

**D-1**

**GAME AND FISH COMMISSION (R20-1201)**

Title 12, Chapter 4, Article 2, Licenses; Permits; Stamps; Tags

**Amend:** R12-4-201, R12-4-205, R12-4-206, R12-4-207, R12-4-208,  
R12-4-210, R12-4-211, R12-4-215, R12-4-216, R12-4-217

**Repeal:** R12-4-212



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 6, 2020

**SUBJECT: GAME AND FISH COMMISSION (R20-1201)**  
Title 12, Chapter 4, Article 2, Licenses; Permits; Stamps; Tags

**Amend:** R12-4-201, R12-4-205, R12-4-206, R12-4-207, R12-4-208,  
R12-4-210, R12-4-211, R12-4-215, R12-4-216, R12-4-217

**Repeal:** R12-4-212

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### **Summary:**

This regular rulemaking from the Game and Fish Commission (Commission) relates to rules in Title 12, Chapter 4, Article 2 regarding Licenses; Permits; Stamps; Tags. In this rulemaking, the Commission seeks to make minor grammatical and non-substantial amendments to increase consistency between the Commission's rules, make the rules clearer and more concise, and replace references to the Department's website URL with the term "Department's website" in the rules. In addition, the Department proposes substantive amendments to the following rules:

- **R12-4-201: Pioneer License;**
- **R12-4-208: Guide License;**
- **R12-4-210: Combination Hunting and Fishing License;**
- **R12-4-211: Lifetime License;**

- **R12-4-212: Benefactor License (repeal due to incorporation of its provisions into R12-4-211);**
- **R12-4-216: Crossbow Permit; and**
- **R12-4-217: Challenged Hunter Access/Mobility Permit (CHAMP).**

The rule amendments proposed in this rulemaking were part of the proposed course of action for these rules in their last five year review report (5YRR), which the Council approved in June 2019. The Commission received an exemption from Executive Order 2019-01 to conduct this rulemaking on September 23, 2019.

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

Yes. The Commission cites both general and specific statutory authority for these rules.

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

No. This rulemaking does not establish a new fee or contain a fee increase.

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

The Commission did not review or rely on a study in conducting this rulemaking.

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

In this rulemaking, the Commission's intent is to provide a benefit to the regulated community, members of the public, and the Commission by clarifying rule language, creating consistency among existing Commission rules, and reducing the burden on the regulated community where practical. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Commission. The Commission anticipates the rulemaking will result in little to no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions, or state revenues.

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

The Commission states that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission indicates that the benefits of the rulemaking outweigh any costs.

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

The stakeholders include the Commission, the Commission's licensees, and applicants for Commission-issued licenses.

The principal benefit the Commission will receive from the proposed rulemaking is increasing customer satisfaction. As a result, some of the proposed amendments will create costs to the agency. The Commission anticipates the rulemaking will impact the Commission in the form of costs to develop and implement an online guide license examination. However, these amendments will not require new full-time employees because the Department designated existing employees who administer the information and technology program.

The Commission will benefit from the repeal of the Community Fishing License. While the Commission anticipates some persons will choose not to purchase a general fishing license, it believes most persons will purchase a general fishing license which may generate increased revenue.

The Commission will benefit from the repeal of the Apprentice License. The Commission believes this license has been abused by roughly 15% of the applicants who obtain them. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

The Commission anticipates the rulemaking will benefit private persons and consumers. The Commission anticipates private persons and consumers will not incur any additional costs as a result of the rulemaking because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden.

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

No. The Commission states that it made minor grammatical and stylistic changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are "substantially different" under A.R.S. § 41-1025.

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

The Commission did not receive any comments in conducting this rulemaking.

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

Yes. In Item 12a of the Preamble, the Commission lists all of the rules that require a permit or license. For each rule listed, the Commission states that the permit or license issued falls within the definition of “general permit” in A.R.S. § 41-1001(11). The Commission complies with A.R.S. § 41-1037.

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

Not applicable. There is no corresponding federal law as the rules are based on state law.

11. **Conclusion**

In this regular rulemaking, the Commission proposes to make substantive and non-substantive amendments to rules relating to licenses, permits, stamps, and tags. In conducting this rulemaking, the Commission is attempting to complete a course of action proposed in a 5YRR for these rules.

The Commission is requesting an effective date of July 1, 2021 for this rulemaking, which is longer than the standard 60-day delayed effective date. The Commission says that a delayed effective date “will allow the Department the time needed to ensure necessary programmatic changes occur and all affected publications, licenses, applications, permits, tags, and Internet pages are revised before rulemaking becomes effective.” Pursuant to A.R.S. § 41-1032(B), an agency may specify an effective date longer than 60 days after filing with the Secretary of State if the agency determines that good cause exists and the public will not be harmed by a later effective date. Here, based on the Commission’s reasons for a longer effective date, it appears that there is good cause for the later effective date, and that it would not harm the public interest.

Council staff recommends approval of this rulemaking with an effective date of July 1, 2021.



September 25, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE:** Arizona Game and Fish Commission, 12 A.A.C. 4, Article 2 Licenses; Permits;  
Stamps; Tags, Regular Rulemaking

Dear Ms Sornsin:

1. **The close of record date:** September 25, 2020
2. **Does the rulemaking activity relate to a Five Year Review Report:** Yes
  - a. **If yes, the date the Council approved the Five Year Review Report:**  
June 4, 2019
3. **Does the rule establish a new fee:** No
  - a. **If yes, what statute authorizes the fee:** Not applicable
4. **Does the rule contain a fee increase:** No
5. **Is an immediate effective date requested pursuant to A.R.S. 41-1032:** No

The Arizona Game and Fish Commission (Commission) certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. The Commission certifies that the preamble states that it **did not** rely on it in the Commission evaluation of or justification for the rule.

The Commission certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. General and specific statutes authorizing the rules, including relevant statutory definitions; and

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**azgfd.gov | 602.942.3000**

**5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086**

**GOVERNOR:** DOUGLAS A. DUCEY **COMMISSIONERS:** CHAIRMAN, ERIC S. SPARKS, TUCSON | KURT R. DAVIS, PHOENIX | LELAND S. "BILL" BRAKE, ELGIN  
JAMES E. GOUGHNOUR, PAYSON | TODD G. GEILER, PRESCOTT **DIRECTOR:** TY E. GRAY **DEPUTY DIRECTOR:** TOM P. FINLEY

4. If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

A handwritten signature in black ink, appearing to read "Ty E. Gray". The signature is written in a cursive style with a large, stylized initial "T" and "G".

Ty E. Gray  
Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable)**      **Rulemaking Action**
- |           |        |
|-----------|--------|
| R12-4-201 | Amend  |
| R12-4-205 | Amend  |
| R12-4-206 | Amend  |
| R12-4-207 | Amend  |
| R12-4-208 | Amend  |
| R12-4-210 | Amend  |
| R12-4-211 | Amend  |
| R12-4-212 | Repeal |
| R12-4-215 | Amend  |
| R12-4-216 | Amend  |
| R12-4-217 | Amend  |
- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute:    A.R.S. § 17-231(A)(1)
- Implementing statute:    A.R.S. §§ 17-101, 17-102, 17-231, 17-235, 17-245, 17-301, 17-332, 17-333, 17-334, 17-335, 17-335.01, 17-340, 17-362, 17-371, 17-372, and 41-1005
- 3. The effective date of the rules:**
- a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable
- b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):**
- The Commission requests the rulemaking become effective on July 1, 2021. This delayed effective date will allow the Department the time needed to ensure necessary programmatic changes occur and all affected publications, licenses, applications, permits, tags, and Internet pages are revised before rulemaking becomes effective.
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 23 A.A.R. 1135, June 5, 2020

Notice of Proposed Rulemaking: 23 A.A.R. 1117, June 5, 2020

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

Name: Celeste Cook

Address: Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7677

E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda, five-year review reports, and learn about other agency rulemaking matters.

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

The Arizona Game and Fish Commission (Commission) proposes to amend its Article 2 rules, addressing licenses, permits, stamps, and tags to enact amendments developed during the preceding Five-year Review Report. The amendments proposed in the five-year review report are designed to clarify current rule language; facilitate job growth and economic development; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible. After evaluating the scope and effectiveness of the proposed amendments specified in the review, the Commission proposes additional amendments to further implement the original proposals.

Arizona's great abundance and diversity of wildlife can be attributed to careful management and the important role of the conservation programs developed by the Arizona Game and Fish Department. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

It is important to note, hunters and anglers are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

An exemption from Executive Order 2019-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated September 23, 2019.

In addition to making minor grammatical and nonsubstantive amendments intended to increase consistency between Commission rules, make rules clearer and more concise; and replacing references to the Department website url with "Department's website," the Commission proposes the following substantive amendments:

**R12-4-201. Pioneer License**, the objective of the rule is to establish application requirements and hunting and fishing privileges for the Pioneer License.

Like the lifetime licenses issued under R12-4-211 (Lifetime License) and R12-4-212 (Benefactor License), the Pioneer License is valid for the person's lifetime and continues to remain valid if the license holder moves out-of-state. The out-of-state license holder must pay the nonresident fee when purchasing any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona, but the hunt-permit tag issuance limitations for nonresident permit holders do not apply to a pioneer license holder. The Commission proposes to amend the rule to clarify Pioneer License (lifetime license) benefits and limitations to increase consistency between rules within Article 2. This change is in response to customer comments received by the Department.

In addition, the rule requires an applicant to submit an original or certified copy of their proof of identity (i.e., valid government-issued driver's license, birth certificate, etc.) and have their signature either notarized or witnessed by a Department employee. The Department has determined these requirements do not benefit the Department and are considered burdensome to Pioneer License applicants. The Commission proposes to amend the rule to remove these requirements in an effort to impose the least burden and costs to persons regulated by the rule.

**R12-4-208. Guide License**, the objective of the rule is to establish the application, reporting, and guiding requirements for those persons who provide commercial guiding services in Arizona.

The Commission proposes to amend the rule to allow a Guide License applicant the opportunity to complete the guide examination and submit the annual report to the Department electronically. These changes will reduce burdens and costs to persons regulated by the rule.

Currently, guide examinations are administered on Monday's. In an effort to increase customer service and provide the Department with greater flexibility, the Commission proposes to remove the requirement that the examination be conducted on Mondays. Currently, an applicant who fails the guide examination is allowed to retake the examination on the same day. This becomes a problem when another guide examination is scheduled for later the same day. The Commission proposes to amend the rule to allow the employee administering the evaluation to determine whether an applicant may retake the evaluation the same day by removing the language stating the applicant may retake the examination the same day.

The methods and manners in which wildlife may be lawfully taken is a constantly moving landscape; hunt regulations change, seasons and species change, conservation messages change, and new technology is released. In order to ensure this information is known and shared by Arizona License Guides the Commission proposes to require a licensed guide to complete a Department-sanctioned continuing education course at least once every five-years.

**R12-4-210. Combination Hunting and Fishing License**, the rule establishes the requirements and privileges of both the resident and nonresident hunting and fishing combination licenses.

The Commission proposes to amend the rule to replace references to the Department website url with "Department's website." In addition, the Commission proposes to remove references to the Community Fishing License rule because the Commission proposes to repeal that rule with this rulemaking.

**R12-4-211. Lifetime License**, the objective of the rule is to establish the hunting and/or fishing privileges for the four lifetime licenses, application requirements, and fees for lifetime licenses.

One of the lifetime licenses is the Benefactor License, a combination hunting and fishing license, except the person purchasing the license pays an additional amount that is considered a tax deductible donation to the State for the continued management, protection, and conservation of the State's wildlife. The Commission proposes to amend the rule to incorporate the requirements of the Benefactor License into this rule and repeal R12-4-212. The Commission also proposes to amend the rule to clarify the privileges included with the lifetime license does not include hunt permit-tags, nonpermit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp. This change is in response to customer comments received by the Department.

**R12-4-212. Benefactor License**, the Commission proposes to repeal this rule due to the incorporation of its provisions into R12-4-211.

Because the only difference between the Lifetime License and Benefactor License is the additional tax donation, the Commission proposes to repeal R12-4-212 and incorporate the requirements of the Benefactor License into R12-4-211 Lifetime License.

**R12-4-216. Crossbow Permit**, the objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person who cannot draw and hold a bow to use a crossbow during an archery-only hunt.

The Commission proposes to amend the rule to establish that a temporary crossbow permit is valid for one year from the date the medical certification portion of the application was signed by the medical healthcare professional. Currently, the Department allows the medical healthcare professional to determine how long the person is likely to suffer from the temporary injury. Establishing a temporary crossbow permit that is valid for one year will increase consistency in Department processes and remove the uncertainty felt by the medical healthcare professional when trying to determine how long an injury is likely to last. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting; however, the Department has learned that parents are applying for a crossbow permit for their minor child. The healthcare provider is using the failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds as justification for the issuance of the permit. For the most part, able-bodied children under 14 years of age are not physically capable of passing this test. These minor children are then issued a permanent crossbow permit that they would not medically qualify for once they mature physically. The Commission proposes to amend the rule to clarify the functional draw test may not be used to determine eligibility for the permit when it is not associated with a disability.

The Commission proposes to amend the rule to require an applicant to pay the fee established under R12-4-102.

**R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**, the objective of the rule is to establish eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP).

The Commission proposes to amend the rule to require an applicant to pay the fee established under R12-4-102.

The following rules are amended only to replace the references to the Department website url with "Department's website."

**R12-4-205. Honorary Scout; Reduced Fee Youth Class F License**, the objective of the rule is to establish application requirements and hunting and fishing privileges for the for the reduced-fee honorary scout license.

**R12-4-206. General Hunting License; Exemption**, the objective of the rule is to establish application requirements and hunting privileges for the general hunting license.

**R12-4-207. General Fishing License; Exemption**, the objective of the rule is to establish application requirements and hunting privileges for the general fishing license.

**R12-4-213. Hunt Permit-tags and Nonpermit-tags**, the objective of the rule is to establish requirements to validate a license for the take a big game animal or any other wildlife requiring a valid tag.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

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

Not applicable

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

The Commission's intent in proposing the amendments is to benefit the regulated community, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, and reducing the burden on the regulated community where practical. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

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

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

The Notice of Proposed Rulemaking was published in the June 5, 2020 issue of the Arizona Administrative register. The public comment period ran from June 5, 2020 to July 5, 2020. The Department did not receive any

public or stakeholder comments in response to the proposed rulemaking.

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

**a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:**

The following rules comply with A.R.S. § 41-1037:

For R12-4-201, the Pioneer License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-205, the High Achievement Scout License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-206, the General Hunting License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-207, the General Fishing License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-208, the Guide License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-210, the Combination Hunting and Fishing License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-211, the Lifetime License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-212, the Lifetime Benefactor License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-215, the Youth Two-day Fishing License described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-216, the Crossbow Permit described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

For R12-4-217, the Challenged Access and Mobility Permit described in the rule falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11).

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

Federal law is not directly applicable to the subject of the rules. The rules are based on state law.

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

The agency has not received an analysis that compares the rule’s impact of competitiveness of business in this state to the impact on business in other states.

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

**rules:**

Not applicable

- 14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rule was not previously made, amended, or repealed as an emergency rule.

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

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**

Section

R12-4-201 Pioneer License

R12-4-205 High Achievement Scout License

R12-4-206 General Hunting License; Exemption

R12-4-207 General Fishing License; Exemption

R12-4-208 Guide License

R12-4-210 Combination Hunting and Fishing License; Exemption

R12-4-211 Lifetime License

~~R12-4-212 Benefactor License~~ Repeal

R12-4-216 Crossbow Permit

R12-4-217 Challenged Hunter Access/Mobility Permit (CHAMP)

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

### R12-4-201. Pioneer License

- A. A pioneer license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The pioneer license is only available at a Department office.
- B. The pioneer license is a complimentary license and is valid for the license holder's lifetime. **The license remains valid if the licensee subsequently resides outside of this state.**
1. **A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.**
  2. **Limits established under R12-4-114 for nonresident hunt permit-tags do not apply to a pioneer license holder.**
- C. A person who is age 70 or older and has been a resident of Arizona for at least 25 consecutive years immediately preceding application may apply for a pioneer license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and ~~online at [www.azgfd.gov](http://www.azgfd.gov)~~ on the Department's website. A pioneer license applicant shall provide all of the following information on the application:
1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant is 70 years of age or older and has been a resident of this state for 25 or more consecutive years immediately preceding application for the license; and
    - b. The information provided on the application is true and accurate.
  3. Applicant's signature and date. ~~The applicant's signature shall be either notarized or witnessed by a Department employee.~~
- D. In addition to the requirements listed under subsection (C), an applicant for a pioneer license shall also submit **a copy of** any one of the following documents at the time of application:
1. Valid U.S. passport;
  2. ~~Original or certified copy of the applicant's~~ Applicant's birth certificate;
  3. ~~Original or copy of a valid~~ Valid government-issued driver's license; or
  4. ~~Original or copy of a valid~~ Valid government-issued identification card.

- E. All information and documentation provided by the applicant is subject to Department verification. ~~The Department shall return the original or certified copy of a document to the applicant after verification.~~
- F. The Department shall deny a pioneer license when the applicant:
  - 1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(1),
  - 2. Fails to comply with this Section, or
  - 3. Provides false information on the application.
- G. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Ch 6, Article 10.
- H. A pioneer license holder may request a no-fee duplicate of the paper license provided:
  - 1. The license was lost or destroyed;
  - 2. The license holder submits a written request to the Department for a no-fee duplicate paper license; and
  - 3. The Department's records indicate a pioneer license was previously issued to that person.
- I. A person issued a pioneer license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).

**R12-4-205. High Achievement Scout License**

- A. A high achievement scout license is offered to a resident who is:
  - 1. Eligible for a combination hunting and fishing license,
  - 2. Under 21 years of age, and
  - 3. A member of the Boy Scouts of the United States of America and has attained the rank of Eagle Scout, or
  - 4. A member of the Girl Scouts of the United States of America and has attained the Gold Award.
- B. The high achievement scout license grants all of the hunting and fishing privileges of the youth combination hunting and fishing license and is only available at Department offices.
  - 1. The license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
  - 2. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the high achievement scout license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- C. An applicant for a high achievement scout license shall apply on an application form available from any Department office and on the Department's web site at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application:
  - 1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;

- f. Mailing address, when applicable;
  - g. Physical address;
  - h. Telephone number, when available; and
  - i. E-mail address, when available;
2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** In addition to the application, an eligible applicant shall present with the application:
1. For an applicant who is a member of the Boy Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Boy Scouts of the United States of America stating that the applicant has attained the rank of Eagle Scout,
    - b. A Boy Scouts of the United States of America Eagle Scout Award Certificate, or
    - c. A Boy Scouts of the United States of America Eagle Scout wallet card.
  2. For an applicant who is a member of the Girl Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Girl Scouts of the United States of America stating that the applicant has completed the award,
    - b. A Girl Scouts of the United States of America Gold Award Certificate, or
    - c. A Girl Scouts Gold Award Certificate from the local council.
- E.** The Department shall deny a high achievement scout license to an applicant who:
1. Is not eligible for the license;
  2. Fails to comply with the requirements of this Section; or
  3. Provides false information during the application process.
- F.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

**R12-4-206. General Hunting License; Exemption**

- A.** A general hunting license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the general hunting license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** The general hunting license is valid for one-year from:
1. The date of purchase when a person purchases the hunting license from a ~~license dealer~~ License Dealer, as defined under R12-4-101;
  2. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
  3. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant

does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or

4. The selected start date when a person purchases the hunting license from a Department office or online. A person may select the start date for the hunting license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C. A resident may apply for a general hunting license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or ~~online at [www.azgfd.gov](http://www.azgfd.gov) on the Department's website.~~ The application is furnished by the Department and is available at any Department office, ~~license dealer~~ License Dealer, and ~~online at [www.azgfd.gov](http://www.azgfd.gov) on the Department's website.~~ A general hunting license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D. In addition to the requirements listed under subsection (C), at the time of application an applicant who is applying for a general hunting license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information ~~electronically~~ provided on the online application is true and accurate.
- E. A person who is under 10 years of age may hunt wildlife other than big game without a hunting license when accompanied by a properly licensed person who is 18 years of age or older.

**R12-4-207. General Fishing License; Exemption**

- A. A general fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The general fishing license is valid:
1. State-wide including Mittry Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission-designated community waters. The list of Commission-designated community waters is available at any ~~license dealer~~ License Dealer, Department office, and ~~online at~~

- ~~www.azgfd.gov~~ on the Department's website.
2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a general fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- B.** The general fishing license is valid for one-year from:
1. The date of purchase when a person purchases the fishing license from a ~~license dealer~~ License Dealer, as defined under R12-4-101; or
  2. The selected start date when a person purchases the fishing license from a Department office or online. A person may select the start date for the fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C.** A resident or nonresident may apply for a general fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or ~~online at www.azgfd.gov~~ online at www.azgfd.gov on the Department's website. The application is furnished by the Department and is available at any Department office, ~~license dealer~~ License Dealer, and ~~online at www.azgfd.gov~~ online at www.azgfd.gov on the Department's website. A general fishing license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** In addition to the requirements listed under subsection (C), an applicant who is applying for a general fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information ~~electronically~~ provided on the online application is true and accurate.
- E.** In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish without a fishing license.

**R12-4-208. Guide License**

- A.** A guide, as defined under A.R.S. § 17-101, is a person who does any one of the following:
1. Advertises for guiding services.
  2. Is presented to the public for hire as a guide.
  3. Is employed by a commercial enterprise as a guide.
  4. Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading, or instructing a person in the field to locate and take wildlife.
  5. Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
- B.** A person shall not act as a guide unless the person holds one of the following guide licenses:
1. A hunting guide license, which authorizes the license holder to act as a guide for the lawful taking of ~~lawful~~ wildlife other than aquatic wildlife as defined under A.R.S. § 17-101.
  2. A fishing guide license, which authorizes the license holder to act as a guide for the lawful taking of ~~lawful~~ aquatic wildlife.
  3. A hunting and fishing guide license, which authorizes the license holder to act as a guide for the lawful taking of ~~lawful~~ wildlife.
- C.** A guide license shall expire on December 31 of each year.
- D.** A person is not eligible to apply for an original or renewal guide license when any one of the following conditions apply:
1. The applicant was convicted of a felony violation of any federal wildlife law, within five years immediately preceding the date of application;
  2. The applicant was convicted of a violation listed under A.R.S. § 17-309(D), within five years immediately preceding the date of application;
  3. The applicant was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended within five years immediately preceding the date of application; or
  4. The applicant's privilege to take or possess wildlife or to guide or act as a guide is currently suspended or revoked anywhere in the ~~United States~~ U.S., for violation of a federal or state wildlife law.
- E.** Notwithstanding subsection (D), a person who was convicted of a misdemeanor violation of any wildlife law within one year preceding the date of application may apply for a guide license provided the person immediately and voluntarily reported the violation to the Department after committing the violation.
- F.** An applicant for a guide license shall:
1. Be 18 years of age or older, and
  2. Possess the required Department-issued license, as applicable:
    - a. A current Arizona hunting license when applying for a hunting guide license;
    - b. A current Arizona fishing license when applying for a fishing guide license;
    - c. A current Arizona combination hunting and fishing license when applying for a hunting and fishing

guide license;

- G.** The guide license does not exempt the license holder from any applicable method of take or licensing requirement. The guide license holder shall comply with all applicable Commission rules, including, but not limited to, rules governing:
1. Lawful methods of take,
  2. Lawful devices, and
  3. License requirements.
- H.** Unless otherwise provided under this Section, a person shall successfully complete the Department administered examination, and answer at least 80% of the questions correctly, prior to applying for a guide license. Guide examinations are:
1. Provided at a Department office.
  2. Valid for a period up to twelve months prior to the date on which the applicant submits an application to the Department until December 31 of the year in which it was taken.
  3. Conducted during normal business hours.
  4. Conducted on the first Monday of the month or by special appointment. A person interested in taking the guide examination shall contact a Department office to obtain scheduling information.
- I.** The examination is based on the type of guide license the person is seeking.
1. A person shall provide acceptable proof of identity, as listed under subsection (L)(2), prior to Before taking the examination, the applicant shall provide their:
    - a. Name;
    - b. Date of birth; and
    - c. Driver license number and issuing state.
  2. The examination may include questions regarding any of the following topics:
    - a. A.R.S. Title 17 Game and Fish statutes and Commission rules regarding the taking and handling of terrestrial and aquatic wildlife;
    - b. A.R.S. Title 28, Ch 3, Article 20 Off-highway Vehicles statutes and rule regarding the use of off-highway vehicles;
    - c. A.R.S. Title 5, Ch 3, Boating and Water Sports statutes and Commission rules on boating;
    - d. Requirements for guiding on federal lands;
    - e. Identification of aquatic wildlife species;
    - f. Identification of wildlife;
    - g. Special state and federal laws regarding certain species;
    - h. General knowledge of fair chase, hunter ethics, and conservation in Arizona;
    - ~~h~~.i. General knowledge of species habitat and wildlife that may occur in the same habitat;
    - ~~i~~.j. General knowledge of the types of habitat within the State; and
    - ~~j~~.k. General knowledge of special or concurrent jurisdictions within the State.
  3. An applicant who fails an the examination may retake the examination ~~on the same day or~~ as ~~otherwise~~ agreed

upon by the applicant and the examination administrator. ~~An applicant who fails an examination twice on the same day shall wait at least seven calendar days, from the examination date, before retaking the examination.~~

- J.** In addition to the guide examination requirement under subsection (H), a guide license holder shall take the Department administered examination when:
1. The applicant currently holds a hunting or fishing guide license and is applying to add a new guiding authority to become for a current combination hunting and fishing guide license;
  2. The applicant for a hunting guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of terrestrial wildlife within one year preceding the date of application;
  3. The applicant for a fishing guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of aquatic wildlife within one year preceding the date of application;
  4. The applicant failed to submit a renewal application postmarked before the expiration date of the guide license; or
  5. The applicant failed to submit the annual report for the preceding license year by January 10 of the following license year.
- K.** A person may apply for a guide license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and ~~online at [www.azgfd.gov](http://www.azgfd.gov) on the Department's website.~~ A guide license applicant shall provide all of the following information on the application:
1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number ~~or Department identification number;~~
    - e. Current hunting, fishing, or combination hunting and fishing license number;
    - ~~e.f.~~ Residency status;
    - ~~f.g.~~ Mailing address, when applicable;
    - ~~g.h.~~ Physical address;
    - ~~h.i.~~ Telephone number, when available;
    - ~~i.j.~~ E-mail address, when available;
    - ~~j.k.~~ Type of guide license sought; and
    - ~~k.l.~~ Calendar year for which the application is made;
  2. The outfitting or guide:
    - a. Business name; and
    - b. Business address, as applicable;
  3. Responses to questions relating to criminal violations;
  4. Affirmation that:

- a. The applicant meets the eligibility requirements prescribed under this Section; and
  - b. The information provided on the application is true and accurate;
- 5. Applicant's signature and date.
- L. In addition to the requirements listed under subsection (K), an applicant for a guide license shall also submit ~~the following documents at the time of application for an original or renewal of a guide license:~~
  - 1. ~~Proof of the successful completion of the guide examination required under subsection (H). The applicant must successfully complete the examination within the twelve months immediately preceding the date of application.~~
  - 2. ~~One~~ a copy of any one of the following as proof of the applicant's identity:
    - a.1. Valid U.S. passport;
    - b.2. ~~Original or certified copy of the applicant's~~ Applicant's birth certificate;
    - e.3. ~~Original or copy of a valid~~ Valid government-issued driver's license; or
    - d.4. ~~Original or copy of a valid~~ Valid government-issued identification card.
- M. All information and documentation provided by the guide license applicant is subject to Department verification. ~~The Department shall return the original or certified copy of a document to the applicant after verification.~~
- N. An applicant for a guide license shall pay all applicable fees required under R12-4-102 upon approval of an initial or renewal application for a guide license.
- O. The Department shall deny a guide license when the applicant:
  - 1. Fails to meet the criteria prescribed under A.R.S. § 17-362,
  - 2. Fails to comply with the requirements of this Section,
  - 3. Provides false information during the application process,
  - 4. Fails to provide the annual report required under subsection (R) by January 10, or
  - 5. Provides false information in the annual report required under subsection (R) within three years immediately preceding the date of application.
- P. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- Q. A guide license holder may submit an application for renewal of a guide license after December 1 of the year it was issued. The Department shall not start the substantive review, as defined under A.R.S. § 41-1072, before January 10 of the following license year, unless the Department receives the annual report prior to the date established under subsection (R). The current guide license shall remain valid pending a Department decision on the application for renewal, provided:
  - 1. The application for renewal is submitted to the Department by December 31, and
  - 2. The Department receives the annual report submitted in compliance with subsection (R).
- R. A guide license holder shall submit to the Department the annual report required under A.R.S. § 17-362(C) for the previous calendar year before January 10 of the following license year. The report form is furnished by the Department and is available at any Department office or ~~online at [www.azgfd.gov](http://www.azgfd.gov)~~ on the Department's website.
  - 1. A report is required whether or not the license holder performed any guiding activities.

2. The annual report shall include all of the following information, as applicable:
    - a. License holder's personal information:
      - i. Name;
      - ii. Guide license number; and
      - iii. E-mail address, when available; and
    - b. Client's personal information:
      - i. Name;
      - ii. Mailing address; and
      - iii. Arizona license, tag and permit numbers, and
    - c. Dates guiding activities were conducted;
    - d. Number and species of wildlife taken by the clients;
    - e. Game management unit or body of water where guiding activities took place;
    - f. Affirmation that the information provided in the annual report is true and accurate; and
    - g. License holder's signature and date.
  3. The Department shall not renew a guide license if the annual report is not submitted to the Department by January 10 of the following license year.
- S.** The date of receipt for the items required under subsections (K), (L), (Q), and (R) shall be as follows:
1. The date a person presents the items to a Department office;
  2. The date a private express mail carrier receives the package containing the items as indicated on the shipping package; or
  3. The date of the United States Postal Service postmark stamped on the envelope containing the items.
- T.** ~~While performing guide activities or providing guide services, a~~ A guide license holder shall:
1. Complete a Department-sanctioned continuing education course at least once every five-years.
  2. While performing guide activities or providing guide services:
    - ~~1-a.~~ Possess a valid guide license.
    - ~~2-b.~~ Possess a valid Arizona hunting, fishing, or combination hunting and fishing license, as applicable under subsection (F)(2).
    - ~~3-c.~~ Present the license for inspection upon the request of any peace officer, including wildlife ~~manager, or managers and game ranger rangers.~~
    - ~~4-d.~~ Report any violation of a federal or state wildlife regulation, law, or rule personally witnessed by the guide license holder.
- U.** A guide license holder shall not:
1. Use, or allow another person to use, any method or device prohibited under any federal or state wildlife regulation, law, or rule while taking wildlife.
  2. Aid, counsel, agree to aid, or attempt to aid another person in planning or engaging in conduct that results in a violation of any federal or state wildlife regulation, law, or rule while taking wildlife.
  3. Pursue any wildlife or hold at bay any wildlife for a person unless that person is present during the pursuit to

take the wildlife.

- a. The person shall be continuously present during the entire pursuit of that specific target animal.
  - b. If dogs are used, the person shall be present when the dogs are released on a specific target animal and shall be continuously present for the remainder of the pursuit.
4. Hold wildlife at bay other than during daylight hours, unless a Commission Order authorizes the take of the species at night.
- V. As authorized under A.R.S. § 17-362(A), the Commission may revoke or suspend a guide license when any one or more of the following actions occur:
1. The guide license holder failed to comply with the requirements of A.R.S. Title 17 or was convicted of violating any provision of A.R.S. Title 17;
  2. The guide license holder was convicted of a felony violation of any federal wildlife law;
  3. The guide license holder was convicted of a violation listed under A.R.S. § 17-309(D);
  4. The guide license holder was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended; or
  5. The guide license holder's privilege to take or possess wildlife is suspended or revoked by any jurisdiction for violation of a federal or state wildlife law.

**R12-4-210. Combination Hunting and Fishing License; Exemption**

- A. A combination hunting and fishing license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds.
- B. A combination hunting and fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-101. The combination hunting and fishing license is valid:
1. State-wide including Mittry Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission-designated community waters. The list of Commission-designated community waters is available at any ~~license dealer~~ License Dealer, Department office, and ~~online at www.azgfd.gov~~ on the Department's website.
  2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a combination hunting and fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- C. The Department offers three combination hunting and fishing licenses:
1. A short-term combination hunting and fishing license, valid for one 24-hour period from midnight to midnight.
    - a. The short-term combination hunting and fishing license is not valid for the take of big game animals.
    - b. The short-term combination hunting and fishing license is valid for the take of migratory game birds and

waterfowl, provided the person possesses the applicable State Migratory Bird stamp and Federal Waterfowl stamp.

- c. The Department does not limit the number of short-term combination hunting and fishing licenses a resident or nonresident may purchase.
2. A combination hunting and fishing license for a person age 18 and over.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a ~~license dealer~~ License Dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
      - iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
      - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
  3. A youth combination hunting and fishing license for a person through age 17.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a ~~license dealer~~ License Dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
      - iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
      - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- D.** A resident or nonresident may apply for a combination hunting and fishing license by submitting an application

to the Department, a License Dealer as defined under R12-4-101, or ~~online at www.azgfd.gov on the Department's website.~~ The application is furnished by the Department and is available at any Department office, ~~license dealer License Dealer,~~ and ~~online at www.azgfd.gov on the Department's website.~~ A combination hunting and fishing license applicant shall provide the following information on the application:

1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- E.** In addition to the requirements listed under subsection (C), an applicant who is applying for a combination hunting and fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information ~~electronically~~ provided on the online application is true and accurate.
- F.** Exemptions authorized under R12-4-206(E); and R12-4-207(E); ~~and R12-4-209(E)~~ also apply to this Section, as applicable.

**R12-4-211. Lifetime License; Benefactor License**

- A.** The Department offers the following lifetime licenses:
1. A lifetime hunting license includes the privileges established under R12-4-206(A).
  2. A lifetime fishing license includes the privileges established under R12-4-207(A).
  3. A lifetime combination hunting and fishing license includes the privileges established under R12-4-210(A) and (B).
  4. A benefactor lifetime combination hunting and fishing license includes the privileges established under R12-4-210(A) and (B).
- B.** A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate lifetime hunting or combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.C.** A The lifetime license does licenses identified under subsection (A) do not expire and remains remain valid

if the licensee subsequently resides outside of this state.

1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
2. Limits established under R12-4-114 for nonresident hunt permit-tags do not apply to a lifetime license holder.

**C.D.** A resident may apply for a lifetime license by submitting an application to the Department and paying the applicable fee required under subsection ~~(D)~~(E). The application is furnished by the Department and is available at any Department office and ~~online at [www.azgfd.gov](http://www.azgfd.gov)~~ on the Department's website. A lifetime license applicant shall provide the following information on the application:

1. The applicant's:
  - a. Name;
  - b. Date of birth,
  - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
  - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
  - e. Department identification number, when applicable;
  - f. Residency status and number of years of residency immediately preceding application, when applicable;
  - g. Mailing address, when applicable;
  - h. Physical address;
  - i. Telephone number, when available; and
  - j. E-mail address, when available; and
2. Affirmation that the information provided on the application is true and accurate; and
3. Applicant's signature and date.

**D.E.** The fees for resident lifetime licenses listed under (A)(1) through (A)(3) are determined by the age of the applicant as follows:

1. Age 0 through 13 years is 17 times the fee established under R12-4-102 for the equivalent one-year license.
2. Age 14 through 29 years is 18 times the fee established under R12-4-102 for the equivalent one-year license.
3. Age 30 through 44 years is 16 times the fee established under R12-4-102 for the equivalent one-year license.
4. Age 45 through 61 years is 15 times the fee established under R12-4-102 for the equivalent one-year license.
5. Age 62 and older is 8 times the fee established under R12-4-102 for the equivalent one-year license.
6. For the purposes of this subsection, when the applicant is under the age of 18, the fee for the lifetime license is based on the full priced license fee, not the youth license fee.

**F.** The fee for the benefactor license listed under (A)(4) is \$1,500. The difference between \$1,500 and the license fee for a resident lifetime combination hunting and fishing license established under subsection (E):

1. Is a donation to the State for continued management, protection, and conservation of the State's wildlife.
2. Shall be credited to the wildlife endowment fund established under A.R.S. § 17-271.
3. May be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations.

**E.G.** A lifetime license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. §

17-340.

~~F.H.~~ A person issued a lifetime license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A)(1), (A)(2), ~~or (A)(3)~~, or (A)(4), as applicable, for the equivalent lifetime license.

**~~R12-4-212.~~ Benefactor License**

- ~~A.~~ A benefactor license includes the privileges established under R12-4-210(A) and (B). A valid hunt permit tag, nonpermit tag, or stamp is required to validate the benefactor license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- ~~B.~~ A benefactor license does not expire and remains valid if the licensee subsequently resides outside of this state.
- ~~1.~~ A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required permit tag, nonpermit tag, or stamp to hunt and fish in this state.
  - ~~2.~~ Limits established under R12-4-114 for nonresident permit tags do not apply to a benefactor license holder.
- ~~C.~~ The benefactor license fee is \$1,500. The difference between \$1,500 and the license fee for a resident lifetime combination hunting and fishing license established under R12-4-211(D):
- ~~1.~~ Is a donation to the State for continued management, protection, and conservation of the State's wildlife.
  - ~~2.~~ Shall be credited to the wildlife endowment fund established under A.R.S. § 17-271.
  - ~~3.~~ May be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax exempt organizations.
- ~~D.~~ A resident may apply for a benefactor license by submitting an application to the Department. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov) on the Department's website. A benefactor license applicant shall provide the following information on the application:
- ~~1.~~ The applicant's:
    - ~~a.~~ Name;
    - ~~b.~~ Date of birth;
    - ~~c.~~ Physical description, to include the applicant's eye color, hair color, height, and weight;
    - ~~d.~~ Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
    - ~~e.~~ Department identification number, when applicable;
    - ~~f.~~ Residency status and number of years of residency immediately preceding application, when applicable;
    - ~~g.~~ Mailing address, when applicable;
    - ~~h.~~ Physical address;
    - ~~i.~~ Telephone number, when available; and
    - ~~j.~~ E-mail address, when available; and
  - ~~2.~~ Affirmation that the information provided on the application is true and accurate; and
  - ~~3.~~ Applicant's signature and date.
- ~~E.~~ A benefactor license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- ~~F.~~ A person issued a benefactor license prior to the effective date of this Section shall be entitled to the privileges

~~established under subsection (A).~~

**R12-4-213. Hunt Permit-tags and Nonpermit-tags**

- A. A valid hunt permit-tag or nonpermit-tag is required to validate a license to take a big game animal or other wildlife requiring a valid tag. Before a person may take a big game animal or other wildlife requiring a tag, the person shall apply for and obtain the appropriate tag required for the take of that big game animal or other wildlife.
- B. A person may apply for a hunt permit-tag in accordance with R12-4-104 and at the times, locations, and in the manner established by the hunt permit-tag application schedule that the Department publishes and is available at any Department office, ~~online at [www.azgfd.gov](http://www.azgfd.gov)~~ on the Department's website, or a ~~license dealer~~ License Dealer as defined under R12-4-101.
- C. A person applying for a nonpermit-tag shall apply in accordance with R12-4-114 and pay the required fee established under R12-4-102.
- D. Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate tag to a person whose tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or placed on a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). The person shall complete and sign the affidavit furnished by the Department. The affidavit is available at any Department office or license dealer. The person shall provide the following information on the affidavit:
  - 1. The applicant's personal information:
    - a. Name;
    - b. Department identification number, when applicable;
    - c. Residency status and number of years of residency immediately preceding application, when applicable;
  - 2. The original license or tag information:
    - a. Type of license or tag;
    - b. Place of purchase;
    - c. Purchase date, when available;
  - 3. Disposition of the original tag for which a duplicate is being purchased.
  - 4. A person applying for a duplicate tag after a harvested animal that was subsequently condemned as described under subsection (D) shall also submit the condemned meat duplicate tag authorization form issued by the Department.
- E. The person shall pay the applicable duplicate fee prescribed under R12-4-102.

**R12-4-216. Crossbow Permit**

- A. For the purposes of this Section, "healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
  - Medical Doctor,
  - Doctor of Osteopathy,

Doctor of Chiropractic,  
Nurse Practitioner, or  
Physician Assistant.

- B.** A crossbow permit allows a person to use a crossbow, or any bow to be drawn and held with an assisting device, during an archery-only season, as prescribed under R12-4-318, when authorized under R12-4-304 as lawful for the species hunted.
- C.** The crossbow permit does not exempt the permit holder from any other applicable method of take or licensing requirement. The permit holder shall be responsible for compliance with all applicable regulatory requirements.
- D.** The crossbow permit does not expire, unless:
  - 1. The medical certification portion of the application indicates the person has a temporary physical disability; then the crossbow permit shall be valid ~~only for the a~~ period of ~~time indicated on the crossbow permit as specified~~ **one year from the date the medical certification portion of the application was signed** by the healthcare provider,
  - 2. The permit holder no longer meets the criteria for obtaining the crossbow permit, or
  - 3. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose crossbow permit is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E.** An applicant for a crossbow permit shall apply by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A crossbow permit applicant shall provide all of the following information on the application:
  - 1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  - 2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  - 3. Applicant's signature and date.
  - 4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant has one or more of the following physical limitations:

- i. An amputation involving body extremities required for stable function to use conventional archery equipment;
  - ii. A spinal cord injury resulting in a disability to the lower extremities, leaving the applicant nonambulatory;
  - iii. A wheelchair restriction;
  - iv. A neuromuscular condition that prevents the applicant from drawing and holding a bow;
  - v. ~~A failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds;~~
  - ~~vi.~~v. A failed manual muscle test involving the grading of shoulder and elbow flexion and extension or an impaired range-of-motion test involving the shoulder or elbow; or
  - ~~vii.~~vi. A combination of comparable physical disabilities resulting in the applicant's inability to draw and hold a bow;
  - vii. A failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds. The functional draw test may not be used to determine eligibility for the permit when it is not associated with a disability.
- b. Indicate whether the disability is temporary or permanent and, when temporary, specify the expected duration of the physical limitation; and
  - c. Provide the healthcare provider's:
    - i. Typed or printed name,
    - ii. License number,
    - iii. Business address,
    - iv. Telephone number, and
    - v. Signature and date;
5. A person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP) and who is applying for a crossbow permit is exempt from the requirements of subsection (E)(4) and shall indicate "CHAMP" in the space provided for the medical certification on the crossbow permit application.

**F.** In addition to the requirements listed above, at the time of application an applicant who is applying for a crossbow permit shall pay the applicable fee required under R12-4-102.

**~~F.G.~~** All information and documentation provided by the applicant is subject to Department verification. ~~The Department shall return the original or certified copy of a document to the applicant after verification.~~

**~~G.H.~~** The Department shall deny a crossbow permit when the applicant:

- 1. Fails to meet the criteria prescribed under this Section,
- 2. Fails to comply with the requirements of this Section, or
- 3. Provides false information during the application process.

**~~H.I.~~** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

~~I.J.~~ The applicant claiming a temporary or permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.

~~J.K.~~ When acting under the authority of a crossbow permit, the crossbow permit holder shall possess the permit, and exhibit the permit upon request to any peace officer, including wildlife ~~manager, or managers and game ranger rangers.~~

~~K.L.~~ A crossbow permit holder shall not:

1. Transfer the permit to another person, or
2. Allow another person to use or possess the permit.

**R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**

A. For the purposes of this Section, the following definitions apply:

“Healthcare provider” means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:

Medical Doctor,

Doctor of Osteopathy,

Doctor of Chiropractic,

Nurse Practitioner, or

Physician Assistant.

“Severe permanent disability” means one or more permanent physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, pulmonary disorders, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations.

B. The Challenged Hunter Access/Mobility Permit (CHAMP) allows a person with a severe permanent disability to perform one or more of the following activities:

1. Discharge a firearm or other legal hunting device from a motor vehicle if, under existing conditions:
  - a. The discharge is otherwise lawful;
  - b. The motor vehicle is not in motion;
  - c. The motor vehicle is not on any road, as defined under A.R.S. § 17-101; and
  - d. The motor vehicle's engine is turned off.
2. Discharge a firearm or other legal hunting device from a watercraft, as defined under R12-4-501; provided the motor is turned off, the sail furled, or both; and progress has ceased.
  - a. The watercraft may be drifting as a result of current or wind, beached, moored, resting at anchor, or propelled by paddle, oars, or pole.
  - b. A person may use a watercraft under power to retrieve dead or wounded wildlife.
  - c. For the purposes of this subsection, "watercraft" does not include a sinkbox.
3. Use off-road locations in a motor vehicle if use is not in conflict with federal or state statutes or regulations

or local ordinances or regulations and the motor vehicle is used as a place to wait for game. A person shall not use a motor vehicle to chase or pursue game.

4. Designate an assistant to track and dispatch a wounded animal, and to retrieve the animal, in accordance with the requirements of this Section.
- C. The CHAMP holder shall comply with all applicable regulatory requirements. A CHAMP does not exempt the permit holder from any other applicable method of take or licensing requirement.
- D. The CHAMP does not expire, unless:
1. The permit holder no longer meets the criteria for obtaining the CHAMP, or
  2. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose CHAMP is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E. An applicant for a CHAMP shall apply by submitting an application to the Department. The application form is furnished by the Department and is available from any Department office and ~~online at [www.azgfd.gov](http://www.azgfd.gov)~~ on the Department's website. The CHAMP applicant shall provide all of the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  3. Applicant's signature and date.
  4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant is a person with a severe permanent disability as defined under subsection (A), and
    - b. Provide the healthcare provider's:
      - i. Typed or printed name,
      - ii. Business address,
      - iii. Telephone number, and
      - iv. Signature and date;
- F. In addition to the requirements listed above, at the time of application an applicant who is applying for a CHAMP shall pay the applicable fee required under R12-4-102.

**F.G.** All information and documentation provided by the applicant is subject to Department verification. ~~The Department shall return the original or certified copy of a document to the applicant after verification.~~

**G.H.** The applicant claiming a severe permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.

**H.I.** The Department shall deny a CHAMP when the applicant:

1. Fails to meet the criteria prescribed under this Section,
2. Fails to comply with the requirements of this Section, or
3. Provides false information during the application process.

**I.J.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed in A.R.S. Title 41, Chapter 6, Article 10.

**J.K.** When acting under the authority of the CHAMP, the permit holder shall possess and exhibit the permit upon request to any peace officer, including wildlife manager, or managers and game ranger rangers.

**K.L.** The CHAMP holder shall ensure the CHAMP vehicle placard, issued with the CHAMP, is visibly displayed on the motor vehicle or watercraft when in use.

**L.M.** The Department shall provide a CHAMP holder with a dispatch permit that allows the CHAMP holder to designate a licensed hunter as an assistant to:

1. Dispatch and retrieve an animal wounded by the CHAMP holder, or
2. Retrieve wildlife killed by the CHAMP holder.

**M.N.** The CHAMP holder shall:

1. Designate an assistant only after the animal is wounded or killed.
2. Ensure the designation on the dispatch permit is in ink and includes:
  - a. A description of the animal,
  - b. The assistant's name and valid Arizona hunting license number,
  - c. The date and time the animal was wounded or killed, and
3. Ensure compliance with all of the following requirements:
  - a. The site where the animal is wounded and the location from which tracking begins are marked so they can be identified later.
  - b. The assistant possesses the dispatch permit and a valid hunting license while tracking and dispatching the wounded animal. When acting under the authority of the dispatch permit, the assistant shall possess and exhibit the dispatch permit and hunting license upon request to any peace officer, including wildlife manager, or managers and game ranger rangers.
  - c. The CHAMP holder is in the field while the assistant is tracking and dispatching the wounded animal.
  - d. The assistant does not transfer the dispatch permit to anyone except that the dispatch permit may be transferred back to the CHAMP holder.
  - e. Dispatch is made by a method that is lawful for the take of the particular animal in the particular season in accordance with requirements established under R12-4-304 and R12-4-318.
  - f. The assistant attaches the dispatch permit to the carcass of the animal and returns the carcass to the

CHAMP holder, and the tag of the CHAMP holder is affixed to the carcass.

- g. If the assistant is unsuccessful in locating and dispatching the wounded animal, the assistant returns the dispatch permit to the CHAMP holder. The CHAMP holder shall strike the name and authorization of the assistant from the dispatch permit.

**N.O.** A dispatch permit may not be reused when all spaces for designation of an assistant are filled or the dispatch permit is attached to a carcass. The CHAMP holder may request another dispatch permit from the Department if:

1. All spaces for assistants are filled,
2. The dispatch permit is lost, or
3. When the CHAMP holder needs another dispatch permit for another big game hunt.

**O.P.** A CHAMP holder shall not:

1. Transfer the permit to another person, or
2. Allow another person to use or possess the permit.

## TITLE 12. NATURAL RESOURCES

### CHAPTER 4. GAME AND FISH COMMISSION

#### ARTICLE OR RULE NUMBERS

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

R12-4-201, R12-4-203, R12-4-205, R12-4-206, R12-4-207, R12-4-208, R12-4-210, R12-4-211,  
R12-4-212, R12-4-213, R12-4-214, R12-4-215, R12-4-216, AND R12-4-217

#### A. The economic, small business and consumer impact summary:

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

The Arizona Game and Fish Commission (Commission) proposes to amend its Article 2 rules, addressing licenses, permits, stamps, and tags to enact amendments developed during the preceding Five-year Review Report. The amendments proposed in the five-year review report are designed to clarify current rule language; facilitate job growth and economic development; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible. After evaluating the scope and effectiveness of the proposed amendments specified in the review, the Commission proposes additional amendments to further implement the original proposals.

Arizona's great abundance and diversity of wildlife can be attributed to careful management and the important role of the conservation programs developed by the Arizona Game and Fish Department. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

It is important to note, hunters and anglers are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

An exemption from Executive Order 2019-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated September 23, 2019.

In addition to making minor grammatical and nonsubstantive amendments intended to increase consistency between Commission rules, make rules clearer and more concise; and replacing references to the Department website url with "Department's website," the Commission proposes the following substantive amendments:

**R12-4-201. Pioneer License**, the objective of the rule is to establish application requirements and hunting and fishing privileges for the Pioneer License.

Like the lifetime licenses issued under R12-4-211 (Lifetime License) and R12-4-212 (Benefactor License), the Pioneer License is valid for the person's lifetime and continues to remain valid if the license

holder moves out-of- state. The out-of-state license holder must pay the nonresident fee when purchasing any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona, but the hunt-permit tag issuance limitations for nonresident permit holders do not apply to a pioneer license holder. The Commission proposes to amend the rule to clarify Pioneer License (lifetime license) benefits and limitations to increase consistency between rules within Article 2. This change is in response to customer comments received by the Department.

In addition, the rule requires an applicant to submit an original or certified copy of their proof of identity (i.e., valid government-issued driver's license, birth certificate, etc.) and have their signature either notarized or witnessed by a Department employee. The Department has determined these requirements do not benefit the Department and are considered burdensome to Pioneer License applicants. The Commission proposes to amend the rule to remove these requirements in an effort to impose the least burden and costs to persons regulated by the rule.

**R12-4-208. Guide License**, the objective of the rule is to establish the application, reporting, and guiding requirements for those persons who provide commercial guiding services in Arizona.

The Commission proposes to amend the rule to allow a Guide License applicant the opportunity to complete the guide examination and submit the annual report to the Department electronically. These changes will reduce burdens and costs to persons regulated by the rule.

Currently, guide examinations are administered on Monday's. In an effort to increase customer service and provide the Department with greater flexibility, the Commission proposes to remove the requirement that the examination be conducted on Mondays. Currently, an applicant who fails the guide examination is allowed to retake the examination on the same day. This becomes a problem when another guide examination is scheduled for later the same day. The Commission proposes to amend the rule to allow the employee administering the evaluation to determine whether an applicant may retake the evaluation the same day by removing the language stating the applicant may retake the examination the same day.

The methods and manners in which wildlife may be lawfully taken is a constantly moving landscape; hunt regulations change, seasons and species change, conservation messages change, and new technology is released. In order to ensure this information is known and shared by Arizona License Guides the Commission proposes to require a licensed guide to complete a Department-sanctioned continuing education course at least once every five-years.

**R12-4-210. Combination Hunting and Fishing License**, the rule establishes the requirements and privileges of both the resident and nonresident hunting and fishing combination licenses.

The Commission proposes to amend the rule to replace references to the Department website url with "Department's website." In addition, the Commission proposes to remove references to the Community Fishing License rule because the Commission proposes to repeal that rule with this rulemaking.

**R12-4-211. Lifetime License**, the objective of the rule is to establish the hunting and/or fishing privileges for the four lifetime licenses, application requirements, and fees for lifetime licenses.

One of the four lifetime licenses is the Benefactor License, a combination hunting and fishing license, except the person purchasing the license pays an additional amount that is considered a tax deductible donation to the State for the continued management, protection, and conservation of the State's wildlife. The Commission proposes to amend the rule to incorporate the requirements of the Benefactor License into this rule and repeal R12-4-212. The Commission also proposes to amend the rule to clarify the privileges included with the lifetime license does not include hunt permit-tags, nonpermit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp. This change is in response to customer comments received by the Department.

**R12-4-212. Benefactor License**, the Commission proposes to repeal this rule due to the incorporation of its provisions into R12-4-211.

Because the only difference between the Lifetime License and Benefactor License is the additional tax donation, the Commission proposes to repeal R12-4-212 and incorporate the requirements of the Benefactor License into R12-4-211 Lifetime License.

**R12-4-216. Crossbow Permit**, the objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person who cannot draw and hold a bow to use a crossbow during an archery-only hunt.

The Commission proposes to amend the rule to establish that a temporary crossbow permit is valid for one year from the date the medical certification portion of the application was signed by the medical healthcare professional. Currently, the Department allows the medical healthcare professional to determine how long the person is likely to suffer from the temporary injury. Establishing a temporary crossbow permit that is valid for one year will increase consistency in Department processes and remove the uncertainty felt by the medical healthcare professional when trying to determine how long an injury is likely to last. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting; however, the Department has learned that parents are applying for a crossbow permit for their minor child. The healthcare provider is using the failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds as justification for the issuance of the permit. For the most part, able-bodied children under 14 years of age are not physically capable of passing this test. These minor children are then issued a permanent crossbow permit that they would not medically qualify for once they mature physically. The Commission proposes to amend the rule to clarify the functional draw test may not be used to determine eligibility for the permit when it is not associated with a disability.

The Commission proposes to amend the rule to require an applicant to pay the fee established under R12-4-102.

**R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**, the objective of the rule is to establish eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP).

The Commission proposes to amend the rule to require an applicant to pay the fee established under R12-4-102.

The following rules are amended only to replace the references to the Department website url with "Department's website."

**R12-4-205. Honorary Scout; Reduced Fee Youth Class F License**, the objective of the rule is to establish application requirements and hunting and fishing privileges for the for the reduced-fee honorary scout license.

**R12-4-206. General Hunting License; Exemption**, the objective of the rule is to establish application requirements and hunting privileges for the general hunting license.

**R12-4-207. General Fishing License; Exemption**, the objective of the rule is to establish application requirements and hunting privileges for the general fishing license.

**R12-4-213. Hunt Permit-tags and Nonpermit-tags**, the objective of the rule is to establish requirements to validate a license for the take a big game animal or any other wildlife requiring a valid tag.

**(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.

The Commission proposes to allow a person to submit a copy of their proof of name and date of birth to the Department. Currently, a person is required to submit the original document. When an applicant mails their documentation to the Department, they put their personally identifying information at risk. In addition, the Department must mail the original documentation back to the applicant; again putting the applicant's personally identifying information at risk. On an annual basis, the Department issues approximately 4,415 Pioneer Licenses, 400 Disabled Veteran's License, and 865 Guide Licenses. Because the Department's Sportsman's Database does not differentiate between applications submitted in person or by mail, it is not possible to quantify the frequency of occurrences.

The Commission proposes to repeal the Apprentice license. On an annual basis, the Department issues approximately 50 resident and 25 nonresident complimentary apprentice licenses. The apprentice license is intended to be a tool for recruitment that provides both youth and adult novice hunters the opportunity to receive hands-on experience under the supervision of a licensed hunter. However, the Department believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. Because the license is not meeting its objective, the Commission proposes to repeal the rule.

**(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this

subsection will address only those rules deemed to have a significant impact on the regulated community. For all rules identified in (A)(1)(b), the Commission believes the targeted conduct identified below will continue to occur if the rule is not amended as identified in (A)(1):

An applicant who mails their documentation to the Department puts their personally identifying information at risk.

Persons are using the apprentice license to avoid buying a hunting license will continue to obtain an apprentice license even though Department records indicate they have an interest in continuing the sport of hunting.

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

The Commission anticipates the rule changes will prevent or diminish the frequency of the targeted conduct. While it is not possible to quantify the actual change in frequency of the targeted conduct expected from the rule change, the Commission believes that over time, through continued education, outreach, and enforcement of the rule changes identified under (A)(1), the frequency of the targeted conduct will be significantly reduced.

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

The Commission's intent in proposing the amendments indicated in (A)(1) is to benefit the regulated community, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, and reducing the burden on the regulated community where practical. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Therefore, 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: Celeste Cook, Rules and Policy Manager

Address: Arizona Game and Fish Department

5000 W. Carefree Highway

Phoenix, AZ 85086

Telephone:(623) 236-7390

Fax: (623) 236-7677

E-mail: CCook@azgfd.gov

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

**1. Identification of the proposed rulemaking:**

See paragraph (A)(1) above.

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

Persons who will bear costs from the proposed rulemaking:

Persons who have applied for apprentice licenses numerous times in the past will no longer be able to obtain a complimentary two-day license and will be required to purchase a hunting license.

Persons who will benefit from the proposed rulemaking:

Persons applying for a Pioneer license will benefit from the amendment that removes the requirement that the applicant's signature be either notarized or witnessed by a Department employee.

Persons applying for a Pioneer, Disabled Veteran's, or Guide license will benefit from the amendment that allows them to submit a copy of their proof of name and date of birth document.

Disabled veterans who are not rated 100% disabled by the U.S. Department of Veteran's Affairs will benefit from the amendment that allows the Department to issue a reduced-fee Disabled Veteran's License.

Persons regulated by the rule will benefit from the amendments that make the rules more concise.

**3. Cost benefit analysis:**

**(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:**

The principle benefit the Department will receive from the proposed rulemaking is increasing customer satisfaction. As a result, some of the proposed amendments will create costs to the agency. The Commission anticipates the rulemaking will impact the Department due to costs to develop and implement an online guide license examination; however, these amendments will not require new full-time employees as the Department has designated employees who administer the information and technology program. The Commission anticipates the rulemaking will have little or no impact on other state agencies affected by the implementation and enforcement of the rulemaking. The Commission believes the benefits of the rulemaking outweigh any costs.

The Department will benefit from the repeal of the Community Fishing License. While the Commission anticipates some persons will choose not to purchase a general fishing license, it believes most persons will purchase a general fishing license which may generate increased revenue.

The Department will benefit from the repeal of the Apprentice License. The Commission believes this license has been abused by roughly 15% of the applicants who obtain them. The Department believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

**(b) The probable costs and benefits to a political subdivision of this State directly affected by the implementation and enforcement of the proposed rulemaking:**

The Commission anticipates the proposed amendments will have little or no impact on political subdivisions of this state directly affected by the implementation and enforcement of the proposed rulemaking.

**(c) The 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 have little or no impact on businesses directly affected by the 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:**

Except as indicated below, the Commission anticipates the proposed amendments will have no substantive impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be insignificant.

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

**(a) Identification of the small businesses subject to the proposed rulemaking.**

The Commission anticipates the rulemaking will result in little or no impact to small businesses. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates small business affected by the rule will not incur any additional costs as a result of the rulemaking. For most small businesses affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be insignificant.

**(b) Administrative and other costs required for compliance with the proposed rulemaking.**

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on persons regulated by the rule.

**(c) Description of the methods that the agency may use to reduce the impact on small businesses.**

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any compliance or reporting requirements on businesses.

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

The Commission anticipates the rulemaking will benefit private persons and consumers. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates private persons and consumers will not incur any additional costs as a result of the rulemaking. The Department's customers are a voluntary constituency who determine if, and at what levels, they choose to participate. They are not required to participate and have the ultimate vote with their hard-earned dollars. Given this reality and the fact that the Department is not a general fund (tax-funded) agency, the Commission and Department need to be responsive to constituent desires and

concerns regarding opportunities and products. For an agency to operate like a business, it must have the ability to react to customer needs or changing conditions in a timely manner.

**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 considered placing additional restrictions on the Apprentice License, such as limiting the number of apprentice licenses a person may be issued in their lifetime and limiting the number of persons a hunter may mentor at any one time; however, this would increase the administrative burden to the Department for a complimentary license that is not meeting its intended objective. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona. 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 and observations, which included comments from the public and agency staff who administer and enforce rules included in this rulemaking. Additionally, the Commission relied on historical data, current processes, benchmarking with other states, and the Department's overall mission. This rulemaking includes rules that govern licenses, permits, stamps, and tags valid for the take of wildlife. The subject the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

**C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.**

The Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 2. In its review, the team considered all comments from agency staff that administer and enforce Article 2 rules, historical data, current processes and environment, comments submitted by the public, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue

harm to the Department's 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.

# **Arizona Game and Fish Commission 2019 Five-Year-Review Report**

**TITLE 12. NATURAL RESOURCES  
CHAPTER 4. GAME AND FISH COMMISSION  
ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**



**A Report to the Governor's Regulatory Review Council**

**ARIZONA GAME AND FISH COMMISSION**  
**12 A.A.C. 4, ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**  
**2017 FIVE-YEAR REVIEW REPORT**  
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## **REPORT: ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 3, Taking and Handling Wildlife, are scheduled to be reviewed by April 2019.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 2. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff as well as comments received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates requesting an exception to the rulemaking moratorium by May 2019 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by February 2021, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086;
3. The Department includes the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and
4. The Department provides the directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements. These documents are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086.

## **R12-4-201. PIONEER LICENSE**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-336(A)(1), and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish application requirements and hunting and fishing privileges for the pioneer license. The rule was adopted to comply with the statutory mandate under A.R.S. § 17-336(A)(1). This license may be issued to a person who is seventy years of age or older and who has been a resident of this state for twenty-five or more consecutive years immediately preceding application for the license. The pioneer license is valid for the lifetime of the licensee and does not require renewal. The complimentary combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges

The pioneer license is free of charge to eligible applicants.

The Department issues an average of 4,415 complimentary pioneer licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Like the lifetime licenses issued under R12-4-211 (lifetime license) and R12-4-212 (benefactor license), the

pioneer license is valid for the person's lifetime and continues to remain valid even when the person moves to another state. The Department proposes to amend the rule to establish a pioneer license holder who resides outside of this state must pay the nonresident fee when purchasing any required permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona; and the limits established under R12-4-114 (issuance of nonpermit-tags and hunt permit-tags) for nonresident permit holders do not apply to a pioneer license holder to increase consistency between rules within Article 2.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticisms of the rule:

**Written Comment: August 1, 2013.** If I make it to 70 years of age, I will be too crippled to hunt. Why not change the age and residency requirements to something reasonable, like 60 years of age with at least 30 years of residency?

**Written Comment: March 20, 2017.** I was wondering why you have to be a resident of Arizona for 25 years to get a pioneer license. I have been here for 15 years and do not plan on moving anywhere till the day I die, then I will go in a hole in Cave Creek. I checked other states and theirs is as long as you have residence in the state. I will be 70 in December and thought I could get one until I was told different. I don't think that is right and it needs to be changed. **Follow-up Comment: April 11, 2017.** Thank you for your feedback. I misunderstood the rule; I thought the 25 years was for the city you live in, not the State. So, I will be okay.

**Agency Response:** The twenty five year requirement is based on statute; A.R.S. 17-336(A)(1) requires a person to be at least 70 years of age and a resident of Arizona for twenty-five or more consecutive years immediately preceding application for the license. The legislative amendment must occur before the Department may issue a Pioneer License to a person under the age of 70 or has been a resident of Arizona for less than 25 years.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission amended the rule to clarify the pioneer license is a complimentary, no-fee, license and is valid for the license holder's lifetime provided the person continues to meet the statutory requirements; clarify that a duplicate paper pioneer license is also complimentary; reference age and residency requirements; and establish a person issued a pioneer license prior to January 1, 2014 is granted all of the privileges established by the last rulemaking. The Commission anticipated the amendments would result in a rule that is either less burdensome or would have no significant impact on persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory**

**objective.**

The rule establishes application requirements and hunting and fishing privileges for the pioneer license. The Department issues an average of 4,415 complimentary pioneer licenses on an annual basis. The public and the Department benefit from the proposed rulemaking through clarification of rule language governing licenses and permits issued by the Department. The public and Department benefit from a rule that is understandable. Currently, the rule requires an applicant to submit an original or certified copy of their proof of name and date of birth document (i.e., valid government-issued driver license, birth certificate, etc.) and have their signature either notarized or witnessed by a Department employee. The Department has determined these requirements do not benefit the Department and are considered burdensome to Pioneer License applicants. The Department proposes to amend the rule to remove these requirements. The Department believes that once the proposed amendments indicated in the report are made, the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-201 to:

- Establish a pioneer license holder who resides outside of this state must pay the nonresident fee when purchasing any required permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona to increase consistency between rules within Article 2.
- Establish the limits prescribed under R12-4-114 (issuance of nonpermit-tags and hunt permit-tags) for nonresident permit holders do not apply to a pioneer license holder to increase consistency between rules within Article 2.

- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the requirement that an applicant's signature be either notarized or witnessed by a Department employee to reduce burdens and costs to persons regulated by the rule.
- Allow an applicant to submit a copy of their valid U.S. passport, birth certificate, or valid government-issued driver's license or identification card to reduce burdens and costs to persons regulated by the rule.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

#### **R12-4-202. DISABLED VETERAN'S LICENSE**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-336(A)(2), and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish application requirements and hunting and fishing privileges for the disabled veteran's license. This license may be issued to a disabled veteran who has been a resident for at least one year prior to application and who is receiving compensation from the United States Government for a service connected disability that is 100% disabling. Eligibility is determined by disability rating and not compensation received. The disabled veteran's license is valid for three years if the licensee's 100% permanent disability rating will be reevaluated within three years or for the lifetime of the licensee without requirement for renewal if the license's 100% disability rating will not be reevaluated. The complimentary combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges. The rule was adopted to comply with the statutory mandate under A.R.S. §17-231(A)(2).

The disabled veteran's license is free of charge to eligible applicants.

The Department issues an average of 400 complimentary disabled veteran's licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following criticisms of the rule:

**Oral Comment: March 7, 2018.** I don't understand why Arizona requires a person to be a resident of the state in order to obtain a Disabled Veteran's License. Other states allow a nonresident to get a disabled veteran's license. A veteran serves the entire U.S., why do they have to be a resident of a state in order to qualify for a reduced license?

**Agency Response:** The requirement that a veteran of the armed forces of the United States be a resident of this state for one year preceding application for the complimentary disabled veteran's license is described in statute, A.R.S. 17-336(A)(2). No legislative intent clause or other explanation of this requirement could be located, and any attempt to explain the motivation for requiring residency would therefore be speculative.

**Proposed Amendment:** Consider issuing a three-year disabled veteran's license to a military member who is rated 100% unemployable (IU).

**Agency Response:** The recent passage of *Laws, 2018, Chapter 103* has codified the Game and Fish Commission's authority to offer complimentary and discounted licenses at its discretion. It is therefore appropriate for the Commission to consider this amendment as a potential new license discount or complimentary license, rather than an amendment to the existing rule.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission amended the rule in order to accept a benefits letter issued by the United States Department of Veteran's Affairs (DVA) or an eBenefits letter downloaded from the DVA website as proof of eligibility and allowing applicants to attest that application information is true and correct, instead of requiring a notarized signature. The Commission anticipated the amendments would benefit persons regulated by providing a financial benefit to applicants who would no longer incur costs associated travel and notary fees. There were no negative fiscal impacts to the Department, other state agencies, small business, or state revenues associated with this amendment.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.

- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes application requirements and hunting and fishing privileges for the disabled veteran's license. The Department issues an average of 400 complimentary disabled veteran's licenses on an annual basis. The public benefits from a rule that allows a veteran who has been a resident for at least one year prior to application and who is receiving compensation from the United States Government for a service connected disability that is 100% disabling to receive a complimentary combination hunting and fishing license. The Department benefits from a rule that is understandable. The Department has determined that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-202 to:

- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

**R12-4-203. NATIONAL HARVEST INFORMATION PROGRAM (HIP);  
STATE WATERFOWL AND MIGRATORY BIRD STAMP**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-235, 17-332, 17-333, and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish requirements for the application and use of both the waterfowl and state migratory bird stamps, which enable the Department to obtain hunter participation and harvest data for migratory game birds in compliance with the requirements of the federally mandated National Harvest Information Program; which is administered by the United States Fish and Wildlife Service (USFWS).

The fee for the State Waterfowl Migratory Bird stamp is \$5.

The Department issues an average of 53,030 State Waterfowl and Migratory Bird Stamps on an annual basis.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the

rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission amended the rule to combine State Waterfowl and Migratory Bird stamp privileges and requirements to simplify the license structure. This resulted in requiring only one stamp for the taking of migratory birds and waterfowl. The Commission anticipated the amendments would benefit persons regulated by providing a financial benefit to applicants who previously had to purchase two different stamps for taking migratory birds and waterfowl. There were no negative fiscal impacts to the Department, other state agencies, small business, or state revenues associated with this amendment.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Exempt Rulemaking: 190 A.A.R. 3225, October 18, 2013

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish requirements for the application and use of the state migratory bird stamp, which enable the Department to obtain hunter participation and harvest data for migratory game birds in compliance with the requirements of the federally mandated National Harvest Information Program. The Department issues an average of 53,030 State Waterfowl and Migratory Bird Stamps on an annual basis. The Department collects the participation and harvest data online. The Department has determined that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law, 50 C.F.R. Part 20, is applicable to the subject of the rule. The Department has determined the rule is not more stringent than federal law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

**R12-4-205. HONORARY SCOUT; REDUCED FEE YOUTH CLASS F LICENSE**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-336(B), and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish application requirements and hunting and fishing privileges for the reduced-fee honorary scout license. The combination hunting and fishing license is offered to a resident of this state who is a member of the Boy Scouts of America and who has attained the rank of Eagle Scout or a member of the Girl Scouts of the U.S.A. who has received the Gold Award. The rule was adopted to comply with amendments made to A.R.S. § 17-336(B), which honored the 100th anniversary of the Boy Scouts of America.

The fee for the honorary scout license is \$5.

The Department issues an average of 120 Honorary Scout reduced-fee youth class licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission amended the rule to increase consistency between Commission rules. The Commission anticipated the amendments resulted in a rule that had no significant impact on persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory**

**objective.**

The objective of the rule is to establish application requirements for the reduced-fee honorary scout license. The combination hunting and fishing license is offered to a resident of this state who is a member of the Boy Scouts of America and who has attained the rank of Eagle Scout or a member of the Girl Scouts of the U.S.A. who has received the Gold Award. The Department issues an average of 120 Honorary Scout reduced-fee youth class licenses on an annual basis. The Department has determined that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

**R12-4-206. GENERAL HUNTING LICENSE; EXEMPTION**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish application requirements and hunting privileges for the general hunting license. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The resident general hunting license is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The general hunting license is also valid for the take of migratory birds when the person possesses the applicable migratory bird stamp, and for big game when the person possesses the applicable big game tag. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; the applicant may choose their start date, provided that date is in the future and is no more than 60 calendar days from the date of purchase. A person under 10 years of age may hunt wildlife other than big game without a license, when accompanied by a person, 18 years of age or older, who possesses a valid Arizona hunting license.

The fee for the resident hunting license is \$37.

The Department issues an average of 53,140 general hunting licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Commission increased the cost of the general hunting license by \$5, which the Commission determined would affect persons regulated by the rule. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the fee increase would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish application requirements and hunting privileges for the general hunting license. The Department issues an average of 53,140 general hunting licenses on an annual basis. Purchasing a general hunting license is voluntary and a person who chooses to purchase a license will incur those costs associated with the license. The public and Department benefit from a rule that is understandable. The Department has determined that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-206 to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided

the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

#### **R12-4-207. GENERAL FISHING LICENSE; EXEMPTION**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish application requirements and hunting privileges for the general fishing license. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The resident and nonresident general fishing license is valid for the take of aquatic wildlife, includes trout, community, and Colorado River fishing privileges and allows simultaneous fishing as defined under R12-4-301. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; and when the applicant purchases the license online or at a Department office, the applicant may choose their start date, provided that date is in the future and is no more than 60 calendar days from the date of purchase. A person under 10 years of age may fish without a fishing license.

The fees for the general fishing license are as follows:

- Resident general fishing license is \$37, and
- Nonresident general fishing license is \$55.

On an annual basis, the Department issues:

- 149,700 resident fishing licenses, and
- 15,505 nonresident fishing licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. Although the Commission increased the cost of the resident general fishing license by \$13.50, the Commission also increased the value of the license by including trout, simultaneous fishing, community fishing, and Colorado River fishing privileges. Previously, a resident had to

purchase all of these additional privileges separately for a combined total cost of \$69.75 (class A fishing license \$23.50, Urban fishing license \$18.50, trout stamp \$15.75, two-pole stamp \$6, and Arizona/California and Arizona/Nevada Colorado River stamps \$6). An internal analysis indicated nonresident fishing license sales were poor in comparison to resident fishing license sales, so the nonresident fishing license fee was reduced by \$15.25. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, fishing is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the resident fee increase and nonresident fee reduction would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish application requirements and fishing privileges for the general fishing license. The Department issues an average of 149,700 resident fishing licenses and 15,505 nonresident fishing licenses on an annual basis. Purchasing a general hunting license is voluntary and a person who chooses to purchase a license will incur those costs associated with the license. The public and Department benefit from a rule that is understandable. The Department has determined that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.**12. A determination that the rule is**

**not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-207 to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

#### **R12-4-208. GUIDE LICENSE**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-245, 17-362, and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the application, reporting, and guiding requirements for those persons who provide commercial guiding services in Arizona. The rule was adopted to clarify what a guide may legally do while aiding or assisting a client in the taking of wildlife and ensure compliance with wildlife laws and rules.

The fees for the guide license are as follows:

- Resident guide license is \$300, and
- Nonresident guide license is \$300.

On an annual basis, the Department issues:

- 770 resident guide licenses, and
- 95 nonresident guide licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission amended the rule to increase consistency between A.R.S. Title 17 and rules within Article 2 by citing the definition of aquatic wildlife; clarify rule language; incorporate questions regarding off-highway vehicle laws and rules into the guide license examination; require a person to provide acceptable proof of identity prior to taking the examination; allow an applicant who failed the examination to retake the examination on the same day or as otherwise agreed upon by the applicant and the examination administrator; require an applicant who fails an examination twice on the same day to wait at least seven calendar days before retaking the examination; and extend the prohibition on providing false information to required annual reports. The Commission anticipated the rulemaking would benefit persons who provide guiding services by increasing consistency between Commission rules and clarifying guide license requirements.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish the application, reporting, and guiding requirements for those persons who provide commercial guiding services in Arizona. The Department issues an average of 770 resident guide licenses and 95 nonresident guide licenses on an annual basis. The public and the Department benefit from a rule that is understandable. Although the Department has determined the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective, the Department proposes to amend the rule to provide applicants the ability to apply for a guide license, take the guide examination, and submit reports to the Department electronically. These changes will make it easier for members of the public to apply for and obtain a guide license and will reduce both costs and administrative burden to applicants once implemented. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-208 as follows:

- Remove rule language relating to the manual examination to implement the online examination process.
- Require a person taking the online guide examination to provide personal information for security purposes when taking the examination to implement the online examination process.
- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Allow an applicant to submit a copy of their valid U.S. passport, birth certificate, or valid government-issued driver's license or identification card to reduce burdens and costs to persons regulated by the rule.
- Remove date of receipt information applicable to the annual report to implement the online reporting process.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

#### **R12-4-209. COMMUNITY FISHING LICENSE; EXEMPTION**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The rule was adopted to provide fishing opportunities for anglers in an urban environment for the purpose of encouraging angler recruitment and reengagement. The resident and nonresident community fishing license is valid for the take of aquatic wildlife from those Commission designated community waters specifically listed in the Department's fishing regulations and allows simultaneous fishing. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; when the applicant purchases the license online or at a Department office, the applicant may choose their start date, provided that date is in the future and is no more than 60 calendar days from the date of purchase. A person under 10 years of age may fish in designated community waters without a fishing license.

The fees for the community fishing license is as follows:

- Resident community fishing license is \$24, and
- Nonresident community fishing license is \$24.

On an annual basis, the Department issues:

- 4,370 resident community licenses, and
- 650 nonresident community fishing licenses.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review,

Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for

recruitment of new hunters and anglers. The Commission increased the cost of the resident and nonresident community fishing license by \$3.50. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the resident and nonresident fee reduction would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The Department issues 4,370 resident community licenses and 650 nonresident community fishing licenses on an annual basis. In 2014, through the license simplification rulemaking, fishing privileges for Commission designated community waters were added to the general fishing license to increase its value. Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water

angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to repeal R12-4-209. The privilege to fish Commission designated community waters is available through the purchase of a general fishing license and combination hunting and fishing license. Eliminating the community fishing license will simplify license choices available to the public at a minimal cost to the end user.

**R12-4-210. COMBINATION HUNTING AND FISHING LICENSE**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The rule establishes the requirements and privileges of both the resident and nonresident hunting and fishing combination licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges. The Commission established three variations of the combination hunting and fishing license: resident and nonresident one-year combination hunting and fishing license available to persons 18 years of age and older, resident and nonresident one-year youth combination hunting and fishing license available to person's age 10 through 17, and resident and nonresident short-term combination hunting and fishing license available to persons age 18 and older. The short-term license is valid for one 24-hour period from midnight to midnight. The short-term combination hunting and fishing license is the only short term license offered by the Department and provides the same privileges as the one-year combination hunting and fishing license, except that it is not valid for the take of big game animals. The Commission does not limit the number of short-term licenses a person may purchase in any given year or require a person to purchase consecutive short-term licenses, however, the Department will offer an annual license when the cost of short-term licenses being purchased meets or exceeds the price of the applicable combination hunting and fishing license. A person under 10 years of age may hunt wildlife other than big game without a license, when accompanied by a person, 18 years of age or older, who possesses a valid Arizona hunting license. The only hunting license the Commission offers a nonresident is the combination hunting and fishing license.

The fees for the combination hunting and fishing licenses are as follows:

- Resident combination hunting and fishing license is \$57,
- Nonresident combination hunting and fishing license is \$160,
- Resident youth combination hunting and fishing license is \$5,
- Nonresident youth combination hunting and fishing license is \$5,
- Resident short-term combination hunting and fishing license is \$15 and
- Nonresident short-term combination hunting and fishing license is \$20.

On an annual basis, the Department issues:

- 101,190 resident combination hunting and fishing licenses,
- 27,325 nonresident combination hunting and fishing licenses,
- 66,340 resident youth combination hunting and fishing licenses,
- 3,625 nonresident youth combination hunting and fishing licenses,
- 17,925 resident short-term combination hunting and fishing licenses, and
- 30,925 nonresident short-term combination hunting and fishing licenses.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activities and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the resident fee increase of \$3 and nonresident fee reduction of \$65.75 would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements and privileges of both the resident and nonresident hunting and fishing combination licenses. The Department issues a total of 247,330 combination hunting and fishing licenses: resident and nonresident: youth, one-year, and short-term. The fee for resident and nonresident youth combination hunting and fishing license was reduced from \$26.50 to \$5 to remove barriers for recruitment of new hunters and anglers. The fee for the resident combination hunting and fishing license was increased to

\$160, which was only \$3 more than it was before. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-210 to:

- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the reference to R12-4-209 because the report recommends repealing this rule.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

**R12-4-211. LIFETIME LICENSE**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-335.01, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the hunting and/or fishing privileges for the three lifetime licenses, application requirements, and fees for lifetime licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Arizona's lifetime general hunting and fishing license program provides a unique opportunity for resident sportsmen and sportswomen to participate in the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of these special licenses are deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. The license is a great value; the initial investment pays off in 18 years even when purchasing the most costly lifetime license: combination license for a person aged 14 to 29 for \$1026. The purchaser of a lifetime license is entitled to hunt and fish (as applicable) in Arizona for their lifetime, even if the license holder moves out-of-state. In addition, a lifetime license holder who moved out-of-state is not subject to the limits placed on nonresident permit-tags. The lifetime hunting license is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The lifetime fishing license is valid for the take of aquatic wildlife, includes trout, community, and Colorado River fishing privileges and allows simultaneous fishing as defined under R12-4-301. The lifetime combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges.

Fees for the lifetime fishing, lifetime hunting, and lifetime combination licenses are based on the applicant's age as follows:

- Age 0 through 13 years is 17 times the applicable annual license fee,
- Age 14 through 29 years is 18 times the applicable annual license fee,
- Age 30 through 44 years is 16 times the applicable annual license fee,
- Age 45 through 61 years is 15 times the applicable annual license fee, and
- Age 62 and older is 8 times the applicable annual license fee.

On an annual basis, the Department issues:

- 24 lifetime fishing licenses,
- 128 lifetime hunting licenses, and
- 195 lifetime combination hunting and fishing licenses.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the

rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department also issues a Benefactor License. The benefactor license is an additional type of lifetime license and is similar to the lifetime hunting and fishing license, except the person purchasing the license pays an additional amount that is considered a tax deductible donation to the state for the continued management, protection and conservation of the state's wildlife. The Department proposes to amend the rule to incorporate the requirements of the Benefactor License; R12-4-212 Benefactor License will be repealed with the same rulemaking.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to amend the rule to clarify the privileges included with the lifetime license do not include permit-tags, nonpermit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp. This change is in response to customer comments received by the Department.

In addition, the Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or**

**methods.**

The Department received the following written criticism of the rule:

**Written Comment: November 4, 2014.** I have been inquiring about the new migratory bird stamp requirement for dove hunting. I possess a lifetime hunting/fishing license and have been given conflicting information from the Department as to whether or not I need the stamp. The majority consensus has been that I would need it. I feel that Arizona hunters who have paid for the lifetime license, under the belief that they would pay no more to hunt or fish again except for game tags, should be "grandfathered" in those rights as they stood when they bought the license. I was contemplating giving up hunting before I bought the lifetime license because of the ever increasing cost. I made the purchase believing that would save me from future inflation and expenses, except for tags of course. Now I see that new charges are being added and it is disturbing to me. Please clarify the rule language to address this issue. Furthermore, can the Department also put something out exclusive to lifetime license holders on exactly what you get (i.e. trout stamp, two-pole stamp, etc.)? What about special big game tags exclusively for lifetime license holders? That would probably draw more people into the investment.

**Agency Response:** Prior to December 31, 2013, a lifetime license holder was required to purchase additional licenses and stamps as required: community (urban) fishing license (\$18.50), Colorado River stamps (\$6), state waterfowl stamp (\$7.50), trout stamp (\$15.75), two-pole stamp (\$6), and Unit 12A Habitat Management stamp (\$15). The licenses and stamps were valid until December 31 of each year, meaning the lifetime license holder purchased these privileges separately and annually each year. On January 1, 2014 the Commission increased the value of hunting and fishing licenses by including all of the privileges listed above in the price of the license. At that time, the lifetime license privileges were amended to include all of the privileges listed above; a total savings of \$68.75 each year. The Department does not support the concept of dedicating special big game tags for lifetime license holders. Arizona's big game populations are not as robust as in many other states, mostly attributable to the arid climate. Arizona's populations are much lower and the demand for the big game tags the Department offers is very high. The Commission's draw process is designed to provide equal opportunity to all classes of persons and not to provide an advantage to certain classes. As a result, the Commission does not believe that any class of persons should be awarded or offered big game tags for which others are not eligible.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide

quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activities and only those persons who choose to participate in the activity will pay the fee. The Commission anticipated the new, simplified license structure would benefit persons regulated by the rule due to the increased value. While other licenses that were previously available prior to December 31, 2013 were either repealed or the fee increased, the three lifetime license fees were not increased, providing a greater benefit to current and future lifetime license holders.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the hunting and/or fishing privileges for the three lifetime licenses, application requirements, and fees for lifetime licenses. The Department issues a combined total of 347 lifetime licenses on an annual basis. Prior to January 1, 2014, the lifetime fishing and lifetime combination hunting and fishing licenses did not include simultaneous fishing, community, and Colorado River fishing privileges. In addition, the previous lifetime fishing license did not include trout privileges. A person who desired any or all of these additional privileges had to purchase them separately on an annual basis, with the exception of trout fishing privileges which could be purchased either annually or for a lifetime. When the rule was adopted, the Commission included these additional privileges in the license and also granted persons issued a lifetime license prior to the effective date of the rule change the same privileges applicable to the new lifetime license. The public benefits from a rule that enables a person to obtain a hunting and/or fishing license that lasts a lifetime

for a nominal fee. The Department benefits from a rule that enables the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of these special licenses are deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-211 as follows:

- Incorporate the requirements of the Benefactor License; R12-4-212 Benefactor License will be repealed with the same rulemaking.
- Clarify the privileges included with the lifetime license do not include permit-tags, nonpermit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp. This change is in response to customer comments received by the Department.
- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

## **R12-4-212. BENEFACTOR LICENSE**

### **1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-335.01, and 41-1005

### **2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the hunting and fishing privileges for the benefactor combination hunting and fishing license, application requirements, and fee. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Arizona's lifetime general hunting and fishing license program provides a unique opportunity for resident sportsmen and sportswomen to participate in the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of the benefactor license is deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. In addition, the difference between the cost of the lifetime combination hunting and fishing license and the cost of the benefactor combination hunting and fishing license is considered a donation and may be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations. The purchaser of a benefactor license is entitled to hunt and fish in Arizona for their lifetime, even if the license holder moves out-of-state. In addition, a benefactor license holder who moved out-of-state is not subject to the limits placed on nonresident permit-tags. The benefactor combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges.

Fee for the lifetime benefactor combination hunting and fishing license is \$1,500.

On an annual basis, the Department issues five lifetime benefactor combination hunting and fishing licenses.

### **3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the

rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input,

and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activities and only those persons who choose to participate in the activity will pay the fee. The Commission anticipated the new, simplified license structure would benefit persons regulated by the rule due to the increased value. While other licenses that were previously available prior to December 31, 2013 were either repealed or the fee increased, the lifetime benefactor license fees were not increased, providing a greater benefit to current and future benefactor license holders.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes establish the hunting and fishing privileges for the benefactor combination hunting and fishing license, application requirements, and fee. The Department issues five benefactor licenses on an annual basis. Prior to January 1, 2014, the benefactor combination hunting and fishing license did not include simultaneous fishing, trout, community, and Colorado River fishing privileges. A person who desired any or all of these additional privileges had to purchase them separately on an annual basis, with the exception of trout fishing privileges which could be purchased either annually or for a lifetime. When the rule was adopted, the Commission included these additional privileges in the license and also granted persons issued a benefactor license prior to the effective date of the rule change the same privileges applicable to the new benefactor license. The public benefits from a rule that enables a person to obtain a hunting and fishing license that lasts a lifetime for a nominal fee. The Department benefits from a rule that enables the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of the benefactor license is deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. In addition, the difference between the cost of the lifetime combination hunting and

fishing license and the cost of the benefactor combination hunting and fishing license is considered a donation and may be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to repeal R12-4-212 and incorporate the requirements of the Benefactor License into R12-4-211 Lifetime Licenses.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

**R12-4-213. HUNT PERMIT-TAGS AND NONPERMIT-TAGS**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-345, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish requirements to validate a license for the take a big game animal or any other wildlife requiring a valid tag. The rule was adopted to establish permit-tag and nonpermit-tag requirements. Because tags are issued by the season and the Department no longer issues a hunting or combination hunting and fishing license that is valid for the calendar year (expires on December 31 of each year), the Commission believed the rule was necessary.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticisms of the rule:

**Written Comment: April 10, 2014.** I believe Arizona should consider conservation permits; these permits could be auctioned annually to create a large amount of money to directly benefit each species individually. Please open the link below to see how Utah structures these permits/ programs. <https://wildlife.utah.gov/hunting-in-utah/hunting-information/big-game/118-hunting/big-game/839-conservationpermitprogram.html>

**Agency Response:** Under A.R.S. § 17-346, the Commission is authorized to award ten Special Big Game License Tags to the Arizona Big Game Super Raffle for the purpose of conducting a raffle. The Arizona Big Game Super Raffle is a 501(c)(3) organization founded in 2006. These special license tags are designed to earn money for wildlife and wildlife management in Arizona. Raffle entries come from all 50 states and other countries; and every dollar raised for each species by the raffle of these special big game tags is returned to the Arizona Game and Fish Department and managed by the Arizona Habitat Partnership Committee for that particular species. With input from local habitat partners across the state, as well as the input from the organizations involved with the fundraising, they collectively determine which projects will provide the most benefit to each species represented. Since, 2006, the raffle has given the Arizona Game and Fish Department almost \$6,000,000 for habitat improvements that benefit wildlife.

**Written Comment: June 14, 2017.** This is the second time I have appealed to the Department requesting a family tag (deer, elk, etc.) be made available to hunters. I never received a response. When asking for input from the public, please include an email address on the announcement where we can respond in the event we are unable to attend the public hearings.

**Agency Response:** Currently, the computer draw process allows four applicants to apply for a specific hunt on one application. Approximately four weeks after deadline day, the draw is run by computer. There are three separate passes made during a computer draw. The first is for hunters with maximum bonus points for first and second choices, the second is the “regular pass” for first and second choices, and the third is for third, fourth and fifth choices. Each application is assigned a random number. A person receives an additional random number for each bonus point for that particular genus (bonus points for group applications are averaged). The lowest of all random numbers is the one assigned to the application for that genus for the draw. When the computer draws a group application, it first determines whether there are enough permit-tags available for all members of the group. If there are not enough permit-tags for everyone in the group, the application is rejected and the computer draw goes onto the application with the next lowest random number. Amending the rule to allow more persons to apply on a group application could result in all persons not being drawn. However, a large group can apply for hunts by submitting multiple applications.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the**

**rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. Some tag fees were increased, while others were reduced. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. The Commission anticipated increasing some fees will most significantly affect persons regulated by the rule, both resident and nonresident. However, hunting is a voluntary recreational activity and only those persons who choose to participate in the activity requiring the necessary permit-tag or nonpermit-tag will pay the increased fee. The Commission did not anticipate the fee increase would significantly affect a person's ability to practice an activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The effective date for the license fee increases is January 1, 2014, which is seven years from the time of the last over-all fee increase.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes that a person may apply for a hunt permit-tag in accordance with R12-4-104 and at the times, locations, and in the manner established by the hunt permit tag application schedule that the Department publishes at [www.azgfd.gov](http://www.azgfd.gov) or a license dealer. The public benefits from a rule that establishes permit-tag and

non-permit tag requirements. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

**R12-4-214. APPRENTICE LICENSE**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. Apprentice license privileges and mentor requirements were previously prescribed under A.R.S. § 17-333. The

apprentice license is a complimentary license and is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is valid for the take of migratory game birds and waterfowl provided the license holder also possesses the applicable state and federal stamp. The apprentice license is not valid for the take of big game.

The apprentice license is free of charge to eligible applicants.

The Department issues an average of 50 resident and 25 nonresident complimentary apprentice licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or**

**methods.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Department believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. To prevent the abuse of this complimentary license, the Department proposes to limit the number of apprentice licenses a person may obtain to two per the person's lifetime. The Department believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. The Department also proposes to limit the number of hunters a person may mentor at any one time to two persons to promote hunter safety.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes apprentice license privileges and mentor requirements. The Department issues an average of 100 resident and 190 nonresident complimentary apprentice licenses on an annual basis. Apprentice license privileges and mentor requirements were previously prescribed under A.R.S. § 17-333. The apprentice license is a complimentary license and is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The Department believes the concept of an apprentice license would be beneficial to persons who would like to try fishing before buying a fishing license. The Department proposes to amend the rule to establish an Apprentice Fishing License to assist in the recruitment of both youth and adult novice anglers by providing an opportunity to fish under the supervision of a licensed angler. The public benefits from a rule that establishes a complimentary license that allows a person to experience hunting without having to purchase a license first. The public and Department benefit from a rule that is understandable. The Department benefits from a rule that encourages hunter recruitment. The Department believes that once the proposed amendments indicated in the report are made, the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-214 as follows:

- Establish an apprentice fishing license to provide both youth and adult novice anglers the opportunity to fish without a license under the supervision of a licensed angler.
- Limit the number of apprentice licenses a person may obtain to two per the person's lifetime to maintain the intent of the license. The short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona.
- Limit the number of hunters a person may mentor at any one time to two persons to promote hunter safety.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

#### **R12-4-215. YOUTH GROUP TWO-DAY FISHING LICENSE**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish youth group two-day fishing license privileges and requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Youth group two-day fishing license privileges were previously prescribed under A.R.S. § 17-333. The youth group two-day fishing license is issued to a nonprofit organization that sponsors adult supervised activities for groups of no more than 25 youth, ages 10 through 17. The youth group two-day fishing license is valid for taking all aquatic wildlife.

Fee for the youth group two-day fishing license is \$25.

The Department issues 55 youth group two-day fishing licenses on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the

rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

No written criticisms were received.

**8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. It is important to note, the fee for the youth group two-day fishing license was not changed. Fishing is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the rulemaking would significantly affect a person's ability to participate in the activity or have a

significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable; the rule was adopted January 1, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish youth group two-day fishing license privileges and requirements by rule to comply with the recent statutory amendments. The Department issues 55 youth group two-day fishing licenses on an annual basis. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The youth group two-day fishing license privileges were amended to lower the minimum age for eligible youth from 14 to 10 and increase the maximum age for eligible youth from 14 to 17 to increase consistency between Commission fishing license rules. The public benefits from a rule that establishes a low-cost fishing license that allows a nonprofit organization or governmental entity to take up to 25 youth fishing. The Department benefits from a rule that promotes angler recruitment. The public and Department benefit from a rule that is understandable. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action

#### **R12-4-216. CROSSBOW PERMIT**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-332, 17-301(D)(2), and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person who cannot draw and hold a bow to use a crossbow during an archery-only hunt. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting.

The crossbow permit (both temporary and lifetime) are free of charge to eligible applicants.

The Department issues an average of 1 lifetime crossbow permit and 85 temporary crossbow permits on an annual basis.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticisms of the rule:

**Written Comment: July 16, 2013.** The Department should allow the use of crossbows for all archery hunting opportunities. Many Arizonan's are getting older and having more difficulty drawing a compound bow back to full draw at the minimum draw weight. This would also provide more opportunity to hunters and generate more revenue for the Arizona Game and Fish Department.

**Written Comment: April 14, 2014.** I would like to suggest that people 70 years of age and older be permitted to use a crossbow during archery seasons.

**Written Comment: July 28, 2014.** It would be nice to allow the use of a crossbow for a person 70 years and older during bow season.

**Written Comment: January 7, 2015.** Arizona should allow deer hunting with a crossbow during archery season for everyone. The current crossbow disability rules are ridiculous. Stop forcing us to go to the many other states that allow crossbow hunting and spending our money there instead of at home.

**Written Comment: January 7, 2015.** Crossbows for Archery. Some of us do not qualify for the handicapped rules but with shoulder injuries that still cannot draw even today's 80% drop off compounds.

**Written Comment: July 1, 2015.** I think crossbow should be able to be used during archery seasons for senior citizens over 65.

**Written Comment: November 8, 2016.** I would like to see those that have Pioneer License be able to use a crossbow when hunting without a physical exam for disability.

**Agency Response:** The Department disagrees. Crossbows generally fire with higher levels of kinetic energy, more speed and greater accuracy, providing an advantage to a hunter who uses a crossbow over one that uses a bow and arrow. At this time, crossbows may be used during general season for the take of big game, small game, predators, furbearers, nongame, and the handgun, archery and muzzleloader (HAM) season for the take of javelina. In addition, a person with a crossbow permit issued under R12-4-216 may use a crossbow during an archery-only hunt. The Department does not believe that any class of individuals (persons of a certain age) should be afforded preferential treatment.

**Written Comment: February 1, 2016.** You may have already heard about the new arrow shooting airgun from Crosman, called the Benjamin "Pioneer Airbow" (press release copied below). It made its debut at ATA show just after the first of the year, and set social media ablaze for a few days, then at SHOT last week the interest was almost overwhelming. The weapon is basically an adaptation of the .35 cal. Bulldog PCP airgun. It shoots a full-length 26-inch 375 grain arrow at 450 feet-per-second, each and every shot due to an internal metering system. And, it actually shoots arrows more accurately than the Bulldog shoots slugs - "robin hoods" are a common occurrence out to 50 yards. I have been testing a prototype of the airbow that is very close to what the final production model will be. They are scheduled to start shipping in April, and Crosman has a pile of pre-orders. I showed the airbow to Dan Diamond and Dave Cagle in the Pinetop office, with somewhat mixed reaction. It's my contention that since it is a .35 cal. PCP airgun adapted to shoot arrows, and since AZ regulations do not specify requirements for the projectile, that this should be legal for hunting where PCP airguns are allowed. Dan questioned that it is not marked .35 cal. externally, and Crosman says this will be corrected on the final production version. I have a general javelina hunt later this month, and I hope to use this remarkable new weapon on that hunt. We also discussed that Crosman is targeting crossbow seasons with this new weapon, as it is more accurate, faster and more lethal, easier to load, unload and handle, and much safer than a crossbow. I believe this weapon to be an excellent alternative for disabled hunters or those with physical limitations that prevent them from cocking and using a crossbow (at least in a safe manner). I spoke with Celeste Cook regarding the possibility of clarifying the legality of this new weapon, since article 3 is open once again for changes. Here's what I would like to see addressed: 1) clarification so it's easily understood that the airbow is legal for use where PCP airguns are legal. 2) consideration for classification of the new airbow as a crossbow, so it can be used by disabled hunters with a legitimate crossbow permit. 3) modification of rule 3

(and also rule 2 if necessary) to allow the take of elk with the airbow (during general hunts, where .35 cal. PCP airguns are not currently legal). You may recall the EEE chart we developed in 2012 when regulations for hunting with airguns were being developed. I have attached an updated version of this chart, which includes both the airbow and modern crossbow. Finally, I would welcome the opportunity to demonstrate the airbow for you, as well as any of the other commissioners and G&F personnel that may be interested. There's a good possibility that I will have a couple of airbows available for hands-on demonstration at the Outdoor Expo at Ben Avery April 1-2. Rob Potter with Shoot Right American club has invited me to do so at his booth, and I should have an actual production model by then. **Additional Follow-up Comment: August 8, 2016.** I sent the email copied below back in February regarding the new arrow shooting airgun, and intended to follow-up since I did not hear back from you. Unfortunately, we were unable to get the necessary approvals to demonstrate the Pioneer Airbow at the Expo in April, and time flies by... I see the Commissioners will be meeting in Pinetop this month (8/26-27), and I plan to submit a blue card to speak about the Airbow and current airgun hunting regulations at this meeting. I will have one at the meeting on Friday for the Commissioners to review, and possibly shoot -- if we can get this cleared with the Pinetop office (we can probably set up a 20-30 yard range behind the office if anyone wants to try the Airbow, possible at the lunch break or after the meeting). And, I can be available for demonstrations/questions, etc. on Saturday as well if necessary. I think addressing this new weapon class is important for several reasons. There are now more than a dozen arrow shooting airguns marketed in the US, and some have greater utility as hunting weapons (safer and more lethal) than others. Also, last week Air Venturi announced they are now marketing specially adapted arrows that can be launched from virtually any .50 caliber airgun. Thus, there's no question AZGFD will be encountering more arrow launchers in the field.

**Agency Response:** The Commission is currently amending rules within Article 3, which addresses the taking and handling of wildlife, to allow a Crossbow Permit holder to use a pre-charged pneumatic weapon, as defined under R12-4-301, using bolts or arrows and with a capacity of holding and firing only one arrow or bolt at a time during an archery-only season. This change is proposed as a result of customer comments received by the Department.

**Written Comment: February 10, 2015.** I am not handicapped but my father is. I have had the pleasure of hunting with him my entire life and have seen how hard it has become for him to even get within shooting range with a rifle. In one particular year we had the chance meeting with a father and son hunter, where the son was severely handicapped and was not expected to live another three years. That young man was 16 at the time and I suspect that he has now passed as it was five years ago. Both of these hunts were right after a major muzzleloader hunt in 6A and even seeing an animal was rare as both parties were confined to road hunting. The boy was completely chair bound and my father can walk a couple of hundred yards at best in an hour. How do we as hunters and humans expect these people to have half a chance if we don't even give them a 10% chance to start. I would like to see these hunts moved in front of the rifle hunts and give them that half a chance. It also

wouldn't hurt if you allowed the animals a few days to settle down after each hunt either. So many other states have hunts that do this, why shouldn't we. It seems only fair to game more so than the hunters.

**Agency Response:** The Department appreciates your comments and suggestions. Your comment relates to the Department's hunt guidelines and was forwarded to the Department's Terrestrial Wildlife Branch for consideration during the next hunt guideline evaluation process.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule was amended to define "healthcare provider" to reduce the regulatory burden on the applicant; establish a temporary crossbow permit for applicants who are temporarily disabled to reduce the regulatory burden on the applicant; allow the Department to issue a crossbow permit to a person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP); and expand the list of qualifying medical conditions. The Commission anticipated persons who apply for a crossbow permit would benefit from the proposed amendments that expand the medical eligibility criteria and allow a person to apply for a temporary crossbow permit. The Commission anticipated the amendments would result in an overall benefit to persons regulated by the rule, members of the public, and the Department.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes eligibility requirements, conditions, and restrictions for the crossbow permit. The Department issues an average of 1 lifetime crossbow permit and 85 temporary crossbow permits on an annual basis. The public benefits from a rule that provides a mechanism that afforded persons with a disability the opportunity to participate in hunting. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

#### **R12-4-217. CHALLENGED HUNTERS ACCESS/MOBILITY PERMIT (CHAMP)**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-332, 17-301(D)(2), and 41-1005

**2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP). The permit allows a disabled person to perform activities while hunting normally prohibited under A.R.S. § 17-301. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting.

The CHAMP is free of charge to eligible applicants.

The Department issues an average of one CHAMP on an annual basis.

**3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

**4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

**6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

**7. Summary of written criticisms of the rule received in last five years including any written analyses**

**submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticism of the rule:

**Written Comment: August 20, 2013.** I think the CHAMP rule needs to be looked at. There are people who enjoy hunting and are very limited too. They should be able to qualify for the CHAMP; such as people who have COPD, CHF, and other similar limiting health issues. Imagine a person who takes an deer or elk, they could die trying to get it back to their truck on foot, but if they were missing a foot, arm, or leg - they could use their quad to retrieve that deer or elk. The requirements are not fair. The CHAMP should cover more than just handicapped hunters. Just because I have both arms and legs, does not mean I am not just as limited. I used to walk 15 to 20 miles a day, scouting and hunting. Now it takes me all day just to cover a couple of miles. I called the Department to ask about the CHAMP and the person I spoke to told me to get one of my children to take me hunting. That is the last thing I want; to have lean on or burden my children. My daughter is 15, if something happened to me - how would she drag me out of the woods. The second person I spoke to suggested that I write in and bring this to the Department's attention. Maybe no one has ever looked at it this way before, maybe it could be put on the agenda and voted on when considering new regulations.

**Agency Response:** On January 3, 2015, the CHAMP rule was amended to expand the list of qualifying medical conditions to include one or more permanent physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, pulmonary disorders, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule was amended to define "healthcare provider" to reduce the regulatory burden on the applicant; expand the list of persons authorized to complete the medical certification portion of the application; and expand the list of qualifying medical conditions. The Commission anticipated persons who apply for a CHAMP would benefit from the proposed amendments that expand the medical eligibility criteria. The Commission anticipated the amendments would result in an overall benefit to persons regulated by the rule, members of the public, and the Department.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the**

**competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 1233, May 30, 2014
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- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP). The Department issues an average of one CHAMP on an annual basis. The public benefits from a rule that provides a mechanism that afforded persons with a disability the opportunity to participate in hunting. The public and Department benefit from a rule that is understandable. The Department has determined the rule imposes the least burden and costs to persons regulated by the rule.

**12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

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4. Ensure that all safety standards, guidelines, and requirements are followed.
  5. Implement additional safety requirements upon request by the Department.
  6. Ensure all obstructions and hazards are eliminated.
  7. Ensure trash and waste is properly disposed of throughout the solicitation or event.
- Q.** The Department shall revoke or terminate the solicitation or event if a sponsor fails to comply with a Department request or any one of the following minimum safety requirements:
1. All solicitation or event activities shall comply with all applicable federal, state, and local laws, ordinances, codes, statutes, rules, and regulations.
  2. The layout of the solicitation or event shall ensure that emergency vehicles will have access at all times.
  3. The Department may conduct periodic safety checks throughout the solicitation or event.
- R.** This Section does not apply to government agencies.

**Historical Note**

New Section made by emergency rulemaking at 10 A.A.R. 4777, effective November 4, 2004 for 180 days (Supp. 04-4). Emergency expired (Supp. 05-2). New Section renumbered from R12-4-804 and amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS****R12-4-201. Pioneer License**

- A.** A pioneer license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The pioneer license is only available at a Department office.
- B.** The pioneer license is a complimentary license and is valid for the license holder's lifetime.
- C.** A person who is age 70 or older and has been a resident of Arizona for at least 25 consecutive years immediately preceding application may apply for a pioneer license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A pioneer license applicant shall provide all of the following information on the application:
1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant is 70 years of age or older and has been a resident of this state for 25 or more consecutive years immediately preceding application for the license; and
    - b. The information provided on the application is true and accurate.
  3. Applicant's signature and date. The applicant's signature shall be either notarized or witnessed by a Department employee,
- D.** In addition to the requirements listed under subsection (C), an applicant for a pioneer license shall also submit any one of the following documents at the time of application:
1. Valid U.S. passport;
  2. Original or certified copy of the applicant's birth certificate;
  3. Original or copy of a valid government-issued driver's license; or
  4. Original or copy of a valid government-issued identification card.
- E.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- F.** The Department shall deny a pioneer license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(1),
  2. Fails to comply with this Section, or
  3. Provides false information on the application.
- G.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Ch 6, Article 10.
- H.** A pioneer license holder may request a no-fee duplicate of the paper license provided:
1. The license was lost or destroyed;
  2. The license holder submits a written request to the Department for a no-fee duplicate paper license; and
  3. The Department's records indicate a pioneer license was previously issued to that person.
- I.** A person issued a pioneer license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).

**Historical Note**

Former Section R12-4-31 renumbered as Section R12-4-201 without change effective August 13, 1981. New Section R12-4-201 amended effective August 31, 1981 (Supp. 81-4). Amended subsection (B) effective December 9, 1985 (Supp. 85-6). Amended subsections (D) and (E), and changed application for a Pioneer License effective September 24, 1986 (Supp. 86-5). Former Section repealed, new Section adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-202. Disabled Veteran's License**

- A.** A disabled veteran's license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The disabled veteran's license is only available at a Department office.
- B.** The disabled veteran's license is a complimentary license and is valid for a three-year period from the issue date or the license holder's lifetime, as established under subsection (F).
- C.** An eligible applicant is a disabled veteran who:
1. Has been a resident of Arizona for at least one year immediately preceding application, and
  2. Is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling. Eligibility for the disabled veteran's

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- license is based on the disability rating, not on the compensation received by the veteran.
- D.** A person applying for a disabled veteran's license shall submit an application to the Department. The application form is furnished by the Department and available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application:
1. The applicant's personal information:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the eligibility requirements prescribed under A.R.S. § 17-336(A)(2),
    - b. The applicant has been a resident of this state for at least one year immediately preceding application for the license, and
    - c. The information provided on the application is true and accurate.
  3. Applicant's signature and date.
- E.** In addition to the requirements established under subsection (D), an applicant for a disabled veteran's license shall, at the time of application, also submit an original certification or a benefits letter issued by the United States Department of Veteran's Affairs (DVA) or obtained from the DVA website that meets the requirements specified in subsections (D)(1), (2), and (3). The certification form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The certification shall be completed by an agent of the United States Department of Veteran's Affairs. The certification shall include all of the following information:
1. The applicant's full name,
  2. Certification that the applicant is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling,
  3. Certification that the 100% rating is permanent, and:
    - a. Will not require reevaluation or
    - b. Will be reevaluated in three years, and
  4. The signature and title of the Department of Veterans' Affairs agent who issued or approved the certification.
- F.** If the certification or benefits letter required under subsection (E) indicate the applicant's disability rating of 100% is permanent and:
1. Will not be reevaluated, the disabled veteran's license will not expire.
  2. Will be reevaluated in three years, the disabled veteran's license will expire three years from the date of issuance.
- G.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- H.** The Department shall deny a disabled veteran's license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(2),
  2. Fails to comply with the requirements of this Section, or
  3. Provides false information during the application process.
- I.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- J.** A disabled veteran's license holder may request a no-fee duplicate paper license provided:
1. The license was lost or destroyed,
  2. The license holder submits a written request to the Department for a duplicate license, and
  3. The Department's records indicate a disabled veteran's license was previously issued to that person.
- K.** A person issued a disabled veteran's license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).
- L.** For the purposes of this Section, "disabled veteran" means a veteran of the armed forces of the United States with a service connected disability.

**Historical Note**

Former Section R12-4-66 renumbered, then repealed and readopted as Section R12-4-43 effective February 20, 1981 (Supp. 81-1). Former Section R12-4-43 renumbered as Section R12-4-202 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 31, 1984 (Supp. 84-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section R12-4-202 adopted effective December 22, 1989 (Supp. 89-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1199, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2550, effective January 5, 2015 (Supp. 15-2).

**R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp**

- A.** All state fish and wildlife agencies are required to obtain data to assess the harvest of migratory game birds in compliance with the federally mandated National Harvest Information Program administered by the United States Fish and Wildlife Service in accordance with 50 C.F.R. Part 20.
- B.** In compliance with the National Harvest Information Program, the Department requires a person to possess a migratory bird stamp or authorization number, which may be affixed to or written on the appropriate license, and a current, valid federal waterfowl stamp. The migratory bird stamp and authorization number are required to take band-tailed pigeons, moorhen, coots, doves, ducks, geese, snipe, or swans.
1. The state migratory bird stamp expires on June 30 of each year. To obtain a state migratory bird stamp, a person shall submit:
    - a. The fee required under R12-4-102, and
    - b. A completed state migratory bird registration form to a license dealer or a Department office.
  2. The person shall provide on the state migratory bird registration form the person's:
    - a. Name,
    - b. Mailing address,
    - c. Date of birth, and
    - d. Information on past and anticipated hunting activity.
  3. The youth combination hunting and fishing license includes the state migratory bird stamp privileges. A

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youth hunter who possesses a valid combination hunting and fishing license shall obtain:

- a. A Federal waterfowl stamp when the youth hunter is 16 years of age or older and is taking ducks, geese, swans, coots, gallinules; or
  - b. A permit-tag when the youth hunter is taking sand-hill crane.
- C. A license dealer shall submit state migratory bird registration forms for all state migratory bird stamps sold with the monthly report required under A.R.S. § 17-338.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2).

Amended effective April 22, 1980 (Supp. 80-2).

Amended subsections (A), (C), (D), and (G) effective December 29, 1980 (Supp. 80-6). Former Section R12-4-41 renumbered as Section R12-4-203 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (C), (E), (G) and added Form 7016 (Supp. 81-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section adopted effective July 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**Editor's Note**

For similar subject matter, see Section R12-4-411.

This editor's note does not apply to the new Section adopted effective July 1, 1997 (Supp. 96-4).

**R12-4-204. Taxidermy Registration; Register**

- A. A person shall register with the Department before engaging in the business of taxidermy for hire. A taxidermy registration authorizes a person to mount, refurbish, maintain, restore, or preserve wildlife as defined under A.R.S. § 17-101.
- B. A taxidermy registration expires on December 31 of each year.
- C. The Department shall deny a taxidermy registration when the applicant:
  1. Fails to meet the requirements established under this Section;
  2. Provides false information during the application process; or
  3. Provides false information in the register required under A.R.S. § 17-363(B).
- D. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- E. A person may apply for a taxidermy registration by paying the applicable fee and submitting an application to the Department. The application form is available on the Department's website. A taxidermy registration applicant shall provide all of the following information:
  1. The applicant's information:
    - a. Name;
    - b. Date of birth;
    - c. Department identification number, when applicable;
    - d. Mailing address, when applicable;
    - e. Physical address;
    - f. Telephone number, when available;
    - g. Email address, when available; and

2. The applicant's business information:
  - a. Name;
  - b. Mailing address;
  - c. Email address;
  - d. Website URL address, if available;
  - e. Business telephone number, when applicable;
  - f. Calendar year for which the application is made; and
  - g. Whether the applicant is seeking renewal of an existing taxidermy registration.
3. Affirmation that the information provided on the application is true and accurate; and
4. Applicant's signature and date.

F. A registered taxidermist may submit an application for renewal of a taxidermy registration after December 1 of the year it was issued.

G. A registered taxidermist shall maintain a register of all persons who furnish raw and unmounted wildlife specimens for taxidermy service using the form available on the Department's website.

1. This register shall be:
    - a. Maintained for a period of five years after the date the raw and unmounted wildlife specimens were received;
    - b. Provided upon request to an employee of the Department; and
    - c. Filed with the Department on or before January 31 of each year.
  2. This register shall contain all of the following information, as applicable:
    - a. The registered taxidermist's information:
      - i. Name;
      - ii. Taxidermy registration number;
      - iii. Email address, when available; and
    - b. The customer's or potential customer's:
      - i. Name;
      - ii. Address;
      - iii. Taker's tag or license number;
      - iv. Species and number of wildlife received;
      - v. Date wildlife received; and
    - c. A signed affirmation from the registered taxidermist that the information provided in the register is true and accurate.
  3. The taxidermy renewal registration becomes invalid if the register is not submitted to the Department by January 31 of the year following registration.
- H. As authorized under A.R.S. § 17-363(C), the Commission may revoke or suspend the taxidermy registration of a person convicted of violating any provision of A.R.S. § 17-363 or requirement established under this Section.

**Historical Note**

Amended effective May 31, 1976 (Supp. 76-3). Correction, Historical Note Supp. 76-3 should read "Amended effective May 3, 1976" (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective March 20, 1981 (Supp. 81-2). Former Section R12-4-32 renumbered as Section R12-4-204 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Repealed by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). New Section made by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3).

**R12-4-205. High Achievement Scout License**

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- A. A high achievement scout license is offered to a resident who is:
1. Eligible for a combination hunting and fishing license,
  2. Under 21 years of age, and
  3. A member of the Boy Scouts of the United States of America and has attained the rank of Eagle Scout, or
  4. A member of the Girl Scouts of the United States of America and has attained the Gold Award.
- B. The high achievement scout license grants all of the hunting and fishing privileges of the youth combination hunting and fishing license and is only available at Department offices.
1. The license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
  2. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the high achievement scout license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- C. An applicant for a high achievement scout license shall apply on an application form available from any Department office and on the Department's web site at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D. In addition to the application, an eligible applicant shall present with the application:
1. For an applicant who is a member of the Boy Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Boy Scouts of the United States of America stating that the applicant has attained the rank of Eagle Scout,
    - b. A Boy Scouts of the United States of America Eagle Scout Award Certificate, or
    - c. A Boy Scouts of the United States of America Eagle Scout wallet card.
  2. For an applicant who is a member of the Girl Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Girl Scouts of the United States of America stating that the applicant has completed the award,
    - b. A Girl Scouts of the United States of America Gold Award Certificate, or
    - c. A Girl Scouts Gold Award Certificate from the local council.
- E. The Department shall deny a high achievement scout license to an applicant who:
1. Is not eligible for the license;
  2. Fails to comply with the requirements of this Section; or
  3. Provides false information during the application process.
- F. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Editorial correction subsection (A) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective September 23, 1980 (Supp. 80-5). Former Section R12-4-33 renumbered as Section R12-4-205 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-206. General Hunting License; Exemption**

- A. A general hunting license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the general hunting license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B. The general hunting license is valid for one-year from:
1. The date of purchase when a person purchases the hunting license from a license dealer, as defined under R12-4-101;
  2. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
  3. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
  4. The selected start date when a person purchases the hunting license from a Department office or online. A person may select the start date for the hunting license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C. A resident may apply for a general hunting license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A general hunting license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.

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- D.** In addition to the requirements listed under subsection (C), at the time of application an applicant who is applying for a general hunting license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E.** A person who is under 10 years of age may hunt wildlife other than big game without a hunting license when accompanied by a properly licensed person who is 18 years of age or older.
- e. Residency status and number of years of residency immediately preceding application, when applicable;
  - f. Mailing address, when applicable;
  - g. Physical address;
  - h. Telephone number, when available; and
  - i. E-mail address, when available; and
2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** In addition to the requirements listed under subsection (C), an applicant who is applying for a general fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E.** In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish without a fishing license.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2).  
 Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-34 renumbered as Section R12-4-206 without change effective August 13, 1981 (Supp. 81-4).  
 Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-207. General Fishing License; Exemption**

- A.** A general fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The general fishing license is valid:
1. State-wide including Mittry Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission designated community waters. The list of Commission designated community waters is available at any license dealer, Department office, and online at [www.azgfd.gov](http://www.azgfd.gov).
  2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a general fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- B.** The general fishing license is valid for one-year from:
1. The date of purchase when a person purchases the fishing license from a license dealer, as defined under R12-4-101; or
  2. The selected start date when a person purchases the fishing license from a Department office or online. A person may select the start date for the fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C.** A resident or nonresident may apply for a general fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A general fishing license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2).  
 Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-35 renumbered as Section R12-4-207 without change effective August 13, 1981 (Supp. 81-4).  
 Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-208. Guide License**

- A.** A guide, as defined under A.R.S. § 17-101, is a person who does any one of the following:
1. Advertises for guiding services.
  2. Is presented to the public for hire as a guide.
  3. Is employed by a commercial enterprise as a guide.
  4. Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading, or instructing a person in the field to locate and take wildlife.
  5. Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
- B.** A person shall not act as a guide unless the person holds one of the following guide licenses:
1. A hunting guide license, which authorizes the license holder to act as a guide for the taking of lawful wildlife other than aquatic wildlife as defined under A.R.S. § 17-101.
  2. A fishing guide license, which authorizes the license holder to act as a guide for the taking of lawful aquatic wildlife.
  3. A hunting and fishing guide license, which authorizes the license holder to act as a guide for the taking of lawful wildlife.
- C.** A guide license shall expire on December 31 of each year.
- D.** A person is not eligible to apply for an original or renewal guide license when any one of the following conditions apply:
1. The applicant was convicted of a felony violation of any federal wildlife law, within five years immediately preceding the date of application;

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2. The applicant was convicted of a violation listed under A.R.S. § 17-309(D), within five years immediately preceding the date of application;
  3. The applicant was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended within five years immediately preceding the date of application; or
  4. The applicant's privilege to take or possess wildlife or to guide or act as a guide is currently suspended or revoked anywhere in the United States for violation of a federal or state wildlife law.
- E.** Notwithstanding subsection (D), a person who was convicted of a misdemeanor violation of any wildlife law within one year preceding the date of application may apply for a guide license provided the person immediately and voluntarily reported the violation to the Department after committing the violation.
- F.** An applicant for a guide license shall:
1. Be 18 years of age or older, and
  2. Possess the required Department-issued license, as applicable:
    - a. A current Arizona hunting license when applying for a hunting guide license;
    - b. A current Arizona fishing license when applying for a fishing guide license;
    - c. A current Arizona combination hunting and fishing license when applying for a hunting and fishing guide license;
- G.** The guide license does not exempt the license holder from any applicable method of take or licensing requirement. The guide license holder shall comply with all applicable Commission rules, including, but not limited to, rules governing:
1. Lawful methods of take,
  2. Lawful devices, and
  3. License requirements.
- H.** Unless otherwise provided under this Section, a person shall successfully complete the Department administered examination, and answer at least 80% of the questions correctly, prior to applying for a guide license. Guide examinations are:
1. Provided at a Department office.
  2. Valid for a period up to twelve months prior to the date on which the applicant submits an application to the Department.
  3. Conducted during normal business hours.
  4. Conducted on the first Monday of the month or by special appointment. A person interested in taking the guide examination shall contact a Department office to obtain scheduling information.
- I.** The examination is based on the type of guide license the person is seeking.
1. A person shall provide acceptable proof of identity, as listed under subsection (L)(2), prior to taking the examination.
  2. The examination may include questions regarding any of the following topics:
    - a. A.R.S. Title 17 Game and Fish statutes and Commission rules regarding the taking and handling of terrestrial and aquatic wildlife;
    - b. A.R.S. Title 28, Ch 3, Article 20 Off-highway Vehicles statutes and rule regarding the use of off-highway vehicles;
    - c. A.R.S. Title 5, Ch 3, Boating and Water Sports statutes and Commission rules on boating;
    - d. Requirements for guiding on federal lands;
    - e. Identification of aquatic wildlife species;
    - f. Identification of wildlife;
    - g. Special state and federal laws regarding certain species;
    - h. General knowledge of species habitat and wildlife that may occur in the same habitat;
    - i. General knowledge of the types of habitat within the State; and
    - j. General knowledge of special or concurrent jurisdictions within the State.
3. An applicant who fails an examination may retake the examination on the same day or as otherwise agreed upon by the applicant and the examination administrator. An applicant who fails an examination twice on the same day shall wait at least seven calendar days, from the examination date, before retaking the examination.
- J.** In addition to the guide examination requirement under subsection (H), a guide license holder shall take the Department administered examination when:
1. The applicant is applying to add a new guiding authority to a current guide license;
  2. The applicant for a hunting guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of terrestrial wildlife within one year preceding the date of application;
  3. The applicant for a fishing guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of aquatic wildlife within one year preceding the date of application;
  4. The applicant failed to submit a renewal application post-marked before the expiration date of the guide license; or
  5. The applicant failed to submit the annual report for the preceding license year by January 10 of the following license year.
- K.** A person may apply for a guide license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A guide license applicant shall provide all of the following information on the application:
1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number or Department identification number;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available;
    - i. E-mail address, when available;
    - j. Type of guide license sought; and
    - k. Calendar year for which the application is made;
  2. The outfitting or guide:
    - a. Business name; and
    - b. Business address, as applicable;
  3. Responses to questions relating to criminal violations;
  4. Affirmation that:
    - a. The applicant meets the eligibility requirements prescribed under this Section; and
    - b. The information provided on the application is true and accurate;
  5. Applicant's signature and date.
- L.** In addition to the requirements listed under subsection (K), an applicant for a guide license shall also submit the following documents at the time of application for an original or renewal of a guide license:

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1. Proof of the successful completion of the guide examination required under subsection (H). The applicant must successfully complete the examination within the twelve months immediately preceding the date of application.
  2. One of the following as proof of the applicant's identity:
    - a. Valid U.S. passport;
    - b. Original or certified copy of the applicant's birth certificate;
    - c. Original or copy of a valid government-issued driver's license; or
    - d. Original or copy of a valid government-issued identification card.
- M.** All information and documentation provided by the guide license applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- N.** An applicant for a guide license shall pay all applicable fees required under R12-4-102 upon approval of an initial or renewal application for a guide license.
- O.** The Department shall deny a guide license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-362,
  2. Fails to comply with the requirements of this Section,
  3. Provides false information during the application process,
  4. Fails to provide the annual report required under subsection (R) by January 10, or
  5. Provides false information in the annual report required under subsection (R) within three years immediately preceding the date of application.
- P.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- Q.** A guide license holder may submit an application for renewal of a guide license after December 1 of the year it was issued. The Department shall not start the substantive review, as defined under A.R.S. § 41-1072, before January 10 of the following license year, unless the Department receives the annual report prior to the date established under subsection (R). The current guide license shall remain valid pending a Department decision on the application for renewal, provided:
1. The application for renewal is submitted to the Department by December 31, and
  2. The Department receives the annual report submitted in compliance with subsection (R).
- R.** A guide license holder shall submit to the Department the annual report required under A.R.S. § 17-362(C) for the previous calendar year before January 10 of the following license year. The report form is furnished by the Department and is available at any Department office or online at [www.azgfd.gov](http://www.azgfd.gov).
1. A report is required whether or not the license holder performed any guiding activities.
  2. The annual report shall include all of the following information, as applicable:
    - a. License holder's personal information:
      - i. Name;
      - ii. Guide license number; and
      - iii. E-mail address, when available; and
    - b. Client's personal information:
      - i. Name;
      - ii. Mailing address; and
      - iii. Arizona license, tag and permit numbers, and
    - c. Dates guiding activities were conducted;
    - d. Number and species of wildlife taken by the clients;
      - e. Game management unit or body of water where guiding activities took place;
      - f. Affirmation that the information provided in the annual report is true and accurate; and
      - g. License holder's signature and date.
  3. The Department shall not renew a guide license if the annual report is not submitted to the Department by January 10 of the following license year.
- S.** The date of receipt for the items required under subsections (K), (L), (Q), and (R) shall be as follows:
1. The date a person presents the items to a Department office;
  2. The date a private express mail carrier receives the package containing the items as indicated on the shipping package; or
  3. The date of the United States Postal Service postmark stamped on the envelope containing the items.
- T.** While performing guide activities or providing guide services, a guide license holder shall:
1. Possess a valid guide license.
  2. Possess a valid Arizona hunting, fishing, or combination hunting and fishing license, as applicable under subsection (F)(2).
  3. Present the license for inspection upon the request of any peace officer, wildlife manager, or game ranger.
  4. Report any violation of a federal or state wildlife regulation, law, or rule personally witnessed by the guide license holder.
- U.** A guide license holder shall not:
1. Use, or allow another person to use, any method or device prohibited under any federal or state wildlife regulation, law, or rule while taking wildlife.
  2. Aid, counsel, agree to aid, or attempt to aid another person in planning or engaging in conduct that results in a violation of any federal or state wildlife regulation, law, or rule while taking wildlife.
  3. Pursue any wildlife or hold at bay any wildlife for a person unless that person is present during the pursuit to take the wildlife.
    - a. The person shall be continuously present during the entire pursuit of that specific target animal.
    - b. If dogs are used, the person shall be present when the dogs are released on a specific target animal and shall be continuously present for the remainder of the pursuit.
  4. Hold wildlife at bay other than during daylight hours, unless a Commission Order authorizes the take of the species at night.
- V.** As authorized under A.R.S. § 17-362(A), the Commission may revoke or suspend a guide license when any one or more of the following actions occur:
1. The guide license holder failed to comply with the requirements of A.R.S. Title 17 or was convicted of violating any provision of A.R.S. Title 17;
  2. The guide license holder was convicted of a felony violation of any federal wildlife law;
  3. The guide license holder was convicted of a violation listed under A.R.S. § 17-309(D);
  4. The guide license holder was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended; or
  5. The guide license holder's privilege to take or possess wildlife is suspended or revoked by any jurisdiction for violation of a federal or state wildlife law.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2). Former

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Section R12-4-40 renumbered as Section R12-4-208 without change effective August 13, 1981 (Supp. 81-4). Former rule repealed, new Section R12-4-208 adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-209. Community Fishing License; Exemption**

- A.** A community fishing license is valid for taking all aquatic wildlife from Commission designated community waters, only, and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The list of Commission designated community waters is available at any license dealer, Department office, and online at [www.azgfd.gov](http://www.azgfd.gov).
- B.** The community fishing license is valid for one-year from:
1. The date of purchase when a person purchases the community fishing license from a license dealer, as defined under R12-4-101; or
  2. The selected start date when a person purchases the community fishing license from a Department office or online. A person may select the start date for the community fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C.** A resident or nonresident may apply for a community fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A community fishing license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** In addition to the requirements listed under subsection (C), an applicant who is applying for a community fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E.** In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish in Commission designated community waters without a fishing license.

**Historical Note**

Adopted effective March 20, 1981 (Supp. 81-2). Former Section R12-4-42 renumbered as Section R12-4-209 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-210. Combination Hunting and Fishing License; Exemption**

- A.** A combination hunting and fishing license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds.
- B.** A combination hunting and fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-101. The combination hunting and fishing license is valid:
1. State-wide including Mitty Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission designated community waters. The list of Commission designated community waters is available at any license dealer, Department office, and online at [www.azgfd.gov](http://www.azgfd.gov).
  2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a combination hunting and fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- C.** The Department offers three combination hunting and fishing licenses:
1. A short-term combination hunting and fishing license, valid for one 24-hour period from midnight to midnight.
    - a. The short-term combination hunting and fishing license is not valid for the take of big game animals.
    - b. The short-term combination hunting and fishing license is valid for the take of migratory game birds and waterfowl, provided the person possesses the applicable State Migratory Bird stamp and Federal Waterfowl stamp.
    - c. The Department does not limit the number of short-term combination hunting and fishing licenses a resident or nonresident may purchase.
  2. A combination hunting and fishing license for a person age 18 and over.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a license dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
      - iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
      - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person

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- may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
3. A youth combination hunting and fishing license for a person through age 17.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a license dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
      - iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
      - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- D.** A resident or nonresident may apply for a combination hunting and fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A combination hunting and fishing license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- E.** In addition to the requirements listed under subsection (C), an applicant who is applying for a combination hunting and fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- F.** Exemptions authorized under R12-4-206(E), R12-4-207(E), and R12-4-209(E) also apply to this Section, as applicable.
- Historical Note**
- Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective January 20, 1977 (Supp. 77-1). Editorial correction subsection (A), paragraph (2) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective March 17, 1981 (Supp. 81-2). Former Section R12-4-39 renumbered as Section R12-4-210 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 16, 1982 (Supp. 82-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).
- R12-4-211. Lifetime License**
- A.** The Department offers the following lifetime licenses:
1. A lifetime hunting license includes the privileges established under R12-4-206(A).
  2. A lifetime fishing license includes the privileges established under R12-4-207(A).
  3. A lifetime combination hunting and fishing license includes the privileges established under R12-4-210(A) and (B).
- B.** A lifetime license does not expire and remains valid if the licensee subsequently resides outside of this state.
1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
  2. Limits established under R12-4-114 for nonresident permit-tags do not apply to a lifetime license holder.
- C.** A resident may apply for a lifetime license by submitting an application to the Department and paying the applicable fee required under subsection (D). The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A lifetime license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
    - e. Department identification number, when applicable;
    - f. Residency status and number of years of residency immediately preceding application, when applicable;
    - g. Mailing address, when applicable;
    - h. Physical address;
    - i. Telephone number, when available; and
    - j. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** The fees for resident lifetime licenses are determined by the age of the applicant as follows:

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1. Age 0 through 13 years is 17 times the fee established under R12-4-102 for the equivalent one-year license.
  2. Age 14 through 29 years is 18 times the fee established under R12-4-102 for the equivalent one-year license.
  3. Age 30 through 44 years is 16 times the fee established under R12-4-102 for the equivalent one-year license.
  4. Age 45 through 61 years is 15 times the fee established under R12-4-102 for the equivalent one-year license.
  5. Age 62 and older is 8 times the fee established under R12-4-102 for the equivalent one-year license.
  6. For the purposes of this subsection, when the applicant is under the age of 18, the fee for the lifetime license is based on the full priced license fee, not the youth license fee.
- E.** A lifetime license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- F.** A person issued a lifetime license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A)(1), (A)(2), or (A)(3), as applicable, for the equivalent lifetime license.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2).  
Amended effective October 9, 1980 (Supp. 80-5). Former Section R12-4-36 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-212. Benefactor License**

- A.** A benefactor license includes the privileges established under R12-4-210(A) and (B). A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the benefactor license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** A benefactor license does not expire and remains valid if the licensee subsequently resides outside of this state.
1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
  2. Limits established under R12-4-114 for nonresident permit-tags do not apply to a benefactor license holder.
- C.** The benefactor license fee is \$1,500. The difference between \$1,500 and the license fee for a resident lifetime combination hunting and fishing license established under R12-4-211(D):
1. Is a donation to the State for continued management, protection, and conservation of the State's wildlife.
  2. Shall be credited to the wildlife endowment fund established under A.R.S. § 17-271.
  3. May be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations.
- D.** A resident may apply for a benefactor license by submitting an application to the Department. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A benefactor license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
    - e. Department identification number, when applicable;

- f. Residency status and number of years of residency immediately preceding application, when applicable;
  - g. Mailing address, when applicable;
  - h. Physical address;
  - i. Telephone number, when available; and
  - j. E-mail address, when available; and
2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- E.** A benefactor license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- F.** A person issued a benefactor license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A).

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective January 1, 1977 (Supp. 76-5). Former Section R12-4-37 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-213. Hunt Permit-tags and Nonpermit-tags**

- A.** A valid hunt permit-tag or nonpermit-tag is required to validate a license to take a big game animal or other wildlife requiring a valid tag. Before a person may take a big game animal or other wildlife requiring a tag, the person shall apply for and obtain the appropriate tag required for the take of that big game animal or other wildlife.
- B.** A person may apply for a hunt permit-tag in accordance with R12-4-104 and at the times, locations, and in the manner established by the hunt permit-tag application schedule that the Department publishes and is available at any Department office, online at [www.azgfd.gov](http://www.azgfd.gov), or a license dealer as defined under R12-4-101.
- C.** A person applying for a nonpermit-tag shall apply in accordance with R12-4-114 and pay the required fee established under R12-4-102.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2). Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-38 renumbered as Section R12-4-213 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-214. Apprentice License**

- A.** An apprentice license authorizes the taking of small game, furbearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is only available from a Department office.
- B.** An apprentice license is:
1. A complimentary license,
  2. Valid for any two consecutive days; and
  3. Issued to a person only once per calendar year.
- C.** The apprentice license is not valid for the take of big game animals.
- D.** The apprentice license is valid for the take of migratory game birds and waterfowl when the apprentice also possesses the applicable Migratory Bird stamp and federal waterfowl stamp.
- E.** An apprentice license holder shall be accompanied by a mentor at all times while in the field. A mentor is eligible to apply

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for no more than two apprentice hunting licenses in any calendar year. A mentor shall:

1. Be a resident of Arizona,
2. Be 18 years of age or older,
3. Possess an appropriate and valid Arizona hunting license, and
4. Provide the apprentice with instruction and supervision on safe and ethical hunting practices.
5. A short-term license does not meet the license requirement of this subsection.

**F.** A mentor may apply for an apprentice license at any Department office. An applicant for an apprentice license shall provide the following information at the time of application:

1. The mentor's:
  - a. Name;
  - b. Arizona hunting license number and effective date of the license; and
2. The applicant's:
  - a. Name;
  - b. Age;
  - c. Date of birth;
  - d. Telephone number, when available;
  - e. Department identification number, when applicable;
  - f. E-mail address, when available;
  - g. Physical description, to include the applicant's eye color, hair color, height, and weight;
  - f. Mailing address, when applicable;
  - g. Physical address; and
  - h. Residency status.

**Historical Note**

Former Section R12-4-67 renumbered as Section R12-4-214 without change effective August 13, 1981 (Supp. 81-4). Repealed effective December 22, 1989 (Supp. 89-4).

New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-215. Youth Group Two-day Fishing License**

**A.** A youth group two-day fishing license authorizes a nonprofit organization or governmental entity as defined under subsection (C) that sponsors adult supervised activities for youth to take up to 25 youths fishing. The youth group two-day fishing license is only available from a Department office. The youth group two-day fishing license is valid for:

1. Two consecutive days,
2. The take of all aquatic wildlife, and
3. All privileges established under R12-4-207(A).

**B.** A nonprofit organization or governmental entity may apply for a youth group two-day fishing license at any Department office. An applicant for a youth group two-day fishing license shall be a resident. The applicant shall pay the fee required under R12-4-102 and provide the following information at the time of application:

1. The nonprofit organization's or governmental entity's:
  - a. Name;
  - b. Mailing address; and
  - c. Telephone number, when available;
2. The applicant's:
  - a. Name;
  - b. Date of birth,
  - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
  - d. Department identification number, when applicable;
  - e. Mailing address, when applicable;
  - f. Physical address;
  - g. Telephone number, when available; and
  - h. E-mail address, when available;

3. The dates on which the nonprofit organization intends to conduct the youth group fishing activity.
4. The approximate number of youth participating in the group fishing activity.

**C.** For the purpose of this Section, "governmental entity" means any town, city, county, municipality, or other political subdivision of this state or any department, agency, board, commission, authority, division, office, public school, public charter school, public corporation, or other public entity of this state or any department agency bureau, or office of the federal government that is physically located within this state.

**Historical Note**

Adopted effective December 9, 1982 (Supp. 82-6). Section repealed, new Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective December 31, 2003 (Supp. 05-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-216. Crossbow Permit**

**A.** For the purposes of this Section, "healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:

Medical Doctor,  
 Doctor of Osteopathy,  
 Doctor of Chiropractic,  
 Nurse Practitioner, or  
 Physician Assistant.

**B.** A crossbow permit allows a person to use the following devices during an archery-only season, as prescribed under R12-4-318, when authorized under R12-4-304 as lawful for the species hunted:

1. A crossbow as defined under R12-4-101,
2. Any bow to be drawn and held with an assisting device, or
3. Pre-charged pneumatic weapons, as defined under R12-4-301, using arrows or bolts and with a capacity of holding and firing only one arrow or bolt at a time.

**C.** The crossbow permit does not exempt the permit holder from any other applicable method of take or licensing requirement. The permit holder shall be responsible for compliance with all applicable regulatory requirements.

**D.** The crossbow permit does not expire, unless:

1. The medical certification portion of the application indicates the person has a temporary physical disability; then the crossbow permit shall be valid only for the period of time indicated on the crossbow permit as specified by the healthcare provider,
2. The permit holder no longer meets the criteria for obtaining the crossbow permit, or
3. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose crossbow permit is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.

**E.** An applicant for a crossbow permit shall apply by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A crossbow permit applicant shall provide all of the following information on the application:

1. The applicant's:
  - a. Name;
  - b. Date of birth;

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- c. Physical description, to include the applicant's eye color, hair color, height, and weight;
  - d. Department identification number, when applicable;
  - e. Residency status;
  - f. Mailing address, when applicable;
  - g. Physical address;
  - h. Telephone number, when available; and
  - i. E-mail address, when available;
2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  3. Applicant's signature and date.
  4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant has one or more of the following physical limitations:
      - i. An amputation involving body extremities required for stable function to use conventional archery equipment;
      - ii. A spinal cord injury resulting in a disability to the lower extremities, leaving the applicant nonambulatory;
      - iii. A wheelchair restriction;
      - iv. A neuromuscular condition that prevents the applicant from drawing and holding a bow;
      - v. A failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds;
      - vi. A failed manual muscle test involving the grading of shoulder and elbow flexion and extension or an impaired range-of-motion test involving the shoulder or elbow; or
      - vii. A combination of comparable physical disabilities resulting in the applicant's inability to draw and hold a bow.
    - b. Indicate whether the disability is temporary or permanent and, when temporary, specify the expected duration of the physical limitation; and
    - c. Provide the healthcare provider's:
      - i. Typed or printed name,
      - ii. License number,
      - iii. Business address,
      - iv. Telephone number, and
      - v. Signature and date;
  5. A person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP) and who is applying for a crossbow permit is exempt from the requirements of subsection (E)(4) and shall indicate "CHAMP" in the space provided for the medical certification on the crossbow permit application.
- F.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- G.** The Department shall deny a crossbow permit when the applicant:
1. Fails to meet the criteria prescribed under this Section,
  2. Fails to comply with the requirements of this Section, or
  3. Provides false information during the application process.
- H.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I.** The applicant claiming a temporary or permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- J.** When acting under the authority of a crossbow permit, the crossbow permit holder shall possess the permit, and exhibit the permit upon request to any peace officer, wildlife manager, or game ranger.
- K.** A crossbow permit holder shall not:
1. Transfer the permit to another person, or
  2. Allow another person to use or possess the permit.

**Historical Note**

Adopted effective April 7, 1983 (Supp. 83-2). Repealed effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). New Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

**R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**

- A.** For the purposes of this Section, the following definitions apply:
- "Healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:

Medical Doctor,  
 Doctor of Osteopathy,  
 Doctor of Chiropractic,  
 Nurse Practitioner, or  
 Physician Assistant.

"Severe permanent disability" means one or more permanent physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, pulmonary disorders, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations.

- B.** The Challenged Hunter Access/Mobility Permit (CHAMP) allows a person with a severe permanent disability to perform one or more of the following activities:
1. Discharge a firearm or other legal hunting device from a motor vehicle if, under existing conditions:
    - a. The discharge is otherwise lawful;
    - b. The motor vehicle is not in motion;
    - c. The motor vehicle is not on any road, as defined under A.R.S. § 17-101; and
    - d. The motor vehicle's engine is turned off.
  2. Discharge a firearm or other legal hunting device from a watercraft, as defined under R12-4-501; provided the motor is turned off, the sail furled, or both; and progress has ceased.
    - a. The watercraft may be drifting as a result of current or wind, beached, moored, resting at anchor, or propelled by paddle, oars, or pole.
    - b. A person may use a watercraft under power to retrieve dead or wounded wildlife.

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- c. For the purposes of this subsection, “watercraft” does not include a sinkbox.
3. Use off-road locations in a motor vehicle if use is not in conflict with federal or state statutes or regulations or local ordinances or regulations and the motor vehicle is used as a place to wait for game. A person shall not use a motor vehicle to chase or pursue game.
4. Designate an assistant to track and dispatch a wounded animal, and to retrieve the animal, in accordance with the requirements of this Section.
- C.** The CHAMP holder shall comply with all applicable regulatory requirements. A CHAMP does not exempt the permit holder from any other applicable method of take or licensing requirement.
- D.** The CHAMP does not expire, unless:
1. The permit holder no longer meets the criteria for obtaining the CHAMP, or
  2. The Commission revokes the person’s hunting privileges under A.R.S. § 17-340. A person whose CHAMP is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E.** An applicant for a CHAMP shall apply by submitting an application to the Department. The application form is furnished by the Department and is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The CHAMP applicant shall provide all of the following information on the application:
1. The applicant’s:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant’s eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  3. Applicant’s signature and date.
  4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant is a person with a severe permanent disability as defined under subsection (A), and
    - b. Provide the healthcare provider’s:
      - i. Typed or printed name,
      - ii. Business address,
      - iii. Telephone number, and
      - iv. Signature and date;
- F.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- G.** The applicant claiming a severe permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- H.** The Department shall deny a CHAMP when the applicant:
1. Fails to meet the criteria prescribed under this Section,
  2. Fails to comply with the requirements of this Section, or
  3. Provides false information during the application process.
- I.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed in A.R.S. Title 41, Chapter 6, Article 10.
- J.** When acting under the authority of the CHAMP, the permit holder shall possess and exhibit the permit upon request to any peace officer, wildlife manager, or game ranger.
- K.** The CHAMP holder shall ensure the CHAMP vehicle placard, issued with the CHAMP, is visibly displayed on the motor vehicle or watercraft when in use.
- L.** The Department shall provide a CHAMP holder with a dispatch permit that allows the CHAMP holder to designate a licensed hunter as an assistant to:
1. Dispatch and retrieve an animal wounded by the CHAMP holder, or
  2. Retrieve wildlife killed by the CHAMP holder.
- M.** The CHAMP holder shall:
1. Designate an assistant only after the animal is wounded or killed.
  2. Ensure the designation on the dispatch permit is in ink and includes:
    - a. A description of the animal,
    - b. The assistant’s name and valid Arizona hunting license number,
    - c. The date and time the animal was wounded or killed, and
  3. Ensure compliance with all of the following requirements:
    - a. The site where the animal is wounded and the location from which tracking begins are marked so they can be identified later.
    - b. The assistant possesses the dispatch permit and a valid hunting license while tracking and dispatching the wounded animal. When acting under the authority of the dispatch permit, the assistant shall possess and exhibit the dispatch permit and hunting license upon request to any peace officer, wildlife manager, or game ranger.
    - c. The CHAMP holder is in the field while the assistant is tracking and dispatching the wounded animal.
    - d. The assistant does not transfer the dispatch permit to anyone except that the dispatch permit may be transferred back to the CHAMP holder.
    - e. Dispatch is made by a method that is lawful for the take of the particular animal in the particular season in accordance with requirements established under R12-4-304 and R12-4-318.
    - f. The assistant attaches the dispatch permit to the carcass of the animal and returns the carcass to the CHAMP holder, and the tag of the CHAMP holder is affixed to the carcass.
    - g. If the assistant is unsuccessful in locating and dispatching the wounded animal, the assistant returns the dispatch permit to the CHAMP holder. The CHAMP holder shall strike the name and authorization of the assistant from the dispatch permit.
- N.** A dispatch permit may not be reused when all spaces for designation of an assistant are filled or the dispatch permit is attached to a carcass. The CHAMP holder may request another dispatch permit from the Department if:
1. All spaces for assistants are filled,
  2. The dispatch permit is lost, or
  3. When the CHAMP holder needs another dispatch permit for another big game hunt.
- O.** A CHAMP holder shall not:
1. Transfer the permit to another person, or

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2. Allow another person to use or possess the permit.

**Historical Note**

Adopted effective October 9, 1980 (Supp. 80-5). Former Section R12-4-59 renumbered as Section R12-4-310 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-310 renumbered as R12-4-217 and amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-310 renumbered as R12-4-217 and amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Section repealed, new Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-218. Repealed****Historical Note**

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective November 7, 1996 (Supp. 96-4).

**R12-4-219. Renumbered****Historical Note**

Adopted as an emergency effective July 5, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Correction, Historical Note, Supp. 88-3, should read, "Adopted as an emergency effective July 15, 1988..."; readopted and amended as an emergency effective October 13, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 24, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Former Section R12-4-219 amended and adopted as a permanent rule and renumbered as Section R12-4-424 effective April 28, 1989 (Supp. 89-2).

**R12-4-220. Repealed****Historical Note**

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4).

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE****R12-4-301. Definitions**

In addition to the definitions provided under A.R.S. § 17-101 and R12-4-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to apply a drug directly to wildlife by injection, inhalation, ingestion, or any other means.

"Aircraft" means any contrivance used for flight in the air or any lighter-than-air contrivance, including unmanned aircraft systems also known as drones.

"Artificial flies and lures" means man-made devices intended as visual attractants to catch fish. Artificial flies and lures does

not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, or chemicals or organic materials intended to create a scent, flavor, or chemical stimulant to the device regardless of whether it is added or applied during or after the manufacturing process.

"Barbless hook" means any fish hook manufactured without barbs or on which the barbs have been completely closed or removed.

"Body-gripping trap" means a device designed to capture an animal by gripping the animal's body.

"Confinement trap" means a device designed to capture wildlife alive and hold it without harm.

"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.

"Deadly weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Device" has the same meaning as provided under A.R.S. § 17-101.

"Dip net" means any net, excluding the handle, that is no greater than three feet in the greatest dimension, that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the person.

"Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of wildlife.

"Edible portions of game meat" means, for:

Upland game birds, migratory game birds and wild turkey: breast.

Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins.

Game fish: fillets of the fish.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity, and size.

"Foothold trap" means a device designed to capture an animal by the leg or foot.

"Hybrid device" means a device with a combination of components from two or more lawful devices and is used for the take of wildlife, such as but not limited to a firearm, pneumatic weapon, or slingshot that shoots arrows or bolts.

"Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.

"Land set" means any trap used on land rather than in water.

"Live-action trail camera" means an unmanned device capable of transmitting images, still photographs, video, or satellite imagery, wirelessly to a remote device such as but not limited to a computer, smart phone, or tablet. This does not include a trail camera that only records photographic or video data and stores the data for later use, provided the device is not capable of transmitting data wirelessly.

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS - DEFINITIONS

### 17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
  - (a) Advertises for guiding services.
  - (b) Holds himself out to the public for hire as a guide.
  - (c) Is employed by a commercial enterprise as a guide.
  - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
  - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License year" means the twelve-month period between January 1 and December 31, inclusive.
13. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
14. "Open season" means the time during which wildlife may be lawfully taken.
15. "Possession limit" means the maximum limit, in number or amount of wildlife, which may be possessed at one time by any one person.
16. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
  - (a) A member of the armed forces of the United States on active duty and stationed in:

## ARTICLE 2. DEFINITIONS CONTINUED...

- (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
    - (ii) Another state or country but who lists this state as their home of record at the time of applying for a license, permit, tag or stamp.
  - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
17. "Road" means any maintained right-of-way for public conveyance.
  18. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
  19. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
  20. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
  21. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
  22. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
  23. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
  24. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.
- B.** The following definitions of wildlife shall apply:
1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
  2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
  3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
  4. "Trophy" means:
    - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
    - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.
    - (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.
    - (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total length.
    - (e) Any bighorn sheep.
    - (f) Any bison (buffalo).
  5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.

## ARTICLE 2. DEFINITIONS CONTINUED...

6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
7. Predatory animals are foxes, skunks, coyotes and bobcats.
8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
9. Upland game birds are quail, partridge, grouse and pheasants.
10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
11. Nongame birds are all birds except upland game birds and migratory game birds.
12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
14. Nongame fish are all the species of fish except game fish.
15. Trout means all species of the family salmonidae, including grayling.

### **R12-4-101. Definitions**

- A.** In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Certificate of insurance” means an official document issued by the sponsor's and sponsor's vendors or subcontractors insurance carrier providing insurance against claims for injury to persons or damage to property which may arise from or in connection with the solicitation or event as determined by the Department.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

## ARTICLE 2. DEFINITIONS CONTINUED...

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department, as established under R12-4-111.

“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under ~~to~~ R12-4-105.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

“Person” has the meaning as provided under A.R.S. § 1-215.

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

## **ARTICLE 2. DEFINITIONS CONTINUED...**

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck antelope” means a male pronghorn antelope.

“Adult bull buffalo” means a male buffalo any age or any buffalo designated by a Department employee during an adult bull buffalo hunt.

“Adult cow buffalo” means a female buffalo any age or any buffalo designated by a Department employee during an adult cow buffalo hunt.

“Bull elk” means an antlered elk.

“Designated” means the gender, age, or species of an animal or the specifically identified animal the Department authorizes to be taken and possessed with a valid tag.

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

“Yearling buffalo” means any buffalo less than three years of age or any buffalo designated by a Department employee during a yearling buffalo hunt.

Article 2. Licenses, Permits; Stamps; Tags  
Statutory Authority

**17-101. Definitions**

A. In this title, unless the context otherwise requires:

1. "Angling" means taking fish by one line and not more than two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not more than two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that any one person may lawfully take during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who meets any of the following:
  - (a) Advertises for guiding services.
  - (b) Holds himself out to the public for hire as a guide.
  - (c) Is employed by a commercial enterprise as a guide.
  - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
  - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that any one person may possess at one time.

17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
  - (a) A member of the armed forces of the United States on active duty and who is stationed in:
    - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
    - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
  - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
  - (c) A youth who resides with and is under the guardianship of a person who is a resident.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife.
21. "Taxidermist" means any person who engages for hire in mounting, refurbishing, maintaining, restoring or preserving any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

**B.** The following definitions of wildlife shall apply:

1. Aquatic wildlife means fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. Big game means wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
3. Fur-bearing animals means muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
4. Game fish means trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
5. Game mammals means deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
6. Migratory game birds means wild waterfowl, including ducks, geese and swans, sandhill cranes, all coots, all gallinules, common snipe, wild doves and bandtail pigeons.

7. Nongame animals means all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
8. Nongame birds means all birds except upland game birds and migratory game birds.
9. Nongame fish means all the species of fish except game fish.
10. Predatory animals means foxes, skunks, coyotes and bobcats.
11. Raptors means birds that are members of the order of falconiformes or strigiformes and includes falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
12. Small game means cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
13. Trout means all species of the family salmonidae, including grayling.
14. Upland game birds means quail, partridge, grouse and pheasants.

#### **17-102. Wildlife as state property; exceptions**

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

#### **17-231. General powers and duties of the commission**

- A. The commission shall:
  1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
  2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
  3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
  4. Be responsible for the enforcement of laws for the protection of wildlife.
  5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
  6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
  7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
  8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
  9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic

development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.
- C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
- D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

#### **17-235. Migratory birds**

The commission shall prescribe seasons, bag limits, possession limits and other regulations pertaining to taking migratory birds in accordance with the migratory bird treaty act and regulations issued thereunder, but the commission may shorten or modify seasons, bag and possession limits and other regulations on migratory birds as it deems necessary.

#### **17-245. Training courses**

The commission may:

1. Offer training courses on a voluntary basis to all persons as prescribed by rule.
2. Require any person whose hunting, fishing or guide license has been revoked or suspended to show a certificate of completion of a training course as a condition to issuance or renewal of a hunting, fishing or guide license.

#### **17-301. Times when wildlife may be taken; exceptions; methods of taking**

- A. A person may take wildlife, except aquatic wildlife, only during daylight hours unless otherwise prescribed by the commission. A person shall not take any species of wildlife by the aid or with the use of a jacklight, other artificial light, or illegal device, except as provided by the commission.
- B. A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission. No person may knowingly discharge any firearm or shoot any other device upon, from, across or into a road or railway.
- C. Fish may be taken only by angling unless otherwise provided by the commission. The line shall be constantly attended. In every case the hook, fly or lure shall be used in such manner that the fish voluntarily take or attempt to take it in their mouths.

- D. It shall be unlawful to take wildlife with any leghold trap, any instant kill body gripping design trap, or by a poison or a snare on any public land, including state owned or state leased land, lands administered by the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, the state parks board and any county or municipality. This subsection shall not prohibit:
1. The use of the devices prescribed in this subsection by federal, state, county, city, or other local departments of health which have jurisdiction in the geographic area of such use, for the purpose of protection from or surveillance for threats to human health or safety.
  2. The taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined or regulated by the Arizona game and fish commission, including but not limited to the taking of wildlife pursuant to a hunting or fishing license issued by the Arizona game and fish department.
  3. The use of snares, traps not designed to kill, or nets to take wildlife for scientific research projects, sport falconry, or for relocation of the wildlife as may be defined or regulated by the Arizona game and fish commission or the government of the United States or both.
  4. The use of poisons or nets by the Arizona game and fish department to take or manage aquatic wildlife as determined and regulated by the Arizona game and fish commission.
  5. The use of traps for rodent control or poisons for rodent control for the purpose of controlling wild and domestic rodents as otherwise allowed by the laws of the state of Arizona, excluding any fur-bearing animals as defined in section 17-101.

**17-332. Form and content of license; duplicate licenses; transfer of license prohibited; exceptions; period of validity**

- A. Licenses and license materials shall be prepared by the department and may be furnished and charged to dealers that are authorized to issue licenses. Each license shall be issued in the name of the department and signed in a manner provided by rule adopted by the commission. With each license authorizing the taking of big game, the department shall provide such tags as the commission may prescribe, which the licensee shall attach to the big game animal in the manner prescribed by the commission. The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten percent or fewer of the total hunt permits, but in extraordinary circumstances, at a public meeting the commission may increase the number of permits issued to nonresidents in a random drawing if, on separate roll call votes, the members of the commission unanimously:
1. Support the finding of a specifically described extraordinary circumstance.
  2. Adopt the increased number of nonresident permits for the hunt.
- B. The commission shall issue with each license a shipping permit entitling the holder of the license to a shipment of game or fish as provided by article 4 of this chapter.
- C. It is unlawful, except as provided by the commission, for any person to apply for or obtain in any one license year more than one original license permitting the taking of big game. A duplicate license or tag may be issued

by the department or by a license dealer if the person requesting such a license or tag furnishes the information deemed necessary by the commission.

- D. A license or permit is not transferable and may not be used by anyone except the person to whom the license or permit was issued, except that:
  - 1. The commission may prescribe the manner and conditions of transferring and using permits and tags under this paragraph, including an application process for a qualified organization, to allow a person to transfer the person's big game permit or tag to a qualified organization for use by:
    - (a) A minor child who has a life-threatening medical condition or a permanent physical disability. If a child with a physical disability is under fourteen years of age, the child must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.
    - (b) A veteran of the armed forces of the United States who has a service-connected disability. For the purposes of this paragraph:
      - (i) "Disability" means a permanent physical impairment that substantially limits one or more major life activities and that requires the assistance of another person or a mechanical device for physical mobility.
      - (ii) "Qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the United States internal revenue code and that affords opportunities and experiences to children with life-threatening medical conditions or with physical disabilities or to veterans with service-connected disabilities.
  - 2. A parent, grandparent or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements:
    - (a) The parent, grandparent or guardian must transfer the permit or tag to the minor child in a manner prescribed by the commission.
    - (b) The minor child must possess a valid hunting license and, if under fourteen years of age, must satisfactorily complete, before the beginning of the hunt, the Arizona hunter education course or another comparable hunter education course that is approved by the director.
    - (c) Any big game that is taken counts toward the minor child's bag limit.
- E. Refunds may not be made for the purchase of a license or permit.
- F. Licenses are valid for a license year as prescribed in rule by the commission. Lifetime licenses and benefactor licenses are valid for the lifetime of the licensee.

**17-333. License classifications; fees; reduced-fee and complimentary licenses; annual report; review**

- A. The commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.

- B. The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.
- C. The commission may reduce the fees of licenses and issue complimentary licenses, including the following:
  - 1. A complimentary license to a pioneer who is at least seventy years of age and who has been a resident of this state for twenty-five or more consecutive years immediately before applying for the license. The pioneer license is valid for the licensee's lifetime, and the commission may not require renewal of the license.
  - 2. A complimentary license to a veteran of the armed forces of the United States who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a permanent service-connected disability rated as one hundred percent disabling.
  - 3. A license for a reduced fee to a veteran of the United States armed forces who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a service-connected disability.
  - 4. A youth license for a reduced fee to a resident of this state who is a member of the boy scouts of America who has attained the rank of eagle scout or a member of the girl scouts of the USA who has received the gold award.
- D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.
- E. On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources, energy and water committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. The joint legislative audit committee may assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

**17-334. Sale of licenses**

Hunting, fishing and other licenses shall be issued by such person as may be designated license dealers by the commission. The commission may suspend or revoke a dealer's license for failure to comply with rules specified by commission order.

**17-335. Blind resident; fishing license exemption**

A blind resident may fish without a license and is entitled to the same privileges as the holder of a valid license.

**17-335.01. Lifetime hunting and fishing licenses and trout stamps; fees**

- A. For the purposes of this title, the commission may prescribe by rule a lifetime license and a benefactor license and privileges associated with the taking and handling of fish and wildlife in this state pursuant to section 17-333. All monies derived from the sale of lifetime licenses and benefactor licenses shall be deposited, pursuant to sections 35-146 and 35-147, in the wildlife endowment fund established by section 17-271.
- B. A lifetime license, benefactor license and trout stamp may be denied or suspended pursuant to, and for the offenses described in, section 17-340.
- C. A lifetime license, benefactor license and trout stamp remain valid if the licensee subsequently resides outside this state, but the licensee must pay the nonresident fee to purchase any additional privileges, including stamps, permits and tags required to hunt and fish in this state. Limits set by the commission on issuing nonresident stamps, permits or tags do not apply to stamps, permits or tags sold to a lifetime licensee.

**17-340. Revocation, suspension and denial of privilege of taking wildlife; civil penalty; notice; violation; classification**

- A. On conviction or after adjudication as a delinquent juvenile as defined in section 8-201 and in addition to other penalties prescribed by this title, the commission, after a public hearing, may revoke or suspend a license issued to any person under this title and deny the person the right to secure another license to take or possess wildlife for a period of not to exceed five years for:
  - 1. Unlawful taking, unlawful selling, unlawful offering for sale, unlawful bartering or unlawful possession of wildlife.
  - 2. Careless use of firearms that resulted in the injury or death of any person.
  - 3. Destroying, injuring or molesting livestock, or damaging or destroying growing crops, personal property, notices or signboards or other improvements while hunting, trapping or fishing.
  - 4. Littering public hunting or fishing areas while taking wildlife.
  - 5. Knowingly allowing another person to use the person's big game tag, except as provided by section 17-332, subsection D.
  - 6. A violation of section 17-303, 17-304, 17-316 or 17-341 or section 17-362, subsection A.
  - 7. A violation of section 17-309, subsection A, paragraph 5 involving a waste of edible portions other than meat damaged due to the method of taking as follows:
    - (a) Upland game birds, migratory game birds and wild turkey: breast.
    - (b) Deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo) and peccary (javelina): hind quarters, front quarters and loins.
    - (c) Game fish: fillets of the fish.
  - 8. A violation of section 17-309, subsection A, paragraph 1 involving any unlawful use of aircraft to take, assist in taking, harass, chase, drive, locate or assist in locating wildlife.
- B. On conviction or after adjudication as a delinquent juvenile and in addition to any other penalties prescribed by this title:

1. For a first conviction or a first adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to five years.
  2. For a second conviction or a second adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to ten years.
  3. For a third conviction or a third adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife permanently.
- C. In accordance with title 41, chapter 6, article 10 and notwithstanding subsection A of this section, a person against whom the commission imposes a civil penalty under section 17-314 for the unlawful taking, wounding, killing or possession of wildlife may be denied the right to obtain a license to take wildlife until the person has made full payment of the civil penalty.
- D. On receiving a report from the licensing authority of a state that is a party to the wildlife violator compact adopted under chapter 5 of this title that a resident of this state has failed to comply with the terms of a wildlife citation, the commission, after a public hearing, may suspend any license issued under this title to take wildlife until the licensing authority furnishes satisfactory evidence of compliance with the terms of the wildlife citation.
- E. In carrying out this section, the director shall notify the licensee, within one hundred eighty days after conviction, to appear and show cause why the license should not be revoked, suspended or denied. The notice may be served personally or by certified mail sent to the address appearing on the license.
- F. The commission shall furnish to license dealers the names and addresses of persons whose licenses have been revoked or suspended, and the periods for which they have been denied the right to secure licenses.
- G. The commission may use the services of the office of administrative hearings to conduct hearings and to make recommendations to the commission pursuant to this section.
- H. Except for a person who takes or possesses wildlife while under permanent revocation, a person who takes wildlife in this state, or attempts to obtain a license to take wildlife, at a time when the person's privilege to do so is suspended, revoked or denied under this section is guilty of a class 1 misdemeanor.

**17-362. 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.

**17-371. Transportation, possession and sale of wildlife and wildlife parts**

- A. A person may transport in his possession his legally taken wildlife, or may authorize the transportation of his legally taken big game, provided such big game or any part thereof has attached thereto a valid transportation permit issued by the department. Such wildlife shall be transported in such manner that it may be inspected by authorized persons upon demand until the wildlife is packaged or stored. Species of wildlife, other than game species, may be transported in any manner unless otherwise specified by the commission. A person possessing a valid license may transport lawfully taken wildlife other than big game given to him but in no event shall any person possess more than one bag or possession limit.
- B. A holder of a resident license shall not transport from a point within to a point without the state any big game species or parts thereof without first having obtained a special permit issued by the department or its authorized agent.
- C. Migratory birds may be possessed and transported in accordance with the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) and regulations under that act.
- D. A holder of a sport falconry license may transport one or more raptors that the person lawfully possesses under terms and conditions prescribed by the commission. Regardless of whether a person holds a sport falconry license and as provided by section 17-236, subsection C, the person may transport for sport falconry purposes one or more raptors that are not listed pursuant to the migratory bird treaty act.
- E. Heads, horns, antlers, hides, feet or skin of wildlife lawfully taken, or the treated or mounted specimens thereof, may be possessed, sold and transported at any time, except that migratory birds may be possessed and transported only in accordance with federal regulations.

**17-372. Shipment by common carrier**

- A. A common carrier shall not transport any wildlife except as provided for under this title or title 3, chapter 16.
- B. Wildlife may be shipped during the open season, or within five days thereafter, but such shipment shall not exceed the possession limit for any one species and no more than one such possession limit may be shipped in a period of seven consecutive days. When shipped a valid permit shall be firmly attached to such shipment and

the specimens shall be clearly and conspicuously labeled with the name and address of the consignor and consignee and an accurate statement of the contents of package.

- C. A resident may ship wildlife as provided under this section, except that a holder of a resident license shall not ship or offer for shipment from a point within to a point without the state any big game species or parts thereof without first having obtained a special permit issued by the department or its authorized agent.

#### **41-1005. Exemptions**

- A. This chapter does not apply to any:
1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
  2. Order or rule of the Arizona game and fish commission that does the following:
    - (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
    - (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
    - (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.
  3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
  4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
  5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
  6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
  7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
  8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
  9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
  10. Fees prescribed by section 6-125.
  11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
  12. Fees established under section 3-1086.
  13. Fees established under sections 41-4010 and 41-4042.
  14. Rule or other matter relating to agency contracts.
  15. Fees established under section 32-2067 or 32-2132.

16. Rules made pursuant to section 5-111, subsection A.
  17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.
  18. Fees or charges established under section 41-511.05.
  19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
  20. Fee schedules established pursuant to section 36-3409.
  21. Procedures of the state transportation board as prescribed in section 28-7048.
  22. Rules made by the state department of corrections.
  23. Fees prescribed pursuant to section 32-1527.
  24. Rules made by the department of economic security pursuant to section 46-805.
  25. Schedule of fees prescribed by section 23-908.
  26. Procedure that is established pursuant to title 23, chapter 6, article 6.
  27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.
  28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.
  29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.
  30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.
  31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.
  32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.
- B. Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.
  - C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall file a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.
  - D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or

rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

- E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.
- F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment.

**D-2**

**BOARD OF COSMETOLOGY**

Title 4, Chapter 10, Board of Cosmetology

**Amend:** R4-10-101, R4-10-102, R4-10-104, R4-10-105, R4-10-108, R4-10-110, R4-10-111, R4-10-112, R4-10-114, R4-10-201, R4-10-202, R4-10-203, R4-10-204, R4-10-205, R4-10-206, R4-10-206.1, R4-10-207, R4-10-208, R4-10-209, R4-10-301, R4-10-302, R4-10-303, R4-10-304, R4-10-304.1, R4-10-305, R4-10-306, R4-10-401, R4-10-402, R4-10-403, R4-10-404, R4-10-405

**New Section:** R4-10-210



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT: BOARD OF COSMETOLOGY**  
Title 4, Chapter 10, Board of Cosmetology

**Amend:** R4-10-101, R4-10-102, R4-10-104, R4-10-105, R4-10-108, R4-10-110, R4-10-111, R4-10-112, R4-10-114, R4-10-201, R4-10-202, R4-10-203, R4-10-204, R4-10-205, R4-10-206, R4-10-206.1, R4-10-207, R4-10-208, R4-10-209, R4-10-301, R4-10-302, R4-10-303, R4-10-304, R4-10-304.1, R4-10-305, R4-10-306, R4-10-401, R4-10-402, R4-10-403, R4-10-404, R4-10-405

**New Section:** R4-10-210

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### **Summary:**

This regular rulemaking from the Board of Cosmetology (Board) seeks to amend 31 rules in Title 4, Chapter 10, Articles 1-4 and add one new section to Article 2. The Board recently submitted a Five-Year Review Report (5YRR) outside the typical 5YRR process at the request of the Council pursuant to A.R.S. § 41-1056(D) which was approved at the October 6, 2020 Council Meeting. This rulemaking seeks to enact the proposed course of action outlined in that 5YRR. The Board also seeks to amend rules to make them consistent with statute, Board practice, and industry standards. This rulemaking seeks to establish a new fee for a license by universal recognition, which is specifically authorized by A.R.S. § 32-507. Additionally, the Board is also seeking to amend its rules to address recent statutory changes dealing with training by apprenticeship (*see* Laws 2019, Chapter 109) and licensure by universal recognition (*see*

Laws 2019, Chapter 55). This rulemaking also seeks to add one new section outlining changes that affect a license to operate a cosmetology school at R4-10-210.

Of particular note, and as previously outlined in the Board's recent 5YRR, the Board is seeking to amend many rules to reduce the regulatory burden for applicants and licensees. These include:

- Obtaining e-mail addresses and encouraging electronic submission of documents;
- Allowing online access to study materials rather than requiring hard copies;
- Allowing virtual learning as a means to teach and learn the theory portion of cosmetology classes;
- Accepting money orders and credit cards rather than only checks for payment of fees;
- Deleting the requirement that an application to operate a school be notarize;
- Increasing the amount of time a license can be inactive and then reactivated without applying for a new license;
- Deleting burdensome requirements regarding personal and establishment cleanliness;
- Deleting burdensome requirement for a school licensee to submit a new operating schedule at the time of license renewal;
- Deleting burdensome requirements for a school licensee regarding filing cabinets and personal storage for students and instructors;
- Deleting burdensome requirements for a school licensee regarding student records;
- Deleting burdensome requirements specifying the size of tables and mirrors in a school; and
- Deleting restrictions regarding having a salon in a residence.

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

The Board cites both general and specific statutory authority for these rules.

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

The proposed rule amendments establish a new fee for license by universal recognition, which is specifically authorized by A.R.S. § 32-507. Specifically, at R4-10-102(A)(4), the Board is proposing to add universal recognition licenses to the same fee category as personal reciprocity licenses. Council staff does note that while universal recognition licenses have been added, effectively establishing a new fee, the fee for that license category is also being reduced from \$140 to \$60.

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

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

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

In this rulemaking, the Board amends rules to make them consistent with statute, Board practice, and industry standards. It also makes changes identified as needed in a 5YRR approved by the Council on October 6, 2020. The Board expects the economic impact of the rulemaking to be minimal because there are no substantive changes to the current rules except that they reduce the regulatory burden for applicants and licensees as well as reduce fees. Licensees and applicants will benefit from the reduced fees while the Board, licensees, and applicants will benefit from having rules that are clear, concise, and understandable and consistent with statute.

The Board currently has 72,148 active licensees. Eighty-five percent of active licensees are individuals licensed in one of the four occupations (aesthetician, nail technologist, cosmetologist, and hairstylist) licensed by the Board. There are currently 1,258 active instructor licensees; 9,549 active salon licensees; and 70 active school licensees. In every category of license—occupation, instructor, salon, and school—cosmetology predominates because it is the most versatile license.

During the last year, the Board received 2,920 applications for licensure by examination, 1,322 for licensure by reciprocity, and 368 for licensure by universal recognition. The Board has received no applications from individuals who obtained their training in an apprenticeship rather than a school.

There are currently 28,493 inactive occupational or instructor licenses. All of these have been inactive for fewer than 10 years and under the rules as amended in this rulemaking, will be able to reactivate the license rather than applying anew.

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

The Board believes the methods in the rulemakings are the least intrusive and costly possible consistent with the regulatory objectives. The rulemaking deletes several provisions determined to be unnecessarily burdensome. No alternative methods were considered.

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

The Board identifies licensees, applicants, the state, and the Board as stakeholders of the rulemaking.

The Board reduces several fees in this rulemaking. If the reduced fees had been in effect during the past year, the following savings for licensees and applicants would have occurred:

- 2,920 applications for licensure by examination: \$29,200
- 1,694 applications for licensure by reciprocity or universal recognition: \$135,520
- 69 school license renewals: \$17,250
- 4 delinquent school license renewals: \$1,000

The total saved would have been \$182,970, which would not have been contributed to the state's general fund.

The Board, licensees, and applicants will benefit from having rules that are clear, concise, and understandable and consistent with statute.

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

The Board indicates that it made no changes to the rules between the Notice of Proposed Rulemaking and Notice of Final Rulemaking.

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

The Board indicates it received no written comments regarding the rulemaking. However, the Board indicates three stakeholders appeared and made comments at the oral proceeding on September 23, 2020. Two stakeholders expressed happiness with the amendment to R4-10-112(S) allowing clients of a residence-based salon to enter and move through living quarters to the salon. A representative of the Yuma School of Beauty expressed satisfaction with the flexibility provided by R4-10-306 dealing with curriculum hours. It is Council staff's position that the Board adequately addressed these comments and a copy of the transcript from the oral proceeding is provided with the final materials for the Council's reference.

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

This rulemaking would amend an existing rule that requires a regulatory permit. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit unless one of several exceptions applies. Here, the Board indicates that this rulemaking does not require a general permit because the Board issues individual permits as authorized by state statute under A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, 32-531, 32-541, and 32-551. As such, the Board's licenses fall under exception A.R.S. § 41-1037(A)(2), a specific alternative permit is authorized by state statute, and it is Council staff's position that the Board is in compliance with A.R.S. § 41-1037.

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

Not applicable. The Board indicates there is no federal law directly applicable to the subject of this rulemaking.

## **11. Conclusion**

The Board seeks to amend 31 rules in Title 4, Chapter 10, Articles 1-4 and add one new section to Article 2. This rulemaking seeks to enact the proposed course of action outlined in the Board's recent 5YRR, approved by the Council on October 6, 2020. Specifically, the Board seeks to amend rules to make them consistent with statute, Board practice, and industry standards. This rulemaking seeks to establish a new fee for a license by universal recognition, which is specifically authorized by A.R.S. § 32-507. Additionally, the Board is also seeking to amend its rules to address recent statutory changes dealing with training by apprenticeship (see Laws 2019, Chapter 109) and licensure by universal recognition (see Laws 2019, Chapter 55). This rulemaking also seeks to add one new section outlining changes that affect a license to operate a cosmetology school at R4-10-210. Finally, the Board is seeking to amend many rules to reduce the regulatory burden for applicants and licensees as outlined above and in the Board's Notice of Final Rulemaking.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Arizona State  
Board of Cosmetology

Kim Scoplitte, Executive Director

1740 W. Adams • Suite #4400 • Phoenix, AZ 85007  
Phone 480.784.4539 • www.azboc.gov

October 9, 2020

Ms. Nicole Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations  
Chapter 33. Board of Cosmetology**

Dear Ms. Sornsin:

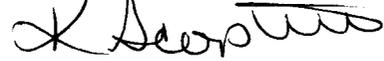
The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on October 2, 2020, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on October 6, 2020.
- C. New fee: The rulemaking establishes a new fee for a license by universal recognition. This new fee is specifically authorized by A.R.S. § 32-507.
- D. Fee increase: The rulemaking does not increase an existing fee. Rather, it decreases several fees.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly Scoplitte". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

Kimberly Scoplitte  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 10. BOARD OF COSMETOLOGY**  
**PREAMBLE**

<b><u>1. Articles, Parts, and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R4-10-101	Amend
R4-10-102	Amend
R4-10-104	Amend
R4-10-105	Amend
R4-10-108	Amend
R4-10-110	Amend
R4-10-111	Amend
R4-10-112	Amend
R4-10-114	Amend
R4-10-201	Amend
R4-10-202	Amend
R4-10-203	Amend
R4-10-204	Amend
R4-10-205	Amend
R4-10-206	Amend
R4-10-206.1	Amend
R4-10-207	Amend
R4-10-208	Amend
R4-10-209	Amend
R4-10-210	New Section
R4-10-301	Amend
R4-10-302	Amend
R4-10-303	Amend
R4-10-304	Amend
R4-10-304.1	Amend
R4-10-305	Amend
R4-10-306	Amend

R4-10-401	Amend
R4-10-402	Amend
R4-10-403	Amend
R4-10-404	Amend
R4-10-405	Amend

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

Authorizing statute: A.R.S. § 32-504(A)(1)

Implementing statute: A.R.S. §§ 32-501, 32-504, 32-512.01, 32-513, 32-517, 32-531, 32-532, 32-543, 32-551, 32-572, and 32-574

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

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 1590, August 7, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 1655, August 21, 2020

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

Name: Kimberly Scoplitte, Executive Director

Address: 1740 W. Adams, Suite 4400  
Phoenix, AZ 85007

Telephone: 480-784-4632

Fax: 480-784-4962

E-mail: [kscoplitte@azboc.gov](mailto:kscoplitte@azboc.gov)

Web site: [www.boc.az.gov](http://www.boc.az.gov)

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

This rulemaking continues the work started in a rulemaking approved by the Council on October 3, 2017. In this rulemaking, the Board amends rules to make them consistent with statute (See A.R.S. §§ 41-1080 and 41-1092.09), Board practice, and industry standards. It also makes changes identified as needed in a 5YRR approved by the Council on October 6, 2020, and makes the rules consistent with current rulemaking standards. Because the Board lacks authority to approve an applicant to take an examination, the time frame for that approval is deleted. The time frame for an application for licensure by examination is increased to match the deleted time frame. The rulemaking includes a new fee that is specifically authorized under A.R.S. § 32-507. The Board is also making amendments to address recent statutory changes dealing with training by apprenticeship (See Laws 2019, Chapter 109) and licensure by universal recognition (See Laws 2019, Chapter 55). An exemption from EO2019-01 was provided for this rulemaking by Emily Rajakovich in an e-mail dated February 26, 2019. A final approval from the governor's office of the NPR was provided by Trista Guzman Glover in an e-mail dated July 20, 2020.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The Board expects the economic impact of the rulemaking to be minimal because there are no substantive changes to the current rules. The Board, licensees, and applicants will benefit from having rules that are clear, concise, and understandable and consistent with statute. The Board made some changes to reduce the regulatory burden for applicants and licensees. These include:

- Obtaining e-mail addresses and encouraging electronic submission of documents;
- Allowing online access to study materials rather than requiring hard copies;
- Allowing virtual learning as a means to teach and learn the theory portion of cosmetology classes;
- Accepting money orders and credit cards rather than only checks for payment of fees;
- Deleting the requirement that an application to operate a school be notarize;

- Increasing the amount of time a license can be inactive and then reactivated without applying for a new license;
- Deleting burdensome requirements regarding personal and establishment cleanliness;
- Deleting burdensome requirement for a school licensee to submit a new operating schedule at the time of license renewal;
- Deleting burdensome requirements for a school licensee regarding filing cabinets and personal storage for students and instructors;
- Deleting burdensome requirements for a school licensee regarding student records;
- Deleting burdensome requirements specifying the size of tables and mirrors in a school;
- Deleting restrictions regarding having a salon in a residence.

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

The Board made no changes between the proposed and final rulemaking.

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

The Board received no written comments regarding the rulemaking. However, three stakeholders appeared and made comments at the oral proceeding on September 23, 2020. Amy Mathews and Kristy Kube indicated their happiness with the amendment to R4-10-112(S) allowing clients of a residence-based salon to enter and move through living quarters to the salon. A representative of the Yuma School of Beauty expressed satisfaction with the flexibility provided by R4-10-306 dealing with curriculum hours.

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

None

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

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute (See A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, 32-531, 32-541, and 32-551) and rule.

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

There is no federal law directly applicable to the subject of this rulemaking. The U.S. Environmental Protection Agency requires certain disinfectants be registered and this rulemaking requires licensees to use EPA-registered disinfectants; 42 U.S.C. 7412 establishes a list of hazardous air pollutants and R4-10-112(M) is consistent with the list; and 34 CFR Part 600 establishes procedures used to determine whether an educational institution qualifies to participate in certain programs. A school operated by a school licensee under R4-10-201 is qualified.

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

No analysis was submitted.

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

None

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

No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 10. BOARD OF COSMETOLOGY**  
**ARTICLE 1. GENERAL PROVISIONS**

Section

- R4-10-101. Definitions
- R4-10-102. Fees and Charges
- R4-10-104. Application for License by Examination
- R4-10-105. Application for License by Reciprocity; Application for License by Universal Recognition
- R4-10-108. Pre-screening Review; Licensing Examination
- R4-10-110. Reactivating an Inactive License
- R4-10-111. Display of Licenses and Signs
- R4-10-112. Infection Control and Safety Standards
- R4-10-114. ~~Disciplinary Action~~ Board Inspection

**ARTICLE 2. SCHOOLS**

Section

- R4-10-201. Application for a ~~School~~ License to Operate a School; Renewal
- R4-10-202. School Closure
- R4-10-203. General School Requirements
- R4-10-204. School Records
- R4-10-205. Aesthetic School Requirements
- R4-10-206. Cosmetology School Requirements
- R4-10-206.1. Hairstyling School Requirements
- R4-10-207. Nail Technology School Requirements
- R4-10-208. Combined School Requirements
- R4-10-209. Demonstrators; Exclusions
- R4-10-210. Changes Affecting a License to Operate a School

**ARTICLE 3. STUDENTS**

Section

- R4-10-301. Instruction; Licensed Individuals
- R4-10-302. Instructor Curriculum Required Hours
- R4-10-303. Aesthetics Curriculum Required 600 Hours

- R4-10-304. Cosmetology Curriculum Required 1600 Hours
- R4-10-304.1. Hairstyling Curriculum Required 1000 Hours
- R4-10-305. Nail Technology Curriculum Required 600 Hours
- R4-10-306. Curricula Hours

#### **ARTICLE 4. SALONS**

- R4-10-401. Application for a ~~Salon~~ License to Operate a Salon
- R4-10-402. Changes Affecting a ~~Salon~~-License to Operate a Salon
- R4-10-403. Salon Requirements and Minimum Equipment
- R4-10-404. Mobile Services
- R4-10-405. Shampoo Assistants

## ARTICLE 1. GENERAL PROVISIONS

### R4-10-101. Definitions

The definitions in A.R.S. §§ 32-501, 32-516, and 32-572 apply to this Chapter. Additionally, in this Chapter unless otherwise specified:

1. “Accredited” means approved by ~~the~~ any regional or national accreditation organization.
  - a. ~~New England Association of Schools and Colleges,~~
  - b. ~~Middle States Association of Colleges and Secondary Schools,~~
  - e. ~~North Central Association of Colleges and Schools,~~
  - d. ~~Northwest Association of Schools and Colleges,~~
  - e. ~~Southern Association of Colleges and Schools, or~~
  - f. ~~Western Association of Schools and Colleges.~~
2. “Administrative completeness review” means the Board’s process for determining that an applicant has provided all information and documents required by Board statute or rule for an application.
3. “Applicant” means an individual or any of the following seeking licensure by the Board:
  - a. If a corporation, any two officers of the corporation;
  - b. If a partnership, any two of the partners; or
  - c. If a limited liability company, the designated corporate contact person, or if no contact person is designated, any two members of the limited liability company.
4. “Application packet” means the forms and documents the Board requires an applicant to submit.
5. “Bracing” means to use a support that helps to steady or strengthen while performing a procedure.
- ~~5.6.~~ “Certification of hours” means a document that states the total number of hours completed at a school, including:
  - a. A written statement of the hours or credits a student received in ~~a~~ the licensed school, ~~or credits a student received,~~ signed by the administrator of the agency authorized to record hours in the jurisdiction in which the applicant received certified or accredited vocational or academic training, affixed with the agency’s official seal; or
  - b. If a student is transferring from one Arizona school to another under A.R.S. § 32-560, a transfer application that reflects the hours or credits a student received, signed by the administrator of the school where the applicant received certified or accredited training.
- ~~6.7.~~ “Certification of licensure” means the status of the license, signed by the administrator of the agency authorized to issue cosmetology, hairstyling, nail technician, aesthetics, or instructor licenses in the jurisdiction in which the applicant received a license, affixed with the agency’s official seal.

8. “Classroom” means an area in which instruction or demonstration is provided regarding theory and practice on models.
- ~~7-9.~~ “Clinic means the area where a student practices cosmetology, hairstyling, nail technology, or aesthetics on the general public for a fee.
- ~~8-10.~~ “Course” means an organized subject matter in which instruction is offered within a given period of time and for which credit toward graduation or certification is given.
- ~~9-11.~~ “Credit” means one earned academic unit of study based on:
- a. ~~completing~~ Completing a high school’s required number of class sessions per calendar week in a course; or ~~an earned academic unit of study based on attending~~
  - b. Attending a one-hour class session per calendar week at a community college, an accredited college or university, or a high school.
12. “Crossover hours” means hours of training obtained by a licensed aesthetician, cosmetologist, hair stylist, or nail technician that a school licensee accepts as hours of training required for licensure in a different profession.
- ~~10-13.~~ “Days” means calendar days.
- ~~11.~~ ~~“Double bracing” means using a stable base of support and two points of contact for the hand while performing a procedure.~~
- ~~12.~~ ~~“Establishment” means a business that functions as a school or a salon at least an average of 20 hours a week for the majority of the year.~~
- ~~13-14.~~ “Graduation” or “graduated from a school” means completion of the criteria established by a cosmetology, hairstyling, aesthetics, or nail technology school for the course in which the applicant was enrolled including completion of the required curriculum hours.
- ~~14-15.~~ “High school equivalency” means:
- a. A high school diploma from a school recognized by the basic education authority or the Department of Education in the jurisdiction in which the school is located,
  - b. A ~~total passing score of 45 points~~ passing score on a high school equivalency general educational development test or its equivalent as required by the Department of Education,
  - c. An associate degree or 15 academic credits from a junior college recognized by the basic education authority in the jurisdiction in which the college is located, or
  - d. Any degree from a college or university recognized by the basic education authority in the jurisdiction in which the college or university is located.
- ~~15-16.~~ “Hour” means one clock hour.
- ~~16-17.~~ “Instructor training” means the courses specified in R4-10-302.
- ~~17-18.~~ “Licensed in another state of the United States or foreign country” means:

- a. A governmental regulatory agency in the state or country is authorized to examine the competency of individuals who graduate from a licensed cosmetology, hairstyling, nail technology, or aesthetics school, or instructors for these disciplines; and
  - b. The governmental regulatory agency issues licenses over which the state or country has regulatory and disciplinary jurisdiction.
19. “Licensed salon or licensed school” means an establishment for which the Board has issued a license to a person under A.R.S. § 32-541 or 32-551, as applicable.
- ~~18-20.~~ “Manager” means an individual ~~licensed by the Board~~ who is responsible for ensuring an ~~establishment’s compliance~~ establishment complies with A.R.S. §§ 32-501 et seq. and this Chapter.
- ~~19-21.~~ “Model” means ~~a person~~ an individual or a mannequin on ~~whom~~ which an applicant performs demonstrations for the practical section of a licensing examination ~~or lab~~.
- ~~20.~~ ~~“Owner” means an individual or entity that has a controlling legal or equitable interest and authority and is responsible for ensuring an establishment’s compliance with A.R.S. § 32-501 et seq. and this Chapter.~~
- ~~21.~~ ~~“Patron” means any client of an establishment or student of a school.~~
22. “Personal knowledge” means actual observation of an individual who practiced aesthetics, cosmetology, hairstyling, or nail technology in any state or country.
23. “Practice” means engaging in the profession of aesthetics, cosmetology, hairstyling, nail technology, or instructor.
24. “Reciprocity” means the procedure for granting an Arizona license to an applicant who received the required hours from a school licensed in another state of the United States or a foreign country or is currently licensed in another state of the United States or a foreign country.
- ~~25.~~ “Salon suite” means multiple individually operated and licensed salons that share a physical address except for suite number.
- ~~25-26.~~ “Substantive review” means the Board’s process for determining whether an applicant for licensure meets the requirements for the license for which application is made including, if applicable, taking and passing an examination ~~given~~ required by the Board.
- ~~26-27.~~ “Tenth grade equivalency” means:
- a. Ten high school credits, including two in English, from any school recognized by the basic education authority or the Department of Education in the jurisdiction in which the credits were obtained;
  - b. Proof the prospective student is at least 18 years old. Satisfactory proof of age is shown by a government-issued driver’s license or identification card, birth certificate, or passport; or

c. High school equivalency.

~~27.~~28. “Transfer application,” as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, hairstyling, nail technology, or aesthetics school to another and contains the student’s name, address, identification number, telephone number, and number of hours of instruction received.

29. “Virtual learning” means the use of technology to teach students who may or may not be physically present in a classroom.

#### **R4-10-102. Fees and Charges**

**A.** Under the specific authority provided by A.R.S. § 32-507(~~A~~) and subject to R4-10-103(~~E~~), the Board establishes and shall collect the following fees:

1. Initial personal license: ~~\$70.00~~ \$60.00
2. Personal licensing renewal fees: \$60.00
3. Delinquent personal license renewal: ~~\$90.00~~ (~~\$60 for personal license renewal as specified under subsection (A)(4) (A)(2) plus \$30 for delinquent renewal~~) for every two years or portion of two years that the license is inactive to a maximum of ~~four~~ 10 years
4. Personal reciprocity or universal recognition license: ~~\$140.00~~ \$60.00
5. Salon initial license: \$110.00
6. Salon renewal: \$50.00
7. Salon delinquent renewal: \$80.00
8. School license: \$600.00
9. School renewal: ~~\$500.00~~ \$250.00
10. Delinquent school renewal: ~~\$600.00~~ \$350.00

**B.** An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations.

**C.** Under the specific authority provided by A.R.S. § 32-507(B) and subject to R4-10-103(E), the Board establishes and shall collect the following charges for the services provided:

1. Board administered educational classes: \$25.00
- ~~2. Review of examination: \$50.00~~
- ~~3. Re-grading of examination: \$25.00~~
- ~~4.~~2. Certification of licensure or hours: \$30.00
- ~~5.~~3. For use of an alternative method of payment: \$3.00 per transaction

~~6.4.~~ For copying public documents: 50¢ per page

~~7.5.~~ For audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information: \$15 per tape, disc, or other medium

~~8.6.~~ For a list of licensees' names and addresses: 25¢ per name

~~9.7.~~ Duplicate Board-issued duplicate license: ~~\$20.00~~ \$10.00

8. Issuing an updated license following receipt of a notice of salon-suite change: \$20

**D.** As authorized by A.R.S. § 44-6852, the Board shall charge a service fee of \$20.00 for the return of a dishonored check or the failure of any other means of payment to be honored plus the actual charges assessed by the financial institution dishonoring the check or other means of payment.

### **R4-10-103. Payment of Fees**

**A.** A fee is not considered paid until the Board receives the amount required. The Board shall not provide services, administer examinations, or issue certifications or licenses until it receives the required fee.

**B.** The Board shall accept personal ~~checks~~ check, money order, or credit card only for license renewals.

**C.** If a check for a license renewal is returned because it is dishonored ~~for any reason including insufficient funds~~, the renewal application is incomplete, and any license renewal ~~that has been~~ issued is void effective the date the Board mails written notice to the licensee that the license is void.

~~**C.D.**~~ An applicant or licensee whose fee payment to the Board is dishonored ~~for any reason including an insufficient funds check~~ is not entitled to a further service, ~~examination~~, certification, or license until the Board receives the following:

1. The amount of the fee for which the payment was dishonored;
2. The ~~penalty~~ service charge provided in R4-10-102~~(21)~~ (D); and
3. If applicable, the delinquent fee for each year or part of a year the license was inactive for the type of license to be renewed.

~~**D.E.**~~ Fees are nonrefundable except if A.R.S. § 41-1077 applies.

~~**E.F.**~~ The Board shall not refund fees tendered for \$5.00 or less over the amount specified in R4-10-102, except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. § 32-507.

### **R4-10-104. Application for License by Examination**

**A.** An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by examination shall submit to the Board:

1. The fee required for an initial personal license in R4-10-102; and
2. An application provided by the Board that contains:
  - a. A passport quality photo of the applicant;
  - b. The applicant's name, address, e-mail address, telephone number, Social Security number, gender, and birth date;
  - c. The name and address of each licensed school attended by the applicant;
  - d. The name of course completed, the name of the school where completed, and the starting date and date of graduation;
  - e. If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
  - f. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;
  - g. A statement by the applicant verifying the truthfulness of the information provided by the applicant; and
  - h. The applicant's signature-; and
3. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

- B.** In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, cosmetology, hairstyling, or nail technology license by examination shall:
1. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting documentation of 10th grade equivalency; ~~and~~
  2. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting a copy of one of the following:
    - a. If the applicant graduated from a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of all required hours; ~~or~~
    - b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation-; ~~;~~

c. If the applicant completed an apprenticeship program as described under A.R.S. § 32-511(3)(c), ensure the Department of Economic Security provides notice to the Board that the applicant completed the described program; and

d. Comply with R4-10-102 regarding examination fees.

C. In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:

1. Comply with A.R.S. § 32-531 by submitting the following:

- a. Documentation, as specified in subsection (C)(3), of required work experience;
- b. Proof of current licensure in the profession in which work experience was gained;
- c. Proof of licensure during the period work experience was gained; and
- d. Proof of attainment of 18 years of age; or
- e. Proof of high school equivalency.

2. If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:

- a. ~~Documentation of graduation from a Board-licensed school by a certification~~ Certification of graduation from a licensed school, on a form supplied by the Board, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and
- b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and

3. Documentation of the work experience required by A.R.S. § 32-531, which shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:

- a. Profession in which applicant gained the experience;
- b. Starting and ending dates of applicant's experience in the profession;
- c. Name of licensed salon and address where applicant gained experience in the profession; and
- d. License number and name of the licensed individual completing the form; or
- e. Name, address, and telephone number of the individual ~~completing~~ providing the information.

**R4-10-105. Application for License by Reciprocity; Application for License by Universal Recognition**

**A.** An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. An application provided by the Board and signed by the applicant that contains:
  - a. The applicant's name, address, e-mail address, telephone number, gender, ~~passport quality photo~~, Social Security number, and birth date;
  - b. A passport quality photo of the applicant;
  - ~~b.c.~~ If previously licensed by the Board, the type of license, license number, license expiration date, and the name used on the license; ~~and~~
  - ~~e.d.~~ A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country; and
  - e. A statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A certification of hours and proof of graduation or licensure in another state of the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure; and
3. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

**B.** An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by universal recognition, as described at A.R.S. § 32-4302, shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. An application provided by the Board and signed by the applicant that contains:
  - a. The applicant's name, address, e-mail address, telephone number, gender, Social Security number, and birth date;
  - b. A passport quality photo of the applicant; and
  - c. A statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A list of all states in which the applicant is currently licensed and certification from the licensing states that the applicant's license is in good standing;
3. Proof of Arizona residency; and

4. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

**R4-10-106. Licensing ~~Time-frames~~ Time Frames**

- A. The overall, administrative completeness, and substantive review ~~time-frame~~ time frames described in A.R.S. § 41-1072 for each type of approval license granted by the Board ~~is set forth~~ are listed in Table 1. The applicant and ~~the~~ Executive Director of the Board may agree in writing to extend the overall ~~time-frame~~ time frame. The substantive review ~~time-frame~~ time frame may not be extended by more than 25% percent of the overall ~~time-frame~~ time frame.
- B. ~~The administrative completeness time frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.~~
  1. ~~The administrative completeness review~~ time-frame time frame begins:
    - a. ~~For approval to take an examination, approval or denial of school or salon license, or approval or denial of a license by reciprocity, when the Board receives an application packet;~~  
~~or~~
    - b. ~~For approval or denial of a license by examination, when the applicant takes an examination.~~
  2. ~~1.~~ If an 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~~ time frame and the overall ~~time-frame~~ 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. ~~2.~~ If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
  4. ~~3.~~ If the Board grants a license ~~or approval~~ during the ~~time provided to assess~~ administrative completeness time frame, 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 set forth in Table 1 and~~ time frame begins on the postmark date of notice of administrative completeness.
  1. As part of the substantive review for a ~~school~~ license to operate a school, the Board shall conduct an inspection that may require more than one visit to the school.
  2. During the substantive review ~~time-frame~~ time frame, the Board may make one comprehensive written request for additional information or documentation. If the applicant has applied for licensure by examination, the Board shall request evidence of passing the examination required

under R4-10-108. The ~~time frame~~ 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. If an applicant meets the requirements of A.R.S. ~~§ 32-501 through § 32-575~~ Title 32, Chapter 5 and this Chapter, the Board shall send written notice ~~of approval~~ granting a license to the applicant. ~~If an applicant is applying for approval to take an examination, the notice shall include the date, time, and place the applicant is scheduled to take an examination.~~
4. If an applicant does not meet the requirements of A.R.S. ~~§ 32-501 through § 32-575~~ Title 32, Chapter 5 and this Chapter, the Board shall send a written notice ~~of denial~~ denying a license to the applicant. The Board shall include in the notice of denial including a the basis for the denial and an explanation of the applicant's right to appeal ~~as prescribed in~~ under A.R.S. ~~§ 41-1076~~ Title 41, Chapter 6, Article 10.

**D.** The Board shall consider an application withdrawn if within 180 days from the application submission date the applicant fails to:

1. ~~Supply~~ supply the missing information under subsection ~~(B)(2)~~ (B)(1) or ~~(C)(2); or~~
2. ~~Take an examination.~~

~~**E.** An applicant who does not wish an application withdrawn may request a denial in writing within 180 days from the application submission date.~~

~~**F.E.**~~ An individual shall not practice as an aesthetician, cosmetologist, hairstylist, instructor, or nail technician until the individual receives and posts the license at the individual's place of employment.

~~**G.F.**~~ If a ~~time frame's~~ the last day of a time frame falls on a Saturday, Sunday, or a legal holiday, the Board shall consider the next business day the ~~time frame's~~ last day of the time frame.

#### **R4-10-107. License Renewal**

**A.** An aesthetician, cosmetologist, hairstylist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.

1. If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.
2. A renewal application consists of:

- a. A form provided by the Board that contains: the licensee's name, address, e-mail address, Social Security number, and signature ~~or Personal Identification Number (PIN) supplied by the Board if filed electronically~~;
  - b. A copy of a government-issued identification containing a photograph of the licensee;
  - c. If the documentation previously submitted under R4-10-104(A)(3) or R4-10-105(3) did not establish citizenship in the United States or was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the licensee's presence in the United States continues to be authorized under federal law;
  - ~~b.d.~~ A statement of whether the licensee has changed the licensee's name since the previous application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and
  - ~~e.e.~~ The fee required in R4-10-102.
- B.** An establishment licensee shall annually postmark or electronically submit to the Board an application for renewal ~~and the fee required in R4-10-102~~ on or before the license renewal date.
1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.
  2. A renewal application consists of:
    - ~~a.~~ a A form provided by the Board that contains:
      - ~~a.~~ i. The establishment's name ~~and license number~~;
      - ii. The licensee's license number; and
      - ~~b.~~ iii. If the ~~owner~~ licensee is an individual or partnership, the signature and tax identification number of the ~~owner~~ licensee; or if the ~~owner~~ licensee is a corporation or limited liability company, the signature of the authorized signer and the tax identification number of the corporation or limited liability company; ~~if filed electronically, the Personal Identification Number (PIN) supplied by the Board may be used in place of the signature.~~ and
    - b. The fee required in R4-10-102.

**R4-10-108. Pre-screening Review; Licensing Examination**

- A.** A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a licensed school but the student shall not be issued an examination date until the student has completed a minimum of:
1. 1450 hours of cosmetology training,

2. 750 hours of hairstyling training,
  3. 500 hours of aesthetics or nail technology training, or
  4. 350 hours of cosmetology, hairstyling, aesthetics, or nail technology instructor training.
- B.** After the Board completes the pre-screening review and determines the student has completed the number of hours specified in subsection (A), the Board or national professional organization with which the Board contracts to administer the licensing examination shall issue an examination date to the student. However, the Board shall not allow the student to take the examination until the student applies for licensure and provides a certification of graduation to the Board.
- C.** If a student who has been issued an examination date fails to apply for licensure and provide a certification of graduation by the examination date or fails to appear at the examination site at the scheduled examination time, the examination fee is forfeited.
- D.** A request for a pre-screening review is not an application for licensure and does not guarantee the Board will issue a license.
- E.** The Board or national professional organization with which the Board contracts to administer the licensing examination shall provide written notice to an applicant of the date, time, and location for the examination.
- F.** An applicant shall provide photographic identification ~~upon~~ when entering the examination site. The following U.S.-issued forms of identification are acceptable: passport, driver license, bank identification card, military identification, or other government-issued identification card.
- G.** The licensing examination consists of both a written and practical section. An applicant shall perform a live demonstration on a model during the practical section of the licensing examination. ~~During the live demonstration, the applicant shall:~~
- ~~1. Provide the model required for the demonstration. If the applicant provides a live model for the demonstration, the live model shall not be a current or former student of aesthetics, cosmetology, or nail technology or a current or former licensee;~~
  - ~~2. Provide all equipment, supplies, tools, or instruments required for the demonstration; and~~
  - ~~3. Comply with all infection control and safety standards specified in R4-10-112, including those regarding blood spills. If an applicant fails to follow proper blood spill procedures during the demonstration, the examination administrator shall dismiss the applicant from the examination and cause the examination fee to be forfeited.~~
- H.** If an applicant fails to appear for a licensing examination as scheduled, the applicant forfeits the examination fee. If an applicant arrives at an examination site after the scheduled examination begins, the examination administrator shall not allow the applicant to take the examination. An applicant may reschedule a missed examination by paying another examination fee.

- I. An applicant may cancel a scheduled examination date once by providing notice of cancellation at least 48 hours before the examination start time. The Board does not require another examination fee to reschedule a canceled examination.
- J. Neither the Board nor the examination administrator shall make examination materials available for inspection or copying by any person. A person shall not attempt to obtain or provide examination materials.
- K. An applicant shall not bring and the examination administrator shall not allow written material or recording media to either the written or practical section of the licensing examination. The examination administrator may exclude from the written or practical section of the licensing examination any items the examination administrator believes may impede the fair administration or security of the examination. The examination administrator shall dismiss from the examination an applicant who seeks to impede the fair administration of the examination, or copies or asks for information from another applicant and cause the examination fee to be forfeited.
- L. If an applicant passes the examination but fails to complete the licensure process within one year after the date of the examination, the Board shall void the examination scores.
- M. If application is made for licensure by reciprocity, the Board shall accept a score on a written or practical examination from another jurisdiction if the examination:
  1. Is the same national examination administered in Arizona,
  2. The score obtained by the applicant is at least the same as the passing score required by the Board at the time the applicant took the examination in the other jurisdiction, and
  3. The applicant provides the Board with documentation from the other jurisdiction verifying the passing score and that the score was received within one year before the application for licensure by reciprocity.
- N. The Board or national professional organization with which the Board contracts to administer the licensing examination shall conduct:
  1. ~~The~~ the practical section of the licensing examination in English and an applicant shall submit answers in English;
  2. The written section of the licensing examination ~~in English and other~~ is conducted in languages specified by the national professional organization. ~~An and chosen by the applicant may choose to take the written section of the licensing examination in any of the offered languages.~~

**R4-10-110. Reactivating an Inactive License**

- A. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.

- B.** A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than ~~five~~ 10 years, may be reactivated by the inactive licensee paying the delinquent renewal fee, as described in R4-10-102(A)(3), and paying for and completing the infection protection class and law review class, offered by the Board.
- ~~C.~~ A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than five years, but less than 10 years, may be reactivated by the inactive licensee if the licensee does all of the following:
1. Provides a certification of licensure;
  2. Completes the infection protection class and law review class given by the Board;
  3. Takes and passes the Board examination pertaining to the type of license formerly held; and
  4. Pays for the classes required under subsection (C)(2) and the delinquent renewal fee.
- ~~D.C.~~ If a cosmetology, hairstyling, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the inactive licensee shall pay 10 years of delinquent renewal fees and comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.

#### **R4-10-111. Display of Licenses and Signs**

- A.** ~~The~~ An establishment licensee shall ensure the name on an ~~the~~ establishment's exterior sign, advertising, and publications ~~shall be~~ is the same as the name on the ~~establishment~~ to operate the establishment issued by the Board. The establishment's exterior sign shall ~~contain lettering at least 2 1/2 inches in height~~ be prominently posted.
- B.** A school licensee shall: ~~prominently~~
1. Prominently post a ~~class course~~ schedule that lists the names of instructors and ~~classes courses;~~ and
  2. ~~The school shall display~~ Display the licenses of the school licensee and instructor licenses all instructors near the school entrance, visible to the public.
- C.** A salon licensee shall:
1. ~~prominently~~ Prominently post the license of the salon licensee licensee, and
  2. ~~ensure~~ Ensure that the personal license of each licensee performing services in the salon is posted at the licensee's work station.
- D.** A licensee performing mobile services shall prominently display in the area where mobile services are provided:
1. ~~a duplicate~~ A photocopy of the licensee's personal license or the licensee's Board-issued, wallet-size license card, and ~~establishment~~

2. A photocopy of the Board-issued license to operate a salon or Board-issued, wallet-size license card to operate a salon in the area where mobile services are provided. The licensee's original license shall be prominently displayed in the salon from which the licensee was dispatched in accordance with subsection (C).
- E. A copy of R4-10-112 shall be prominently posted in each establishment.
- F. A If applicable, a salon licensee shall prominently post a notice sign that reads: "These of salon services that are not regulated by the Arizona Board of Cosmetology" and include a list services provided but not regulated and that are provided at the salon.

#### **R4-10-112. Infection Control and Safety Standards**

- A. An establishment licensee shall ensure the establishment have has and maintain maintains the following minimum equipment and supplies:
1. Non-leaking, solid-side waste receptacles with liners, which ~~shall be~~ are emptied, cleaned, and disinfected daily;
  2. Ventilated, covered, containers for soiled linens including towels and capes;
  3. ~~Closed~~ Covered, clean containers or cabinets to hold clean linens including towels and capes;
  4. ~~A covered~~ Covered, wet disinfectant container ~~made of stainless steel or a material recommended by the manufacturer of the wet disinfectant that:~~
    - a. ~~Is large enough to contain sufficient disinfectant solution to allow for the total immersion of tools and instruments,~~
    - ~~b.a.~~ Is set up with disinfectant solution at all times the establishment is open, and
    - ~~e.b.~~ Is changed as determined by the manufacturer's instructions or when visibly cloudy or contaminated; and
  5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, or fungicidal, ~~and pseudomonacidal (formulated for hospitals)-disinfectant effective against HIV and human hepatitis B virus, which shall be mixed and used according to manufacturer's directions on all tools, instruments, and equipment, ~~except those that have come in contact with blood or other body fluids; and~~~~
  6. ~~An EPA registered disinfectant that is effective against HIV-1 and Human Hepatitis B Virus<sub>2</sub> or Tuberculoecidal which shall be mixed and used according to the manufacturer's directions on tools, instruments, and equipment that come in contact with blood or other body fluids.~~
- B. Procedure for disinfecting non-electrical equipment. A licensee or student shall disinfect non-electrical equipment by

1. ~~Non-electrical equipment shall be disinfected by cleaning~~ Cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and
  2. Totally immersing in the wet disinfectant required under subsection (A)(5) ~~or (A)(6)~~ following manufacturer's recommended directions.
- C. Procedure for ~~storage of~~ storing tools and instruments. A licensee or student shall:
1. ~~A Place a tool or implement instrument that has been used on a client or soiled in any manner shall be placed~~ in a covered properly labeled receptacle that is labeled "dirty"; and
  2. ~~A Place a disinfected implement instrument shall be stored~~ in a disinfected, dry, covered container that is labeled "ready to use" and isolate the disinfected instrument from contaminants.
- D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use. A licensee or student shall disinfect electrical equipment by:
1. ~~Remove~~ Removing all foreign matter from the equipment;
  2. ~~Clean~~ Cleaning and spray spraying or wipe wiping with a an EPA-registered bactericidal, virucidal, or fungicidal disinfectant, compatible with electrical equipment, as required in subsection (A)(5) or (A)(6), ensuring the electrical equipment is in contact with the disinfectant for the time specified on the disinfectant label;
  3. Storing the disinfected electrical equipment in a clean place separated from cords for the electrical equipment; and
  - 3.4. ~~Disinfect~~ If the electrical equipment has removable parts, disinfecting the removed parts as described in subsection (B).
- E. Tools, instruments, and supplies. A licensee or student shall:
1. ~~All~~ Dispose of all tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) ~~shall be disposed of by placing them~~ in a waste receptacle immediately after use;
  2. ~~Disinfected~~ Not store or carry disinfected tools and instruments ~~shall not be stored~~ in a leather or cloth storage pouch or pocket;
  3. ~~A~~ Dispose of a sharp cosmetology tool or ~~implement that is to be disposed of~~ ~~shall be sealed instrument by sealing the tool or instrument~~ in a rigid, puncture-proof container and ~~disposed disposing of~~ in a manner that keeps licensees, students, and clients, and sanitation workers safe;
  4. ~~An instrument or supply shall not be carried in or on a garment while practicing in the establishment;~~
  - 5.4. ~~Clips~~ Not place clips or other tools and instruments ~~shall not be placed in mouths~~ the mouth, pockets pocket, or other unsanitized holders holder that cannot be cleaned and disinfected;

- ~~6.5. Pencil~~ Sharpen pencil cosmetics ~~shall be sharpened~~ before each use and clean and disinfect the sharpener after each use; and
7. ~~All supplies, equipment, tools, and instruments shall be kept clean, disinfected, free from defects, and in good repair;~~
8. ~~Cutting equipment shall be kept sharp; and~~
- ~~9.6.~~ A client's personal cosmetology tools and instruments that are brought into and used in the establishment shall comply with these rules.
- F. ~~If there is a blood spill or exposure to blood or other body fluids during a service, licensees and students~~ a licensee or student shall stop the service and:
1. ~~Before returning to service, If the wound is on the licensee's or student's hand, the licensee or student shall:~~
    - a. ~~clean~~ Clean the wound with an antiseptic solution;
    - b. Cover the wound with a sterile bandage; and
    - c. ~~If the wound is on a licensee's or student's hand in an area that can be covered by~~ Cover the wounded area with a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;
  - ~~4.2. Blood stained~~ Discard all blood-stained tissue or cotton or other blood-contaminated material ~~shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;~~
  - ~~5.3. All~~ Disinfect all equipment, tools, and instruments that ~~have come~~ came in contact with blood or other body fluids ~~shall be disinfected~~ as discussed in subsections ~~(A)(6)~~ (A)(5) and (B); and
  - ~~6.4. Electrical~~ Disinfect electrical equipment ~~shall be disinfected~~ as discussed in subsection (D).
- G. ~~All~~ An establishment licensee shall ensure all circulating and non-circulating tubs or spas ~~shall be~~ are cleaned as follows ~~using the disinfectant in subsection (A)(5) or (6):~~
1. After each client or service, complete all of the following:
    - a. Drain the tub;
    - b. Clean the tub according to manufacturer's instructions, taking special care to remove all film, especially at the water line;
    - c. Rinse the tub;
    - d. Fill the tub with water and disinfectant as in subsection ~~(A)(5) or (6);~~ and
    - e. Allow the disinfectant to stand for non-circulating tubs or to circulate for circulating tubs for the time specified in manufacturer's instructions.
  2. At the end of the day, complete all of the following:

1. Drain the tub;
- ~~a.2.~~ Remove all filters, screens, drains, jets, and other removable parts;
- ~~b.3.~~ Scrub all removed parts with a brush and soap or detergent until free from debris;
- ~~c.4.~~ Rinse the removed parts;
- ~~d.5.~~ Completely immerse the removed parts in the ~~solution described in~~ disinfectant listed under subsection (A)(5);
- ~~e.6.~~ Rinse the tub;
- f. ~~Air dry;~~ and
- ~~g.7.~~ Replace the disinfected parts ~~in the tubs or store in a disinfected, dry, covered container.~~;
8. Fill the tub with clean water and the amount of disinfectant proper for the volume of water;
9. Circulate the water and disinfectant for the full contact time listed on the manufacturer's label. If the tube does not have jets, allow the water and disinfectant to stand for the full contact time listed on the manufacturer's label; and
10. Drain the tub.

**H. Personal cleanliness. A licensee or student shall:**

1. ~~A licensee or student shall thoroughly~~ Thoroughly wash his or her hands with soap and warm water or any equally effective ~~cleansing agent~~ hand sanitizer immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom;
2. ~~A licensee or student shall wear clothing and shoes;~~
- ~~3.2. A client's skin upon which services will be performed shall be washed~~ Wash a client's skin on which services will be performed with soap and warm water or ~~wiped~~ wipe the skin with ~~disinfectant or waterless hand cleanser~~ sanitizer approved for use on skin before a nail technology service, including a pedicure service, is provided; and
- ~~4.3. A licensee or student shall wear~~ Wear clean, fluid-proof, single-use, protective gloves while performing any service if any bodily discharge is present from the licensee, student, or client or if any discharge is likely to occur from the client because of services being performed. Discard gloves immediately after use.

**I. Disease and infestation. A licensee or student shall not perform a service on an individual:**

1. ~~A licensee or student who has a contagious disease shall not perform services on a client until the licensee or student takes medically approved measures to prevent transmission of the disease; and~~
- ~~2.1. Services shall not be performed on an individual who~~ Who has a contagious disease that may be transmitted by the performing of the ~~services~~ service on the individual; or
2. Who is exhibiting a sign of infection such as reddened, erupted, or open skin.

**J.** Client protection. A licensee or student shall:

1. ~~A~~ Protect a client's clothing ~~shall be protected~~ from direct contact with shampoo bowls or headrests by ~~the use of~~ using clean linens, capes, robes, or protective neck strips;
2. ~~Infection~~ Maintain infection control ~~shall be maintained~~ and perform services ~~shall be performed~~ safely ~~to protect the licensee or student and client~~;
3. ~~Double~~ Use bracing ~~shall be used~~ around a client's eyes, ears, lips, fingers, and toes; and
4. ~~A~~ Provide a client ~~shall receive~~ a pre- and post-analysis that includes appropriate instructions for follow-up.

**K.** Care and storage of linens including towels, robes, and capes. An establishment licensee shall ensure:

1. Clean linens ~~shall be~~ are provided for each client and laundered after each use;
2. Soiled linens ~~shall be~~ are stored in a ventilated receptacle;
3. Laundering ~~shall include~~ includes ~~disinfecting~~ washing linens ~~by~~ using detergent and bleach; and
4. Clean linens ~~shall be~~ are stored in ~~closed~~ covered containers or closets.

**L.** Care and storage of products including liquids, creams, powders, cosmetics, chemicals, and disinfectants. An establishment licensee shall ensure:

1. All products ~~shall be~~ are stored in a container that is clean and free of corrosion, ~~and~~ labeled to identify contents, and in compliance with state and local laws and manufacturer's instruction;
2. All products containing poisonous substances ~~shall be~~ are distinctly marked;
3. When only a portion of a cosmetic product is to be used, the portion ~~shall be~~ is removed from the container in a way that does not contaminate the remaining product; and
4. Once dispensed, a product ~~shall not be~~ is not returned to the original container.

**M.** Prohibited hazardous substances and use of products. An establishment licensee shall ensure

1. ~~An establishment shall not have on the premises~~ No cosmetic products containing hazardous substances banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride, are on the establishment premises; and
2. ~~Product shall be~~ All products are used only in a manner approved by the FDA, EPA, or other regulatory agency; and
3. Instructions on the manufacturer's label are followed at all times.

**N.** Care of headrests, shampoo bowls, and treatment tables. An establishment licensee shall ensure:

1. Headrests of chairs and treatment tables ~~shall be~~ are disinfected at least daily; ~~and treatment~~
2. Treatment tables are covered with a clean linen or paper sheet for each client;
- 2.3. Shampoo bowls and neck rests ~~shall be cleansed~~ are cleaned with soap and warm water or other detergent and disinfected after each use and kept in good repair; and

~~3.4. Shampoo neck rests shall be~~ are disinfected with a solution ~~described in~~ listed under subsection (A)(5) ~~or (A)(6)~~ before each use.

**O. Prohibited devices, tools, or chemicals; invasive procedures.** An establishment licensee shall ensure:

1. Except as provided in this subsection and subsection (O)(2), all of the following devices, tools, or chemicals are ~~prohibited from being~~ not present in or used in a salon:
  - a. A devise, tool, or chemical ~~that is~~ designed or used to pierce the dermis; and
  - b. A low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application.
2. A ~~salon or~~ licensee that provides an invasive procedure, using a device, tool, or chemical described in subsection (O)(1), that is otherwise allowed under Arizona law, complies ~~shall ensure that the performance of the procedure complies~~ with statutes and rules governing the procedure, training, or supervision as required by the relevant, regulatory authorities.

**P. Skin peeling.** A licensee shall:

1. Except as provided in ~~subsections (O)(1) and~~ subsection (O)(2), remove only the non-living, uppermost layer of skin, known as the epidermis, ~~may be removed~~ by any method or means and only for the purpose of beautification;
2. A Not use a skin removal technique or practice that affects the dermal layer of the skin is ~~prohibited~~;
3. ~~Skin removal products shall not be mixed~~ Not mix or ~~combined~~ combine skin removal products except as required by manufacturer instructions and approved by the FDA; and
4. ~~Only~~ Use only commercially available products for the removal of epidermis for the purpose of beautification ~~shall be used~~.

**Q. Restricted use tools and instruments.** A licensee shall use:

1. ~~Nippers shall be used~~ Nippers only to remove loose cuticles; and
2. Pre-sterilized, disposal lancets ~~shall be used~~ only to dilate follicles and release sebaceous debris from the follicle.

**R. Cleanliness** An establishment licensee shall maintain cleanliness and repair of the establishment ~~shall be maintained~~ according to the following guidelines:;

1. ~~After each client,~~ Discard hair and nail clippings ~~shall immediately be discarded~~ after each client;
2. ~~All areas of the establishment, including storerooms and passageways, shall be well lighted, ventilated, and free from infectious agents;~~
3. ~~Floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures shall be clean and in good repair;~~

~~4.2. Shampoo~~ Clean and disinfect shampoo bowls ~~shall be clean and disinfected by using a disinfectant discussed in~~ listed under subsection (A)(5) ~~or (A)(6)~~ and ensure drains ~~shall be~~ are free running;

~~5.3. Counters~~ Disinfect counters and all work areas ~~shall be disinfected~~ after each client by using a disinfectant discussed in subsection (A)(5) ~~or (A)(6)~~; and

~~6. Waste or refuse shall be removed timely so there is no accumulation.~~

S. ~~Building~~ An establishment licensee, including the licensee of a salon in a residence, shall ensure compliance with the following building standards-:

1. There ~~shall is be a direct an~~ entrance into the establishment from the outside. ~~If the establishment is a salon in a residence, the entrance may be, not~~ through living quarters, ~~into the establishment;~~

2. ~~If connected to a residence, all passageways between the living quarters and the establishment shall have a door that remains closed during business hours;~~

~~3.2. The~~ Except for a salon in a residence, an establishment shall not be used for residential or other living purposes;

~~4.3. The establishment shall have~~ has a restroom open and available for employees' and clients' use during business hours. The restroom ~~that~~ has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; and is in close enough proximity to the ~~salon~~ establishment to ensure safety for cosmetology procedures during use; ~~and is open and available for use by employees and clients of the salon;~~

~~5.4. Any excess~~ Extra material stored in a the establishment restroom ~~shall be in a~~ is locked in a cabinet;

~~6.5. The establishment, including a mobile unit, shall have~~ has sufficient hot and cold running water;

~~7. A mobile unit shall have sufficient water at all times; and~~

~~8.6. The establishment shall have~~ has a natural or mechanical ventilation and air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.

T. ~~General~~ An establishment licensee shall ensure compliance with the following general requirements.

1. ~~The establishment shall have a~~ A first-aid kit that contains, at a minimum, ~~small~~-bandages, gauze, antiseptic, and antibiotic cream; is present in the establishment and easily accessible; ~~and a blood-spill kit that contains disposable bags, gloves, and hazardous waste stickers;~~

2. ~~No bird or animal, except~~ Only fish in aquariums and service animals, are allowed in the establishment; and

3. The establishment ~~shall comply~~ complies with federal and state requirements.

**R4-10-113. Establishment Management**

- A. The manager of ~~each~~ an establishment shall ensure ~~that~~:
1. Licenses, notices, and the Board's most recent inspection sheet are prominently displayed;
  2. The establishment and all licensees in a salon, school, or a mobile service area have current licenses;
  3. Infection control and safety standards are maintained.
- B. The Board shall hold the salon and school owner establishment licensee and salon and school manager or director shall be responsible for all violations of requirements enumerated in subsection (A), ~~occurring that occur~~ within the ~~salon, school, or mobile service areas~~ establishment.
- C. If a salon ~~owner~~ licensee rents or leases space within the salon to a person who obtains a separate ~~salon~~ license to operate a salon, the Board shall hold the ~~that~~ second licensee and ~~their~~ salon manager ~~and the owner shall each be~~ responsible for all violations of requirements enumerated in subsection (A) ~~occurring that occur~~ within the portion of the salon the second licensee's licensed portion of the ~~salon, and are each responsible for the common areas~~ licensee is licensed to operate.

**R4-10-114. Disciplinary Action Board Inspection**

- A. ~~Licenses~~ A licensee or manager of an establishment shall permit an a Board inspector or Board representative to inspect the premises of any salon or school the establishment regardless of whether the establishment has been identified in a complaint.
- B. ~~, or other location identified by a complaint or the~~ A Board, inspector or representative may inspect the premises of a location alleged to be alleging the location is operating as a salon or school without a license from the Board.
- ~~B.C.~~ Board action is required to dismiss a complaint.

**R4-10-115. Rehearing or Review of Decisions a Board Decision**

- A. ~~Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The Board shall provide for a rehearing or 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 (H), a party is required to file a motion for rehearing or review of a Board decision, within 30 calendar days after service of the decision, to exhaust the party's administrative remedies.

**B.C.** A motion for rehearing or review may be amended at any time before it is ruled ~~upon~~ on by the Board. A response may be filed within ~~40~~ 15 calendar days after service of ~~such a~~ a motion or amended motion by any party. The Board may require the filing of written briefs ~~upon~~ regarding the issues raised in the motion and may provide for oral argument.

**C.D.** ~~A~~ The Board may grant a rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings ~~of the agency or its hearing officer or the prevailing party,~~ or any order or abuse of discretion, ~~whereby~~ that deprived the moving party ~~was deprived~~ of a fair hearing;
2. Misconduct of the Board or its staff, ~~or its~~ an administrative hearing officer, or the prevailing party;
3. Accident or surprise ~~which~~ that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence ~~which~~ 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 administrative hearing or during the progress of the proceedings; or
7. A decision ~~which~~ that is not justified by the evidence or is contrary to law.

**D.E.** ~~Not later than 10 calendar days after the Board's receipt of a motion for rehearing or review, the~~ The Board may affirm or modify the decision or grant a rehearing or review to any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C) (D). An order granting a rehearing or review The Board shall specify with particularity the ground or particular grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified for any order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.

**E.F.** ~~Not~~ No later than ~~15~~ 30 calendar days after the date of a decision is rendered 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 for which it might have granted a rehearing or review on motion of a party. ~~After giving the parties or their counsel notice and an opportunity to be heard on~~

~~the matter, the~~ The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. ~~In either case the~~ An order granting such a rehearing or review shall specify the grounds ~~therefor~~ on which the rehearing or review is granted.

**F.G.** When a motion for rehearing or review is based ~~upon~~ on affidavits, they shall be served with the motion. An opposing party may, within ~~40~~ 20 calendar days after ~~such~~ service, serve opposing affidavits, ~~which period~~ . This time may be extended for an additional period not exceeding 20 calendar days by the Board ~~for~~ when there is a showing of good cause ~~shown~~ or by written stipulation of the parties. Reply affidavits may be permitted.

**G.H.** ~~If in a particular decision~~ the Board makes a specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the finding that a particular decision needs to be effective immediately to preserve public peace, health, or safety and that a rehearing or review of the decision is impractical, unnecessary, or contrary to the public interest, the Board may issue the decision may be issued as a final decision without an opportunity for rehearing or review. ~~An application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.~~

**H. I.** ~~For purposes of this Section, the terms “contested case” and “party” shall be defined as provided in A.R.S. § 41-1001. A Board order is final on expiration of the time for filing a motion for review or rehearing or on denial of a motion for review or rehearing, whichever is later. A party that has exhausted the party’s administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.~~

**J.** A person that files a complaint with the Board against a licensee:

1. Is not a party to:
  - a. A Board administrative action, decision, or proceeding; or
  - b. A court proceeding for judicial review under A.R.S. Title 12, Chapter 7, Article 6; and
2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

**Table 1. ~~Time-frames~~ Time Frames (in days)**

Type of Approval	Statutory Authority	<del>Overall Time-frame</del> <u>Time Frame</u>	<del>Administrative Completeness Time-frame</del> <u>Time Frame</u>	<del>Substantive Review Time-frame</del> <u>Time Frame</u>
<del>Approval to Take an Examination</del>	<del>A.R.S. §§ 32-514, 32-515, 32-533</del>	90	60	30

License by Examination	A.R.S. §§ 32-510, 32-511, 32-512, <u>32-512.01, 32-531</u>	<del>60</del> <u>90</u>	<del>30</del> <u>60</u>	30
License by Reciprocity or Universal Recognition	A.R.S. §§ 32-513, 32-532, <u>32-4302</u>	60	30	30
School License	A.R.S. § 32-551	90	30	60
License Renewal	A.R.S. §§ 32-517, 32-535, 544, 32-564	75	45	30
Salon License	A.R.S. §§ 32-541, 32-542	90	30	60
License Reactivation	A.R.S. § 32-518	30	15	15

## ARTICLE 2. SCHOOLS

### **R4-10-201. Application for a ~~School~~ License to Operate a School; Renewal**

**A.** An applicant for a ~~school~~ license to operate a school shall submit the documents required in A.R.S. § 32-551 and:

1. An application, on a form provided by the Board, which is signed by the applicant, and notarized ~~that contains~~ provides the following information:
  - a. The applicant's name, address, e-mail address, federal tax identification number, and telephone number;
  - b. If the applicant is a partnership, each partner's name, ~~and~~ address, and an identification of whether each is a limited or general partner;
  - c. If the applicant is a corporation, the state of incorporation and ~~the~~ name, title, and address of at least two officers of the corporation and the statutory agent;
  - d. If the applicant is a limited liability company, name and address of each member, manager, and statutory agent;

- e. If the applicant is an Arizona school district or community college:
  - i. Office address of the school district or community college, and
  - ii. Number of the school district and name of the superintendent, or
  - iii. Name of the community college dean;
- ~~d.f.~~ The name under which the school will be operated as registered with the Arizona Secretary of State;
- e.g. The name and Board-issued license number of the instructor in charge of the school;
- ~~f.h.~~ If an existing school, the date the applicant will be assuming ownership; ~~and~~
- ~~g.i.~~ If a new school, the scheduled date for opening the school; and
- j. A statement by the applicant verifying the truthfulness of the information provided by the applicant;
- 2. ~~If a partnership, a copy of the partnership agreement;~~ The following evidence of business organization, as applicable:
  - a. Copy of the partnership agreement for a partnership,
  - b. Copy of the articles of incorporation and a Certificate of Good Standing from the Arizona Corporation Commission for a corporation, or
  - c. Copy of the articles of organization for a limited liability company.
- 3. ~~If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;~~
- 4.~~3.~~ A signed statement that the establishment has the equipment required by statute and rule for ~~the a~~ school;
- 5.~~4.~~ An ~~unexpected~~ unexecuted student-school contract form, ~~as required by~~ under A.R.S. § 32-558;
- 6.~~5.~~ A An operating schedule that includes the hours of each day and each day of a calendar week during which the school will be open for instruction;
- 7.~~6.~~ A proposed schedule of ~~classes~~ courses to be taught at the school;
- 8.~~7.~~ The name, address, e-mail address, and telephone number of ~~the a~~ a bonding company, as required under A.R.S. § 32-551, and a copy of the bond;
- 9.~~8.~~ A copy of all school policies and procedures;
- 10.~~9.~~ A school catalog that contains the information required ~~by~~ under A.R.S. § 32-559 and:
  - a. The number of days during course enrollment ~~that are~~ necessary to complete the course hours ~~for the course~~;
  - b. The days and hours of operation, vacation periods, and holidays;
  - c. ~~A listing of policies~~ Policies regarding leaves of absence, refunds, and vacation approval for students;

~~11.10.~~ Demonstrate evidence of compliance with A.R.S. §§ 32-551 through 32-575 and these rules through a school inspection conducted by the Board; and

~~12.11.~~ The fee required in R4-10-102.

B. In addition to the requirements in R4-10-107, when renewing a license, a licensee shall submit ~~the following when renewing a license~~:

1. ~~The most recent school catalog that~~ A statement that indicates:

- a. ~~Indicates where any~~ Any modifications, additions, or deletions ~~from~~ to the previously submitted catalog ~~may be found~~;
- b. ~~Contains an index that shows where the information required by A.R.S. § 32-559 is located in the catalog~~ Any changes that have occurred regarding the school's accrediting or approving organization; and
- c. ~~Contains the name of each accrediting or approving organization; and~~ The school continues to maintain all equipment required by statute and rule;
- d. ~~Provides a signed statement that the establishment has the equipment required by statute and rule for the school.~~

2. A subject description for each new course ~~and its schedule~~, if applicable;

~~3. A new operating schedule if changes will occur beginning with the new license year;~~

~~4.3.~~ The name, and address, and e-mail address of any a new statutory agent if the statutory agent will change will take effect beginning with the new license year;

~~5.4.~~ The name and license number of the current licensed instructor in charge of the school; and

~~6.5.~~ The name, address, e-mail address, and telephone number of the bonding company, the bond number, the expiration date of the bond, and a copy of the bond.

C. ~~The owner of a school licensee~~ shall submit to the Board the terms and conditions of any management contract entered into for the school after the contract is executed;

D. Within five days after a change occurs during the license year, the ~~owner of a school licensee~~ shall submit to the Board ~~the~~ a subject description of any new course; the name of any new statutory agent; or any a description of a change to the catalogue, catalog or school policies, procedures, or hours of operation, generic a copy of the student-school contract, policies, procedures, hours of operation, or a copy of the bond.

#### **R4-10-202. School Closure**

A. For purposes of A.R.S. § 32-563, the Board may consider a school to be closed if ~~it~~ the school licensee fails for five consecutive school days to ~~provide~~ ensure instruction is provided in accordance with ~~its~~ the schedule of operations on file with the Board.

1. ~~All~~ The school licensee shall notify all enrolled students and employees ~~shall be notified by the school~~ in writing of a pending closure at least five calendar days before closure of the school, unless the time of ~~such~~ closure could not have been anticipated. A copy of the notice shall be sent to the Board at the time it is delivered to ~~the~~ students and employees.
  2. The licensee of a closed school shall release students' and employees' personal belongings, including equipment, tools, and ~~implements shall be released to each student or employee instruments~~ immediately ~~upon request~~ when requested.
  - 2.3. ~~Student records as specified by~~ As required under A.R.S. § 32-563, the licensee of a closed school shall be sent electronically deliver or otherwise send the following student records to the Board within 10 calendar days after the school ~~closure, including~~ closes:
    - a. ~~Copies~~ As specified in R4-10-204, copies of hour sheets documenting all student hours and the current time cards or time records received by the student after the last monthly report before the school ~~closure~~ closed as specified by R4-10-204;
    - b. ~~A~~ As specified in R4-10-204, a copy of the file of each student who was enrolled the last school day ~~prior to~~ before closure ~~as specified by R4-10-204~~. If a ~~teachout~~ teach-out was arranged with another school ~~which agreed to complete the training~~, the licensee of the closed school shall transfer the student's file ~~shall be transferred~~ to that school; and
    - c. A written statement signed by each enrolled student verifying the ~~school's~~ school licensee's compliance with subsection (A)(1) as it applies to students.
- B. Failure** The Board shall consider failure to comply with subsection (A) ~~may be~~ as possible grounds for refusal to issue a school license to an owner, manager, director, or instructor of the school at the time of ~~the school~~ closure.

**R4-10-203. General School Requirements**

- A.** ~~An~~ The licensee of an aesthetics, cosmetology, hairstyling, or nail technology school shall ensure the school complies with R4-10-112 and has the following minimum facilities, equipment, supplies, and materials:
1. One area of instruction for every 20 students;
  2. A licensed instructor as manager or director;
  3. A desk, or table and chair, or other instructional fixtures and facilities for each student during theory instruction;
  4. ~~Filing cabinets to hold all school and student records;~~
  - 5.4. ~~An instruction~~ A board in each room used for on which to write or post materials during instruction;

- ~~6.5. At least two cubic feet of an individual locked area with a different locking device for each enrolled student and each instructor to store personal objects and training kits~~ A secured area for personal items of students and instructors ;
- 7.6. A sink area for each 50 students in attendance for the preparation, mixing, and dispensing of supplies and chemicals, and for the disinfection of small tools or instruments;
- ~~8.7. At least one restroom that meets the requirements of R4-10-112; and~~
- 9.8. Separate receptacles for garbage and soiled linens; ~~and~~
10. ~~One container for wet disinfectant for each student performing aesthetics or nail technology.~~
- B.** The school licensee shall furnish equipment, tools, instruments, materials, and supplies needed to perform assignments and for instructional purposes, except ~~that the school may require~~ each student may be required to furnish small tools or instruments. ~~All~~ The school licensee shall ensure all equipment, tools, and materials ~~shall be~~ are salon quality and maintained in good repair at all times.
- C.** The school licensee shall ~~have~~ ensure students have access to the following materials whether in a school library for student use which contains at least the following materials relating to the courses offered by the school or electronically:
1. Standard dictionary;
  2. Medical dictionary;
  3. Anatomy chart on bones, muscles, nerves, hands, arms, nails, veins, arteries, circulatory system, hair, and skin;
  4. Three current periodicals on the art and science of cosmetology;
  5. Current cosmetology instruction manuals or textbooks;
  6. Current Arizona Board of Cosmetology statutes and rules; and
  7. A cosmetology dictionary.
- D.** ~~Each~~ The school licensee shall maintain at the school a complete file on all current curriculum requirements.
- E.** ~~A~~ The school licensee shall not pay an enrolled student for time while the student is taking classes ~~courses~~ or receiving credit.
- F.** ~~A licensed~~ The school licensee may offer a postgraduate or advanced continuing education aesthetics, cosmetology, hairstyling, or nail technology course to currently licensed individuals without a licensed instructor present and to students currently enrolled in the school with a licensed instructor present.
4. ~~A~~ The school licensee shall not report ~~post-graduate~~ postgraduate credit hours to the Board or apply the hours toward graduation.

~~2.G.~~ Currently The school licensee shall not allow enrolled students ~~shall not to~~ perform services ~~upon~~ on a person without ~~an~~ a licensed instructor present.

~~3.~~ A student file is not required for licensed individuals.

~~4.~~ Each licensee shall have the licensee's current Board-issued license number onsite.

~~G.H.~~ A school licensee may enroll an individual licensed by the Board ~~may re-enroll in a licensed~~ the school for a refresher course as a current student. ~~Credit and shall submit to the Board a record of~~ hours ~~for training~~ received ~~shall be submitted by the school to the Board~~ in the refresher course.

~~H.I.~~ A school licensee shall establish a periodic grading schedule and ~~keep~~ ensure student transcripts are kept current.

~~I.J.~~ A school licensee shall schedule a minimum of four hours of theory ~~classes~~ courses each week for each full-time student and a minimum of two hours of theory ~~classes~~ courses each week for each part-time student.

~~J.K.~~ A school licensee shall ~~teach~~ ensure safety and infection control measures relating to each subject are taught in conjunction with that subject.

~~K.L.~~ A school licensee shall not solicit students for enrollment at other school sites.

~~L.M.~~ While A school licensee shall ensure that while teaching, instructors ~~shall~~ wear a tag indicating the instructor's name and courses taught.

~~M.N.~~ A school licensee shall ensure compliance with the following:

1. A student ~~shall~~ does not attend school more than 56 hours in any one week.
2. A student ~~shall only operate~~ operates only safe equipment in good repair.
3. A student of aesthetics, cosmetology, hairstyling, or nail technology performs services within the enrolled course, ~~upon~~ on the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the basic training specified in R4-10-303, R4-10-304, R4-10-304.1, or R4-10-305.
4. A ~~school shall~~ student is not ~~prevent~~ prevented or ~~discourage a student~~ discouraged from making a complaint to the Board.
5. A ~~school~~ student shall is not ~~dismiss a student~~ dismissed from a scheduled theory instruction or written or practical examination to perform clinical services for the public;
6. While in school, each student ~~shall wear~~ wears a tag indicating the student's name and the course in which the student is enrolled; and
7. If the school has a distant classroom, the ~~school shall ensure that~~ equipment ~~for each~~ in the distant classroom is the same as that required ~~for each course of instruction in the school~~ under this Section; and:

- a. Private postsecondary and public educational facilities ~~shall do~~ not extend ~~the school~~ facilities beyond ~~.5 miles apart as verified by Global Positioning System map readings~~ Arizona boundaries;
- b. ~~Public educational facilities shall not extend the school beyond the school designated campus~~;
- ~~e.b.~~ A duplicate photocopy of the Board-issued school license to operate a school or Board-issued, wallet-size license card to operate a school shall be posted in each distant facility;
- ~~e.c.~~ Duplicate instructor licensees licenses are not required in a distant classroom; and
- ~~e.d.~~ Clinic No clinic, retail, all public services, and appointments by the or public services are prohibited allowed in a distant classroom.

#### **R4-10-204. School Records**

- A. A school licensee shall maintain a student's records at the school where the student is enrolled. The Board may inspect the records at any time the school is open.
- B. ~~When~~ A school licensee shall ensure that when a student transfers from one school to another or withdraws, the school from which the student is transferring ~~shall~~ or withdrawing:
  - 1. ~~Keep~~ Keeps a copy of the student's transcript,
  - 2. ~~Forward~~ Forwards one copy of the student's hours to the student and another copy to the Board within three days of the date of transfer or withdrawal, and
  - 3. ~~Withdraw~~ Removes the student ~~on~~ from the school records and ~~the~~ monthly report submitted to the Board in the month following the transfer or withdrawal.
- C. ~~Each~~ A school licensee shall keep ensure the following are maintained:
  - 1. A complete and accurate record of the time devoted by each student to the enrolled course of study, including hours devoted to alternative learning and field trips;
  - 2. A complete and accurate record that shows the ~~school's~~ basis for certification of the student hours. A school licensee shall certify only ~~those~~ hours of training the student receives ~~in that~~ at the licensee's school or hours the school licensee accepts as received in another state or country;
  - 3. A complete and accurate individual student file for each student enrolled containing:
    - a. ~~Contract and enrollment agreement~~ Executed student-school contract;
    - b. Financial aid transcript;
    - c. Proof of 10th grade equivalency for a student enrolled in an aesthetics, cosmetology, hairstyling, or nail technology course or proof of high school equivalency or 18 years of age for a student enrolled in an instructor course;

- ~~d.~~ Identification number;
  - ~~e.d.~~ Proof of one year of licensed work experience for a student instructor;
  - ~~f.e.~~ A statement signed by a school administrator and the student that provides a list of the supplies contained in the training kit provided to the student. ~~The contract shall set forth the contents of the kit including~~ and the following information:
    - ~~i.~~ The price of items contained in the kit;
    - ~~ii.i.~~ When the items shall training kit will be distributed to the student;
    - ~~iii.~~ The manufacturer of the products;
    - ~~iv.ii.~~ The retail value of the training kit; and
    - ~~v.iii.~~ A statement that if substitutions occur made after the contract statement is signed, the substitutions shall will be of comparable value; and
  - ~~g.f.~~ A record of completed hours, including proof of cosmetology, hairstyling, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school licensee; and
4. Complete and accurate academic transcripts and attendance and hour records or time cards.
- D.** ~~The~~ A school licensee shall electronically deliver to the Board a complete and accurate monthly report, containing the following information, no later than the 10th day of each month. ~~The monthly report shall include:~~
1. ~~For~~ Only for each student enrolled since the prior monthly report ~~only~~:
    - a. Name;
    - ~~b.~~ Student identification number;
    - ~~e.b.~~ Enrollment date;
    - ~~d.c.~~ Address and e-mail address;
    - ~~e.d.~~ Telephone number;
    - ~~f.e.~~ Type of educational documentation that meets the requirements of R4-10-104;
    - ~~g.f.~~ Proof of hours received from another ~~Board-licensed~~ school for which the Board issued a license to operate; or a school in another state; or country; and certified by the school licensee, if applicable;
    - ~~h.g.~~ Proof Acceptance of crossover hours ~~necessary to qualify for R4-10-306~~, if applicable; and
    - ~~i.h.~~ Birth date.
  2. The enrollment category of each student;
  3. The name, license number, and work schedule of the instructor in charge of the school; and name of the custodian of records;

4. The name, license number, and work schedule of each instructor employed by the school licensee;
  5. The signature of the instructor who prepares and certifies ~~that~~ the report is correct;
  6. The name of ~~student instructors~~, the scheduled attendance, and ~~the~~ Board-issued license number for each student instructor;
  7. For each demonstration given, the name of the demonstrator, ~~the~~ name of the observing instructor, ~~the~~ name of the process or product demonstrated, ~~the~~ number of students in attendance, and ~~the~~ name of the course in which the demonstration was given;
  8. Hours received by each student for the prior month, the current month, and total cumulative hours. The school licensee shall not amend total hours without satisfactory proof of error;
  9. Signature of each student verifying approval of the certified hours;
  10. The ~~school's~~ school licensee's certification of the students who meet ~~the~~ graduation requirements ~~of the school~~, including the day, month, and year of graduation; and
  11. The notation "transferred," "withdrawn," or "leave of absence" for students who discontinue training, and the day, month, and year training was discontinued. ~~The school shall provide certification to the student within one week of the hours earned by the student before the student withdraws or takes a leave of absence.~~
- E. A school licensee shall credit a student with additional hours earned after graduation if the student completes the required hours for graduation, registers for the ~~Board~~ required examination, and stays in school until the date of the examination.
- F. A school licensee is not required to maintain a student file for licensed individuals.

#### **R4-10-205. Aesthetic School Requirements**

- A. ~~Schools~~ The licensee of a school that ~~provide~~ provides aesthetics 600-hour training for students, 350-hour training for instructors, or both, shall ~~provide~~ ensure the following minimum facilities, equipment, supplies, and materials are provided in addition to ~~that~~ those required ~~by~~ under R4-10-203 and R4-10-204:
1. A work station for each student in attendance to perform aesthetics services to the public for a fee, each having:
    - a. A facial chair or table;
    - b. A supported table top ~~that is 12" x 18" or larger~~;
    - c. A dry, disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112, and
    - d. A labeled receptacle for contaminated tools ~~or~~ and instruments as specified under R4-10-112.

2. One steamer machine for each group of four students in attendance during ~~lab~~ classroom instruction and two students in attendance during clinic instruction;
3. One microdermabrasion machine to be used at a non-invasive level;
4. One magnifying lamp of at least 5 diopters for each group of two students in attendance during ~~lab~~ classroom instruction and each group of four students in attendance during clinic instruction;
5. Cleansers;
6. Massage medium;
7. Toner; and
8. ~~Exfolients~~ Exfoliants and masks; ~~and~~
9. ~~Depilatories~~.

**B.** Each A school licensee shall ~~provide~~ ensure a nonreturnable student training kit ~~for~~, containing at least the following, is provided to each enrolled aesthetics student. ~~The kit shall contain at a minimum, the following:~~

1. ~~One~~ Access to an electronic or standard textbook for professional aestheticians;
2. ~~One~~ Access to an electronic or hard copy of the Arizona ~~cosmetology~~ Board of Cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified ~~by~~ under R4-10-112; and
4. ~~A~~ One container for contaminated tools ~~or~~ and instruments as specified under R4-10-112.

#### **R4-10-206. Cosmetology School Requirements**

**A.** ~~Schools~~ The licensee of a school that ~~provide~~ provides cosmetology 1600-hour training for students, 350-hour training for instructors, or both, shall ~~provide~~ ensure the following minimum facilities, equipment, supplies, and materials are provided in addition to ~~that~~ those specified ~~by~~ under R4-10-203 and R4-10-204:

1. A work station for each student in attendance ~~performing~~ to perform cosmetology services to the public for a fee, each having:
  - a. A mirror ~~that is at least 18" by 30" when performing services on a~~ for client services;
  - b. A table top or counter;
  - c. A client chair;
  - d. A dry, disinfected, covered receptacle to store disinfected tools and instruments as specified under R4-10-112; and
  - e. A container for contaminated tools ~~or~~ and instruments as specified under R4-10-112;

2. One shampoo basin for each group of 10 students in attendance during ~~lab~~ classroom or clinic instruction;
  3. One hand-held hair dryer for each student in attendance during ~~lab~~ classroom or clinic instruction;
  4. ~~One hooded dryer for each group of 20 students in attendance during lab or clinic instruction;~~
  5. ~~One high frequency Tesla or violet ray unit, including a facial and scalp electrode, for each group of 20 students in attendance during practical instruction;~~
  - 6.4. Two electric clippers in the school;
  7. ~~Depilatories;~~
  - 8.5. Chemical hair straighteners;
  - 9.6. One nail technology table ~~with a 12" x 18" or larger top~~ for each group of 10 students in attendance during practical instruction;
  - 10.7. A facial work station for each group of 10 students in attendance and receiving ~~lab~~ classroom or clinic aesthetics instruction;
  - 11.8. A receptacle, large enough to completely immerse two feet for each group of 10 students in attendance during ~~lab~~ classroom or clinic nail technology instruction;
  - 12.9. ~~Two~~ One electronic nail ~~drills~~ file for filing and buffing ~~in the school~~; and
  - 13.10. Nail products for acrylics, gels, tips, wraps, and polishing.
- B.** ~~Each~~ A school licensee shall ~~provide~~ ensure a nonreturnable student training kit ~~for~~, containing at least the following, is provided to each enrolled cosmetology student ~~a nonreturnable student training kit. The kit shall contain at a minimum, the following:~~
1. ~~One~~ Access to an electronic or standard textbook for professional cosmetologists;
  2. ~~One~~ Access to an electronic or hard copy of the Arizona ~~cosmetology~~ Board of Cosmetology statutes and rules;
  3. One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and
  4. A container for contaminated tools ~~or~~ and instruments as specified under R4-10-112.

#### **R4-10-206.1. Hairstyling School Requirements**

- A.** ~~A~~ The licensee of a school that provides hairstyling 1000-hour training for students, 350-hour training for instructors, or both, shall ensure the minimum facilities, equipment, supplies, and materials listed under R4-10-206(A)(1) through (6) are provided in addition to those specified under R4-10-203 and R4-10-204.
- B.** A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled hairstyling student:

1. ~~Reasonable access~~ Access to an ~~online~~ electronic or standard textbook for professional hairstylists;
2. ~~Reasonable access~~ Access to an electronic or a hard copy of the Arizona Board of Cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and
4. A container for contaminated tools and instruments as specified under R4-10-112.

**R4-10-207. Nail Technology School Requirements**

A. ~~The licensee of a school~~ that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall ~~provide~~ ensure the following minimum facilities, tools, instruments, equipment, supplies, and materials are provided, in addition to those ~~required by~~ specified under R4-10-203 and R4-10-204:

1. A work station to perform nail technology services for the public for a fee for each student in attendance containing:
  - a. A nail technology table ~~with a top 32" x 16" or larger~~;
  - b. A client chair;
  - c. A nail technology chair or stool;
  - d. A disinfected, covered container to store disinfected tools and instruments as specified ~~in~~ under R4-10-112;
  - e. A container with wet disinfectant as specified ~~in~~ under R4-10-112;
  - f. A container for soiled tools ~~or~~ and instruments as specified ~~in~~ under R4-10-112;
  - g. A waste receptacle as specified ~~in~~ under R4-10-112; and
  - h. A disinfectant for blood or body-fluid exposure as specified ~~in~~ under R4-10-112.
2. One container large enough to ~~completely~~ immerse two feet completely, for every five students in attendance during ~~practical training~~ clinic instruction;
3. Nail products for acrylics, gels, tips, wraps, and polishing; and
4. One ultraviolet light.

B. ~~Each~~ A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled nail technology student ~~shall have a training kit containing~~:

1. One simulated hand;
2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezer, nail brush, and finger bowl;

3. One covered container to store disinfected tools and ~~implements~~ instruments as specified by under R4-10-112;
4. A container for soiled tools and instruments as specified ~~in~~ under R4-10-112;
5. ~~A current instruction manual or~~ Access to an electronic or standard textbook of for professional nail technology and access to an electronic or hard copy of the Arizona cosmetology laws Board of Cosmetology statutes and rules;
6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
7. One electric nail file.

**R4-10-208. Combined School Requirements**

- A. A ~~licensed~~ school licensee shall ensure ~~that~~ the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:
1. Aesthetics course - 600 hours,
  2. Aesthetics instructor course - 350 hours,
  3. Cosmetology course - 1600 hours,
  4. Cosmetology instructor course - 350 hours,
  5. Hairstyling course – 1000 hours,
  6. Hairstyling instructor course – 350 hours,
  7. Nail technology course - 600 hours, and
  8. Nail technology instructor course - 350 hours.
- B. A school licensee that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required ~~by~~ under:
1. R4-10-203,
  2. R4-10-204,
  3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
  4. R4-10-206,
  5. R4-10-206.1, and
  6. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.
- C. A school licensee that provides the curriculum specified in subsections (A)(3) through (A)(8) only shall have the minimum records, facilities, equipment, supplies, and materials required under:

1. R4-10-203,
2. R4-10-204,
3. R4-10-206,
4. R4-10-206.1, and
5. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.

**D.** A school licensee that provides the curriculum specified in subsections (A)(1) through (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required under:

1. R4-10-203,
2. R4-10-204,
3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
4. R4-10-206, and
5. R4-10-206.1.

**E.** A school licensee that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(7) and (A)(8) only shall have the minimum records, facilities, equipment, supplies, and material required under:

1. R4-10-203,
2. R4-10-204,
3. R4-10-205, and
4. R4-10-207.

**R4-10-209. Demonstrators; Exclusions**

**A.** A school licensee shall ensure only an individual person who does not hold holds an instructor license shall not or a student instructor is allowed to teach in a school.

**B.** but A school licensee shall ensure an unlicensed individual may demonstrate to enrolled students any who demonstrates a process, product, or appliance to enrolled students presents the demonstration only when an a licensed instructor is present and observing the demonstration.

**B.C.** When demonstrating A school licensee shall ensure an unlicensed individual who conducts a demonstration on a model, the demonstrations shall be confined to an confines the demonstration to an explanation of the products, procedures, and appliances being promoted.

**R4-10-210. Changes Affecting a License to Operate a School**

**A.** A licensee shall apply for a new license to operate a school when any of the following occurs:

1. The school address changes;
  2. The name of the school changes;
  3. If the school licensee is a corporation, the controlling ownership is transferred or the corporation is reorganized; or
  4. If the school licensee is a corporation, limited liability company, or partnership, a corporate officer, partner, or statutory agent changes.
- B.** A school licensee and the instructor in charge shall ensure a Board-issued license to operate a school, indicating the correct ownership of the license, is posted in the school before the school is opened for business.

### ARTICLE 3. STUDENTS

#### **R4-10-301. Instruction; Licensed Individuals**

~~Licensed schools~~ A school licensee that ~~provide~~ provides ~~instruction~~ a course for licensed individuals ~~pursuant to~~ licensed under this Article shall:

1. Keep a record of the: ~~date,~~
  - a. Date, time, title, and name of the provider of the course; and ~~along with the attendee's name~~
  - b. Names and license ~~number~~ numbers of all attendees;
2. Ensure ~~that~~ the instruction course consists of professional development related to scope of practice as specified ~~by~~ under A.R.S. § 32-501; and
3. Ensure ~~that~~ hours are not granted toward licensing unless ~~it is~~ the hours are part of ~~the approved a~~ course required for licensing and provided by or in the presence of a licensed instructor.

#### **R4-10-302. Instructor Curriculum Required Hours**

**A.** A school licensee shall ensure each student in an aesthetics, cosmetology, hairstyling, or nail technology instructor course completes 350 curriculum hours that ~~includes~~ include the following:

1. Orientation and review of the Arizona Board of Cosmetology statutes and rules;
2. Theory, preparation, and practice curriculum development. This includes:
  - a. Developing and using educational aids;
  - b. Practical and written presentation principles;
  - c. Classroom management evaluation, assessment, and remediation methods;
  - d. Diversity in learning including cultural differences;
  - e. Methods of teaching;
  - f. Professional development including ethics; and

- g. Alternative learning;
  - 3. Classroom and clinic oversight.
- B.** A school licensee may allow a student in an instructor course to satisfy, in part, curriculum hours required under subsection (A)(2) by completing a course at an accredited college or university or an educational institution described under R4-10-101(~~14~~)(15)(c) and (d). Hours obtained under this subsection are subject to the following limits:
- 1. No more than nine credit hours for cosmetology, hairstyling, or aesthetics;
  - 2. No more than six credit hours for nail technology; and
  - 3. Each ~~college~~ credit hour equals no more than 30 of the clock hours required under subsection (A).
- C.** A school licensee may allow a student in an instructor course to satisfy the curriculum hours required under subsection (A)(2) by participating in virtual learning.
- ~~**C.D.**~~ All A school licensee shall ensure all instruction given by a student instructor ~~shall be~~ is under the direct supervision and observation of a licensed instructor.
- ~~**D.**~~ A student instructor as a student for the purpose of determining the maximum allowed ratio of 40 students during a theory class and 20 students during a lab or clinic for each licensed instructor in the school.
- E.** A school licensee shall not allow a student instructor ~~shall not~~ to instruct students or check student services performed on the public until the student instructor has received at least 80 hours of ~~basic~~ instructor training.

**R4-10-303. Aesthetics Curriculum Required 600 Hours**

- A.** Each student in an aesthetics course shall complete the following curriculum:
- 1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Arizona ~~cosmetology laws~~ Board of Cosmetology statutes and rules; and
  - 2. Clinical and ~~laboratory~~ classroom aesthetics including theory ~~that involves~~ involving all skin types:
    - a. Principles and practices of infection control and safety;
    - b. Recognition of diseases and the treatment of disorders of the skin;
    - c. Interpersonal skills and professional ethics;
    - d. Clinical and ~~laboratory~~ classroom practice that includes face and body;
    - e. Morphology and treatment of skin, including face and body, by hand and machine;
    - f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
    - g. Aesthetics machines, tools, and instruments and their ~~related~~ uses;

- h. Alternative skin technology;
- i. ~~Pre-~~ Client pre- and post-client service consultation, documentation, and analysis;
- j. Spa body modalities;
- k. Exfoliation modalities;
- l. Body and face massage and manipulations;
- m. Body and facial hair removal except by electrolysis;
- n. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
- o. Cosmetic enhancement applications; and
- p. Required industry standards and ecology, including monitor duties.

**B.** A school licensee may allow a student in an aesthetics course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

~~**B.C.** An aesthetics~~ A school licensee shall not receive remuneration for a an aesthetics student performing clinical services ~~to~~ for the public until the student has received at least 120 hours of aesthetics training; and

~~**C.D.** Each~~ A school licensee shall ensure each student ~~shall be~~ is evaluated for progress and ~~provided~~ suggested remediation of suggestions are provided to the student for remediating deficiencies.

#### **R4-10-304. Cosmetology Curriculum Required 1600 Hours**

**A.** Each student in a cosmetology course shall complete the following curriculum:

1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, ~~electricity,~~ diseases and disorders, and Arizona ~~cosmetology laws~~ Board of Cosmetology statutes and rules; and
2. Clinical and ~~laboratory~~ classroom cosmetology including theory that involves nails, hair, and skin:
  - a. Principles and practices of infection control and safety;
  - b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
  - c. Morphology and treatment of hair, skin, and nails;
  - d. Interpersonal skills and professional ethics;
  - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
  - f. Cosmetology machines, tools, and instruments and their ~~related~~ uses;
  - g. Chemical texturizing;
  - h. Changing existing hair color;
  - i. Hair and scalp care;

- j. Fundamentals of hairstyling including braiding and extensions;
- k. Body, scalp, and facial massage and manipulations;
- l. Hair cutting fundamentals;
- m. Fundamental aesthetics of the body and face;
- n. Fundamentals of nail technology;
- o. Clinical and ~~laboratory~~ classroom practice that includes hair, skin, and nails;
- p. Alternative hair, skin, and nail technology;
- q. ~~Pre-~~ Client pre- and ~~post-client~~ service consultation, documentation, and analysis;
- r. Body and facial hair removal except by electrolysis;
- s. ~~Introduction to electricity and light therapy for cosmetic purposes including laser/Intense-Pulsed Light (IPL) procedures and devices;~~
- ~~t.s.~~ Cosmetology technology; and
- ~~u.t.~~ Required industry standards and ecology, including monitor duties.

**B.** A school licensee may allow a student in a cosmetology course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

**B.C.** A ~~cosmetology~~ school licensee shall not receive remuneration for a cosmetology student performing ~~any~~ clinical services, except shampooing, ~~to~~ for the public until the student has received at least 300 hours of cosmetology training; and

**C.D.** ~~Each~~ A school licensee shall ensure each student ~~shall be~~ is evaluated for progress and ~~provided~~ suggested remediation of suggestions are provided to the student for remediating deficiencies.

#### **R4-10-304.1. Hairstyling Curriculum Required 1000 Hours**

**A.** Each student in a hairstyling course shall complete the following curriculum:

1. Theory of hairstyling, infection control, anatomy, diseases and disorders, and Arizona Board of Cosmetology statutes and rules; and
2. Clinical and classroom instruction in hairstyling including theory that involves hair:
  - a. Principles and practices of infection control and safety;
  - b. Recognition of diseases and the treatment of disorders of the hair and scalp;
  - c. Morphology and treatment of hair;
  - d. Interpersonal skills and professional ethics;
  - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
  - f. Hairstyling machines, tools, and instruments and their uses;
  - g. Chemical texturizing;
  - h. Changing existing hair color;

- i. Hair and scalp care;
- j. Fundamentals of hairstyling including braiding and extensions;
- k. Neck and scalp massage and manipulations;
- l. Hair cutting fundamentals;
- m. Clinical and classroom practice that includes hair;
- n. Alternative hair technology;
- o. Client pre- and post-service consultation, documentation, and analysis;
- p. Hairstyling technology;
- q. Facial hair removal except by electrolysis; and
- ~~q-r.~~ Required industry standards and ecology, including monitor duties.

**B.** A school licensee may allow a student in a hairstyling course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

**~~B.C.~~** A school licensee shall not receive remuneration for a hairstyling student performing clinical services, except shampooing, for the public until the student has received at least 300 hours of hairstyling training; and

**~~C.D.~~** A school licensee shall ensure each student is evaluated for progress and suggestions are provided to the student for remediating deficiencies.

**R4-10-305. Nail Technology Curriculum Required 600 Hours**

**A.** Each student in a nail technology course shall complete the following curriculum:

- 1. Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Arizona ~~state~~ ~~cosmetology laws~~ Board of Cosmetology statutes and rules; and
- 2. Clinical and ~~laboratory~~ classroom instruction in nail technology including theory that involves nails, skin, and limbs:
  - a. Principles and practices of infection control and safety;
  - b. Recognition of diseases and the treatment of disorders of the nail and skin;
  - c. Massage and manipulation of the limbs;
  - d. Interpersonal skills and professional ethics;
  - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
  - f. Nail technology machines, tools, and instruments and their ~~related~~ uses;
  - g. Clinical and ~~laboratory~~ classroom practice that includes nails, skin, and limbs;
  - h. ~~Pre-~~ Client pre- and ~~client~~ post-client treatment consultation, documentation, and analysis;
  - i. Manicuring, including use of nippers;

- j. Pedicuring, including use of nippers;
- k. Artificial nail enhancements (application and removal);
- l. Alternative nail technology;
- m. Electric file use;
- n. Pedicure spa modalities;
- o. Exfoliation modalities on limbs or the body; and
- p. Required industry standards and ecology, including monitor duties.

**B.** A school licensee may allow a student in a nail technology course to satisfy the curriculum hours required under subsection (A)(1) by participating in virtual learning.

**B.C.** A nail technology school licensee shall not receive remuneration for students a nail technology student performing clinical services to for the public until the student has received at least 80 hours of nail technology training; and

**C.D.** Each A school licensee shall ensure each student shall be is evaluated for progress and provided suggested remediation of suggestions are provided to the student for remediating deficiencies.

**R4-10-306. Curricula Hours**

**A.** A school licensee shall ensure hours of training received in an aesthetics, cosmetology, hairstyling, or nail technology course are not applied toward hours required to obtain an instructor’s license.

**B.** A school licensee shall ensure hours of training received in an instructor course are not applied toward hours required to obtain an aesthetician, cosmetologist, hairstylist, or nail technician license. Hours received in an instructor course may apply toward hours required to reactivate an aesthetics, cosmetology, hairstyling, or nail technology license if the instructor hours are received after inactive status occurs.

**C.** When evaluating an application for licensure, the Board shall ~~allow the following hours to apply toward licensing:~~ accept crossover hours. The Board shall accept an hour of training as a crossover hour only once.

- 1. ~~100% of the hours of training received in a nail technology course toward a cosmetologist license;~~
- 2. ~~100% of the hours of training received in an aesthetics course toward a cosmetologist license;~~
- 3. ~~100% of the hours of training received in a combined aesthetics and nail technology course toward a cosmetologist license to a maximum of 600 hours;~~
- 4. ~~100% of the hours of training received in a hairstyling course toward a cosmetologist license;~~
- 5. ~~100% of the hours of training received in a cosmetology course toward a hairstylist license;~~
- 6. ~~15% of the hours of training received in a cosmetology course toward a nail technician license;~~

7. ~~15% of the hours of training received in a cosmetology course toward an aesthetician license;~~
8. ~~33% of the hours of training received in a nail technology course toward an aesthetician license;~~
9. ~~66% of the hours of training received in an aesthetics course toward a nail technologist license;~~
10. ~~50% of the hours of training received in a barber course toward a cosmetologist license;~~
11. ~~200 hours of training received for a registered nurse (RN) or clinical nurse specialist (CNS) license toward an aesthetician license;~~
12. ~~100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor license. The Board shall require the remaining hours needed for an aesthetics instructor license to be obtained in an aesthetics or cosmetology instructor course;~~
13. ~~100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;~~
14. ~~100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;~~
15. ~~100% of the hours of training received in a barber instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course. For the purpose of qualifying for the cosmetology instructor examination specified under A.R.S. § 32-531, the Board shall accept one year of licensed barber experience as one year of licensed cosmetology experience; and~~
16. Hours transferred to another course shall be used only once.

- D. A school licensee shall ensure that when a student completes a course of instruction, the cumulative hours for the student equal, at a minimum, those specified in this Article, as applicable.
- E. ~~Infection~~ A school licensee shall ensure that infection control, disinfection procedures, and safety issues ~~shall be~~ are taught with every subject and every procedure.
- F. Alternative learning hours are hours ~~that~~ a school licensee may authorize to enable a student to pursue knowledge of cosmetology in an alternative format or at a location other than a salon. A school licensee shall ensure a student is not ~~credit a student~~ credited with more than 20% percent of the total hours required for graduation, ~~earned during enrollment at the school,~~ as alternative learning hours. The school licensee shall ensure the record of alternative learning hours required under R4-10-204(C) is maintained.

- G. A school licensee that ~~provides~~ authorizes alternative format or location in learning hours under subsection (F) shall include details of the alternative learning format and or location in the school policy policies and procedures in the school catalog.
- H. ~~Up to~~ A school licensee may grant a maximum of 16 hours of obtained during field trips may be granted toward licensing the hours required for graduation if the field trips ~~for which those hours were granted are part of the approved course of instruction and~~ are provided by or in the presence of a licensed instructor. The school licensee shall ensure the record of field trip hours required under R4-10-204(C) is maintained.
- I. If a school ~~is~~ physically closes closed while ~~providing curricula in an~~ alternative format or location learning hours or ~~while conducting~~ a field trip is provided, the school licensee shall ensure:
1. ~~Post a~~ A notice that is visible to the public and students is posted; and
  2. ~~Send a~~ A notice is sent to the Board indicating the ~~times~~ time and location ~~where the curricula is being conducted~~ of the alternative learning hours or field trip.
- J. A student instructor may obtain ~~lab~~ classroom (clinic) hours in a licensed school other than the licensed school in which the student instructor is enrolled if the student:
1. Has available proof of enrollment in a licensed school to show to a Board inspector, and
  2. Earns no more than the ~~lab~~ classroom (clinic) hours required ~~by~~ under R4-10-302.

#### ARTICLE 4. SALONS

##### **R4-10-401. Application for a ~~Salon~~ License to Operate a Salon**

An applicant for a ~~salon~~ license to operate a salon shall submit:

1. An application on a form provided by the Board ~~that contains~~ , which is signed by the applicant and provides the following information:
  - a. The applicant's name, address, e-mail address, telephone number, federal tax identification number, and signature;
  - b. If the applicant is a partnership, each partner's name, address, and an identification of whether each is a limited or general partner;
  - c. If the applicant is a corporation, the state of incorporation and ~~the~~ name, title, and address of each officer of the corporation and the statutory agent;
  - d. If the applicant is a limited liability company, name and address of each member, manager, and statutory agent;
  - ~~d.e.~~ The name of under which the salon will be operated as registered with the Arizona Secretary of State;

- ~~e.f.~~ If a the location change of the salon is changing, the previous address;
  - ~~f.g.~~ A history of the salon including:
    - i. If the location was previously licensed by the Board, the name of the previous establishment;
    - ii. The name of each business operating at the salon address; and
    - iii. A statement of whether a cosmetology license of the applicant; ~~or any partner of the applicant, or any corporate officer, or member or manager of the applicant~~ has ever been suspended or revoked by any state or foreign country;
  - h. A statement of the kind of salon to be operated: cosmetology, aesthetics, hairstyling, or nail technology; and
  - i. A statement by the applicant verifying the truthfulness of the information provided by the applicant.
2. ~~If a corporation, the articles of incorporation and a Certificate of Good Standing from the 2. Corporation Commission; The following evidence of business organization, as applicable:~~
- a. Copy of the partnership agreement for a partnership,
  - b. Copy of the articles of incorporation and a Certificate of Good Standing from the Arizona Corporation Commission for a corporation, or
  - c. Copy of the articles of organization for a limited liability company.
3. ~~If a partnership, a copy of the partnership agreement;~~
4. ~~3.~~ A signed statement that the establishment is in compliance with all Board statutes and rules and has all of the following in the salon:
- a. Wet disinfectant;
  - b. A dry, closed, disinfected container to store disinfected tools and instruments;
  - c. A sink or shampoo bowl with hot and cold running water that is not also used as a dispensary or restroom sink as required ~~by~~ under R4-10-403;
  - d. A work station;
  - e. A restroom that meets the standards specified under R4-10-112(S); and
  - f. ~~Notice posted for activities performed in the salon but not regulated by the Board~~ The notice required under R4-10-111(F); and
5. ~~4.~~ The fee required in R4-10-102.

**R4-10-402. Changes Affecting a ~~Salon~~-License to Operate a Salon**

- A.** ~~An owner~~ A licensee shall apply for a new salon license to operate a salon and pay the fee for an initial salon license specified in R4-10-102 when any of the following occur:
1. The salon address changes;
  2. The name of a the salon changes;
  3. ~~The~~ If the salon licensee is a corporation, the controlling ownership ~~in the corporation~~ is transferred or the corporation is reorganized; or
  4. ~~The~~ If the salon licensee is a corporation, limited liability company, or partnership, ~~has a change of any~~ a corporate officer, partner, or statutory agent changes.
- B.** A licensee shall apply for an updated license and pay the fee specified at R4-10-102(C)(8) when the suite number of the salon changes.
- B.C.** ~~The~~ A salon owner licensee and the manager shall ensure ~~that~~ a Board-issued license to operate a salon, indicating proper the correct ownership of the license, is posted in the salon before ~~opening the~~ salon is opened for business.

**R4-10-403. Salon Requirements and Minimum Equipment**

- A.** A salon licensee shall perform ensure all services performed at the salon for the public according to are consistent with the type of license issued to the licensee. A salon licensee shall ensure that, except as provided in R4-10-405, all services are performed for the public by an individual who holds a Board-issued license.
- B.** ~~Salons~~ A salon licensee shall have ensure the salon has enough equipment, materials, supplies, tools, and instruments to ensure control infection control and protect the safety for of the public and employees.
- C.** A salon licensee shall ensure the salon has:
1. A work station for each ~~employee or person~~ licensee using space within the salon;
  2. If licensees using space in the salon is-a are performing cosmetology or hairstyling ~~salon services,~~ at least one shampoo bowl and one hair dryer, which may be a blow dryer; and
  3. If licensees using space in the salon is-a are performing aesthetics or nail technology ~~salon services,~~ at least one sink in addition to the restroom ~~and dispensary sinks.~~
- D.** A salon licensee shall ensure licensed aestheticians, cosmetologists, hairstylists, and nail technicians have enough equipment, materials, supplies, tools, and instruments to provide services, control infection, and disinfect between clients.

**R4-10-404. Mobile Services**

- A. If a salon licensee provides mobile services ~~are provided~~ as an extension of a ~~licensed~~ the salon, the salon licensee shall advertise the mobile service shall advertise using the ~~licensed~~ name of the salon on the Board-issued license. The ~~licensed~~ salon owner licensee and manager shall ensure ~~that the~~ mobile services comply with the Arizona Board's Board of Cosmetology statutes and rules.
1. A salon licensee providing mobile cosmetology, hairstyling, nail technology, or aesthetics services shall ensure licenses are posted as required under R4-10-111.
  2. A salon licensee providing mobile services shall ~~make~~ ensure client appointments are made through the ~~licensed~~ salon using an appointment book that lists the appointments and locations where services are performed.
  3. Mobile services are subject to inspection by the Board at any time.
  4. If a retrofitted ~~mobile~~ motor vehicle is used to provide mobile services, the salon ~~owner~~ licensee and manager shall ensure ~~that~~ the vehicle has the same equipment as specified ~~by~~ under R4-10-403 and complies with safety and infection control requirements specified ~~by~~ under R4-10-112.
  5. If mobile services are provided in a location other than a retrofitted ~~mobile~~ motor vehicle, the salon ~~owner~~ licensee and manager shall ensure ~~that~~ equipment is disinfected before use and stored as specified ~~in~~ under R4-10-112.
- B. If a retrofitted motor vehicle is used exclusively as a mobile facility ~~that is~~ dispatched from a ~~business~~ an establishment address, the ~~owner~~ salon licensee and manager of the mobile facility shall:
1. Comply with all salon requirements, including infection control and equipment requirements, specified in this Chapter;
  2. ~~Comply with all infection control and equipment requirements;~~
  3. Maintain a complete and current list of appointment locations at the ~~business~~ establishment address and ~~display~~ ensure the list is displayed in a location listed on as specified in the salon application for a license to operate a salon and that is available to an inspector at all times when the retrofitted motor vehicle is open for business; and
  4. Comply with ~~other~~ the Arizona Board of Cosmetology statutes and rules of the Board.

#### **R4-10-405. Shampoo Assistants**

- A. ~~People who are~~ A salon licensee may hire an individual who is not licensed by the Board may be hired as a shampoo assistants assistant to shampoo and apply cream-rinse conditioner to an individual's hair, comb the hair to remove tangles, and remove rollers and clippies.
- B. ~~Shampoo assistants~~ A salon licensee shall not ensure a shampoo assistant does not:

1. ~~apply conditioners, reconstructors,~~ Apply hair color, or permanent wave solution or neutralizer;  
or ~~remove~~
2. Remove rods, tint, relaxers, or ~~other~~ chemical solutions from the hair.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 10. BOARD OF COSMETOLOGY**

1. Identification of the rulemaking:

This rulemaking continues the work started in a rulemaking approved by the Council on October 3, 2017. In this rulemaking, the Board amends rules to make them consistent with statute (See A.R.S. §§ 41-1080 and 41-1092.09), Board practice, and industry standards. It also makes changes identified as needed in a 5YRR approved by the Council on October 6, 2020, and makes the rules consistent with current rulemaking standards. Because the Board lacks authority to approve an applicant to take an examination, the time frame for that approval is deleted. The time frame for an application for licensure by examination is increased to match the deleted time frame. The rulemaking includes a new fee that is specifically authorized under A.R.S. § 32-507. The Board is also making amendments to address recent statutory changes dealing with training by apprenticeship (See Laws 2019, Chapter 109) and licensure by universal recognition (See Laws 2019, Chapter 55). An exemption from EO2019-01 was provided for this rulemaking by Emily Rajakovich in an e-mail dated February 26, 2019. A final approval from the governor's office of the NPR was provided by Trista Guzman Glover in an e-mail dated July 20, 2020.

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

Until the rulemaking is completed, the rule work started in 2017 will remain incomplete and the amendments required to address statutory changes, Board practice, and industry standards will not be made.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government to have rules that are inconsistent with statute, industry standards, and Board practice.

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

When the rulemaking is completed, the Board's rules will be consistent with statute, industry standards, and Board practice.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

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

The Board expects the economic impact of the rulemaking to be minimal because there are no substantive changes to the current rules. The Board, licensees, and applicants will benefit from having rules that are clear, concise, and understandable and consistent with statute. The Board made some changes to reduce the regulatory burden for applicants and licensees. These include:

- Obtaining e-mail addresses and encouraging electronic submission of documents;
- Allowing online access to study materials rather than requiring hard copies;
- Allowing virtual learning as a means to teach and learn the theory portion of cosmetology classes;
- Accepting money orders and credit cards rather than only checks for payment of fees;
- Deleting the requirement that an application to operate a school be notarize;
- Increasing the amount of time a license can be inactive and then reactivated without applying for a new license;
- Deleting burdensome requirements regarding personal and establishment cleanliness;
- Deleting burdensome requirement for a school licensee to submit a new operating schedule at the time of license renewal;
- Deleting burdensome requirements for a school licensee regarding filing cabinets and personal storage for students and instructors;
- Deleting burdensome requirements for a school licensee regarding student records;
- Deleting burdensome requirements specifying the size of tables and mirrors in a school;
- Deleting restrictions regarding having a salon in a residence.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Kimberly Scoplitte, Executive Director

Address: 1740 W. Adams, Suite 4400  
Phoenix, AZ 85007

Telephone: 480-784-4632

Fax: 480-784-4962

E-mail: [kscoplitte@azboc.gov](mailto:kscoplitte@azboc.gov)

Web site: [www.boc.az.gov](http://www.boc.az.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Licensees, applicants, and the Board are persons that are directly affected by, bear the costs of, and benefit from the rulemaking.

The Board currently has 72,148 active licensees. Eighty-five percent of active licensees are individuals licensed in one of the four occupations (aesthetician, nail technologist, cosmetologist, and hairstylist) licensed by the Board. There are currently 1,258 active instructor licensees; 9,549 active salon licensees; and 70 active school licensees. In every category of license—occupation, instructor, salon, and school—cosmetology predominates because it is the most versatile license.

During the last year, the Board received 2,920 applications for licensure by examination, 1,322 for licensure by reciprocity, and 368 for licensure by universal recognition. The Board has received no applications from individuals who obtained their training in an apprenticeship rather than a school.

There are currently 28,493 inactive occupational or instructor licenses. All of these have been inactive for fewer than 10 years and under the rules as amended in this rulemaking, will be able to reactivate the license rather than applying anew.

The Board reduces several fees in this rulemaking. If the reduced fees had been in effect during the past year, the following savings would have occurred:

- 2,920 applications for licensure by examination: \$29,200
- 1,694 applications for licensure by reciprocity or universal recognition: \$135,520
- 69 school license renewals: \$17,250
- 4 delinquent school license renewals: \$1,000

The total saved would have been \$182,970.

The Board also is reducing the charge made to issue a duplicate license. The Board does not currently track the number of duplicate licenses issued but plans to begin doing so.

During the last year, three schools closed triggering the student protections specified in R4-10-202. In the rulemaking, the Board adds a provision that the holder of a license to operate a

school may allow students to satisfy curriculum hours through virtual learning. The Board expects that most, if not all, schools will take advantage of this provision.

During the last year, the Board received 723 complaints against licensees or those alleged to be providing services without a license. The Board revoked two licenses, referred eight to the Attorney General for action, and took other disciplinary actions authorized under A.R.S. § 32-571. There were 17 cases deemed high risk, which means the licensee was the subject of multiple complaints.

During the last year, the Board conducted 3,353 inspections of salons and schools. Eleven percent of the sites inspected were not in compliance with one or more statutes or rules. Frequently occurring issues included lack of current license, working outside the scope of license, and non-compliance with infection control and safety standards. When issues of noncompliance are found, the inspector works with the licensee to achieve compliance. If that fails, a complaint is issued.

The Board's appropriation for FY2021 is \$1,879,100. It currently has 19 filled FTE positions.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing it. The Board has the benefit of rules that are consistent with statute, industry standards, and current Board practice.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are described in item 4. The Board will not require a new FTE to implement and enforce the rulemaking.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Licensees are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

The Board believes the rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

a. Identification of the small business subject to the rulemaking:

Individuals licensed in one of the four occupations licensed by the Board or licensed as an instructor and persons licensed to operate a salon or school are small businesses subject to the rulemaking.

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

The following costs are required for compliance with the rulemaking:

- To become licensed or to renew a licensure, an applicant is required to complete and submit an application form and pay specified fees;
- All licensees are required to display a Board-issued license at place of business;
- All licensees are required to comply with infection control and safety standards;
- Salons and schools are required submit to inspections by the Board;
- Schools are required to provide notice to students and employees when the school closes;
- Schools are required to send student records to the Board when the school closes;
- Schools are required to have specified minimum equipment, supplies, and materials;
- Schools are required to maintain prescribed student records and handle the records as specified;
- Schools are required to report monthly regarding students and training provided;
- Schools are required to employ instructors who have specified qualifications;
- Schools and salons are required to obtain a new license under specified circumstances;

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

- Schools are required to provide a training kit containing specified tools to each student; and
- Salons are required to have specified equipment.

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

Because all Board licensees are small businesses, it is not possible to reduce the impact on small businesses and achieve the regulatory goals of the rulemaking.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking. Consumers of cosmetology services, including students, are indirectly affected by the rulemaking.

9. Probable effects on state revenues:

As indicated in item 4, the fee reductions in this rulemaking may reduce the Board's contribution to the state's general fund by approximately \$18, 297.

10. Less intrusive or less costly alternative methods considered:

The Board believes the methods in the rulemaking are the least intrusive and costly possible consistent with the regulatory objectives. The rulemaking deletes several provisions determined to be unnecessarily burdensome. No alternative methods were considered.



## September 23, 2020 PROPOSED RULEMAKING

### ORAL PROCEEDINGS COMMENTS

**Time: 9:00 a.m. to 10:00 a.m.**

**Location: Virtual Meeting – Google Meet**

#### **Staff Attendance:**

- Kim Scoplitte – Executive Director
- Theresa Bunch – Deputy Director
- Irma Telles-Stewart – Supervisor of Compliance

#### **Public Comments:**

- Marilyn Davis – Owner of Yuma School of Beauty:
  - Question: Crossover hours from Aesthetic to Cosmetology, will it be hour for hour that the school accepts? How will that work?
  - Staff Answer: R4-10-306 – T. Bunch explained the percentage was removed from the proposed rules and it would now be left up to the schools to decide the number of hours that they would accept towards a course.
  - Comment was answered and Ms. Davis was satisfied with the proposed rule changes.
- Amy Mathews – Licensed Cosmetologist owns Studio Salon
  - Question: In home salon/studio please explain
  - Staff Answer: R4-10-112 (S) – K. Scoplitte explained the current rules state there must be a separate entrance into the salon which could not be through the living quarters. The proposed rules would allow the main entrance of the salon to be through the living quarters. Also was explained that salon laws and rules must be followed in order to have the area licensed within the home along with following the Infection Control and Safety Standards laws and rules. Ms. Mathews asked when these rules would be approved. Dates were explained.
  - Comment was answered and Ms. Mathews was satisfied with the proposed rule changes.
- Kelly Little - (public person joined by meeting link):
  - Typed in "Chat" area – just listening no comments
- Christy Kube
  - Question: Can Hairdresser's work from home?
  - Ms. Kube stated: with the COVID-19 other business could work out of their homes. Why couldn't the salon or licensees work out of their home.
  - Staff Answer: R4-10-112 (S) – K. Scoplitte explained that licensees have always been able to work out of their homes with the proper licensure. The current rules state there must be a separate entrance into the salon which could not be through the living quarters. The proposed rules would allow the main entrance of the salon to be through the living quarters which would reduce having to add a separate entrance into the salon.



Arizona State  
Board of Cosmetology

Kim Scoplitte, Executive Director

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Also was explained that salon laws and rules must be followed in order to have the area licensed within the home along with following all of the Infection Control and Safety Standards laws and rules. This proposed rule would allow you to apply for a salon license at your home and you would not have to make large changes to your home.

- Comments were answered and Ms. Kube was satisfied with the proposed rule changes.
  
- **Oral Proceedings: adjourned at 10:00 A.M.**



For rules filed in the fourth quarter between  
October 1 - December 31  
2017

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**TITLE 04. Professions and Occupations**

**Chapter 10. Board of Cosmetology**

Sections, Parts, Exhibits, Tables or Appendices modified

R4-10-101, R4-10-104, R4-10-105, R4-10-107, R4-10-108, R4-10-110, R4-10-203 through R4-10-206.1, R4-10-208, R4-10-302, R4-10-304.1, R4-10-306, R4-10-403, R4-10-404

REMOVE Supp. 16-4  
Pages: 1 - 18

REPLACE with Supp. 17-4  
Pages: 1 - 18

*The agency's contact person who can answer questions about rules in this Chapter:*

Name: Donna Aune  
Address: Board of Cosmetology  
1721 E. Broadway  
Tempe, AZ 85282-1611  
Telephone: (480) 784-4539  
Fax: (480) 784-4962  
E-mail: daune@azboc.gov  
Web site: www.azboc.gov

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Administrative Rules Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION  
December 31, 2017

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### **RULES**

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### **THE ADMINISTRATIVE CODE**

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### **ADMINISTRATIVE CODE SUPPLEMENTS**

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

### **HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### **ARTICLES AND SECTIONS**

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### **HISTORICAL NOTES AND EFFECTIVE DATES**

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### **ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### **SESSION LAW REFERENCES**

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### **EXEMPTIONS FROM THE APA**

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### **EXEMPTIONS AND PAPER COLOR**

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### **PERSONAL USE/COMMERCIAL USE**

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

(Authority: A.R.S. § 32-501 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-10-01 thru R4-10-19, repealed; Section R4-10-27 renumbered to R4-10-105; and Sections R4-10-101 thru R2-10-112 adopted effective April 9, 1996 (Supp. 96-2).

Section
R4-10-101. Definitions ..... 2
R4-10-102. Fees and Charges ..... 3
R4-10-103. Payment of Fees ..... 3
R4-10-104. Application for License by Examination ..... 3
R4-10-105. Application for License by Reciprocity ..... 4
R4-10-106. Licensing Time-frames ..... 4
R4-10-107. License Renewal ..... 5
R4-10-108. Pre-screening Review; Licensing Examination ... 5
R4-10-109. Repealed ..... 6
R4-10-110. Reactivating an Inactive License ..... 6
R4-10-111. Display of Licenses and Signs ..... 7
R4-10-112. Infection Control and Safety Standards ..... 7
R4-10-113. Establishment Management ..... 9
R4-10-114. Disciplinary Action ..... 9
R4-10-115. Rehearing or Review of Decisions ..... 9
Table 1. Time-frames (in days) ..... 10

ARTICLE 2. SCHOOLS

Article 2, consisting of Sections R4-10-28 thru R4-10-32, repealed; Section R4-10-33 renumbered to R4-10-112; Section R4-10-34 repealed; and Sections R4-10-201 thru R4-10-R4-10-209 adopted effective April 9, 1996 (Supp. 96-2).

Section
R4-10-201. Application for a School License; Renewal ..... 10
R4-10-202. School Closure ..... 11

R4-10-203. General School Requirements ..... 11
R4-10-204. School Records ..... 12
R4-10-205. Aesthetic School Requirements ..... 13
R4-10-206. Cosmetology School Requirements ..... 13
R4-10-206.1. Hairstyling School Requirements ..... 14
R4-10-207. Nail Technology School Requirements ..... 14
R4-10-208. Combined School Requirements ..... 14
R4-10-209. Demonstrators; Exclusions ..... 15

ARTICLE 3. STUDENTS

Article 3, consisting of Sections R4-10-301 thru R4-10-306, adopted effective April 9, 1996 (Supp. 96-2).

Section
R4-10-301. Instruction; Licensed Individuals ..... 15
R4-10-302. Instructor Curriculum Required Hours ..... 15
R4-10-303. Aesthetics Curriculum Required 600 Hours ..... 15
R4-10-304. Cosmetology Curriculum Required 1600 Hours ..... 15
R4-10-304.1. Hairstyling Curriculum Required 1000 Hours ... 16
R4-10-305. Nail Technology Curriculum Required 600 Hours ..... 16
R4-10-306. Curricula Hours ..... 17

ARTICLE 4. SALONS

Article 4, consisting of Sections R4-10-401 thru R4-10-404, adopted effective April 9, 1996 (Supp. 96-2).

Section
R4-10-401. Application for a Salon License ..... 17
R4-10-402. Changes Affecting a Salon License ..... 18
R4-10-403. Salon Requirements and Minimum Equipment ..... 18
R4-10-404. Mobile Services ..... 18
R4-10-405. Shampoo Assistants ..... 18

## Board of Cosmetology

**ARTICLE 1. GENERAL PROVISIONS**

*Editor's Note: The Board of Cosmetology repealed or renumbered Sections with the old Administrative Code numbering scheme and adopted new Sections under the current numbering scheme (Supp. 96-2). The old and new Sections cannot be shown in numerical order because of the two Articles; therefore the old numbers are not shown here. Please refer to this Chapter as published in Revised Format 6-92 for historical note information on the old numbered Sections.*

**R4-10-101. Definitions**

The definitions in A.R.S. §§ 32-501, 32-516, and 32-572 apply to this Chapter. Additionally, in this Chapter unless otherwise specified:

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Association of Colleges and Secondary Schools,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Association of Schools and Colleges,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all information and documents required by Board statute or rule for an application.
3. "Applicant" means an individual or any of the following seeking licensure by the Board:
  - a. If a corporation, any two officers of the corporation;
  - b. If a partnership, any two of the partners; or
  - c. If a limited liability company, the designated corporate contact person, or if no contact person is designated, any two members of the limited liability company.
4. "Application packet" means the forms and documents the Board requires an applicant to submit.
5. "Certification of hours" means a document that states the total number of hours completed at a school, including:
  - a. A written statement of the hours a student received in a licensed school, or credits a student received, signed by the administrator of the agency authorized to record hours in the jurisdiction in which the applicant received certified or accredited vocational or academic training, affixed with the agency's official seal; or
  - b. If a student is transferring from one Arizona school to another under A.R.S. § 32-560, a transfer application that reflects the hours or credits a student received, signed by the administrator of the school where the applicant received certified or accredited training.
6. "Certification of licensure" means the status of the license, signed by the administrator of the agency authorized to issue cosmetology, hairstyling, nail technician, aesthetics, or instructor licenses in the jurisdiction in which the applicant received a license, affixed with the agency's official seal.
7. "Clinic" means the area where a student practices cosmetology, hairstyling, nail technology, or aesthetics on the general public for a fee.
8. "Course" means an organized subject matter in which instruction is offered within a given period of time and for which credit toward graduation or certification is given.
9. "Credit" means one earned academic unit of study based on completing a high school's required number of class sessions per calendar week in a course or an earned academic unit of study based on attending a one-hour class session per calendar week at a community college, an accredited college or university, or a high school.
10. "Days" means calendar days.
11. "Double bracing" means using a stable base of support and two points of contact for the hand while performing a procedure.
12. "Establishment" means a business that functions as a school or a salon at least an average of 20 hours a week for the majority of the year.
13. "Graduation" or "graduated from a school" means completion of the criteria established by a cosmetology, hairstyling, aesthetics, or nail technology school for the course in which the applicant was enrolled including completion of the required curriculum hours.
14. "High school equivalency" means:
  - a. A high school diploma from a school recognized by the basic education authority or the Department of Education in the jurisdiction in which the school is located,
  - b. A total score of 45 points on a high school equivalency general educational development test or its equivalent as required by the Department of Education,
  - c. An associate degree or 15 academic credits from a junior college recognized by the basic education authority in the jurisdiction in which the college is located, or
  - d. Any degree from a college or university recognized by the basic education authority in the jurisdiction in which the college or university is located.
15. "Hour" means one clock hour.
16. "Instructor training" means the courses specified in R4-10-302.
17. "Licensed in another state of the United States or foreign country" means:
  - a. A governmental regulatory agency in the state or country is authorized to examine the competency of individuals who graduate from a licensed cosmetology, hairstyling, nail technology, or aesthetics school, or instructors for these disciplines; and
  - b. The governmental regulatory agency issues licenses over which the state or country has regulatory and disciplinary jurisdiction.
18. "Manager" means an individual licensed by the Board who is responsible for ensuring an establishment's compliance with A.R.S. §§ 32-501 et seq. and this Chapter.
19. "Model" means a person or a mannequin on whom an applicant performs demonstrations for the practical section of a licensing examination or lab.
20. "Owner" means an individual or entity that has a controlling legal or equitable interest and authority and is responsible for ensuring an establishment's compliance with A.R.S. § 32-501 et seq. and this Chapter.
21. "Patron" means any client of an establishment or student of a school.
22. "Personal knowledge" means actual observation of an individual who practiced aesthetics, cosmetology, hairstyling, or nail technology in any state or country.
23. "Practice" means engaging in the profession of aesthetics, cosmetology, hairstyling, nail technology, or instructor.
24. "Reciprocity" means the procedure for granting an Arizona license to an applicant who received the required hours from a school licensed in another state of the

## Board of Cosmetology

- United States or a foreign country or is currently licensed in another state of the United States or a foreign country.
25. "Substantive review" means the Board's process for determining whether an applicant for licensure meets the requirements for the license for which application is made including, if applicable, taking and passing an examination given by the Board.
  26. "Tenth grade equivalency" means:
    - a. No change
    - b. Proof the prospective student is at least 18 years old. Satisfactory proof of age is shown by a government-issued driver's license or identification card, birth certificate, or passport; or
    - c. No change
  27. "Transfer application," as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, hairstyling, nail technology, or aesthetics school to another and contains the student's name, address, identification number, telephone number, and number of hours of instruction received.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-102. Fees and Charges**

- A. Under the specific authority provided by A.R.S. § 32-507(A) and subject to R4-10-103(E), the Board establishes and shall collect the following fees:
  1. Initial personal license: \$70.00
  2. Personal licensing renewal fees: \$60.00
  3. Delinquent personal license renewal: \$90.00 (\$60 for personal license renewal as specified under subsection (A)(4) plus \$30 for delinquent renewal) for every two years or portion of two years that the license is inactive to a maximum of four years
  4. Personal reciprocity license: \$140.00
  5. Salon initial license: \$110.00
  6. Salon renewal: \$50.00
  7. Salon delinquent renewal: \$80.00
  8. School license: \$600.00
  9. School renewal: \$500.00
  10. Delinquent school renewal: \$600.00
- B. An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations.
- C. Under the specific authority provided by A.R.S. § 32-507(B) and subject to R4-10-103(E), the Board establishes and shall collect the following charges for the services provided:
  1. Board administered educational classes: \$25.00
  2. Review of examination: \$50.00
  3. Re-grading of examination: \$25.00
  4. Certification of licensure or hours: \$30.00
  5. For use of an alternative method of payment: \$3.00 per transaction
  6. For copying public documents: 50¢ per page
  7. For audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information: \$15 per tape, disc, or other medium
  8. For a list of licensees' names and addresses: 25¢ per name
9. Duplicate license: \$20.00
- D. As authorized by A.R.S. § 44-6852, the Board shall charge a service fee of \$20.00 for the return of a dishonored check or the failure of any other means of payment to be honored plus the actual charges assessed by the financial institution dishonoring the check or other means of payment.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1050, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4).

**R4-10-103. Payment of Fees**

- A. A fee is not considered paid until the Board receives the amount required. The Board shall not provide services, administer examinations, or issue certifications or licenses until it receives the required fee.
- B. The Board shall accept personal checks only for license renewals. If a check for a license renewal is returned because it is dishonored for any reason including insufficient funds, the renewal application is incomplete, and any license renewal that has been issued is void effective the date the Board mails written notice to the licensee that the license is void.
- C. An applicant or licensee whose fee payment to the Board is dishonored for any reason including an insufficient funds check is not entitled to a further service, examination, certification, or license until the Board receives the following:
  1. The amount of the fee for which the payment was dishonored;
  2. The penalty provided in R4-10-102(21);
  3. If applicable, the delinquent fee for each year or part of a year the license was inactive for the type of license to be renewed.
- D. Fees are nonrefundable except if A.R.S. § 41-1077 applies.
- E. The Board shall not refund fees tendered for \$5.00 or less over the amount specified in R4-10-102, except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. § 32-507.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1050, effective May 6, 2003 (Supp. 03-1).

**R4-10-104. Application for License by Examination**

- A. An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by examination shall submit to the Board:
  1. The fee required for an initial personal license in R4-10-102; and
  2. An application provided by the Board that contains:
    - a. A passport quality photo of the applicant;
    - b. The applicant's name, address, telephone number, Social Security number, gender, and birth date;
    - c. The name and address of each licensed school attended by the applicant;
    - d. The name of course completed, the name of the school where completed, and the starting date and date of graduation;
    - e. If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
    - f. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;

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- g. A statement by the applicant verifying the truthfulness of the information provided by the applicant; and
- h. The applicant's signature.
- B.** In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, cosmetology, hairstyling, or nail technology license by examination shall:
1. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting documentation of 10th grade equivalency; and
  2. Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting a copy of one of the following:
    - a. If the applicant graduated from a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of all required hours; or
    - b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation.
- C.** In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:
1. Comply with A.R.S. § 32-531 by submitting the following:
    - a. Documentation of required work experience;
    - b. Proof of current licensure in the profession in which experience was gained;
    - c. Proof of licensure during the period experience was gained; and
    - d. Proof of attainment of 18 years of age; or
    - e. Proof of high school equivalency.
  2. If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:
    - a. Documentation of graduation from a Board-licensed school by a certification of graduation on a form supplied by the Board including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and
    - b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school.
  3. Documentation of the work experience required by A.R.S. § 32-531 shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:
    - a. Profession in which applicant gained the experience;
    - b. Starting and ending dates of applicant's experience in the profession;
    - c. Name of licensed salon and address where applicant gained experience in the profession; and
    - d. License number and name of the licensed individual completing the form; or
- e. Name, address, and telephone number of the individual completing the information.
- Historical Note**
- Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-104 renumbered to R4-10-108; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).
- R4-10-105. Application for License by Reciprocity**
- An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by reciprocity shall submit the application fee required in R4-10-102 and all of the following to the Board:
1. An application provided by the Board and signed by the applicant that contains:
    - a. The applicant's name, address, telephone number, gender, passport quality photo, Social Security number, and birth date;
    - b. If previously licensed by the Board, the type of license, license number, license expiration date, and the name used on the license; and
    - c. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;
  2. A certification of hours and proof of graduation or licensure in another state of the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure.
- Historical Note**
- Section R4-10-105 renumbered from former Section R4-10-27 and amended effective April 9, 1996 (Supp. 96-2). Former Section R4-10-105 renumbered to R4-10-109; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).
- R4-10-106. Licensing Time-frames**
- A.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Board is set forth 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% of the overall time-frame.
- B.** The administrative completeness time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
1. The administrative completeness review time-frame begins:
    - a. For approval to take an examination, approval or denial of school or salon license, or approval or denial of a license by reciprocity, when the Board receives an application packet; or
    - b. For approval or denial of a license by examination, when the applicant takes an examination.
  2. If an 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.

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3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
  4. If the Board grants a license 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 set forth in Table 1 and begins on the postmark date of notice of administrative completeness.
1. As part of the substantive review for a school license, the Board shall conduct an inspection that may require more than one visit to the school.
  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. If an applicant meets the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send written notice of approval to the applicant. If an applicant is applying for approval to take an examination, the notice shall include the date, time, and place the applicant is scheduled to take an examination.
  4. If an applicant does not meet the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send a written notice of denial to the applicant including a basis for the denial and an explanation of the applicant's right to appeal as prescribed in A.R.S. § 41-1076.
- D.** The Board shall consider an application withdrawn if within 180 days from the application submission date the applicant fails to:
1. Supply the missing information under subsection (B)(2) or (C)(2); or
  2. Take an examination.
- E.** An applicant who does not wish an application withdrawn may request a denial in writing within 180 days from the application submission date.
- F.** An individual shall not practice as an aesthetician, cosmetologist, instructor, or nail technician until the individual receives and posts the license at the individual's place of employment.
- G.** If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the Board shall consider the next business day the time-frame's last day.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**R4-10-107. License Renewal**

- A.** An aesthetician, cosmetologist, hairstylist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.
1. If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.
  2. A renewal application consists of:
    - a. A form provided by the Board that contains: the licensee's name, address, Social Security number,

and signature or Personal Identification Number (PIN) supplied by the Board if filed electronically;

- b. A statement of whether the licensee has changed the licensee's name since the previous application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and
- c. The fee required in R4-10-102.

- B.** An establishment licensee shall annually postmark or electronically submit to the Board an application for renewal and the fee required in R4-10-102 on or before the license renewal date.

1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.
2. A renewal application consists of a form provided by the Board that contains:
  - a. The establishment's name and license number; and
  - b. If the owner is an individual or partnership, the signature and tax identification number of the owner; if the owner is a corporation, the signature of the authorized signer and the tax identification number of the corporation; if filed electronically, the Personal Identification Number (PIN) supplied by the Board may be used in place of the signature.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-107 renumbered to R4-10-110; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-108. Pre-screening Review; Licensing Examination**

- A.** A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a licensed school but the student shall not be issued an examination date until the student has completed a minimum of:
1. 1450 hours of cosmetology training,
  2. 750 hours of hairstyling training,
  3. 500 hours of aesthetics or nail technology training, or
  4. 350 hours of cosmetology, hairstyling, aesthetics, or nail technology instructor training.
- B.** After the Board completes the pre-screening review and determines the student has completed the number of hours specified in subsection (A), the Board or national professional organization with which the Board contracts to administer the licensing examination shall issue an examination date to the student. However, the Board shall not allow the student to take the examination until the student applies for licensure and provides a certification of graduation to the Board.
- C.** If a student who has been issued an examination date fails to apply for licensure and provide a certification of graduation by the examination date or fails to appear at the examination site at the scheduled examination time, the examination fee is forfeited.
- D.** A request for a pre-screening review is not an application for licensure and does not guarantee the Board will issue a license.
- E.** The Board or national professional organization with which the Board contracts to administer the licensing examination

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- shall provide written notice to an applicant of the date, time, and location for the examination.
- F.** An applicant shall provide photographic identification upon entering the examination site. The following U.S.-issued forms of identification are acceptable: passport, driver license, bank identification card, military identification, or other government-issued identification card.
- G.** The licensing examination consists of both a written and practical section. An applicant shall perform a live demonstration on a model during the practical section of the licensing examination. During the live demonstration, the applicant shall:
1. Provide the model required for the demonstration. If the applicant provides a live model for the demonstration, the live model shall not be a current or former student of aesthetics, cosmetology, or nail technology or a current or former licensee;
  2. Provide all equipment, supplies, tools, or instruments required for the demonstration; and
  3. Comply with all infection control and safety standards specified in R4-10-112, including those regarding blood spills. If an applicant fails to follow proper blood-spill procedures during the demonstration, the examination administrator shall dismiss the applicant from the examination and cause the examination fee to be forfeited.
- H.** If an applicant fails to appear for a licensing examination as scheduled, the applicant forfeits the examination fee. If an applicant arrives at an examination site after the scheduled examination begins, the examination administrator shall not allow the applicant to take the examination. An applicant may reschedule a missed examination by paying another examination fee.
- I.** An applicant may cancel a scheduled examination date once by providing notice of cancellation at least 48 hours before the examination start time. The Board does not require another examination fee to reschedule a canceled examination.
- J.** Neither the Board nor the examination administrator shall make examination materials available for inspection or copying by any person. A person shall not attempt to obtain or provide examination materials.
- K.** An applicant shall not bring and the examination administrator shall not allow written material or recording media to either the written or practical section of the licensing examination. The examination administrator may exclude from the written or practical section of the licensing examination any items the examination administrator believes may impede the fair administration or security of the examination. The examination administrator shall dismiss from the examination an applicant who seeks to impede the fair administration of the examination, or copies or asks for information from another applicant and cause the examination fee to be forfeited.
- L.** If an applicant passes the examination but fails to complete the licensure process within one year after the date of the examination, the Board shall void the examination scores.
- M.** If application is made for licensure by reciprocity, the Board shall accept a score on a written or practical examination from another jurisdiction if the examination:
1. Is the same national examination administered in Arizona,
  2. The score obtained by the applicant is at least the same as the passing score required by the Board at the time the applicant took the examination in the other jurisdiction, and
  3. The applicant provides the Board with documentation from the other jurisdiction verifying the passing score and that the score was received within one year before the application for licensure by reciprocity.
- N.** The Board or national professional organization with which the Board contracts to administer the licensing examination shall conduct:
1. The practical section of the licensing examination in English and an applicant shall submit answers in English;
  2. The written section of the licensing examination in English and other languages specified by the national professional organization. An applicant may choose to take the written section of the licensing examination in any of the offered languages.
- Historical Note**
- Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-108 renumbered to R4-10-111; new Section R4-10-108 renumbered from Section R4-10-104 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 3329, effective November 4, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).
- R4-10-109. Repealed**
- Historical Note**
- Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-109 renumbered to R4-10-112; new Section R4-10-109 renumbered from Section R4-10-105 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Section repealed by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).
- R4-10-110. Reactivating an Inactive License**
- A.** A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.
- B.** A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than five years, may be reactivated by the inactive licensee paying the delinquent renewal fee and paying for and completing the infection protection class and law review class, offered by the Board.
- C.** A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than five years, but less than 10 years, may be reactivated by the inactive licensee if the licensee does all of the following:
1. Provides a certification of licensure;
  2. Completes the infection protection class and law review class given by the Board;
  3. Takes and passes the Board examination pertaining to the type of license formerly held; and
  4. Pays for the classes required under subsection (C)(2) and the delinquent renewal fee.
- D.** If a cosmetology, hairstyling, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the inactive licensee shall comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.
- Historical Note**
- Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-110 renumbered to Section R4-10-113; new Section R4-10-110 renumbered from Section R4-10-107 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

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Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-111. Display of Licenses and Signs**

- A. The name on an establishment's exterior sign, advertising, and publications shall be the same as the name on the establishment license issued by the Board. The establishment's exterior sign shall contain lettering at least 2 1/2 inches in height.
- B. A school shall prominently post a class schedule that lists the names of instructors and classes. The school shall display the school and instructor licenses near the school entrance, visible to the public.
- C. A salon shall prominently post the salon license and ensure that the personal license of each licensee performing services in the salon is posted at the licensee's station.
- D. A licensee performing mobile services shall prominently display a duplicate personal and establishment license in the area where mobile services are provided. The licensee's original license shall be prominently displayed in the salon from which the licensee was dispatched in accordance with subsection (C).
- E. A copy of R4-10-112 shall be prominently posted in each establishment.
- F. A salon shall prominently post a notice of salon services that are not regulated by the Board and that are provided at the salon.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-111 renumbered to Section R4-10-114; new Section R4-10-111 renumbered from R4-10-108 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-112. Infection Control and Safety Standards**

- A. An establishment shall have and maintain the following minimum equipment and supplies:
  - 1. Non-leaking, waste receptacles, which shall be emptied, cleaned, and disinfected daily;
  - 2. Ventilated containers for soiled linens including towels and capes;
  - 3. Closed, clean containers to hold clean linens including towels and capes;
  - 4. A covered, wet disinfectant container made of stainless steel or a material recommended by the manufacturer of the wet disinfectant that:
    - a. Is large enough to contain sufficient disinfectant solution to allow for the total immersion of tools and instruments,
    - b. Is set up with disinfectant at all times the establishment is open, and
    - c. Is changed as determined by manufacturer's instructions or when visibly cloudy or contaminated;
  - 5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant which shall be mixed and used according to manufacturer's directions on all tools, instruments, and equipment, except those that have come in contact with blood or other body fluids; and
  - 6. An EPA-registered disinfectant that is effective against HIV-1 and Human Hepatitis B Virus or Tuberculocidal which shall be mixed and used according to the manufacturer's directions on tools, instruments, and equipment that come in contact with blood or other body fluids.

- B. Procedure for disinfecting non-electrical equipment.
  - 1. Non-electrical equipment shall be disinfected by cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and
  - 2. Totally immersing in the wet disinfectant required under subsection (A)(5) or (A)(6) following manufacturer's recommended directions.
- C. Procedure for storage of tools and instruments.
  - 1. A tool or implement that has been used on a client or soiled in any manner shall be placed in a properly labeled receptacle; and
  - 2. A disinfected implement shall be stored in a disinfected, dry, covered container and isolated from contaminants.
- D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use.
  - 1. Remove all foreign matter;
  - 2. Clean and spray or wipe with a disinfectant, compatible with electrical equipment, as required in subsection (A)(5) or (A)(6); and
  - 3. Disinfect removable parts as described in subsection (B).
- E. Tools, instruments and supplies.
  - 1. All tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) shall be disposed of in a waste receptacle immediately after use;
  - 2. Disinfected tools and instruments shall not be stored in a leather storage pouch;
  - 3. A sharp cosmetology tool or implement that is to be disposed of shall be sealed in a rigid, puncture-proof container and disposed of in a manner that keeps licensees and clients safe;
  - 4. An instrument or supply shall not be carried in or on a garment while practicing in the establishment;
  - 5. Clips or other tools and instruments shall not be placed in mouths, pockets, or other unsanitized holders;
  - 6. Pencil cosmetics shall be sharpened before each use;
  - 7. All supplies, equipment, tools, and instruments shall be kept clean, disinfected, free from defects, and in good repair;
  - 8. Cutting equipment shall be kept sharp; and
  - 9. A client's personal cosmetology tools and instruments that are brought into and used in the establishment shall comply with these rules.
- F. If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:
  - 1. Before returning to service, clean the wound with an anti-septic solution;
  - 2. Cover the wound with a sterile bandage;
  - 3. If the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;
  - 4. Blood-stained tissue or cotton or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;
  - 5. All equipment, tools, and instruments that have come in contact with blood or other body fluids shall be disinfected as discussed in subsections (A)(6) and (B); and
  - 6. Electrical equipment shall be disinfected as discussed in subsection (D).

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- G.** All circulating and non-circulating tubs or spas shall be cleaned as follows using the disinfectant in subsection (A)(5) or (6):
1. After each client or service, complete all of the following:
    - a. Drain the tub;
    - b. Clean the tub according to manufacturer's instructions, taking special care to remove all film, especially at the water line;
    - c. Rinse the tub;
    - d. Fill the tub with water and disinfectant as in subsection (A)(5) or (6); and
    - e. Allow the disinfectant to stand for non-circulating tubs or to circulate for circulating tubs for the time specified in manufacturer's instructions.
  2. At the end of the day, complete all of the following:
    - a. Remove all filters, screens, drains, jets, and other removable parts;
    - b. Scrub with a brush and soap or detergent until free from debris;
    - c. Rinse;
    - d. Completely immerse in the solution described in subsection (A)(5);
    - e. Rinse;
    - f. Air dry; and
    - g. Replace the disinfected parts in the tubs or store in a disinfected, dry, covered container.
- H.** Personal cleanliness.
1. A licensee or student shall thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom;
  2. A licensee or student shall wear clothing and shoes;
  3. A client's skin upon which services will be performed shall be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a nail technology service, including a pedicure service, is provided; and
  4. A licensee or student shall wear clean, fluid-proof protective gloves while performing any service if any bodily discharge is present from the licensee, student, or client or if any discharge is likely to occur from the client because of services being performed.
- I.** Disease and infestation.
1. A licensee or student who has a contagious disease shall not perform services on a client until the licensee or student takes medically approved measures to prevent transmission of the disease; and
  2. Services shall not be performed on an individual who has a contagious disease that may be transmitted by the performing of the services on the individual.
- J.** Client protection.
1. A client's clothing shall be protected from direct contact with shampoo bowls or headrests by the use of clean linens, capes, robes, or protective neck strips;
  2. Infection control shall be maintained and services shall be performed safely to protect the licensee or student and client;
  3. Double bracing shall be used around a client's eyes, ears, lips, fingers, and toes; and
  4. A client shall receive a pre- and post-analysis that includes appropriate instructions for follow-up.
- K.** Care and storage of linens including towels, robes, and capes.
1. Clean linens shall be provided for each client and laundered after each use;
  2. Soiled linens shall be stored in a ventilated receptacle;
  3. Laundering shall include disinfecting linens by using detergent and bleach; and
  4. Clean linens shall be stored in closed containers or closets.
- L.** Care and storage of products including liquids, creams, powders, cosmetics, chemicals, and disinfectants.
1. All products shall be stored in a container that is clean and free of corrosion and labeled to identify contents, in compliance with state and local laws and manufacturer's instruction;
  2. All products containing poisonous substances shall be distinctly marked;
  3. When only a portion of a cosmetic product is to be used, the portion shall be removed from the container in a way that does not contaminate the remaining product; and
  4. Once dispensed, a product shall not be returned to the original container.
- M.** Prohibited hazardous substances and use of products.
1. An establishment shall not have on the premises cosmetic products containing hazardous substances banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride; and
  2. Product shall be used only in a manner approved by the FDA.
- N.** Care of headrests, shampoo bowls, and treatment tables.
1. Headrests of chairs and treatment tables shall be disinfected at least daily and treatment tables covered with a clean linen or paper sheet for each client;
  2. Shampoo bowls and neck rests shall be cleansed with soap and warm water or other detergent after each use and kept in good repair; and
  3. Shampoo neck rests shall be disinfected with a solution described in subsection (A)(5) or (A)(6) before each use.
- O.** Prohibited devices, tools, or chemicals; invasive procedures.
1. Except as provided in this subsection and subsection (O)(2), all of the following devices, tools, or chemicals are prohibited from being present in or used in a salon:
    - a. A device, tool, or chemical that is designed or used to pierce the dermis; and
    - b. A low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application.
  2. A salon or licensee that provides an invasive procedure, using a device, tool, or chemical described in subsection (O)(1), that is otherwise allowed under Arizona law shall ensure that the performance of the procedure complies with statutes and rules governing the procedure, training, or supervision as required by the relevant, regulatory authorities.
- P.** Skin peeling.
1. Except as provided in subsections (O)(1) and (O)(2), only the non-living, uppermost layer of skin, known as the epidermis, may be removed by any method or means and only for the purpose of beautification;
  2. A skin removal technique or practice that affects the dermal layer of the skin is prohibited;
  3. Skin removal products shall not be mixed or combined except as required by manufacturer instructions and approved by the FDA; and
  4. Only commercially available products for the removal of epidermis for the purpose of beautification shall be used.
- Q.** Restricted use tools and instruments.
1. Nippers shall be used only to remove loose cuticles; and
  2. Pre-sterilized, disposal lancets shall be used only to dilate follicles and release sebaceous debris from the follicle.

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- R.** Cleanliness and repair of the establishment shall be maintained according to the following guidelines.
1. After each client, hair and nail clippings shall immediately be discarded;
  2. All areas of the establishment, including storerooms and passageways, shall be well lighted, ventilated, and free from infectious agents;
  3. Floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures shall be clean and in good repair;
  4. Shampoo bowls shall be clean and disinfected by using a disinfectant discussed in subsection (A)(5) or (A)(6) and drains shall be free running;
  5. Counters and all work areas shall be disinfected after each client by using a disinfectant discussed in subsection (A)(5) or (A)(6); and
  6. Waste or refuse shall be removed timely so there is no accumulation.
- S.** Building standards.
1. There shall be a direct entrance from the outside, not through living quarters, into the establishment;
  2. If connected to a residence, all passageways between the living quarters and the establishment shall have a door that remains closed during business hours;
  3. The establishment shall not be used for residential or other living purposes;
  4. The establishment shall have a restroom for employees' and clients' use during business hours that has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; is in close enough proximity to the salon to ensure safety for cosmetology procedures during use; and is open and available for use by employees and clients of the salon;
  5. Any excess material stored in a restroom shall be in a locked cabinet;
  6. The establishment shall have hot and cold running water;
  7. A mobile unit shall have sufficient water at all times; and
  8. The establishment shall have a natural or mechanical ventilation and air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.
- T.** General requirements.
1. The establishment shall have a first-aid kit that contains, at a minimum, small bandages, gauze, antiseptic, and a blood-spill kit that contains disposable bags, gloves, and hazardous waste stickers;
  2. No bird or animal, except fish aquariums and service animals, are allowed in the establishment; and
  3. The establishment shall comply with federal and state requirements.

**Historical Note**

Section R4-10-112 renumbered from former Section R4-10-33 and amended effective April 9, 1996 (Supp. 96-2). Former Section R4-10-112 renumbered to Section R4-10-115; new Section R4-10-112 renumbered from Section R4-10-109 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**R4-10-113. Establishment Management**

- A.** The manager of each establishment shall ensure that:
1. Licenses, notices, and the Board's most recent inspection sheet are prominently displayed;
  2. The establishment and all licensees in a salon, school, or a mobile service area have current licenses;
  3. Infection control and safety standards are maintained.
- B.** The salon and school owner and salon and school manager or director shall be responsible for all violations enumerated in subsection (A), occurring within the salon, school, or mobile service areas.
- C.** If a salon owner rents or leases space within the salon to a person who obtains a separate salon license, that second licensee and their salon manager and the owner shall each be responsible for all violations of requirements enumerated in subsection (A) occurring within the second licensee's licensed portion of the salon, and are each responsible for the common areas.

**Historical Note**

New Section R4-10-113 renumbered from Section R4-10-110 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**R4-10-114. Disciplinary Action**

- A.** Licensees shall permit an inspector or Board representative to inspect the premises of any salon or school, or other location identified by a complaint or the Board, alleging the location is operating a salon or school.
- B.** Board action is required to dismiss a complaint.

**Historical Note**

New Section R4-10-114 renumbered from Section R4-10-111 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**R4-10-115. Rehearing or Review of Decisions**

- A.** Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.
- B.** A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 calendar days after service of such motion or amended motion by any party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Board or its hearing officer or prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which 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 administrative hearing; or
  7. A decision which is not justified by the evidence or is contrary to law.
- D.** Not later than 10 calendar days after the Board's receipt of a motion for rehearing or review, the Board may affirm or mod-

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ify the decision or grant a rehearing or review to any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.

- E. Not later than 15 calendar days after a decision is rendered, the Board may on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case the order granting such a rehearing or review shall specify the grounds therefor.
- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 calendar days after such service, serve opposing affidavits, which period may be extended for an additional

period not exceeding 20 calendar days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

- G. If in a particular decision the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health, or safety and that a rehearing or review of the decision is impractical, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for rehearing or review. An application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board’s final decisions.
- H. For purposes of this Section, the terms “contested case” and “party” shall be defined as provided in A.R.S. § 41-1001.

**Historical Note**

New Section R4-10-115 renumbered from Section R4-10-112 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**Table 1. Time-frames (in days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take an Examination	A.R.S. §§ 32-514, 32-515, 32-533	90	60	30
License by Examination	A.R.S. §§ 32-510, 32-511, 32-512, 32-531	60	30	30
License by Reciprocity	A.R.S. §§ 32-513, 32-532	60	30	30
School License	A.R.S. § 32-551	90	30	60
License Renewal	A.R.S. §§ 32-517, 32-535, 544, 32-564	75	45	30
Salon License	A.R.S. §§ 32-541, 32-542	90	30	60
License Reactivation	A.R.S. § 32-518	30	15	15

**Historical Note**

New Table adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**ARTICLE 2. SCHOOLS**

*Editor’s Note: The Board of Cosmetology repealed or renumbered Sections with the old Administrative Code numbering scheme and adopted new Sections under the current numbering scheme (Supp. 96-2). The old and new Sections cannot be shown in numerical order because of the two Articles; therefore the old numbers are not shown here. Please refer to this Chapter as published in Revised Format 6-92 for historical note information on the old numbered Sections.*

**R4-10-201. Application for a School License; Renewal**

- A. An applicant for a school license shall submit the documents required in A.R.S. § 32-551 and:
  - 1. An application on a form provided by the Board, signed by the applicant, and notarized that contains:
    - a. The applicant’s name, address, federal tax identification number, and telephone number;
    - b. If a partnership, each partner’s name and address and an identification of whether a limited or general partner;

- c. If a corporation, the state of incorporation and the name, title, and address of at least two officers of the corporation;
- d. The name under which the school will be operated as registered with the Secretary of State;
- e. The name and Board-issued license number of the instructor in charge of the school;
- f. If an existing school, the date the applicant will be assuming ownership; and
- g. If a new school, the scheduled date for opening the school;
- 2. If a partnership, a copy of the partnership agreement;
- 3. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
- 4. A signed statement that the establishment has the equipment required by statute and rule for the school;
- 5. An unexpected contract form required by A.R.S. § 32-558;

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6. A schedule that includes the hours of each day and each day of a calendar week during which the school will be open for instruction;
  7. A proposed schedule of classes to be taught at the school;
  8. The name, address, and telephone number of the bonding company and a copy of the bond;
  9. A copy of all school policies and procedures;
  10. A school catalog that contains the information required by A.R.S. § 32-559 and:
    - a. The number of days during course enrollment that are necessary to complete the hours for the course;
    - b. The days and hours of operation, vacation periods, and holidays;
    - c. A listing of policies regarding leaves of absence and vacation approval for students;
  11. Demonstrate evidence of compliance with A.R.S. §§ 32-551 through 32-575 and these rules through a school inspection conducted by the Board; and
  12. The fee required in R4-10-102.
- B.** In addition to the requirements in R4-10-107, a licensee shall submit the following when renewing a license:
1. The most recent school catalog that:
    - a. Indicates where any modifications, additions, or deletions from the previously submitted catalog may be found;
    - b. Contains an index that shows where the information required by A.R.S. § 32-559 is located in the catalog;
    - c. Contains the name of each accrediting or approving organization; and
    - d. Provides a signed statement that the establishment has the equipment required by statute and rule for the school.
  2. A subject description for each new course and its schedule, if applicable;
  3. A new operating schedule if changes will occur beginning with the new license year;
  4. The name and address of any new statutory agent if the change will take effect with the new license year;
  5. The name and license number of the current licensed instructor in charge of the school; and
  6. The name, address, and telephone number of the bonding company, the bond number, the expiration date of the bond, and a copy of the bond.
- C.** The owner of a school shall submit to the Board the terms and conditions of any management contract entered into for the school after the contract is executed;
- D.** Within five days after a change occurs during the year, the owner of a school shall submit to the Board the subject description of any new course; the name of any new statutory agent; or any change to the catalogue, generic student contract, policies, procedures, hours of operation, or bond.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-202. School Closure**

- A.** For purposes of A.R.S. § 32-563, the Board may consider a school to be closed if it fails for five consecutive school days to provide instruction in accordance with its schedule of operations on file with the Board.
1. All enrolled students and employees shall be notified by the school in writing of a pending closure at least five calendar days before closure of the school, unless the time of such closure could not have been anticipated. A copy of the notice shall be sent to the Board at the time it is delivered to the students and employees. The students' and employees' personal belongings, including equipment, tools, and implements shall be released to each student or employee immediately upon request.
- 2.** Student records as specified by A.R.S. § 32-563 shall be sent to the Board within 10 calendar days after the school closure, including:
- a. Copies of hour sheets documenting all student hours and the current time cards or time records received by the student after the last monthly report before the school closure as specified by R4-10-204;
  - b. A copy of the file of each student who was enrolled the last school day prior to closure as specified by R4-10-204. If a teachout was arranged with another school which agreed to complete the training, the student's file shall be transferred to that school; and
  - c. A written statement signed by each enrolled student verifying the school's compliance with subsection (A)(1) as it applies to students.
- B.** Failure to comply with subsection (A) may be grounds for refusal to issue a school license to an owner, manager, director, or instructor of the school at the time of the school closure.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2).

**R4-10-203. General School Requirements**

- A.** An aesthetics, cosmetology, hairstyling, or nail technology school shall ensure the school complies with R4-10-112 and has the following minimum facilities, equipment, supplies, and materials:
1. One area of instruction for every 20 students;
  2. A licensed instructor as manager or director;
  3. A desk, table and chair, or other instructional fixtures and facilities for each student during theory instruction;
  4. Filing cabinets to hold all school and student records;
  5. An instruction board in each room used for instruction;
  6. At least two cubic feet of an individual locked area with a different locking device for each enrolled student and each instructor to store personal objects and training kits;
  7. A sink area for each 50 students in attendance for the preparation, mixing, and dispensing of supplies and chemicals, and for the disinfection of small tools or instruments;
  8. At least one restroom that meets the requirements of R4-10-112;
  9. Separate receptacles for garbage and soiled linens; and
  10. One container for wet disinfectant for each student performing aesthetics and nail technology.
- B.** The school shall furnish equipment, tools, instruments, materials, and supplies needed to perform assignments and for instructional purposes, except that the school may require each student to furnish small tools or instruments. All equipment, tools, and materials shall be salon quality and maintained in good repair at all times.
- C.** The school shall have a library for student use which contains at least the following materials relating to the courses offered by the school:
1. Standard dictionary;
  2. Medical dictionary;
  3. Anatomy chart on bones, muscles, nerves, hands, arms, nails, veins, arteries, circulatory system, hair, and skin;
  4. Three current periodicals on the art and science of cosmetology;

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5. Current cosmetology instruction manuals or textbooks;
  6. Current Arizona Cosmetology statutes and rules; and
  7. A cosmetology dictionary.
- D.** Each school shall maintain a complete file on all current curriculum requirements.
- E.** A school shall not pay an enrolled student for time while the student is taking classes or receiving credit.
- F.** A licensed school may offer a postgraduate or advanced continuing education aesthetics, cosmetology, hairstyling, or nail technology course to currently licensed individuals without a licensed instructor present and to students currently enrolled in the school with a licensed instructor present.
1. A school shall not report post-graduate credit hours to the Board or apply the hours toward graduation.
  2. Currently enrolled students shall not perform services upon a person without an instructor present.
  3. A student file is not required for licensed individuals.
  4. Each licensee shall have the licensee's current Board-issued license number onsite.
- G.** An individual licensed by the Board may re-enroll in a licensed school for a refresher course as a current student. Credit hours for training received shall be submitted by the school to the Board.
- H.** A school shall establish a periodic grading schedule and keep student transcripts current.
- I.** A school shall schedule a minimum of four hours of theory classes each week for each full-time student and a minimum of two hours of theory classes each week for each part-time student.
- J.** A school shall teach safety and infection control measures relating to each subject in conjunction with that subject.
- K.** A school shall not solicit students for enrollment at other school sites.
- L.** While teaching, instructors shall wear a tag indicating the instructor's name and courses taught.
- M.** A school shall ensure compliance with the following:
1. A student shall not attend school more than 56 hours in any one week.
  2. A student shall only operate safe equipment in good repair.
  3. A student of aesthetics, cosmetology, hairstyling, or nail technology performs services within the enrolled course, upon the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the basic training specified in R4-10-303, R4-10-304, R4-10-304.1, or R4-10-305.
  4. A school shall not prevent or discourage a student from making a complaint to the Board.
  5. A school shall not dismiss a student from a scheduled theory instruction or written or practical examination to perform clinical services for the public;
  6. While in school, each student shall wear a tag indicating the student's name and the course in which the student is enrolled; and
  7. If the school has a distant classroom, the school shall ensure that equipment for each classroom is the same as that required for each course of instruction in the school; and:
    - a. Private postsecondary facilities shall not extend the school facilities beyond .5 miles apart as verified by Global Positioning System map readings;
    - b. Public educational facilities shall not extend the school beyond the school designated campus;
    - c. A duplicate Board-issued school license shall be posted in each distant facility;
    - d. Duplicate instructor licensees are not required; and
- e. Clinic, retail, all public services, and appointments by the public are prohibited.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-204. School Records**

- A.** A school shall maintain a student's records at the school where the student is enrolled. The Board may inspect the records at any time the school is open.
- B.** When a student transfers from one school to another, the school from which the student is transferring shall:
1. Keep a copy of the student's transcript,
  2. Forward one copy to the student and another copy to the Board within three days of the date of transfer, and
  3. Withdraw the student on the school records and the monthly report submitted to the Board.
- C.** Each school shall keep:
1. A complete and accurate record of the time devoted by each student to the enrolled course of study;
  2. A complete and accurate record that shows the school's basis for certification of the student hours. A school shall certify only those hours of training the student receives in that school or hours the school accepts as received in another state or country;
  3. A complete and accurate individual student file for each student enrolled containing:
    - a. Contract and enrollment agreement;
    - b. Financial aid transcript;
    - c. Proof of 10th grade equivalency for a student enrolled in an aesthetics, cosmetology, hairstyling, or nail technology course or proof of high school equivalency or 18 years of age for a student enrolled in an instructor course;
    - d. Identification number;
    - e. Proof of one year of licensed work experience for a student instructor;
    - f. A statement signed by a school administrator and the student that provides a list of the supplies contained in the kit provided to the student. The contract shall set forth the contents of the kit including:
      - i. The price of items contained in the kit;
      - ii. When the items shall be distributed;
      - iii. The manufacturer of the products;
      - iv. The retail value of the kit; and
      - v. A statement that if substitutions occur after the contract is signed, the substitutions shall be of comparable value; and
    - g. A record of completed hours, including proof of cosmetology, hairstyling, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school; and
  4. Complete and accurate academic transcripts and attendance and hour records or time cards.
- D.** The school shall electronically deliver to the Board a complete and accurate monthly report no later than the 10th day of each month. The monthly report shall include:
1. For each student enrolled since the prior monthly report only:
    - a. Name;
    - b. Student identification number;
    - c. Enrollment date;
    - d. Address;

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- e. Telephone number;
  - f. Type of educational documentation that meets the requirements of R4-10-104;
  - g. Proof of hours received from another Board-licensed school, or a school in another state, or country, and certified by the school, if applicable;
  - h. Proof of crossover hours necessary to qualify for R4-10-306, if applicable; and
  - i. Birth date.
2. The enrollment category of each student;
  3. The name, license number, and work schedule of the instructor in charge of the school, and name of the custodian of records;
  4. The name, license number, and work schedule of each instructor employed by the school;
  5. The signature of the instructor who prepares and certifies that the report is correct;
  6. The name of student instructors, the scheduled attendance, and the Board-issued license number for each student instructor;
  7. For each demonstration given, the name of the demonstrator, the name of the observing instructor, the name of the process or product demonstrated, the number of students in attendance, and the name of the course in which the demonstration was given;
  8. Hours received by each student for the prior month, the current month, and total cumulative hours. The school shall not amend total hours without satisfactory proof of error;
  9. Signature of each student verifying approval of the certified hours;
  10. The school's certification of the students who meet the graduation requirements of the school, including the day, month, and year of graduation; and
  11. The notation "transferred," "withdrawn," or "leave of absence" for students who discontinue training, and the day, month, and year training was discontinued. The school shall provide certification to the student within one week of the hours earned by the student before the student withdraws or takes a leave of absence.
- E.** A school shall credit a student with additional hours earned after graduation if the student completes the required hours for graduation, registers for the Board examination, and stays in school until the date of the examination.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-205. Aesthetic School Requirements**

- A.** Schools that provide aesthetics 600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that required by R4-10-203 and R4-10-204:
1. A work station for each student in attendance to perform aesthetics services to the public, each having:
    - a. A facial chair or table;
    - b. A table top that is 12" x 18" or larger;
    - c. A dry, disinfected, covered container to store disinfected tools and instruments, and
    - d. A labeled receptacle for contaminated tools or instruments.
  2. One steamer machine for each group of four students in attendance during lab and two students in attendance during clinic;
  3. One microdermabrasion machine to be used at a non-invasive level;
  4. One magnifying lamp of at least 5 diopters for each group of two students in attendance during lab and each group of four students in attendance during clinic;
  5. Cleansers;
  6. Massage medium;
  7. Toner;
  8. Exfoliants and masks; and
  9. Depilatories.
- B.** Each school shall provide a student training kit for each enrolled aesthetics student. The kit shall contain at a minimum, the following:
1. One standard textbook for professional aestheticians;
  2. One copy of Arizona cosmetology statutes and rules;
  3. One disinfected, covered container to store disinfected tools and instruments as specified by R4-10-112; and
  4. A container for contaminated tools or instruments.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-206. Cosmetology School Requirements**

- A.** Schools that provide cosmetology 1600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that specified by R4-10-203 and R4-10-204:
1. A work station for each student in attendance performing cosmetology services to the public for a fee, each having:
    - a. A mirror that is at least 18" by 30" when performing services on a client;
    - b. A table top or counter;
    - c. A client chair;
    - d. A dry, disinfected, covered receptacle to store disinfected tools and instruments; and
    - e. A container for contaminated tools or instruments;
  2. One shampoo basin for each group of 10 students in attendance during lab or clinic instruction;
  3. One hand-held hair dryer for each student in attendance during lab or clinic instruction;
  4. One hooded dryer for each group of 20 students in attendance during lab or clinic instruction;
  5. One high-frequency Tesla or violet-ray unit, including a facial and scalp electrode, for each group of 20 students in attendance during practical instruction;
  6. Two electric clippers in the school;
  7. Depilatories;
  8. Chemical hair straighteners;
  9. One nail technology table with a 12" x 18" or larger top for each group of 10 students in attendance during practical instruction;
  10. A facial work station for each group of 10 students in attendance and receiving lab or clinic aesthetics instruction;
  11. A receptacle, large enough to completely immerse two feet for each group of 10 students in attendance during lab or clinic nail technology instruction;
  12. Two nail drills for filing and buffing in the school; and
  13. Nail products for acrylics, gels, tips, wraps, and polishing.
- B.** Each school shall provide a student training kit for each enrolled student a nonreturnable student training kit. The kit shall contain at a minimum, the following:

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1. One standard textbook for professional cosmetologists;
2. One copy of Arizona cosmetology statutes and rules;
3. One disinfected, covered container to store disinfected tools and instruments; and
4. A container for contaminated tools or instruments.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-206.1. Hairstyling School Requirements**

- A. A school that provides hairstyling 1000-hour training for students, 350-hour training for instructors, or both, shall ensure the minimum facilities, equipment, supplies, and materials listed under R4-10-206(A)(1) through (6) are provided in addition to those specified under R4-10-203 and R4-10-204.
- B. A school shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled hairstyling student:
  1. Reasonable access to an online or standard textbook for professional hairstylists;
  2. Reasonable access to or a hard copy of the Arizona Board of Cosmetology statutes and rules;
  3. One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and
  4. A container for contaminated tools and instruments as specified under R4-10-112.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-207. Nail Technology School Requirements**

- A. A school that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, tools, instruments, equipment, supplies, and materials, in addition to those required by R4-10-203 and R4-10-204:
  1. A work station to perform nail technology services for the public for each student in attendance containing:
    - a. A nail technology table with a top 32" x 16" or larger;
    - b. A client chair;
    - c. A nail technology chair or stool;
    - d. A disinfected, covered container to store disinfected tools and instruments as specified in R4-10-112;
    - e. A container with wet disinfectant as specified in R4-10-112;
    - f. A container for soiled tools or instruments as specified in R4-10-112;
    - g. A waste receptacle as specified in R4-10-112; and
    - h. A disinfectant for blood or body-fluid exposure as specified in R4-10-112.
  2. One container large enough to completely immerse two feet, for every five students in attendance during practical training;
  3. Nail products for acrylics, gels, tips, wraps, and polishing; and
  4. One ultraviolet light.
- B. Each enrolled nail technology student shall have a training kit containing:
  1. One simulated hand;
  2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezers, nail brush, and finger bowl;

3. One covered container to store disinfected tools and implements as specified by R4-10-112;
4. A container for soiled tools and instruments as specified in R4-10-112;
5. A current instruction manual or textbook of nail technology and Arizona cosmetology laws and rules;
6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
7. One electric nail file.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

**R4-10-208. Combined School Requirements**

- A. A licensed school shall ensure that the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:
  1. Aesthetics course - 600 hours,
  2. Aesthetics instructor course - 350 hours,
  3. Cosmetology course - 1600 hours,
  4. Cosmetology instructor course - 350 hours,
  5. Hairstyling course - 1000 hours,
  6. Hairstyling instructor course - 350 hours,
  7. Nail technology course - 600 hours, and
  8. Nail technology instructor course - 350 hours.
- B. A school that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required by under:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
  4. R4-10-206,
  5. R4-10-206.1, and
  6. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.
- C. A school that provides the curriculum specified in subsections (A)(3) through (A)(8) only shall have the minimum records, facilities, equipment, supplies, and materials required under:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-206,
  4. R4-10-206.1, and
  5. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.
- D. A school that provides the curriculum specified in subsections (A)(1) through (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required under:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
  4. R4-10-206, and
  5. R4-10-206.1.
- E. A school that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(7) and (A)(8) only shall have the minimum records, facilities, equipment, supplies, and material required under:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-205, and
  4. R4-10-207.

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**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-209. Demonstrators; Exclusions**

- A.** A person who does not hold an instructor license shall not teach in a school but may demonstrate to enrolled students any process, product, or appliance when an instructor is present and observing the demonstration.
- B.** When demonstrating on a model, the demonstrations shall be confined to an explanation of the products, procedures, and appliances being promoted.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2).

**ARTICLE 3. STUDENTS****R4-10-301. Instruction; Licensed Individuals**

Licensed schools that provide instruction for licensed individuals pursuant to this Article shall:

1. Keep a record of the date, time, title, and name of the provider of the course along with the attendee's name and license number;
2. Ensure that the instruction consists of professional development related to scope of practice as specified by A.R.S. § 32-501; and
3. Ensure that hours are not granted toward licensing unless it is part of the approved course and provided by or in the presence of a licensed instructor.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**R4-10-302. Instructor Curriculum Required Hours**

- A.** A school shall ensure each student in an aesthetics, cosmetology, hairstyling, or nail technology instructor course completes 350 curriculum hours that includes the following:
1. Orientation and review of the Arizona Board of Cosmetology statutes and rules;
  2. Theory, preparation, and practice curriculum development. This includes:
    - a. Developing and using educational aids;
    - b. Practical and written presentation principles;
    - c. Classroom management evaluation, assessment, and remediation methods;
    - d. Diversity in learning including cultural differences;
    - e. Methods of teaching;
    - f. Professional development including ethics; and
    - g. Alternative learning;
  3. Classroom and clinic oversight.
- B.** A school may allow a student in an instructor course to satisfy, in part, curriculum hours required under subsection (A)(2) by completing a course at an accredited college or university or an educational institution described under R4-10-101(14)(c) and (d). Hours obtained under this subsection are subject to the following limits:
1. No more than nine credit hours for cosmetology, hairstyling, or aesthetics;
  2. No more than six credit hours for nail technology; and
  3. Each college credit hour equals no more than 30 of the clock hours required under subsection (A).
- C.** All instruction given by a student instructor shall be under the direct supervision and observation of a licensed instructor.

- D.** A student instructor shall be counted as a student for the purpose of determining the maximum allowed ratio of 40 students during a theory class and 20 students during a lab or clinic for each licensed instructor in the school.
- E.** A student instructor shall not instruct students or check student services performed on the public until the student instructor has received at least 80 hours of basic instructor training.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-303. Aesthetics Curriculum Required 600 Hours**

- A.** Each student in an aesthetics course shall complete the following curriculum:
1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Arizona cosmetology laws and rules; and
  2. Clinical and laboratory aesthetics including theory that involves all skin types:
    - a. Principles and practices of infection control and safety;
    - b. Recognition of diseases and the treatment of disorders of the skin;
    - c. Interpersonal skills and professional ethics;
    - d. Clinical and laboratory practice that includes face and body;
    - e. Morphology and treatment of skin, including face and body, by hand and machine;
    - f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
    - g. Aesthetics machines, tools, and instruments and their related uses;
    - h. Alternative skin technology;
    - i. Pre- and post-client consultation, documentation, and analysis;
    - j. Spa body modalities;
    - k. Exfoliation modalities;
      - l. Body and face massage and manipulations;
      - m. Body and facial hair removal except by electrolysis;
      - n. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
      - o. Cosmetic enhancement applications; and
      - p. Required industry standards and ecology, including monitor duties.
- B.** An aesthetics school shall not receive remuneration for a student performing clinical services to the public until the student has received at least 120 hours of aesthetics training; and
- C.** Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**R4-10-304. Cosmetology Curriculum Required 1600 Hours**

- A.** Each student in a cosmetology course shall complete the following curriculum:
1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, electricity, diseases and disorders, and Arizona cosmetology laws and rules; and

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2. Clinical and laboratory cosmetology including theory that involves nails, hair, and skin:
    - a. Principles and practices of infection control and safety;
    - b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
    - c. Morphology and treatment of hair, skin, and nails;
    - d. Interpersonal skills and professional ethics;
    - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
    - f. Cosmetology machines, tools, and instruments and their related uses;
    - g. Chemical texturizing;
    - h. Changing existing hair color;
    - i. Hair and scalp care;
    - j. Fundamentals of hairstyling including braiding and extensions;
    - k. Body, scalp, and facial massage and manipulations;
    - l. Hair cutting fundamentals;
    - m. Fundamental aesthetics of the body and face;
    - n. Fundamentals of nail technology;
    - o. Clinical and laboratory practice that includes hair, skin, and nails;
    - p. Alternative hair, skin, and nail technology;
    - q. Pre- and post-client consultation, documentation, and analysis;
    - r. Body and facial hair removal except by electrolysis;
    - s. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
    - t. Cosmetology technology; and
    - u. Required industry standards and ecology, including monitor duties.
  - B. A cosmetology school shall not receive remuneration for a student performing any clinical services, except shampooing, to the public until the student has received at least 300 hours of cosmetology training; and
  - C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.
- Historical Note**
- Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).
- R4-10-304.1. Hairstyling Curriculum Required 1000 Hours**
- A. Each student in a hairstyling course shall complete the following curriculum:
    1. Theory of hairstyling, infection control, anatomy, diseases and disorders, and Arizona Board of Cosmetology statutes and rules; and
    2. Clinical and classroom instruction in hairstyling including theory that involves hair:
      - a. Principles and practices of infection control and safety;
      - b. Recognition of diseases and the treatment of disorders of the hair and scalp;
      - c. Morphology and treatment of hair;
      - d. Interpersonal skills and professional ethics;
      - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
      - f. Hairstyling machines, tools, and instruments and their uses;
      - g. Chemical texturizing;
      - h. Changing existing hair color;
      - i. Hair and scalp care;
      - j. Fundamentals of hairstyling including braiding and extensions;
      - k. Neck and scalp massage and manipulations;
      - l. Hair cutting fundamentals;
      - m. Clinical and classroom practice that includes hair;
      - n. Alternative hair technology;
      - o. Client pre- and post-service consultation, documentation, and analysis;
      - p. Hairstyling technology; and
      - q. Required industry standards and ecology, including monitor duties.
  - B. A school shall not receive remuneration for a hairstyling student performing clinical services, except shampooing, for the public until the student has received at least 300 hours of hairstyling training; and
  - C. A school shall ensure each student is evaluated for progress and suggestions are provided to the student for remediating deficiencies.
- Historical Note**
- New Section made by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).
- R4-10-305. Nail Technology Curriculum Required 600 Hours**
- A. Each student in a nail technology course shall complete the following curriculum:
    1. Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Arizona state cosmetology laws and rules; and
    2. Clinical and laboratory nail technology including theory that involves nails, skin, and limbs:
      - a. Principles and practices of infection control and safety;
      - b. Recognition of diseases and the treatment of disorders of the nail and skin;
      - c. Massage and manipulation of the limbs;
      - d. Interpersonal skills and professional ethics;
      - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
      - f. Nail technology machines, tools, and instruments and their related uses;
      - g. Clinical and laboratory practice that includes nails, skin, and limbs;
      - h. Pre- and post-client consultation, documentation, and analysis;
      - i. Manicuring, including use of nippers;
      - j. Pedicuring, including use of nippers;
      - k. Artificial nail enhancements (application and removal);
        - l. Alternative nail technology;
        - m. Electric file use;
        - n. Pedicure spa modalities;
        - o. Exfoliation modalities on limbs or the body; and
        - p. Required industry standards and ecology, including monitor duties.
  - B. A nail technology school shall not receive remuneration for students performing clinical services to the public until the student has received at least 80 hours of nail technology; and
  - C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

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**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

**R4-10-306. Curricula Hours**

- A. A school shall ensure hours of training received in an aesthetics, cosmetology, hairstyling, or nail technology course are not applied toward hours required to obtain an instructor's license.
- B. A school shall ensure hours of training received in an instructor course are not applied toward hours required to obtain an aesthetician, cosmetologist, hairstylist, or nail technician license. Hours received in an instructor course may apply toward hours required to reactivate an aesthetics, cosmetology, hairstyling, or nail technology license if the instructor hours are received after inactive status occurs.
- C. When evaluating an application for licensure, the Board shall allow the following hours to apply toward licensing:
  1. 100% of the hours of training received in a nail technology course toward a cosmetologist license;
  2. 100% of the hours of training received in an aesthetics course toward a cosmetologist license;
  3. 100% of the hours of training received in a combined aesthetics and nail technology course toward a cosmetologist license to a maximum of 600 hours;
  4. 100% of the hours of training received in a hairstyling course toward a cosmetologist license;
  5. 100% of the hours of training received in a cosmetology course toward a hairstylist license;
  6. 15% of the hours of training received in a cosmetology course toward a nail technician license;
  7. 15% of the hours of training received in a cosmetology course toward an aesthetician license;
  8. 33% of the hours of training received in a nail technology course toward an aesthetician license;
  9. 66% of the hours of training received in an aesthetics course toward a nail technologist license;
  10. 50% of the hours of training received in a barber course toward a cosmetologist license;
  11. 200 hours of training received for a registered nurse (RN) or clinical nurse specialist (CNS) license toward an aesthetician license;
  12. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor license. The Board shall require the remaining hours needed for an aesthetics instructor license to be obtained in an aesthetics or cosmetology instructor course;
  13. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;
  14. 100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course;
  15. 100% of the hours of training received in a barber instructor course toward a cosmetology instructor license. The Board shall require the remaining hours needed for a cosmetology instructor license to be obtained in a cosmetology instructor course. For the purpose of qualifying for the cosmetology instructor examination specified under A.R.S. § 32-531, the Board shall accept one year of licensed barber experience as one year of licensed cosmetology experience; and

16. Hours transferred to another course shall be used only once.

- D. A school shall ensure that when a student completes a course of instruction, the cumulative hours for the student equal, at a minimum, those specified in this Article, as applicable.
- E. Infection control, disinfection procedures, and safety issues shall be taught with every subject and every procedure.
- F. Alternative learning hours are hours that a school may authorize to enable a student to pursue knowledge of cosmetology in an alternative format or location other than a salon. A school shall not credit a student with more than 20% of the total hours required for graduation, earned during enrollment at the school, as alternative learning hours.
- G. A school that provides alternative format or location in subsection (F) shall include details of the format and location in the school policy and procedures in the school catalog.
- H. Up to 16 hours of field trips may be granted toward licensing if the field trips for which those hours were granted are part of the approved course of instruction and are provided by or in the presence of a licensed instructor.
- I. If a school physically closes while providing curricula in an alternative format or location or while conducting a field trip, the school shall:
  1. Post a notice that is visible to the public and students; and
  2. Send a notice to the Board indicating the times and location where the curricula is being conducted.
- J. A student instructor may obtain lab (clinic) hours in a licensed school other than the licensed school in which the student instructor is enrolled if the student:
  1. Has available proof of enrollment in a licensed school to show to a Board inspector, and
  2. Earns no more than the lab (clinic) hours required by R4-10-302.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**ARTICLE 4. SALONS****R4-10-401. Application for a Salon License**

An applicant for a salon license shall submit:

1. An application on a form provided by the Board that contains:
  - a. The applicant's name, address, telephone number, federal tax identification number, and signature;
  - b. If the applicant is a partnership, each partner's name, address, and an identification of whether each is a limited or general partner;
  - c. If a corporation, the state of incorporation and the name, title, and address of each officer of the corporation and the statutory agent;
  - d. The name of the salon as registered with the Secretary of State;
  - e. If a location change, the previous address;
  - f. A history of the salon including:
    - i. If the location was previously licensed by the Board, the name of the previous establishment;
    - ii. The name of each business operating at the salon address; and
    - iii. A statement of whether a cosmetology license of the applicant, any partner of the applicant, or any corporate officer has ever been suspended or revoked by any state or foreign country.

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2. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
3. If a partnership, a copy of the partnership agreement;
4. A signed statement that the establishment is in compliance with all Board statutes and rules and has all of the following in the salon:
  - a. Wet disinfectant;
  - b. A dry, closed, disinfected container to store disinfected tools and instruments;
  - c. A sink or shampoo bowl with hot and cold running water that is not also used as a dispensary or restroom sink as required by R4-10-403;
  - d. A station;
  - e. A restroom; and
  - f. Notice posted for activities performed in the salon but not regulated by the Board; and
5. The fee required in R4-10-102.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-402. Changes Affecting a Salon License**

- A. An owner shall apply for a new salon license when:
  1. The salon address changes;
  2. The name of a salon changes;
  3. The controlling ownership in the corporation is transferred or the corporation is reorganized; or
  4. The corporation, limited liability company, or partnership has a change of any corporate officer, partner, or statutory agent.
- B. The salon owner and manager shall ensure that a Board-issued license, indicating proper ownership, is posted in the salon before opening for business.

**Historical Note**

Former Section R4-10-402 renumbered to R4-10-403; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-403. Salon Requirements and Minimum Equipment**

- A. A salon shall perform services for the public according to the type of license issued.
- B. Salons shall have enough equipment, materials, supplies, tools, and instruments to ensure infection control and safety for the public and employees.
- C. A salon shall ensure the salon has:
  1. No change
  2. If the salon is a cosmetology or hairstyling salon, at least one shampoo bowl and one hair dryer, which may be a blow dryer; and
  3. If the salon is an aesthetics or nail technology salon, at least one sink in addition to the restroom and dispensary sinks.
- D. A salon shall ensure aestheticians, cosmetologists, hairstylists, and nail technicians have enough equipment, materials, supplies, tools, and instruments to provide services, control infection, and disinfect between clients.

**Historical Note**

Adopted April 9, 1996 (Supp. 96-2). Former Section R4-10-403 renumbered to R4-10-404; new Section R4-10-

403 renumbered from Section R4-10-402 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-404. Mobile Services**

- A. If mobile services are provided as an extension of a licensed salon the mobile service shall advertise using the licensed name of the salon. The licensed salon owner and manager shall ensure that the mobile services comply with the Board's statutes and rules.
  1. A salon providing mobile cosmetology, hairstyling, nail technology, or aesthetics services shall ensure licenses are posted as required under R4-10-111.
  2. A salon shall make client appointments through the licensed salon using an appointment book that lists the appointments and locations where services are performed.
  3. Mobile services are subject to inspection by the Board at any time.
  4. If a retrofitted mobile vehicle is used to provide mobile services, the salon owner and manager shall ensure that the vehicle has the same equipment as specified by R4-10-403 and complies with safety and infection control requirements specified by R4-10-112.
  5. If mobile services are provided in a location other than a retrofitted mobile vehicle, the salon owner and manager shall ensure that equipment is disinfected before use and stored as specified in R4-10-112.
- B. If a retrofitted motor vehicle is used exclusively as a mobile facility that is dispatched from a business address, the owner and manager of the mobile facility shall:
  1. Comply with all salon requirements;
  2. Comply with all infection control and equipment requirements;
  3. Maintain a complete and current list of appointment locations at the business address and display the list in a location listed on the salon application that is available to an inspector at all times when the retrofitted motor vehicle is open for business; and
  4. Comply with other statutes and rules of the Board.

**Historical Note**

Adopted April 9, 1996 (Supp. 96-2). Former Section R4-10-404 renumbered to R4-10-405; new Section R4-10-404 renumbered from Section R4-10-403 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

**R4-10-405. Shampoo Assistants**

- A. People who are not licensed by the Board may be hired as shampoo assistants to shampoo and apply cream rinse to an individual's hair, comb the hair to remove tangles, and remove rollers and clippies.
- B. Shampoo assistants shall not apply conditioners, reconstructors, hair color, permanent wave solution or neutralizer, or remove rods, tint, relaxers, or other solutions from the hair.

**Historical Note**

New Section R4-10-405 renumbered from Section R4-10-404 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

As of September 20, 2019

### 32-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Aesthetician" means a person who is licensed to practice skin care pursuant to this chapter.
2. "Aesthetics" means any one or a combination of the following practices if they are performed for cosmetic purposes:
  - (a) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
  - (b) Arching eyebrows or tinting eyebrows and eyelashes.
  - (c) Removing superfluous hair by means other than electrolysis or threading.
3. "Board" means the board of cosmetology.
4. "Cosmetic purposes" means for the purpose of beautifying, preserving or conferring comeliness, excluding therapeutic massage and manipulations.
5. "Cosmetologist" means a person who is licensed to practice cosmetology pursuant to this chapter.
6. "Cosmetology" means any one or a combination of the following practices if they are performed for cosmetic purposes:
  - (a) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
  - (b) Arching eyebrows or tinting eyebrows and eyelashes.
  - (c) Removing superfluous hair by means other than electrolysis or threading.
  - (d) Nail technology.
  - (e) Hairstyling.
7. "Electrical appliances" means devices that use electrical current and includes lasers and IPL devices as defined in section 32-516.
8. "Hairstyling" means either of the following:
  - (a) Cutting, clipping or trimming hair.

(b) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.

9. "Hairstylist" means a person who is licensed to practice hairstyling pursuant to this chapter.

10. "Instructor" means a person who is licensed to teach cosmetology, aesthetics, nail technology or hairstyling, or any combination thereof, pursuant to this chapter.

11. "Mentor" means a cosmetologist who is approved by the board to train a person in a department of economic security-approved apprenticeship program in cosmetology in an establishment that is licensed by the board.

12. "Nail technician" means a person who is licensed to practice nail technology pursuant to this chapter.

13. "Nail technology" means any of the following:

(a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating a person's nails.

(b) Applying artificial nails.

(c) Massaging and cleaning a person's hands, arms, legs and feet.

14. "Salon" means any of the following:

(a) An establishment that is operated for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices.

(b) An establishment together with a retrofitted motor vehicle for exclusive use as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices, that is operated and dispatched through the establishment.

(c) A retrofitted motor vehicle exclusively used as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices, that is operated and dispatched from a business that has a physical street address that is on file with the board.

15. "School" means an establishment that is operated for the purpose of teaching cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices.

16. "Threading" means a service that results in the removal of hair from its follicle from around the eyebrows and from other parts of the face with the use of a single strand of cotton thread and an over-the-counter astringent, if the service does not use chemicals of any kind, wax or any implements, instruments or tools to remove hair.

**32-502. Board of cosmetology; members; appointment; qualifications; terms**

A. The board of cosmetology is established consisting of the following seven members who are appointed by the governor:

1. Two cosmetologists who have been actively practicing in this state for at least three years immediately preceding appointment.
2. One nail technician who has been actively practicing in this state for at least three years immediately preceding appointment.
3. One instructor who has been actively practicing in this state for at least three years immediately preceding appointment.
4. One school owner.
5. Two public members who are not and have never been associated with the cosmetology or nail technology industry, licensed as a cosmetologist or nail technician or involved in the manufacture of cosmetology or nail technology products.

B. The term of office for members is three years beginning and ending June 22.

C. The governor may remove board members for neglect of duty, malfeasance or misfeasance.

**32-503. Organization; meetings; personnel; compensation**

A. The board shall annually elect a chairman, vice-chairman and secretary-treasurer from among its membership.

B. The board shall hold at least one regular meeting monthly and may hold other meetings at times and places it designates.

C. Subject to title 41, chapter 4, article 4, the board may employ the following personnel as it deems necessary to carry out the purposes of this chapter and designate their duties:

1. An executive director.
2. A supervisor of examinations who is an instructor licensed pursuant to this chapter and has worked at least two of the five years immediately preceding employment as an instructor in a school licensed pursuant to this chapter.
3. Examiners who are not employed as instructors in any school licensed pursuant to this chapter.
4. Persons to provide investigative, professional and clerical assistance.
5. Consultants to assist the board in the performance of its duties.
6. Other personnel.

D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day of actual service in the business of the board. The board shall compensate its executive director and other personnel as determined pursuant to section 38-611.

**32-504. Powers and duties**

A. The board shall:

1. Adopt rules that are necessary and proper for the administration of this chapter, including sanitary and safety requirements for salons and schools and sanitary and safety standards for the practice of cosmetology, aesthetics, nail technology and hairstyling.
2. Administer and enforce this chapter and rules adopted pursuant to this chapter.
3. Either prepare, administer and grade practical and written examinations or contract with a national professional organization for cosmetology selected by the board to prepare, administer and grade practical and written examinations.
4. Make and maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and public reproofs of licensees.
5. Evidence its official acts by the signature of the chairman or vice-chairman of the board or a representative designated by the board.
6. Keep records of the board open to public inspection at all reasonable times.
7. Make an annual report to the governor on or before October 1 of each year covering its official acts and financial transactions during the preceding fiscal year and making recommendations it deems necessary.
8. Prescribe minimum school curriculum requirements for cosmetologists, aestheticians, nail technicians, hairstylists and instructors.
9. Prescribe standards and requirements for the provision of salon services through mobile units and in customer locations.
10. Approve a cosmetologist as a mentor based on the cosmetologist's record of compliance with this chapter. The board may not condition the approval on the cosmetologist's payment of an additional fee or completion of an additional requirement.

B. The board may:

1. Inspect the premises of any salon or school during business hours.
2. Delegate authority to its executive director to issue licenses to applicants who meet the requirements of this chapter.

### **32-505. Board of cosmetology fund**

A. The board of cosmetology fund is established. Except as provided in subsection C of this section, before the end of each calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of cosmetology fund.

B. Except as provided in section 32-573, subsection G, monies deposited in the board of cosmetology fund are subject to section 35-143.01.

C. Monies from civil penalties received pursuant to section 32-571 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-506. Nonapplicability of chapter

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Medical practitioners who are licensed pursuant to this title if the practices treat physical or mental ailments or disease.
2. Commissioned physicians and surgeons who are serving in the armed forces of the United States or other federal agencies.
3. Persons who are licensed pursuant to chapter 3 or 12 of this title.
4. Students who are attending schools licensed pursuant to this chapter while they are on school premises during school hours.
5. Persons employed by theatrical groups who apply makeup, oils and cosmetics.
6. Persons who sell makeup, oils and cosmetics and who apply such products during the process of selling such products.
7. Shampoo assistants who shampoo hair under the direction of a cosmetologist or hairstylist licensed pursuant to this chapter.
8. Services performed by and for persons who are in the custody of the state department of corrections.
9. Persons who apply makeup, oils and cosmetics to patients in a hospital, nursing home or residential care institution with the consent of the patient and the hospital, nursing home or residential care institution.
10. Persons who provide a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding if the service does not include the application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl or alter the structure of the hair.
11. Persons who provide threading.
12. Persons who provide tanning services by means of airbrushing, tanning beds or spray tanning.
13. Persons who apply makeup, including eyelash enhancements. This paragraph does not apply if a person is engaging in the practice of aesthetics or cosmetology. A person who is exempt pursuant to this paragraph shall post a sign in a conspicuous location in the person's place of business notifying the public that the person's services are not regulated by the board.
14. Persons who dry, style, arrange, dress, curl, hot iron or shampoo and condition hair if the service does not include applying reactive chemicals to permanently straighten, curl or alter the structure of the hair

and if the person takes and completes a class relating to sanitation, infection protection and law review that is provided by the board or its designee. This paragraph does not apply if a person is engaging in the practice of aesthetics or cosmetology. A person who is exempt pursuant to this paragraph shall post a sign in a conspicuous location in the person's place of business notifying the public that the person's services are not regulated by the board.

15. Persons who are participating in a department of economic security-approved apprenticeship program in cosmetology as described in section 32-511 while working with a mentor in an establishment that is licensed by the board

### 32-507. Fees

A. The board shall establish and collect fees not to exceed the following:

1. Written examination, one hundred dollars.
2. Practical examination, one hundred dollars.
3. Application for initial personal license, a one-time fee of eighty-three dollars.
4. Application for personal reciprocity license, a one-time fee of one hundred fifty dollars.
5. Application for salon license, one hundred twelve dollars.
6. Application for school license, six hundred dollars.
7. Application for certification of licensure or hours, thirty dollars.
8. Personal license renewal, seventy-six dollars to be paid once every two years pursuant to section 32-517 or 32-535.
9. Personal license delinquent renewal, sixty dollars.
10. Salon license renewal, fifty dollars.
11. Salon license delinquent renewal, eighty dollars.
12. School license renewal, five hundred dollars.
13. School license delinquent renewal, six hundred dollars.
14. Delinquent penalties for each year or portion of a year for which the license was inactive.
15. Computer printouts of names of licensees, twenty-five cents per name.
16. Duplicate license, thirty dollars.
17. Dishonored checks, twenty dollars.

18. Copying charges, one dollar per page. For audiotapes, videotapes, computer discs or other mediums used for recording sounds, images or information, fifteen dollars per tape, disc or other medium.

19. Board-administered educational classes, one hundred dollars.

20. Review of examination, fifty dollars.

21. Regrading of examinations, twenty-five dollars.

22. Service charges for persons who pay with alternative payment methods, including credit cards, charge cards, debit cards and electronic transfers, not to exceed the cost of the alternative payment method.

B. The board may charge additional fees for:

1. Documents and publications provided by the board.

2. Services that the board deems appropriate to carry out its intent and purpose. These additional fees shall not exceed the costs of rendering the services.

C. The board shall only issue a duplicate license on receipt of a written request that states the reason for the request for a duplicate license.

#### 32-510. Aestheticians; applications; qualifications

A person is entitled to receive an aestheticians license if the person:

1. Submits to the board an application for an aestheticians license on a form supplied by the board.

2. Does either of the following:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence of either of the following:

(a) That the person is a graduate of an aestheticians school in another state or country that has substantially the same requirements as this state for schools licensed pursuant to this chapter.

(b) That the person is a graduate of an aestheticians course consisting of at least six hundred hours of training in a school licensed pursuant to this chapter.

4. Passes the examination for an aestheticians license.

5. Pays the prescribed fees for an aestheticians license.

#### 32-511. Cosmetologists; applications; qualifications

A person is entitled to receive a cosmetologist license if the person:

1. Submits to the board an application for a cosmetologist license on a form supplied by the board.

2. Does either of the following:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence of any of the following:

(a) That the person is a graduate of a cosmetology course consisting of at least sixteen hundred hours of training in a school licensed pursuant to this chapter.

(b) That the person is a graduate of a cosmetology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.

(c) That the person completed a United States department of labor-approved or a department of economic security-approved apprenticeship program in cosmetology that includes at least two hundred fifty hours of infection protection and law review instruction. The person shall complete the instruction prescribed by this subdivision through either:

(i) A school that is licensed pursuant to this chapter or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.

(ii) A department of economic security-approved apprenticeship program.

4. Passes the examination for a cosmetologist license.

5. Pays the prescribed fees.

### 32-512. Nail technicians; applications; qualifications

A person is entitled to receive a license to practice nail technology if the person does all of the following:

1. Submits to the board an application for a nail technician license on a form supplied by the board.

2. Does either of the following:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence of either of the following:

(a) That the person graduated from a nail technology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.

(b) That the person completed a nail technician course consisting of at least six hundred hours of training in a school licensed pursuant to this chapter.

4. Pays the prescribed fees for a nail technician license.

5. Passes the examination for a nail technician license.

**32-512.01. Hairstylists; applications; qualifications**

A person is entitled to receive a license to practice hairstyling if the person does all of the following:

1. Submits to the board an application for a hairstylist license on a form supplied by the board.

2. Either:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence that the person either:

(a) Graduated from a hairstyling school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed pursuant to this chapter.

(b) Completed a hairstylist course consisting of at least one thousand hours of training in a school licensed pursuant to this chapter.

4. Pays the prescribed fees for a hairstylist license.

5. Passes the examination for a hairstylist license.

**32-513. Reciprocity**

Notwithstanding sections 32-510, 32-511, 32-512 and 32-512.01, a person is entitled to receive a cosmetologist, aesthetician, nail technician or hairstylist license if the person does all of the following:

1. Submits to the board an application for a cosmetologist, aesthetician, nail technician or hairstylist license on a form supplied by the board.

2. Submits to the board satisfactory evidence that the person is licensed in another state or country.

3. Takes and completes a class relating to infection protection and law review that is provided by the board or its designee. The board shall determine the amount of the fees for the class. The applicant shall pay the fees directly to the board or its designee.
4. Pays the prescribed reciprocity license fees.

#### 32-514. Examinations

- A. The board or a national professional organization for cosmetology selected by the board shall administer written and practical examinations for a cosmetologist, aesthetician, nail technician, hairstylist or instructor license. The examinations shall test for requisite knowledge and skills in the technical application of cosmetology services.
- B. The board or a national professional organization for cosmetology selected by the board shall inform each applicant of the examination results.
- C. The board shall make an accurate record of each examination.

#### 32-515. Reexaminations

- A. An applicant who fails an examination for a license pursuant to this article is entitled to a reexamination.
- B. If an applicant fails either part of the examination, the applicant shall only retake the part of the examination that the applicant failed.
- C. If one year or more elapses between an applicant's initial examination and reexamination, the applicant shall take both the written and practical parts of the examination.
- D. An applicant desiring to be reexamined shall:
  1. Apply to the board, if the board is administering the examination, on forms it prescribes and furnishes or to a national professional organization selected by the board to administer the examination.
  2. Pay the prescribed examination fee.

#### 32-516. Aestheticians; cosmetologists; cosmetic laser and IPL device use; certification; fees; definitions

- A. An aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices must:
  1. Apply for and receive a certificate from the department.
  2. Comply with the requirements of this section and department rules.
  3. Successfully complete forty hours of didactic training as required by department rules at a department-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.

4. For hair removal, complete hands-on training that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

5. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of specific procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

6. Submit to the department the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.

B. The department shall issue a laser technician certificate authorizing the aesthetician or cosmetologist to use lasers and IPL devices if the applicant has completed the training for hair removal or lasers and IPL devices for other cosmetic procedures, as applicable, and shall maintain a current register of those laser technicians in good standing and whether certification is for hair removal only or other cosmetic procedures as well. The department may establish a fee for the registration of aestheticians or cosmetologists as laser technicians and the issuance of certificates pursuant to this subsection. The department shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.

C. An aesthetician or a cosmetologist who has been certified as a laser technician by the department may use a laser or IPL device:

1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.

2. For cosmetic purposes other than hair removal if the aesthetician or cosmetologist is directly supervised by a health professional whose scope of practice permits the supervision and the aesthetician or cosmetologist has been certified in those procedures.

D. The board shall investigate any complaint from the public or from another board or agency regarding a licensed aesthetician or cosmetologist who performs cosmetic laser procedures or procedures using IPL devices pursuant to this section. The board shall report to the department any complaint it receives about the training or performance of an aesthetician or a cosmetologist who is certified as a laser technician.

E. An aesthetician or a cosmetologist who used laser and IPL devices before November 24, 2009 may continue to do so if the aesthetician or cosmetologist received a certificate pursuant to this section before October 1, 2010.

F. For the purposes of this section:

1. "Department" means the department of health services.

2. "Directly supervised" means a health professional who is licensed in this state and whose scope of practice allows the supervision supervises the use of a laser or IPL device for cosmetic purposes while the health professional is present at the facility where and when the device is being used.

3. "Health professional" means a person who is licensed pursuant to either:

(a) Chapter 11, article 2 of this title and who specializes in oral and maxillofacial surgery.

(b) Chapter 13, 14, 15, 17 or 25 of this title.

4. "Indirect supervision" means supervision by a health professional who is licensed in this state, whose scope of practice allows the supervision and who is readily accessible by telecommunication.

5. "IPL device" means an intense pulse light class II surgical device certified in accordance with the standards of the department for cosmetic procedures.

6. "Laser" means any device that can produce or amplify electromagnetic radiation with wavelengths in the range of one hundred eighty nanometers to one millimeter primarily by the process of controlled stimulated emission and certified in accordance with the standards for the department for cosmetic procedures.

7. "Laser technician" means a person who is or has been certified by the department pursuant to its rules and chapter 32, article 2 of this title.

#### 32-517. License renewal

A. Except as provided in section 32-4301, a cosmetologist, an aesthetician, a nail technician or a hairstylist shall renew the person's license on or before the person's birthday once every two years.

B. A cosmetologist, an aesthetician, a nail technician or a hairstylist shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew the person's license.

C. A cosmetologist, an aesthetician, a nail technician or a hairstylist who fails to renew the person's license on or before the person's birthday shall also pay the prescribed delinquent renewal penalty in order to renew the license.

#### 32-518. Inactive licenses; reactivation; suspension

A. A license that is not renewed pursuant to section 32-517 automatically reverts to inactive status.

B. A licensee may reactivate an inactive license:

1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.

2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.

C. A license that has been inactive for ten years is automatically suspended.

D. A licensee shall not practice under an inactive license.

**32-531. Instructors; applications; qualifications**

A person is entitled to receive a license to teach cosmetology, aesthetics, nail technology or hairstyling in a school if the person does all of the following:

1. Submits to the board an application for an instructor license on a form prescribed by the board.

2. Either:

(a) Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Is a licensed cosmetologist, aesthetician, nail technician or hairstylist, is applying for an instructor license to teach a subject in which the person is licensed and has practiced for at least one year in the profession for which the person is applying for an instructor license and has received the following hours of instructor training:

(a) For a cosmetologist instructor, three hundred fifty hours.

(b) For an aesthetics instructor, three hundred fifty hours.

(c) For a nail technician instructor, three hundred fifty hours.

(d) For a hairstylist instructor, three hundred fifty hours.

4. Passes the examination for an instructor license.

5. Pays the prescribed fees.

**32-532. Instructor reciprocity**

Notwithstanding section 32-531, a person is entitled to receive a license to teach cosmetology, aesthetics, nail technology or hairstyling in a school if the person submits to the board an application for an instructor license on a form prescribed by the board, pays the prescribed fees and complies with one of the following:

1. Is a current licensed cosmetologist, aesthetician, nail technician or hairstylist instructor in another state or country.

2. Does all of the following:

(a) Either:

- (i) Submits to the board satisfactory evidence that the person is at least eighteen years of age.
- (ii) Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.
- (b) Is a licensed cosmetologist, aesthetician, nail technician or hairstylist in another state or country.
- (c) Completes instructor training in another state or country that has instructor education requirements that are at least substantially equivalent to those of this state.
- (d) Passes the examination for an instructor license.
- (e) Has five years of licensed industry experience within the ten years preceding application.
- (f) Meets requirements as prescribed by the board in its rules.

**32-533. Instructor examinations; reexaminations**

- A. An examination for an instructor license shall be written and practical.
- B. The board shall inform each applicant of the applicant's examination results in writing.
- C. The board shall make an accurate record of each examination.
- D. An applicant who fails any part of the examination twice shall attend a school licensed pursuant to this chapter for two hundred fifty hours of instructor training.
- E. An applicant desiring to be reexamined shall apply to the board on forms it prescribes and furnishes and pay the prescribed examination fee.

**32-535. Instructor license renewal**

- A. Except as provided in section 32-4301, an instructor shall renew the instructor's license on or before the instructor's birth date once every two years.
- B. An instructor shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew the instructor's license.
- C. An instructor who fails to renew the instructor's license on or before the instructor's birth date as prescribed by this section shall also pay the prescribed delinquent renewal penalty in order to renew the license.

**32-536. Instructor practice; instruction**

- A. An instructor may practice in the category of practice he is licensed to practice in a salon licensed pursuant to this chapter.
- B. An instructor shall teach only in the area he is licensed by the board to teach.

32-537. Instructor; inactive licenses; reactivation; suspension

A. An instructor license that is not renewed pursuant to section 32-535 automatically reverts to inactive status.

B. A licensee may reactivate an inactive license:

1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.

2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.

C. A license that has been inactive for ten years is automatically suspended.

D. A licensee shall not practice under an inactive license.

32-541. Salon requirements

A. A person is entitled to receive a license to operate a salon if the person:

1. Submits to the board an application for a salon license on a form supplied by the board.

2. Pays the prescribed fee.

B. The safety and sanitary requirements specified by the board in its rules shall be requirements while a salon is operating.

C. Each salon shall have an individual designated as the manager of the salon.

32-542. Salon inspections

The board shall inspect salons on a regular basis as it deems necessary.

32-543. Required display

Salons shall display the following in a conspicuous location that is readily observable by any patron:

1. The current salon license.

2. The current licenses for cosmetologists, aestheticians, nail technicians or hairstylists practicing in the salon.

3. The latest inspection sheet.

32-544. Salon license renewal

A. Except as provided in section 32-4301, a salon license is renewable each year on or before the anniversary date of the first license by meeting all the requirements for a salon license and paying the prescribed renewal fee.

B. A salon owner who fails to renew the owner's salon license each year by the anniversary date of the license shall apply pursuant to section 32-541 and pay the prescribed fee and delinquent renewal penalty.

#### 32-545. Change of ownership or location; change of trade name

A. A salon shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.

B. A salon owner shall notify the board in writing within ten days after any change of ownership of the salon or change in the salon's location or trade name and pay the prescribed fee.

#### 32-551. School licenses; applications; requirements

A person is entitled to a license to operate a school if:

1. The person pays the prescribed fee.

2. The person furnishes a surety bond in the amount of ten thousand dollars approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of the state for failure to comply with the requirements of this chapter and any student who fails to receive the full course of instruction required under this chapter.

3. The person submits to the board under oath an application for a school license on a form supplied by the board and other documentation required by the board in its rules.

4. The proposed school passes an inspection by the board before it opens.

#### 32-552. Change of ownership or location; change of trade name

A. A school shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.

B. A school owner shall notify the board in writing within ten days after any change of ownership of the school or change in the school's location or trade name, submit a new license application for the school and pay the prescribed fee.

#### 32-553. Instruction staff

A. Instructors shall not apply their time to private practice with or without compensation in a school.

B. Students shall be under the constant supervision of an instructor.

#### 32-554. Required display

Schools shall display the following in a conspicuous location:

1. The current school license.
2. The current licenses of instructors teaching in the school.
3. The latest inspection sheet.

#### 32-555. Equipment

A school shall contain sufficient equipment as prescribed by the board in its rules.

#### 32-556. Separation of schools from other businesses

A school of any type, including a cosmetology school or otherwise, shall not be conducted with any other business, including a salon. A school of any type, including a cosmetology school or otherwise, and another business shall be separated by walls of permanent construction and not have doors or openings between them. A cosmetology school may offer for sale cosmetology products and related articles.

#### 32-557. Services for the public; restrictions

- A. Students may render services to the public only under the direct supervision of an instructor.
- B. The following notice shall be posted in a conspicuous place within the school in letters large enough to be read across the length of the room, "school of cosmetology - work done exclusively by students."
- C. A student in a school shall not receive a salary or commission from the school for any cosmetology, aesthetics, nail technology or hairstyling services while enrolled in the school as a student.
- D. A school shall post a price list for services rendered to the public that is large enough to be easily read from a distance of ten feet.

#### 32-558. Student-school contracts

A private school is required to execute a contract between itself and a student in duplicate. The form of the contract shall be approved by the board. A contract between a school and a student shall bear the signature of a school official and the student or parent or guardian if the student is under eighteen years of age. A fully executed copy of the contract shall be given to the student and the school shall keep the original copy.

#### 32-559. School catalogs

- A. A private school shall submit a copy of its official catalog to the board for board approval.
- B. A private school catalog shall contain the following:
  1. Name and address of the school.
  2. Date of publication.
  3. Admission requirements and procedures used by the school.

4. Number of hours of training required for licensure.
5. A brief outline of the curriculum offered by the school.
6. A description of the school's general physical facilities and equipment.
7. Policies relating to tardiness, absences, make-up work, conduct, termination and other rules of the school.
8. The grading system, including a definition of credit units if any.
9. The type of document awarded on graduation from the school.

32-560. Transfer procedures

A student who desires to transfer from one school to another shall execute an application for transfer form prescribed by the board. The transferring school shall complete the application for transfer in triplicate and forward the requested information to the board within three days after the student executes the application for transfer.

32-561. Student records

A school shall keep records as prescribed by the board in its rules on file for each student enrolled or reenrolled in a school for a regular course, postgraduate course or additional hours.

32-562. School inspections

The board shall inspect schools on a regular basis as it deems necessary.

32-563. School closings

- A. Within five days after a school closes it shall notify the board by certified mail of the closure.
- B. Within ten days after a school closes it shall forward all student records to the board.

32-564. School license renewal

- A. Except as provided in section 32-4301, school licenses are renewable on or before June 30 of every year by meeting all the requirements for a school license and paying the prescribed renewal fee.
- B. A school owner who fails to renew his school license by June 30 of every year shall apply pursuant to section 32-551 and pay the prescribed fee and delinquent renewal penalty.

32-565. Schools; postsecondary education institutions

A school must be recognized as a postsecondary educational institution if both of the following apply:

1. The school admits as regular students only individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma or who are beyond the age of compulsory education as provided by section 15-802.
2. The school is licensed by name by the board under this chapter to offer one or more training programs beyond the secondary school level.

**32-571. Disciplinary action**

The board may take any one or a combination of the following disciplinary actions:

1. Revoke a license.
2. Suspend a license.
3. Impose a civil penalty in an amount not to exceed two thousand dollars.
4. Impose probation requirements best adapted to protect the public safety, health and welfare including requirements for restitution payments to patrons.
5. Publicly reprove a licensee.
6. Issue a letter of concern.

**32-572. Grounds for disciplinary action or refusal to issue or renew license; definition**

A. The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Continued performance of cosmetology, aesthetics, nail technology or hairstyling services by a person knowingly having an infectious or communicable disease.
2. Conviction of a crime.
3. Commission of an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.
4. Malpractice or incompetency.
5. Knowingly advertising by means of false, misleading, deceptive or fraudulent statements through communication media.
6. Violating any provision of this chapter or any rule adopted pursuant to this chapter.
7. Making oral or written false statements to the board.
8. Repeated failure to correct infractions of safety and sanitary requirements prescribed by the board in its rules.

9. Failing to comply with an order of the board.

B. A conviction of a crime or act shall not be a cause of refusal to issue or renew a license unless the crime or act is substantially related to the qualifications, functions or duties of the license for which application is made.

C. The expiration, cancellation, suspension or revocation of a license or a licensee's voluntary surrender of a license does not deprive the board of jurisdiction to do any of the following:

1. Proceed with an investigation of a licensee.
2. Proceed with an action or disciplinary proceeding against a licensee.
3. Suspend or revoke a license.
4. Deny the renewal or right of renewal of a license.

D. For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of no contest.

**32-573. Procedure for disciplinary action; appeal**

A. The board on its own motion may investigate any information that appears to show the existence of any of the causes set forth in section 32-572. The board shall investigate the report of any person that appears to show the existence of any of the causes set forth in section 32-572. A person who reports pursuant to this section and who provides the information in good faith is not subject to liability for civil damages as a result.

B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license, it may take either of the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities that led to the information or report being made to the board may result in action against the licensee's license.

C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview.

D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.

E. A licensee who has been notified pursuant to subsection D of this section of charges pending against the licensee shall file with the board an answer in writing to the charges not more than thirty days after the licensee receives the complaint. If the licensee fails to answer in writing within this time, it is deemed an admission by the licensee of the acts charged in the complaint and the board may take disciplinary action allowed by this chapter without a hearing.

F. If the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof it may take the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against the licensee's license.
3. Impose probation requirements.

G. If a licensee violates this chapter or a rule adopted pursuant to this chapter, the board may assess the licensee with the board's reasonable costs and expenses, including attorney fees, incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in a separate account in the board of cosmetology fund established by section 32-505. The board may only use these monies to defray its expenses in connection with investigation related training and education, disciplinary investigations and all costs related to administrative hearings. Notwithstanding section 35-143.01 the separate account monies may be spent without legislative appropriation.

H. 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.

#### 32-574. Unlawful acts; violation; classification

A. A person shall not:

1. Perform or attempt to perform cosmetology, aesthetics, nail technology or hairstyling without a license in that category issued pursuant to this chapter, or practice in a category in which the person does not hold a license.
2. Display a sign or in any way advertise or hold oneself out as a cosmetologist, aesthetician, nail technician or hairstylist or as being engaged in the practice or business of cosmetology, aesthetics, nail technology or hairstyling without being licensed pursuant to this chapter.
3. Knowingly make a false statement on an application for a license pursuant to this chapter.
4. Permit an employee or another person under the person's supervision or control to perform cosmetology, aesthetics, nail technology or hairstyling without a license issued pursuant to this chapter.

5. Practice or attempt to practice cosmetology, aesthetics, nail technology or hairstyling in any place other than in a salon licensed pursuant to this chapter unless the person is requested by a customer to go to a place other than a salon licensed pursuant to this chapter and is sent to the customer from the salon, except that a person who is licensed pursuant to this chapter may practice, without the salon's request, cosmetology, aesthetics, nail technology or hairstyling in a health care facility, hospital, residential care institution, nursing home or residence of a person requiring home care because of an illness, infirmity or disability.

6. Obtain or attempt to obtain a license by the use of money other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.

7. Provide any service to a person having a visible disease, pediculosis or open sores suggesting a communicable disease until the person furnishes a statement signed by a physician who is licensed pursuant to chapter 13 or 17 of this title stating that the disease or condition is not in an infectious, contagious or communicable stage.

8. Operate a salon or school without being licensed pursuant to this chapter.

9. Violate any provision of this chapter or any rule adopted pursuant to this chapter.

10. Ignore or fail to comply with a board subpoena.

11. Use the title of "aesthetician", "cosmetologist", "nail technician" or "hairstylist" or any other title or term likely to be confused with "aesthetician", "cosmetologist", "nail technician" or "hairstylist" in any advertisement, statement or publication unless that person is licensed pursuant to this chapter.

12. Teach cosmetology, aesthetics, nail technology or hairstyling in this state unless the person is licensed as an instructor pursuant to article 3 of this chapter.

B. An instructor shall not render cosmetology, aesthetics, nail technology or hairstyling services in a school unless the services are directly incidental to the instruction of students.

C. A person who violates this section is guilty of a class 1 misdemeanor.

### 32-575. Injunctions

The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

### 32-576. Confidentiality

A. Examination materials, records of examination grading and performance and transcripts of educational institutions are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2.

B. All investigation files are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2 until the matter is final. The licensee shall be informed of the investigation. The public may

obtain information that discloses that an investigation is being conducted and the general nature of the investigation.

**BOARD OF MANUFACTURED HOUSING**

Title 4, Chapter 34, Board of Manufactured Housing

**Amend:** R4-34-102



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT: BOARD OF MANUFACTURED HOUSING**  
Title 4, Chapter 34, Board of Manufactured Housing

**Amend:** R4-34-102

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### **Summary:**

This regular rulemaking from the Board of Manufactured Housing (Board) seeks to amend one rule in Title 4, Chapter 34, Article 1 related to Materials Incorporated by Reference. Specifically, the Board seeks to update building code materials incorporated by reference from the 2009 to 2018 editions. The Board indicates that the currently incorporated materials are out-of-date and inconsistent with building codes used in most Arizona jurisdictions.

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

The Board cites both general and specific statutory authority for these rules.

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

The Board indicates this rulemaking does not establish a new fee or contain a fee increase.

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

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

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

The Board currently licenses 84 manufacturers and 100 installers. The Board anticipates that this rulemaking will have a positive benefit for these manufacturers and installers, who will no longer have to adjust their work based on an out-of-date code that is inconsistent with building codes used in most Arizona jurisdictions.

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

The Board has determined that any cost to stakeholders will be minimal. If any manufacturers and installers have increased costs because of the rules, the cost of doing business will be passed along to the consumer of the manufactured home. The rulemaking will also benefit the manufacturers and installers who currently have to adjust their work to meet current state standards that are inconsistent with local jurisdictions. The benefits outweigh the costs.

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

Key Stakeholders are: the Board, manufacturers and installers licensed by the Board, political subdivisions, and consumers of manufactured housing.

The Board incurs the cost of implementing the rulemaking. However the Board determined these minimal costs are outweighed by the benefit of removing unnecessary burden to manufacturers and installers.

Manufacturers and installers licensed by the State will benefit from the rulemaking by no longer having to adjust their work to meet out-of-date building codes, inconsistent with codes in most Arizona jurisdictions. Although manufacturers and installers will bear the cost of the rulemaking, this is outweighed by the benefit to manufacturers and public health and safety.

Political subdivisions will benefit from the rulemaking by no longer having to enforce out-of-date building codes, inconsistent with building codes enforced on other projects.

Consumers of manufactured housing will benefit from the rulemaking by having an up-to-date building code that protects the consumer's health and safety as it relates to construction and occupancy of manufactured housing.

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

The Board made two changes between the rules as proposed in the Notice of Supplemental Proposed Rulemaking and the Notice of Final Rulemaking:

1. In anticipation of conducting another rulemaking in the very near future, the Board removed the repeal of R4-34-504 from this rulemaking. The Board indicates it believes this rule action more appropriately belongs in the anticipated rulemaking.
2. 24 CFR, Subtitle B, Chapter XX, which was incorporated by reference in the supplemental notice was removed from this rulemaking. The Board indicates it determined that incorporating the federal law was duplicative and therefore unnecessary because the Department, manufacturers, and installers are required to comply with the federal law regardless of whether it is incorporated by reference.

It is Council staff's position that neither of these changes constitutes a "substantial difference" as outlined in A.R.S. § 41-1025.

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

The Board indicates five individuals attended oral proceedings related to this rulemaking on October 5, 2020 inquiring about the effective date of the newly incorporated materials and whether there would be exceptions. It is Council staff's position that the Board adequately responded to those comments and a copy of the transcript of the oral proceeding is included with the final materials for the Council's reference.

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

The rules do not require a permit, license, or agency authorization.

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

The Board indicates that the rule is not more stringent than applicable federal law. *See* 24 CFR 3280, 3282, 3284, 3285, 3286, and 3288. The Board indicates that, under a contract with the Department of Housing and Urban Development, the Board enforces the federal law.

11. **Conclusion**

The Board seeks to update building code materials incorporated by reference from the 2009 to 2018 editions. The Board indicates that the currently incorporated materials are out-of-date and inconsistent with building codes used in most Arizona jurisdictions.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

DOUGLAS A. DUCEY  
Governor



CAROL DITMORE  
Director

STATE OF ARIZONA  
DEPARTMENT OF HOUSING  
1110 WEST WASHINGTON, SUITE 280  
PHOENIX, ARIZONA 85007

(602) 771-1000 WWW.AZHOUSING.GOV  
FAX: (602) 771-1002

October 20, 2020

Ms. Nicole Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations  
Chapter 34. Board of Manufactured Housing**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on October 6, 2020, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for the rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rule in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

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

Sincerely,

A handwritten signature in black ink that reads "Tara Brunetti". The signature is written in a cursive style with a prominent initial "T" and a flourish at the end.

Tara Brunetti  
Assistant Deputy Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 34. BOARD OF MANUFACTURED HOUSING**

**PREAMBLE**

- |   |                                 |
|---|---------------------------------|
| <b><u>1. Articles, Parts, and Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-34-102   | Amend                           |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 41-4010(A)(13)  
Implementing statute: A.R.S. § 41-4010(A)(1) and (A)(2)
- 3. The effective date for the rules:**  
As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
Not applicable
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: 26 A.A.R. 568, March 27, 2020  
Notice of Proposed Rulemaking: 26 A.A.R. 529, March 27, 2020  
Notice of Supplemental Proposed Rulemaking: 26 A.A.R. 1847, September 4, 2020
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: Tara Brunetti, Assistant Deputy Director  
Address: Office of Manufactured Housing, Arizona Department of Housing  
1110 W. Washington Street, Ste. 280  
Phoenix, AZ 85007  
Telephone: (602) 771-1000

Fax: (602) 771-1002

E-mail: tara.brunetti@azhousing.gov

Website: www.housing.az.gov

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

The Board is updating building-code materials incorporated by reference. The currently incorporated materials are very out of date and inconsistent with building codes used in most Arizona jurisdictions. Having to use inconsistent materials is a regulatory burden for manufacturers and installers. An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, of the Governor's Office, by e-mail dated August 21, 2019.

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

The Board did not review or rely on a study in its evaluation of or justification for the rule.

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

Not applicable

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

Updating building codes incorporated by reference will remove a regulatory burden from manufacturers and installers who currently have to deal with state standards that are out of date and inconsistent with those of local jurisdictions.

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

Two changes were made between the rules as proposed in the supplemental notice and this final notice:

- In anticipation of conducting another rulemaking in the very near future, the Board removed the repeal of R4-34-504 from this rulemaking. The Board believes this rule action more appropriately belongs in the anticipated rulemaking.
- 24 CFR, Subtitle B, Chapter XX, which was incorporated by reference in the supplemental notice was removed from this rulemaking. The Board determined that incorporating the federal law was duplicative and therefore unnecessary because the Department, manufacturers, and installers are required to comply with the federal law regardless of whether it is incorporated by reference.

- a. Under A.R.S. § 41-4002, the Office of Manufactured Housing is to implement all existing laws and regulations mandated by the federal government. Under 24 CFR § 3280.1, the federal government mandates 24 CFR, Subtitle B, Chapter XX.
- b. Under 24 CFR § 3280.3, a manufacturer is required to comply with 24 CFR, Parts 3280 (regarding manufactured home construction and safety standards) and 3282 (regarding manufactured home procedural and enforcement regulations).
- c. Under 24 CFR § 3285.2, a manufacturer is required to provide installation designs and instructions for each manufactured home.
- d. Under 24CFR, Part 3286, dealing with manufactured home installation program, a state is required to comply with the specified installation program either by allowing HUD to conduct enforcement or by having a state-qualifying installation program.
- e. Under agreement with HUD, Arizona has a state-qualifying installation program. The Department enforces the installation program in jurisdictions with which the Department does not have an agreement. In jurisdictions with which the Department has an agreement, the jurisdiction is required under the agreement to comply with 24 CFR, Subtitle B, Chapter XX.

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

Five individuals attended the oral proceeding on October 5, 2020: Josh Hart, Joe Hart, Debbie French, Mike Myers, and John Farrell. All are from Modular Solutions. They inquired about the effective date of the newly incorporated materials and whether there would be exceptions. Department staff answered their question.

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

None

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

The rule does not require a permit.

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

The rule is not more stringent than federal law. Federal law applies to the subject of the rule (See 24 CFR 3280, 3282, 3284, 3285, 3286, and 3288). Under a contract with HUD, the Board enforces the federal law.

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

No analysis was submitted.

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

The following materials are incorporated by reference at R4-34-102:

- International Building Code (IBC), 2018 edition;
- International Residential Code (IRC), 2018 edition;
- International Mechanical Code (IMC), 2018 edition;
- International Plumbing Code (IPC), 2018 edition;
- International Fuel Gas Code (IFGC), 2018 edition;
- International Energy Conservation Code (IECC), 2018 edition;
- National Electrical Code (NEC), 2017 edition;

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

The rule was not previously made, amended, or repealed as an emergency rule.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 34. BOARD OF MANUFACTURED HOUSING**  
**ARTICLE 1. GENERAL**

Section

R4-34-102. Materials Incorporated by Reference

## ARTICLE 1. GENERAL

### R4-34-102. Materials Incorporated by Reference

The following materials, ~~which the Board incorporates~~ are incorporated by reference, apply to this Chapter. ~~The materials, which~~ include no later amendments or editions, and are available ~~from~~ on the ~~Board~~ Board's website. If there is a conflict between the incorporated material and a statute or rule, the statute or rule controls.

1. ~~24 CFR 3280, Manufactured Home Construction and Safety Standards, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
2. ~~24 CFR 3282, Manufactured Home, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
3. ~~24 CFR 3284, Manufactured Housing Program Fee, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
4. ~~24 CFR 3285, Model Manufactured Home Installation Standards, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
5. ~~24 CFR 3286, Manufactured Home Installation Program, April 1, 2009, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
6. ~~24 CFR 3288, Manufactured Home Dispute Resolution Program, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
7. 1. International Building Code (IBC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
8. 2. International Residential Code (IRC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
9. 3. International Mechanical Code (IMC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
10. 4. International Plumbing Code (IPC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
11. 5. International Fuel Gas Code (IFGC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;

- ~~12.6.~~ International Energy Conservation Code (IECC), ~~2009~~ 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or [iccsafe.org](http://iccsafe.org);
- ~~13.7.~~ National Electrical Code (NEC), ~~2008~~ 2017 edition, available from the National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169 or [nfpa.org](http://nfpa.org); and
- ~~14.8.~~ Protecting Manufactured Homes from Floods and Other Hazards, publication 85, second edition, November 2009, available from the Federal Emergency Management Agency, 500 C. St. SW, Washington, D.C. 20472 or [www.fema.gov](http://www.fema.gov).

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 34. BOARD OF MANUFACTURED HOUSING**

1. Identification of the rulemaking:

The Board is updating building-code materials incorporated by reference. The currently incorporated materials are very out of date and inconsistent with building codes used in most Arizona jurisdictions. Having to use inconsistent materials is a regulatory burden for manufacturers and installers. An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, of the Governor's Office, by e-mail dated August 21, 2019.

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

Until the rulemaking is completed, manufacturers and installers will still be burdened by the requirement that they comply with building codes that are out of date and inconsistent with building codes used in most Arizona jurisdictions.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government to burden stakeholders with out of date and inconsistent requirements. These requirements potentially pose a danger to public health and safety.

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

When the rulemaking is completed, the building-code materials with which the Department requires manufacturers and installers to comply will be up to date and consistent with those required in most Arizona jurisdictions. This will have eliminated an unnecessary regulatory burden for manufacturers and installers.

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

Updating building codes incorporated by reference will remove a regulatory burden from manufacturers and installers who currently have to deal with state standards that are out of date and inconsistent with those of local jurisdictions.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Tara Brunetti, Assistant Deputy Director  
Address: Office of Manufactured Housing, Arizona Department of Housing  
1110 W. Washington Street, Ste. 280  
Phoenix, AZ 85007  
Telephone: (602) 771-1000  
Fax: (602) 771-1002  
E-mail: tara.brunetti@azhousing.gov  
Website: www.housing.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Manufacturers and installers of manufactured housing and factory-built buildings and the Department will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The Department currently licenses 84 manufacturers and 100 installers.

The rulemaking incorporates by reference various building codes. The main purpose of the building codes is to protect public health, safety, and general welfare as they relate to construction and occupancy of buildings and other structures. A building code becomes law only when formally enacted by a jurisdiction. The codes are written to enable flexibility in use of materials and building design and not unnecessarily increase construction costs.

Attached and incorporated into this EIS is a summary prepared by the Department of the most significant changes between the currently incorporated building codes and newly incorporated building codes.

Updating the materials incorporated by reference will have a positive benefit for manufacturers and installers who will no longer have to adjust their work to using an out-of-date code that is inconsistent with that used for other projects. If an updated building code contains a provision that increases cost, it is a cost of doing business that is passed to the consumer of the manufactured home or factory-built building.

The Department incurred the cost of conducting this rulemaking and will incur the cost of implementing it. These minimal costs are outweighed by the benefit of removing an unnecessary burden from manufacturers and installers.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

No state agency other than the Department is directly affected by the rulemaking. Its costs and benefits are discussed in item 4. The Department will not need a new FTE to implement or enforce the rulemaking.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions are not directly affected by the rulemaking. However, many are indirectly affected because they have agreements with the Department under which the political subdivisions conduct inspections and enforce the building code provisions. The rulemaking will have an indirect positive benefit for the political subdivisions because they will no longer have to enforce out-of-date building codes that are inconsistent with those enforced on other projects.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Manufacturers and installers are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:

There will be no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

- a. Identification of the small business subject to the rulemaking:

Some manufacturers and most installers are small businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

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

The building codes establish minimum requirements using, to the extent possible, performance-related rather than prescriptive provisions. To comply with the newly incorporated building codes, it will be necessary for manufacturers and installers to have access to a copy of the codes. Because the incorporated building codes are

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

already being used on other projects, most manufacturers and installers already have this access.

- c. Description of methods that may be used to reduce the impact on small businesses:  
The building codes are designed to protect public health, safety, and welfare without unnecessarily increasing construction costs. To achieve these goals, it is necessary that all businesses use the same code standards. The codes do not restrict the use of or give preferential treatment to particular new materials, products, or methods of construction. The Board believes there are no additional methods for reducing impact on small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking. Consumers of manufactured housing or factory-built buildings are indirectly affected by the rulemaking.

9. Probable effects on state revenues:

There will be no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The Board believes there is no less intrusive or costly alternative method. Maintaining the current, out-of-date standards, is actually a more intrusive and costly method because it imposes the burden of having to comply with standards that are inconsistent with those used for other projects.

## Changes from 2009 to 2018 IBC

**311.1.1.** Small storage rooms (less than 100 sf) are automatically accessory and not classified separately. Aggregates are still limited to 10% of the floor area.

**505.2.3, Ex 2 Mezzanine Openness.** Direct access to at least one exit at the mezzanine level is no longer required.

## Changes from 2009 to 2018 IPC

**305.3 Pipes through foundation walls.** The requirement for a pipe sleeve or relieving arch for pipes under a footing was removed because the footing acts as the relieving arch for the pipe below.

**Section 422 Health Care Fixtures and Equipment.** Section 422 concerning Health Care Fixtures and Equipment is deleted.

**607.2 Hot water supply temperature maintenance.** The threshold for where a hot water temperature maintenance system is required was lowered from 100 feet to 50 feet (30 480 mm to 15 240 mm).

## 2009 to 2018 Changes to IECC

**C407.4.2 Additional documentation.** Allows the code official to require documentation of the reduction in energy use associated with on-site renewable energy use.

**C408.3.1.3 Daylight responsive controls.** Requires that calibration adjustment equipment be located for ready access by authorized personnel only.

## Changes from 2009 to 2018 IRC

**R202 Guestroom.** New definition added: Any room or rooms used or intended to be used by one or more guests for living or sleeping purposes.

**R303.5.1 Intake opening.** The revision to this section increases from the minimum vertical clearance that an intake opening must be below a contaminant source from 2 feet to 3 feet.

## 2009 to 2018 Changes to IFGC

**Table 402.4(3) Schedule 40 Metallic Pipe Sizing Table.** New table added for natural gas conditions of:

- Inlet Pressure: Less than 2 pounds per square inch (13.79 kPa)
- Pressure Drop: 3.0 inches water column
- Specific Gravity: 0.60

**404.1 Installation of materials.** Materials must be installed in accordance with the standards under which the materials are accepted and approved, the manufacturer's installation instructions and this code.

**636.1 General for outdoor decorative appliances.** Permanently fixed-in-place outdoor decorative appliances must be tested in accordance with ANSI Z21.97 and must be installed in accordance with the manufacturer's installation instructions.

## 2009 to 2018 Changes to IMC

**301.3 Identification.** Each length of pipe and tubing, and each pipe fitting installed in a mechanical system, must have a unique mark that identifies the maker of the item.

**505.1 Domestic systems.** Ducts for domestic kitchen exhaust hoods must be independent of all other exhaust systems.

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ORAL PROCEEDING FOR PROPOSED MODIFICATIONS TO THE ARIZONA ADMINISTRATIVE CODE, TITLE 4,  
CHAPTER 34

ABBREVIATED MINUTES

OCTOBER 5, 2020 ZOOM MEETING

**CALL TO ORDER**

Assistant Deputy Director Tara Brunetti called the meeting to order at 10:05 a.m.

**Introductions:**

Arizona Department of Housing ("Department") Staff: Deputy Director Reginald Givens; Assistant Deputy Director Tara Brunetti; Inspector Administrator Dave Meunier, Project Specialist Ayde Sanchez, Administrative Assistant Amanda Duncan

Public Present: Josh Hart, Joe Hart and other members of Modular Solutions

**RULE CHANGE PROPOSAL**

Assistant Deputy Director Brunetti provided an update on the previously proposed rule change regarding removing the current building codes from the rule package. This motion to remove the current building codes was paused for further review by the Department. Upon review, the Department notified the attendees that a decision was made to move forward with keeping the ICC codes in our rule package with the intention to update from the 2009 ICC Building Codes to the 2018 ICC Building Codes. Attendees were made aware the GRRC hearing regarding building code changes is scheduled for December 1, 2020. Attendees were informed if the proposed building code changes were approved the effective date would be 60 days from the date of the hearing.

Josh Hart inquired if there would be an addendums to the building codes.

Inspector Administrator Dave Meunier explained there would not be any new addendums to the codes. The current exception regarding accepting the residential sprinkler requirement from the 2009 IRC would be carried over.

No further questions regarding the current proposed rule changes were asked.

**ADJOURNMENT**

Assistant Deputy Director Brunetti thanked all in attendance. The meeting adjourned at 10:12 a.m.

## CHAPTER 34. BOARD OF MANUFACTURED HOUSING

## ARTICLE 1. GENERAL

**R4-34-101. Definitions**

The definitions in A.R.S. §§ 41-4001, and 41-4008 apply to this Chapter. Additionally, in this Chapter:

1. "Act" means the Manufactured Housing Improvement Act of 2000, which is Title VI of the American Homeownership and Economic Opportunity Act of 2000.
2. "Agency" means the seller or purchaser of a used home has given a licensed salesperson written legal authority to act on behalf of the seller or purchaser when dealing with a third party. The written legal authority is also binding on the salesperson's licensed and employing retailer.
3. "Agency disclosure" means a document that specifies the person a licensed salesperson or licensed retailer represents in a brokered transaction.
4. "Agent" means a licensed retailer authorized to act on behalf of a seller, purchaser, or both the seller and purchaser of a used home.
5. "Attached" means an accessory is fastened or affixed to a regulated structure in a manner that imposes a load on the structure.
6. "Branch location" means a satellite office, in addition to the principal office, where business may be transacted.
7. "Brokered transaction" means a transaction in which a licensed broker acts as an agent for the seller, purchaser, or both.
8. "Certificate" means an Arizona Insignia with which a licensee certifies all work performed complies with applicable law, including this Chapter, relating to modular manufacture and reconstruction, installation of modular, manufactured, and mobile homes, or rehabilitation work and construction.
9. "Co-brokered transaction" means a transaction in which the listing retailer and the selling retailer are not the same person.
10. "Consummation of sale, as defined at A.R.S. § 41-1001, includes filing an Affidavit of Affixture, if applicable.
11. "FBB" means factory-built building.
12. "Field installed" means components, equipment, and/or construction that is to be completed or installed at the site. Field installed does not include reconstruction.
13. "HVAC" means heating, ventilation, and air conditioning.
14. "Modular" means a type of FBB built in a factory and transported in three-dimensional sections to an installation site.
15. "New" means a unit not previously sold, bargained, exchanged, or given away to a purchaser.
16. "Panelized" means a type of commercial FBB built in a factory using closed construction, including partly or fully finished walls, floors, or roof panels, and transported in two-dimensional condition to an assembly site.
17. "Permanent foundation" means a system of support and perimeter enclosure, with or without crawl space, that is:
  - a. Constructed of durable materials;
  - b. Developed in accordance with the manufacturer's installation instructions or designed by an Arizona registered engineer;
  - c. Attached in a manner that effectively transfers all vertical and horizontal design loads that could be imposed on the structure by wind, snow, frost, seismic, or flood conditions, as applicable, to the underlying soil or rock; and
  - d. Designed to exclude unwanted elements and varmints, ensure sufficient ventilation, and provide adequate access to the building.
18. "Purchase contract in a brokered transaction" means a written agreement between a purchaser and seller of a used home that indicates the sales price and terms of the sale.
19. "Repair" means work performed on a manufactured home, mobile home, or FBB to restore the building to a habitable condition but does not impact the original structure, electrical, plumbing, HVAC, mechanical, use occupancy, or energy design.
20. "Retailer" means a broker or dealer as prescribed at A.R.S. § 41-4001(5) and (10).
21. "Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.
22. "Site work" means soil preparation including soil analysis, grading, drainage, utility trenches, and foundation systems preparation, and field-installed work including terminal and connections, on-site utility connections, accessibility structures, egress paths, parking, lighting, landscaping, and similar work.
23. "Standards" means the materials referenced in R4-34-102.
24. "Supplement" means a submittal noting change of a floor plan design, system, component, or configuration, and is incorporated as part of an originally approved plan.
25. "Used home" means a previously titled manufactured home, mobile home, or FBB designed for use as a residential dwelling.

**Historical Note**

Former Section R4-34-101 renumbered to R4-34-102, new Section R4-34-101 adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 3582, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

**R4-34-102. Materials Incorporated by Reference**

The following materials, which the Board incorporates by reference, apply to this Chapter. The materials, which include no later amendments or editions, are available from the Board. If there is a conflict between the incorporated material and a statute or rule, the statute or rule controls.

1. 24 CFR 3280, Manufactured Home Construction and Safety Standards, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
2. 24 CFR 3282, Manufactured Home Procedural and Enforcement Regulations, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
3. 24 CFR 3284, Manufactured Housing Program Fee, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
4. 24 CFR 3285, Model Manufactured Home Installation Standards, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;

## CHAPTER 34. BOARD OF MANUFACTURED HOUSING

5. 24 CFR 3286, Manufactured Home Installation Program, April 1, 2009, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
6. 24 CFR 3288, Manufactured Home Dispute Resolution Program, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
7. International Building Code (IBC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
8. International Residential Code (IRC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
9. International Mechanical Code (IMC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
10. International Plumbing Code (IPC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
11. International Fuel Gas Code (IFGC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
12. International Energy Conservation Code (IECC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
13. National Electrical Code (NEC), 2008 edition, available from the National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169; and
14. Protecting Manufactured Homes from Floods and Other Hazards, publication 85, second edition, November 2009, available from the Federal Emergency Management Agency, 500 C. St. SW, Washington, D.C. 20472 or www.fema.gov.

**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective May 28, 1980 (Supp. 80-3). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-102 renumbered to R4-34-103, new Section R4-34-102 renumbered from R4-34-101 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

**R4-34-103. Exceptions**

- A. The Board makes the following exceptions to the materials incorporated by reference in R4-34-102:
1. International Building Code and International Residential Code. A water or gas connection may be a flexible connector if the flexible connector:
    - a. Is not more than 6 feet long,
    - b. Is of the rated size necessary to supply the total demand of the unit, and
    - c. Made of materials that comply with the International Plumbing Code and International Fuel Gas Code; and
  2. International Residential Code. Exclude Section R313, Automatic Fire Sprinkler Systems.

- B. Under A.R.S. § 41-4010(D), a local jurisdiction may petition the Board for an exception to a standard. If the Board grants a local jurisdiction an exception to a standard, the local jurisdiction shall be bound by any conditions in the exception order issued by the Board. The local jurisdiction shall ensure the petition for an exception:
1. Specifies the standard sections affected;
  2. Justifies the requested exception with documented evidence of the local conditions that support the requested exception;
  3. Specifies the boundaries of the area affected by the local conditions;
  4. States why the exception is necessary to protect the health and safety of the public; and
  5. Provides an estimate of the economic impact the requested exception will have on the petitioning jurisdiction, other affected governmental entities, the public, unit owners, and licensees, and the facts upon which the estimate is based.
- C. An exception ordered by the Board applies only within the jurisdiction that petitioned for the exception.
- D. An exception order is effective on the date specified in the order, which will be at least 60 days after a Departmental Substantive Policy Statement has been issued to all licensed installers describing the exception, the area within which it applies, and any provisions applicable to its use.

**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective December 13, 1979 (Supp. 79-6). Amended subsection (A), paragraph (5) effective September 17, 1980 (Supp. 80-5). Amended effective October 20, 1981 (Supp. 81-5). Amended subsection (A), paragraph (2) effective August 29, 1983 (Supp. 83-4). Former Section R4-34-103 renumbered to R4-34-104, new Section R4-34-103 renumbered from R4-34-102 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

**R4-34-104. Repealed****Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (A) effective February 18, 1981 (Supp. 81-1). Amended subsection (A), paragraph (2) effective August 29, 1983 (Supp. 83-4). Amended subsection (A)(2)(d) effective July 18, 1984 (Supp. 84-4). Former Section R4-34-104 renumbered to R4-34-105, new Section R4-34-104 renumbered from R4-34-103 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective April 12, 1994 (Supp. 94-2). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

**R4-34-105. Repealed**

## 41-4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Accessory structure" means the installation, assembly, connection or construction of any one-story habitable room, storage room, patio, porch, garage, carport, awning, skirting, retaining wall, evaporative cooler, refrigeration air conditioning system, solar system or wood decking attached to a new or used manufactured home, mobile home or residential single family factory-built building.
2. "Act" means the national manufactured housing construction and safety standards act of 1974 and title VI of the housing and community development act of 1974 (P.L. 93-383, as amended by P.L. 95-128, 95-557, 96-153 and 96-339).
3. "Alteration" means the replacement, addition, modification or removal of any equipment or installation after the sale by a manufacturer to a dealer or distributor but before the sale by a dealer to a purchaser, which may affect compliance with the standards, construction, fire safety, occupancy, plumbing or heat-producing or electrical system. Alteration does not mean the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle if the replaced item is of the same configuration and rating as the component or appliance being repaired or replaced. Alteration also does not mean the addition of an appliance requiring plug-in to an electrical receptacle if such appliance is not provided with the unit by the manufacturer and the rating of the appliance does not exceed the rating of the receptacle to which such appliance is connected.
4. "Board" means the board of manufactured housing.
5. "Broker" means any person who acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-4028.
6. "Certificate" means a numbered or serialized label or seal that is issued by the director as certification of compliance with this chapter.
7. "Closed construction" means any building, building component, assembly or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage or destruction.
8. "Commercial" means a building with a use-occupancy classification other than single-family dwelling.

9. "Component" means any part, material or appliance that is built-in as an integral part of the unit during the manufacturing process.

10. "Consumer" means either a purchaser or seller of a unit regulated by this chapter who utilizes the services of a person licensed by the department.

11. "Consummation of sale" means that a purchaser has received all goods and services that the dealer or broker agreed to provide at the time the contract was entered into, the transfer of title or the filing of an affidavit of affixture, if applicable, to the sale. Consummation of sale does not include warranties.

12. "Dealer" means any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of factory-built buildings, manufactured homes or mobile homes except as exempted in section 41-4028. A lease or rental agreement by which the user acquired ownership of the unit with or without additional remuneration is considered a sale under this chapter.

13. "Defect" means any defect in the performance, construction, components or material of a unit that renders the unit or any part of the unit unfit for the ordinary use for which it was intended.

14. "Department" means the Arizona department of housing.

15. "Director" means the director of the department.

16. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker before consummation of the sale.

17. "Factory-built building":

(a) Means a residential or commercial building that is:

(i) Either wholly or in substantial part manufactured using closed construction at an off-site location and transported for installation or completion, or both, on-site.

(ii) Constructed in compliance with adopted codes, standards and procedures.

(iii) Installed temporarily or permanently.

(b) Does not include a manufactured home, recreational vehicle, panelized commercial building using open construction, panelized residential building using open or closed construction or domestic or light commercial storage building.

18. "HUD" means the United States department of housing and urban development.
19. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.
20. "Installation" means:
- (a) Connecting new or used mobile homes, manufactured homes or factory-built buildings to on-site utility terminals or repairing these utility connections.
  - (b) Placing new or used mobile homes, manufactured homes, accessory structures or factory-built buildings on foundation systems or repairing these foundation systems.
  - (c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.
21. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.
22. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.
23. "Listing agreement" means a document that contains the name and address of the seller, the year, manufacturer and serial number of the listed unit, the beginning and ending dates of the time period that the agreement is in force, the name of the lender and lien amount, if applicable, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.
24. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.
25. "Manufactured home" means a structure built in accordance with the act.
26. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.
27. "Mobile home" means a structure built before June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site

utilities. Mobile home does not include recreational vehicles and factory-built buildings.

28. "Office" means the office of manufactured housing within the department.

29. "Open construction" means any building, building component, assembly or system manufactured in such a manner that all portions can be readily inspected at the building site without disassembly, damage or destruction.

30. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.

31. "Qualifying party" means a person who is an owner, employee, corporate officer or partner of the licensed business and who has active and direct supervision of and responsibility for all operations of that licensed business.

32. "Reconstruction" means construction work performed for the purpose of restoration or modification of a unit by changing or adding structural components or electrical, plumbing or heat or air producing systems.

33. "Recreational vehicle" means a vehicular type unit that is:

(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls that fold for towing by another vehicle and unfold for camping.

(b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.

(d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured

to the standards for park trailers in a 119.5 of the American national standards institute code.

(e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

34. "Residential" means a building with a use-occupancy classification of a single-family dwelling or as governed by the international residential code.

35. "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.

36. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.

37. "Site development" means the development of an area for the installation of the unit's or units' locations, parking, surface drainage, driveways, on-site utility terminals and property lines at a proposed construction site or area.

38. "Statutory agent" means a person who is on file with the corporation commission as the statutory agent.

39. "Title transfer" means a true copy of the application for title transfer that is stamped or validated by the appropriate government agency.

40. "Unit" means a manufactured home, mobile home, factory-built building or accessory structures.

41. "Used unit" means any unit that is regulated by this chapter and that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit that was titled in the name of such purchaser.

42. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

[41-4002. Office of manufactured housing; purpose](#)

The purpose of the office of manufactured housing within the department is to maintain and enforce standards of quality and safety for manufactured homes, factory-built buildings, mobile homes and accessory structures and installation of manufactured and mobile homes, factory-built buildings and accessory structures. The affairs of the office of manufactured housing shall be conducted consistently with minimum standards of the United States department of housing and urban development so as to be designated the "state inspector" for manufactured homes and related industries. The office shall implement all existing laws and regulations mandated by the federal government, its agencies and this state for such purposes.

41-4004. Powers and duties of department; work by unlicensed person; inspection agreement; permit

A. The department shall:

1. Establish a state inspection and design approval bureau within the department.
2. Enter into reciprocity agreements and compacts with other states or private organizations that adopt and maintain standards of construction reasonably consistent with those adopted pursuant to this article on determining that such standards are being enforced. The director may void such agreements on determining such standards are not being maintained.
3. Issue a certificate to indicate compliance with the construction and installation requirements of this article.
4. Enter and inspect or investigate premises at reasonable times, after presentation of credentials by the director or personnel of the office or under contract with the office, where units regulated by this article are manufactured, sold or installed, to determine if any person has violated this chapter or the rules adopted pursuant to this chapter.
5. Enter into agreements with local enforcement agencies to enforce the installation standards in their jurisdiction provided the director is monitoring their performance to be consistent with the installation standards of the office.
6. If an inspection reveals that a mobile home entering this state for sale or installation is in violation of this chapter, order its use discontinued and the mobile home or any portion of the mobile home vacated. The order to vacate shall be served on the person occupying the mobile home and copies of the order shall be posted at or on each exit of the mobile home. The order to vacate shall include a reasonable period of time in which the violation can be corrected.

7. If an inspection of a new installation of any mobile home or manufactured home reveals that the natural gas or electrical connections of the installation do not conform to the installation standards promulgated pursuant to this chapter and the nonconformance constitutes an immediate danger to life and property, the inhabitants of the home shall be notified immediately and in their absence a notice citing the violations shall be posted in a conspicuous location. The director may order that the public service corporation, municipal corporation or other entity or individual supplying the service to the unit discontinue such service. If the danger is not immediate, the director shall allow at least twenty-four hours to correct the condition before ordering any discontinuation of service.

8. If construction, installation, rebuilding or any other work is performed in violation of this chapter or any rule adopted pursuant to this chapter, order the work stopped. The order to stop work shall be served on the person doing the work or on the person causing the work to be done. The person served with the order shall immediately cease the work until authorized by the office to continue.

9. Verify written complaints filed with the office by purchasers within one year after the date of purchase or installation of units. Complaints shall be accepted from consumers that allege violations by any dealer, broker, salesperson, installer or manufacturer of this chapter or the rules adopted pursuant to this chapter.

10. On verification of a complaint pursuant to paragraph 9 of this subsection, serve notice to the dealer, broker, salesperson, installer or manufacturer that such verified complaint shall be satisfied as specified by the office.

11. Provide to the board every six months the year-to-date fund balance of and a listing of the year-to-date revenues and expenditures from the mobile home relocation fund established by section 33-1476.02. The information shall be updated and posted on the department's website.

B. Any dealer, broker, salesperson, installer or manufacturer licensed by the office shall respond within thirty days to a notice served pursuant to subsection A, paragraph 10 of this section. Failure to respond is grounds for disciplinary action pursuant to section 41-4039.

C. If an inspection or an investigation reveals that any work that is required to be performed by a licensee was performed by an unlicensed person required to be licensed pursuant to this chapter, the director, an employee or a person under contract with the office may cite the unlicensed person. The citation may be issued and served pursuant to section 13-3903. The action shall be filed in the justice court in the precinct where the unlicensed activity occurred.

D. The director may enter into agreements with acceptable qualified building inspection personnel or inspection organizations for enforcement of inspection requirements provided the director is monitoring their performance to be consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office. If the director determines that the person's or organization's performance is not consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office, the person or organization may not enforce the contract and the aggrieved person shall be entitled to a refund of the consideration paid under the agreement.

E. If a mobile or manufactured home or factory-built building is installed without first obtaining an installation permit, the director shall send a written notice to the purchaser specifying that a permit is required. If a permit is not obtained within thirty days after receipt of the written notice, the department shall issue and serve by personal service or certified mail a citation on the purchaser. Service of the citation by certified mail is complete after forty-eight hours after the time of deposit in the mail. On failure of the purchaser to comply with the citation within twenty days after its receipt, the director shall file an action in the justice court in the precinct where installation occurred for violation of this subsection.

41-4005. Submission of construction, reconstruction or alteration plans by manufacturers; approval; revocation

A. Before the construction of any new model of factory-built building, each manufacturer who intends to manufacture for delivery or sell such unit in this state shall submit to the director for approval detailed plans of each model and shall have obtained such approval.

B. Before reconstruction of any factory-built building, including those for which the director has not approved plans before construction, the licensee shall submit to the director for approval detailed plans of the factory-built building that indicate conformance with this state's adopted codes as certified by an engineer who is registered pursuant to title 32, chapter 1.

C. Before installation of a factory-built building or accessory structure, each licensee who intends to accomplish the construction shall submit to the director for approval detailed plans for each project and shall obtain the director's approval.

D. The office or a third-party inspector who is authorized by the director to verify compliance with the approved plans shall inspect the factory-built building.

E. A plan approval may be immediately suspended by the written notice of the director if the director has reasonable cause to believe that the licensee is not complying with the plan as approved or that the licensee has used inferior materials or workmanship in construction. This notice shall be served by personal service to an in-state licensee and by certified mail to an out-of-state licensee. Service of process by certified mail is complete after forty-eight hours from the time of deposit in the mail.

41-4006. Preemption of local building codes; responsibility for maintenance of utility connections

A. No building code or local enforcement agency or its adopted building codes may require, as a condition of entry into or sale in any county or municipality, that any unit that has been certified pursuant to this chapter be subjected to any local enforcement inspection to determine compliance with any standard covering any aspect of the unit that is inspected pursuant to this article.

B. Except where a local enforcement agency participates in the office permit and certificate issuance program for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures and inspection of such installations, no local enforcement agency shall subject any unit installed to any local inspections or charge a fee for any services provided pursuant to this article.

C. A local enforcement agency in any county or municipality shall recognize the minimum standards of the act as equal to any nationally accepted or locally adopted building code standard.

D. Nothing in subsection A, B or C of this section shall prevent the application of local codes and ordinances governing zoning requirements, fire zones, building setback, maximum area and fire separation requirements, site development and property line requirements and requirements for on-site utility terminals for factory-built buildings, manufactured homes and mobile homes.

E. Notwithstanding any other provision of this section, the owner of a manufactured home or mobile home located in a park subject to title 33, chapter 11 is responsible for the maintenance of utility connections from any outlets furnished by the landlord pursuant to section 33-1434 to the unit, except that the landlord is responsible for the maintenance of connections for any distance greater than twenty-five feet to the point at which the utility connections are the property of the providing utility company if the outlet is located outside the lot line of the owner's unit and is more than twenty-five feet from the unit. A local enforcement agency that determines that local code requirements are not being met or that maintenance or safety activities are needed for

utility connections may not require anyone except the responsible party to perform or pay for such activities.

41-4007. Notification and correction of defects by manufacturer; notice to purchaser

A. Every manufacturer of units shall furnish notification of any defect in any unit produced by such manufacturer which he determines, in good faith, relates to a construction or safety standard adopted pursuant to this chapter or contains a defect which constitutes an imminent safety hazard to the purchaser of such unit, within sixty days after such manufacturer has discovered the defect. Every manufacturer of units shall maintain a record of the names and addresses of the purchaser of each unit for the purposes of this section. Such information shall be provided by the dealer or broker upon purchase of each unit and reported monthly to the manufacturer.

B. The notification required by subsection A shall contain a clear description of such defect or failure to comply with such construction or safety standards, an evaluation of the risk to the occupants' safety reasonably related to such defect and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect will be corrected at no cost to the purchaser of the unit or at the expense of the purchaser.

41-4008. Costs of complying with standards; reimbursement from relocation fund; definition

A. The costs of bringing a mobile home into compliance with the requirements of this article may be reimbursed to the owner from the mobile home relocation fund established by section 33-1476.02 if all of the following are true:

1. The mobile home is moved from one mobile home park in this state to another mobile home park in this state.
2. The household income of the owner of the mobile home is at or below one hundred per cent of the current federal poverty level guidelines as published annually by the United States department of health and human services.
3. The mobile home is not being relocated as the result of a judgment in a forcible detainer or special detainer action requiring the owner to vacate the mobile home park in which the mobile home is located.

B. The amount of the reimbursement pursuant to this section shall not exceed one thousand five hundred dollars for the costs related to any mobile home.

C. The fund shall have a claim for reimbursement of sums received under this section by an individual who fails to reside in the mobile home for six months following its relocation, unless the failure was due to the death or disability of a resident.

D. For the purposes of this section, "owner" means an individual whose primary residence has been the mobile home continuously for the six-month period preceding an application for reimbursement, or an individual who has purchased the mobile home and who intends to reside in the mobile home as the individual's primary residence after the relocation.

#### 41-4009. Board of manufactured housing; members; meetings

A. The board of manufactured housing is established. The board shall consist of nine members appointed by the governor pursuant to section 38-211. One member shall represent the manufacturers of manufactured homes, one shall represent the installer industry, one shall represent manufactured home park owners, one shall represent financial institutions, one shall represent the manufacturers of residential factory-built buildings, one shall represent the dealers and brokers and three members of the public, at least one of whom has as his residence a mobile or manufactured home and is a resident of a mobile home park or manufactured home park, shall represent the consumers of this state. Each member shall be appointed for a term of three years. The governor may remove any member from the board for incompetency, improper conduct, disability or neglect of duty. Members are eligible to receive compensation pursuant to section 38-611 and are eligible for reimbursement for expenses incurred while attending meetings called by the board pursuant to title 38, chapter 4, article 2.

B. The board annually shall select from its membership a chairperson for the board.

C. The board shall meet on call of the chairperson or on the request of at least four members.

#### 41-4010. Powers and duties of board

A. The board shall:

1. Adopt rules imposing minimum construction requirements for factory-built buildings and components thereof that are reasonably consistent with nationally recognized and accepted publications or generally accepted manufacturing practices pertinent to the construction and safety standards for such item to be manufactured. These standards shall include minimum requirements for the safety and welfare of the public.

2. Adopt rules imposing requirements for body and frame design and construction and installation of plumbing, heating and electrical systems for manufactured homes that are consistent with the rules and regulations for construction and safety standards adopted by the United States department of housing and urban development.
3. Adopt rules relating to plan approvals as to requirements for the design, construction, alteration, reconstruction and installation of units or accessory structures as deemed necessary by the board to carry out this chapter.
4. Establish a schedule of fees, payable by persons, licensees or owners of units regulated by this chapter, for inspections, licenses, permits, plan reviews, administrative functions and certificates so that the total annual income derived from such fees will not be less than ninety-five percent and not more than one hundred five percent of the anticipated expenditures for the administration of the activities described in this subsection.
5. Adopt rules relating to the inspection throughout the state by the department of the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a manufactured home, mobile home or factory-built building or included in an agreement to move a manufactured home, mobile home or factory-built building.
6. Establish and maintain licensing standards and bonding requirements for all manufacturers of manufactured homes and factory-built buildings regulated pursuant to this chapter.
7. Establish and maintain licensing standards and bonding requirements for all dealers and brokers of manufactured homes, mobile homes and factory-built buildings thereof who sell or arrange the sale of such products within this state.
8. Establish and maintain licensing standards and bonding requirements for all installers of manufactured homes, mobile homes and accessory structures and certified standards for all persons who repair these homes and structures under warranties and who are not employees of the manufacturer.
9. Establish and maintain licensing standards for all salespersons of manufactured homes, mobile homes and factory-built buildings. These standards shall not include educational requirements.
10. Adopt rules consistent with the United States department of housing and urban development procedural and enforcement regulations and enter into such contracts necessary to administer the federal manufactured home regulations.

11. Adopt rules imposing minimum fire and life safety requirements in the categories of fire detection equipment, flame spread for gas furnace and water heater compartments, egress windows, electrical system and gas system for mobile homes entering this state.

12. Adopt rules for inspections and permits for minimum fire and life safety requirements and establish fees for such inspections and permits for mobile homes entering this state.

13. Adopt such other rules as the board deems necessary for the department to carry out this chapter and, to the extent not authorized by other provisions of this section, adopt rules as necessary to interpret, clarify, administer or enforce this chapter.

14. Adopt rules relating to the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a used mobile home, new or used manufactured home or new or used factory-built building or part of an agreement to move a used mobile home, new or used manufactured home or new or used factory-built building. This paragraph does not apply to:

(a) Single wide factory-built buildings that are used for construction project office purposes and that are not used by the public.

(b) Storage buildings of less than one hundred sixty-eight square feet that are not used by the public.

(c) Equipment buildings that are not used by the public.

15. Adopt rules relating to acceptable workmanship standards.

16. Adopt rules relating to issuing permits to licensees, owners of units or other persons for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures.

17. Adopt rules including a requirement that a permit shall be obtained before the installation of a mobile or manufactured home.

18. Establish standards for the permanent foundation of a manufactured home, mobile home or factory-built building.

B. In adopting rules pursuant to subsection A, paragraph 3 of this section, the board shall consider for adoption any amendments to the codes and standards referred to in

subsection A, paragraphs 1 and 2 of this section. If the board adopts the amendments to such codes and standards, the department shall notify the manufacturers licensed pursuant to article 4 of this chapter ninety or more days before the effective date of such amendments.

C. Chapter 6 of this title does not apply to the setting of fees under subsection A, paragraph 4 of this section.

D. Rules adopted pursuant to subsection A, paragraph 14 of this section shall be standard throughout this state and may be enforced by the local enforcement agencies on installation to ensure a standard of safety. The board may make an exception to the standard if, on petition by a local jurisdiction participating in the installation inspection program, local conditions justify the exemption or it is necessary to protect the health and safety of the public. On its own motion, the board may revise or repeal any exception.

**D-4**

**DEPARTMENT OF TRANSPORTATION**

Title 17, Chapter 4, Article 5, Title, Registration, and Drivers Licenses - Safety

**Amend:** R17-4-501, R17-4-502, R17-4-503, R17-4-504, R17-4-506, R17-4-510,  
R17-4-512



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT: Department of Transportation**  
Title 17, Chapter 4, Department of Transportation - Title, Registration, and Driver Licenses

**Amend:** R17-4-501, R17-4-502, R17-4-503, R17-4-504, R17-4-506,  
R17-4-510, R17-4-512

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This Notice of Expedited Rulemaking from the Department of Transportation seeks to amend rules in Title 17, Chapter 4, Article 5 regarding Safety. The Department seeks to amend rules consistent with its recent Five-Year-Review Report (5YRR) for these rules, which the Council approved on February 4, 2020. In that 5YRR, the Department stated it would amend the rules to increase understandability of the rules, simplify and clarify requirements, and update outdated language. Specifically, the proposed amendments include clarification to the definitions, removal of old and inconsistent information, clarification on evaluation requirements and vision standards requirements, and lastly, update the standards for motorcycle noise limits and for child-restraint systems. Additionally, the proposed changes include minor technical changes and to ensure conformity to the rulemaking format and style requirements.

The Department received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on July 16, 2020.

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

Yes. The Department states that the rule amendments meet the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(7) because they implement a course of action proposed in a 5YRR. Upon review, Council staff agrees with the Department that this rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7).

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

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

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

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

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

The Department did not receive any comments in conducting this expedited rulemaking.

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

No, the minor changes are not considered a substantial change from the proposed rules.

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

No. The Department indicates the rules are not more stringent than the corresponding federal laws; 40 CFR 205.152, 40 CFR 205.166, and 49 CFR 571.213.

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

Not applicable. The Department indicates the rules do not require the issuance of a regulatory permit or license.

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

The Department states it did not rely on any study for this expedited rulemaking.

**9. Conclusion**

As mentioned above, this expedited rulemaking seeks to amend rules consistent with a proposed course of action the most recent 5YRR of these rules, which the Council approved on February 4, 2020. The amended rules would be more clear, concise, understandable, effective, and consistent with other rules and statutes. If approved, the rulemaking would be effective immediately upon the Department filing its Certificate of Approval with the Secretary of State's office. Council staff recommends approval of this rulemaking.

September 28, 2020

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

Re: Department of Transportation, 17 A.A.C. 4, Article 5, Expedited Rulemaking

Dear Chairperson Nicole Sornsin:

The Arizona Department of Transportation submits the accompanying final expedited rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-202(A)(1):

- a. The rulemaking record closed on September 2, 2020, and no written public comments were received on these rules;
- b. The Department is engaged in this expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7), in order to incorporate the changes proposed in the Department's recent five-year review report on 17 A.A.C. Chapter 4, Article 5;
- c. The rulemaking activity does relate to a five-year review report, approved by the Governor's Regulatory Review Council on February 4, 2020;
- d. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
- e. Documents included in this final expedited rule package are as follows:
  1. Signed cover letter;
  2. Notice of Final Expedited Rulemaking, including the preamble, table of contents, and text of each rule;
  3. General and specific statutes authorizing the rules, including relevant statutory definitions;
  4. Definitions of terms;
  5. Material incorporated by reference; and
  6. Request for, and approval of, the Department's exception from the rulemaking moratorium.

Sincerely,



John S. Halikowski  
ADOT Director

Enclosures

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

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R17-4-501	Amend
R17-4-502	Amend
R17-4-503	Amend
R17-4-504	Amend
R17-4-506	Amend
R17-4-510	Amend
R17-4-512	Amend

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

Authorizing statutes: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-364, 28-907, 28-955.02, 28-3005, 28-3153, 28-3158, 28-3159, 28-3164, 28-3167, 28-3171, 28-3173, 28-3223, 28-3306, 28-3314, and 28-3315

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

Month X, 2020 (To be completed by the *Register* Editor with an immediate effective date.) This rulemaking becomes effective immediately on filing with the Office of the Secretary of State.

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 1591, August 7, 2020

Notice of Proposed Expedited Rulemaking: 26 A.A.R. 1582, August 7, 2020

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

Name: Candace Olson, Rules Analyst  
Address: Rules and Policy Development  
Department of Transportation  
206 S. 17th Ave., Mail Drop 180A  
Phoenix, AZ 85007  
Telephone: (602) 712-4534  
E-mail: COlson2@azdot.gov  
Web site: <https://azdot.gov/about/government-relations>

**6. An agency’s explanation why the expedited rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027(A), and why expedited proceedings are justified under A.R.S. § 41-1001(16)(c):**

Pursuant to A.R.S. § 41-1027(A)(7), the Department is engaged in this expedited rulemaking to incorporate the changes proposed in the Department’s five-year review report on 17 A.A.C. Chapter 4, Article 5, which was approved by the Governor’s Regulatory Review Council on February 4, 2020. The Department determined that these rules should be updated and improved for clarity and for a better reflection of the Department’s process and needs. This rulemaking includes updates and clarification to the definitions, removal of old and inconsistent information, clarification of the evaluation requirements, clarification of the vision standards and requirements, removal of the unnecessary process of conducting medical-related interviews and additional evaluations that may have been required from an interview, and updates to the standards for the motorcycle noise limits and for child-restraint systems.

Additional changes include making minor technical changes to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

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

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

Not applicable

**9. The agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2)::**

The Department is exempt from an economic, small business, and consumer impact statement for these rules.

**10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking:**

In R17-4-501, to the definition of “specialist”, replaced the comma after the verbiage, “human body” with the verbiage “or to” to better distinguish that the physician’s practice can be limited to patients with a specific age range.

In R17-4-502(C)(2), restructured the sentence by relocating the verbiage “to Department’s Medical Review Program” at the end of the sentence for better flow and clarity.

In R17-4-503, replaced the terminology “field of vision” with “visual field” in order for a better consistency in terminology usage in the rule and with industry.

Minor grammatical and non-substantive technical changes, including punctuation, numbering, and capitalization, were made upon review.

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

The Department did not receive any public or stakeholder comments regarding this rulemaking.

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

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

**a. Whether the rules require a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:**

These rules do not require the issuance of a regulatory permit, license, or agency authorization.

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

Federal regulations in 40 CFR 205.152 and 205.166 are applicable to R17-4-510 and in 49 CFR 571.213 are applicable to R17-4-512. The applicable rules are not more stringent than federal law.

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

No analysis was submitted to the Department.

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

In R17-4-510: 40 CFR 205.152 and 205.166, revised as of July 1, 2019

In R17-4-512: 49 CFR 571.213, revised as of October 1, 2019

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

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

**ARTICLE 5. SAFETY**

Section

- R17-4-501. Definitions
- R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely
- R17-4-503. Vision ~~standards~~ Standards
- R17-4-504. Medical Alert Conditions
- R17-4-506. Neurological Standards
- R17-4-510. Motorcycle ~~noise level limits~~ Noise Level Limits
- R17-4-512. ~~Child restraint~~ Child Restraint Systems in Motor Vehicles

## ARTICLE 5. SAFETY

### R17-4-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, and 28-3005, ~~and 32-1601~~, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” ~~or “licensee”~~ means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

“Application” means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial driver license physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under A.A.C. R17-5-202 and R17-5-204.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

~~“Division” means the Arizona Department of Transportation, Motor Vehicle Division.~~

“Evaluation” means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Department to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license or driving privileges; or

Require an examination or evaluation of an applicant or licensee.

“Medical alert code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

A physician who is a surgeon or a psychiatrist;

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body; or to patients with a specific age range; or

A psychologist.

“Substance abuse” means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or

Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

~~“Substance abuse counselor” is defined in A.R.S. § 28-3005.~~

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

“Successful completion of an examination” means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely; or

Achieves a score of at least 80% on any required tests.

#### **R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely**

~~A. Applicant’s or licensee’s responsibility. To comply with the Division’s screening process for safe operation of a motor vehicle, an applicant or licensee shall:~~

- ~~1. Provide the Division with all requested information about the applicant’s or licensee’s visual, physical, or psychological condition;~~
- ~~2. Successfully complete all required examinations;~~
- ~~3. Obtain all required evaluations;~~
- ~~4. Ensure timely submission of evaluation reports to the Division; and~~
- ~~5. Appear at all required interviews.~~

~~**B.A.** Screening process for safe operation of a motor vehicle. This subsection and subsections (C) through subsection (E) state the screening process for safe operation of a motor vehicle.~~

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license, who shall successfully completes complete all required examinations, shall or obtain an evaluation if:
  - a. The ~~Division~~ Department informs the applicant that the applicant’s responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
  - b. The applicant comes under subsection ~~(C)(1)(a)~~ (B)(1)(a), ~~subsection (C)(1)(e)~~ (B)(1)(c), or ~~subsection (C)(1)(d)~~ (B)(1)(d).

3. An applicant for license renewal shall successfully complete an examination or obtain an evaluation if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license ~~renewal~~ issuance:
  - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
  - b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
4. As soon as ~~an applicant's~~ a licensee's medical condition allows, the ~~applicant~~ licensee shall notify the ~~Division~~ Department, in writing ~~or by telephone~~, that ~~the applicant has or may have~~ a medical condition exists not previously reported to the ~~Division~~ Department that ~~affects~~ may affect the ~~applicant's~~ licensee's functional ability. On receipt of the required notification, the Department shall require the licensee to complete an examination or evaluation.
5. ~~Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:~~
  - a. ~~Complete the medical screening questions and certification on the application, and~~
  - b. ~~Continue with the screening process for safe operation of a motor vehicle.~~

**C.B.** ~~Evaluation, interview, and additional evaluation.~~ An applicant or licensee shall submit to an evaluation, ~~attend an interview, or submit to an additional evaluation~~ as required by the ~~Division~~ Department.

1. The ~~Division~~ Department shall require an evaluation if the ~~Director~~ Department notifies the applicant or licensee in writing that:
  - a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
  - b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
  - c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by ~~Division~~ Department personnel; or
  - d. A person with direct knowledge submits to the ~~Division~~ Department written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit timely, ~~to the Division's Medical Review Program~~, an evaluation report on a form provided by the ~~Division~~ Department ~~to the Department's Medical Review Program~~.
3. ~~If the evaluation report on the applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.~~
4. ~~If the Division is unable to determine whether a disqualifying medical condition exists after an interview with the applicant or licensee, the Division shall require an additional evaluation, performed by an~~

~~appropriate specialist and reported to the Division's Medical Review Program, on a form provided by the Division.~~

~~5.3.~~ An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.

~~D.C.~~ Licensing action. The ~~Division~~ Department shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, or obtain an evaluation and submit an evaluation report, ~~or appear at an interview.~~

1. The ~~Division~~ Department shall deny a driver license if an applicant or licensee:
  - a. Fails to complete successfully an examination; or
  - b. Fails to:
    - i. Obtain an evaluation; or
    - ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the ~~Division~~ Department within 30 days after the ~~Division~~ Department notifies the applicant that an evaluation is required; or
    - iii. ~~Appear at an interview; or~~
  - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
2. The ~~Division~~ Department shall summarily suspend a ~~licensee's driver license~~ an applicant's or licensee's driving privileges under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection ~~(D)(4)~~ (C)(1).
3. The ~~Division~~ Department shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the applicant or licensee that:
  - a. Unless the ~~Division~~ Department receives the applicant or licensee's timely hearing request under subsection ~~(F)~~ (E), the revocation becomes effective:
    - i. Fifteen days after the date the applicant or licensee is personally served with the notice, ~~or~~
    - ii. Twenty days after the date the notice is mailed to the applicant or licensee.
  - b. ~~A person~~ An applicant or licensee who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.
4. The ~~Division~~ Department shall issue a driver license ~~to an applicant~~ or shall not suspend or revoke a ~~licensee's driver license~~ an applicant or licensee's driving privileges if:
  - a. The applicant or licensee successfully completes all required examinations and the ~~Division~~ Department does not require an evaluation, or
  - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.

~~E.D.~~ Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below, to demonstrate functional ability during an examination, the ~~Division~~ Department shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record:

1. Automatic transmission,
2. Hand dimmer switch,
3. Left-foot gas pedal,
4. Parking-brake extension,
5. Power steering,
6. Power brakes,
7. Six-way power seat,
8. Right-side directional signal,
9. A device that enables an operator to spin the steering wheel,
10. A device that enables full foot control,
11. Dual outside mirrors,
12. Chest restraints,
13. Shoulder restraints,
14. A device that extends pedals,
15. A device that enables full hand control, ~~and~~
16. Adapted seat, and
17. Prosthetic aid.

~~**F.E.** Hearings. This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle. The Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.~~

1. ~~If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division's Executive Hearing Office. A hearing request is timely if received by the Division:~~
  - a. ~~Within 15 days after the date the notice is delivered to the applicant or licensee, or~~
  - b. ~~Within 20 days after the date the notice is mailed to the applicant or licensee.~~
2. ~~A.A.C. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.~~
3. ~~The administrative law judge shall sustain, modify, or void the Division's licensing action.~~

~~**G.F.** The ~~Division~~ Department shall not release information required to be submitted to the ~~Division~~ Department under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.~~

**R17-4-503. Vision standards Standards**

**A. Definitions.**

1. "Binocular vision" means the ability to see in both eyes.
2. "~~Biopic Telescopic Lens System~~ telescopic lens system" means a biopic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.

3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
5. "Diplopia" means double vision.
6. ~~"Field of vision" means the area in which objects may be seen when the eye is fixed.~~
- 7.6. "Impaired night vision" means below normal ability to see in reduced light.
- 8.7. "Monocular vision" means the ability to see in one eye only.
- 9.8. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
- 10.9. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
- 11.10. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
- 12.11. "Visual acuity" means the clarity of a person's vision.
12. "Visual field" means the area in which objects may be seen when the eye is fixed.

**B. Standard.** The following applies only to class D, G, or M applicants or licensees:

1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
  - a. ~~The Department shall not license a person with monocular vision and visual acuity of 20/50 or greater.~~
  - b. The Department shall not license a person with binocular vision and visual acuity of 20/70 or greater.
2. ~~Field of vision~~ Visual field. ~~Field of vision~~ Visual field shall be 70 degrees or greater temporally, and 35 degrees or greater nasally, in at least one eye.

**C. Restrictions.**

1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
2. The ~~Division~~ Department shall restrict a person with diagnosed impaired night vision to daytime driving only.
3. The ~~Division~~ Department shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.
4. ~~The Division shall not license a person with monocular vision and visual acuity of 20/50 or greater.~~
5. ~~The Division shall not license a person with binocular vision and visual acuity of 20/70 or greater.~~

**D. Screening process.**

1. The ~~Division~~ Department, a physician, or an optometrist may administer visual acuity and visual field ~~of vision~~ screening through the use of visual screening equipment or the Snellen Chart to determine if a person's visual acuity ~~and field of vision~~ meets minimum standards and through the use of visual screening equipment to determine if a person's visual field meets minimum standards.

2. A person may use a bioptic telescopic lens system during vision screening.
  - a. Beginning on the date of ~~a~~ an initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the ~~Division~~ Department an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
  - b. The ~~Division~~ Department shall not license a person using a bioptic telescopic lens system unless the person submits to the ~~Division~~ Department a ~~written statement from~~ vision examination form provided by the Department and completed by a physician or an optometrist indicating that the individual meets the visual acuity standard as prescribed in subsection (B).
  - c. The ~~Division~~ Department shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.
3. ~~The Division shall conduct visual acuity screening through the use of visual screening equipment or the Snellen Chart to determine whether a person's corrected vision is 20/40 in at least one eye.~~

**E. Reporting requirements.**

1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the ~~Division~~ Department.
2. If the ~~Division~~ Department does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the ~~Division~~ Department shall require the person to submit the results of the person's visual acuity and ~~vision~~ visual field screening by a physician or an optometrist.
3. The ~~Division~~ Department shall require a person diagnosed with any of the following conditions to file the results of the person's visual acuity and visual field screening completed by the physician or optometrist:
  - a. Any progressive eye disease,
  - b. Diplopia, or
  - c. Impaired night vision.

**F. Results of visual acuity and visual field screening from a physician or optometrist shall contain the following.**

1. An examination date no more than three months before the submission date to the ~~Division~~ Department;
2. Visual acuity and visual field-of-vision;
3. If applicable, specification that the person is monocular;
4. If applicable, diagnosis of any condition described in subsection (E)(3);
5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the ~~Division~~ Department;
6. Suggested restrictions on driving, in addition to those required by the ~~Division~~ Department; and
7. Any recommendations on the person's ability to safely operate a motor vehicle.

**G. The ~~Division~~ Department shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.**

**R17-4-504. Medical Alert Conditions**

- A. Definition. In this Section, “license” means any class of driver license, commercial driver license, non-operating identification license, or instruction permit.
- B. Medical alert condition displayed on license. The ~~Division~~ Department will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.
- C. Retention of medical alert condition authorization. The ~~Division~~ Department will not maintain the medical alert code on the ~~Division~~ Department computer record unless written authorization is submitted.
- D. A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the ~~Division~~ Department to maintain the medical alert code ~~in~~ on the ~~Division~~ Department computer record.

**R17-4-506. Neurological Standards**

- A. Driver license application.
  - 1. A person who has a seizure in the three months before applying for a driver license shall undergo ~~a medical examination~~ an evaluation as provided in R17-4-502.
  - 2. After the ~~medical examination~~ evaluation under R17-4-502, the person or the person’s physician shall submit the medical examination report to the ~~Division~~ Department.
  - 3. The ~~Division~~ Department shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person’s ability to operate a motor vehicle safely.
- B. Driver license revocation.
  - 1. A person with a driver license or ~~non-resident~~ nonresident driving privileges who experiences a seizure shall cease driving and:
    - a. Undergo ~~a medical examination~~ an evaluation as provided in R17-4-502;
    - b. Submit the medical examination report to the ~~Division~~ Department; and
    - c. Undergo a follow-up ~~medical examination~~ evaluation within one year after the seizure or within a shorter time, as recommended by a physician.
  - 2. After each ~~medical examination~~ evaluation, the person or the person’s physician shall submit the applicable medical examination report to the ~~Division~~ Department.
  - 3. The ~~Division~~ Department shall revoke a person’s driver license or nonresident ~~driver~~ driving privileges if any medical examination report shows the person has a neurological disorder that affects the person’s ability to operate a motor vehicle safely.
- C. Medical examination report. A medical examination report under this Section shall include the following information:
  - 1. Age at onset of seizures, diagnosis, and history;

2. Aftereffects of seizures;
  3. EEG findings, if any;
  4. Description, cause, frequency, duration, and date of most recent seizure;
  5. Current medications, including dosage, side effects, and serum level; and
  6. A physician's medical opinion as to whether the neurological disorder will affect the person's ability to operate a motor vehicle safely.
- D.** Physician's medical opinion. A neurological disorder does not affect a person's ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:
1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
  2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
  3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
  4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

**R17-4-510. Motorcycle ~~noise level limits~~ Noise Level Limits**

~~A. No person shall operate any motorcycle on the streets or highways of the state of Arizona at any time or under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following noise limits. For the purpose of this Section, "dBA" shall mean "A" weighted decibel, a sound level measurement unit.~~

<del>Model year of motorcycle</del>	<del>Speed limit of 35 m.p.h. or less</del>	<del>Speed limit of more than 35 m.p.h. and less than or equal to 45 m.p.h.</del>	<del>Speed limit of more than 45 m.p.h.</del>
<del>Before 1972</del>	<del>84 dBA</del>	<del>88 dBA</del>	<del>88 dBA</del>
<del>1972-1980</del>	<del>79 dBA</del>	<del>82 dBA</del>	<del>86 dBA</del>
<del>After 1980</del>	<del>76 dBA</del>	<del>80 dBA</del>	<del>83 dBA</del>

- ~~B. The noise limits established by this Section shall be based on measurements taken at a distance of 50 feet from the center of the lane of travel within the specified speed limit. Noise measurements can be made at distances other than 50 feet from the center of the lane of travel. In such cases, the measurement shall be corrected to what it would be at the standard distance of 50 feet, for comparison with the standard.~~
- ~~C. For speed zones of 35 miles per hour or less, notwithstanding the provisions stated above, measurement shall not be made within 200 feet of any intersection controlled by an official traffic device or within 20 feet of the beginning or end of any grade in excess of plus or minus 1%. Measurements shall be made when it is reasonable to assume that the vehicle flow is at a constant rate of speed and measurement shall not be made under congested traffic conditions which require notice able acceleration or deceleration. The Department incorporates by reference 40 CFR 205.152 and 205.166, revised as of July 1, 2019, and no later amendments or~~

editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160952975.

**R17-4-512. ~~Child-restraint~~ Child Restraint Systems in Motor Vehicles**

The ~~Motor Vehicle Division~~ Department incorporates by reference the Federal Motor Vehicle Safety Standards for child restraint systems under 49 CFR 571.213, ~~Federal Motor Vehicle Safety Standard number 213~~ revised as of the October 1, ~~2003~~ 2019, ~~edition~~ and no later amendments or editions. The incorporated material ~~is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001,~~ and is on file with the ~~Division~~ Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160954894.

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

**Definitions of Terms**

**A.R.S. § 28-101. Definitions**

(L20, Ch. 45, sec. 10 & Ch. 78, sec. 1)

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
  - (a) The number of grams of alcohol per one hundred milliliters of blood.
  - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
  - (a) A motor vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is fifty or fewer inches in width.
    - (iii) Has an unladen weight of one thousand two hundred pounds or less.
    - (iv) Travels on three or more nonhighway tires.
    - (v) Is operated on a public highway.
  - (b) A recreational off-highway vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is eighty or fewer inches in width.
    - (iii) Has an unladen weight of two thousand five hundred pounds or less.
    - (iv) Travels on four or more nonhighway tires.
    - (v) Has a steering wheel for steering control.
    - (vi) Has a rollover protective structure.
    - (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
  - (a) A fire department vehicle.
  - (b) A police vehicle.
  - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
  - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
  - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
  - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
8. "Board" means the transportation board.
9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
11. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
13. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
14. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
15. "Conviction" means:
  - (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
  - (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
  - (c) A plea of guilty or no contest accepted by the court.
  - (d) The payment of a fine or court costs.
16. "County highway" means a public road that is constructed and maintained by a county.
17. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
18. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.

19. "Digital network or software application" has the same meaning prescribed in section 28-9551.
20. "Director" means the director of the department of transportation.
21. "Drive" means to operate or be in actual physical control of a motor vehicle.
22. "Driver" means a person who drives or is in actual physical control of a vehicle.
23. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
24. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
  - (a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
25. "Electric miniature scooter" means a device that:
  - (a) Weighs less than thirty pounds.
  - (b) Has two or three wheels.
  - (c) Has handlebars.
  - (d) Has a floorboard on which a person may stand while riding.
  - (e) Is powered by an electric motor or human power, or both.
  - (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.
26. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
27. "Electric standup scooter":
  - (a) Means a device that:
    - (i) Weighs less than seventy-five pounds.
    - (ii) Has two or three wheels.
    - (iii) Has handlebars.
    - (iv) Has a floorboard on which a person may stand while riding.
    - (v) Is powered by an electric motor or human power, or both.

- (vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.
  - (b) Does not include an electric miniature scooter.
28. "Evidence" includes both of the following:
- (a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.
  - (b) An electronic or digital license plate authorized pursuant to section 28-364.
29. "Farm" means any lands primarily used for agriculture production.
30. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.
31. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.
32. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.
33. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.
34. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:
- (a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.
  - (b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.
35. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes

a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

36. "Livery vehicle" means a motor vehicle that:
- (a) Has a seating capacity not exceeding fifteen passengers including the driver.
  - (b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.
  - (c) Is available for hire on an exclusive or shared ride basis.
  - (d) May do any of the following:
    - (i) Operate on a regular route or between specified places.
    - (ii) Offer prearranged ground transportation service as defined in section 28-141.
    - (iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.
37. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.
38. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.
39. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.
40. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.
41. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.
42. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:
- (a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.
  - (b) The vehicle has at least four wheels in contact with the ground.
  - (c) The vehicle seats at least eight passengers, including the driver.
  - (d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.
  - (e) The vehicle is a commercial motor vehicle as defined in section 28-5201.
  - (f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

- (g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.
  - (h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
43. “Motor vehicle”:
- (a) Means either:
    - (i) A self-propelled vehicle.
    - (ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.
  - (b) Does not include a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:
    - (i) “Motorized skateboard” means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.
    - (ii) “Motorized wheelchair” means a self-propelled wheelchair that is used by a person for mobility.
44. “Motor vehicle fuel” includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.
45. “Neighborhood electric vehicle” means a self-propelled electrically powered motor vehicle to which all of the following apply:
- (a) The vehicle is emission free.
  - (b) The vehicle has at least four wheels in contact with the ground.
  - (c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
46. “Nonresident” means a person who is not a resident of this state as defined in section 28-2001.
47. “Off-road recreational motor vehicle” means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

48. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
49. "Owner" means:
- (a) A person who holds the legal title of a vehicle.
  - (b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
  - (c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.
50. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
51. "Personal delivery device":
- (a) Means a device that is both of the following:
    - (i) Manufactured for transporting cargo and goods in an area described in section 28-1225.
    - (ii) Is equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.
  - (b) Does not include a personal mobile cargo carrying device.
52. "Personal mobile cargo carrying device" means an electronically powered device that:
- (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
  - (b) Weighs less than eighty pounds, excluding cargo.
  - (c) Operates at a maximum speed of twelve miles per hour.
  - (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
  - (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.
53. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.
54. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.
55. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and

types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, “essential parts” means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

56. “Residence district” means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.
57. “Right-of-way” when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.
58. “School bus” means a motor vehicle that is designed for carrying more than ten passengers and that is either:
  - (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
  - (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.
59. “Semitrailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, “pole trailer” has the same meaning prescribed in section 28-601.
60. “Single-axle tow dolly” means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.
61. “State” means a state of the United States and the District of Columbia.
62. “State highway” means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.
63. “State route” means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.
64. “Street” or “highway” means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.
65. “Taxi” means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:
  - (a) Does not primarily operate on a regular route or between specified places.

- (b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.
66. “Title transfer form” means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
67. “Traffic survival school” means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.
68. “Trailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, “pole trailer” has the same meaning prescribed in section 28-601.
69. “Transportation network company” has the same meaning prescribed in section 28-9551.
70. “Transportation network company vehicle” has the same meaning prescribed in section 28-9551.
71. “Transportation network service” has the same meaning prescribed in section 28-9551.
72. “Truck” means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.
73. “Truck tractor” means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
74. “Vehicle”:
- (a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.
  - (b) Does not include:
    - (i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.
    - (ii) Devices used exclusively on stationary rails or tracks.
    - (iii) Personal delivery devices.
    - (iv) Personal mobile cargo carrying devices.
75. “Vehicle transporter” means either:
- (a) A truck tractor capable of carrying a load and drawing a semitrailer.
  - (b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

**A.R.S. § 28-3001. Definitions**

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.
2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.
3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:
  - (a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
  - (b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.
  - (c) A bus.
  - (d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.
4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:
  - (a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.
  - (b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.
  - (c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.
5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.
6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.
7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.
8. "Foreign" means outside the United States.
9. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.

10. "Judgment" means a final judgment and any of the following:
  - (a) The finding by a court that an individual is responsible for a civil traffic violation.
  - (b) An individual's admission of responsibility for a civil traffic violation.
  - (c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
  - (d) A default judgment entered by a court pursuant to section 28-1596.
11. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.
12. "Nondomiciled commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.
13. "Original applicant" means any of the following:
  - (a) An applicant who has never been licensed or cannot provide evidence of licensing.
  - (b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.
  - (c) An applicant who has a license from a foreign country.
14. "Revocation" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.
15. "State of domicile" means the state or jurisdiction where a person has the person's true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.
16. "Suspension" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.
17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

**A.R.S. § 36-2021. Definitions**

In this chapter, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.
2. "Alcoholic" means a person who habitually lacks self-control with respect to the use of alcoholic beverages or who uses alcoholic beverages to the extent that the person's health is substantially impaired or endangered or social or economic functions are substantially disrupted.
3. "Approved private treatment facility" means a private agency meeting the standards established by the department and approved pursuant to sections 36-2023 and 36-2029.

4. "Approved public treatment facility" means a treatment agency operating under the directions and control of a county, providing treatment through a contract with a county, meeting the standards established by the department and approved pursuant to sections 36-2023 and 36-2029.
5. "Chronic alcoholic" means an alcoholic who is incapacitated by alcohol and who during the preceding twelve months has been admitted to a local alcoholism reception center on ten or more occasions or has been admitted for three or more episodes of inpatient or residential alcoholism treatment.
6. "Court" means the supreme court, the court of appeals, a superior court, a justice of the peace court, a municipal court or a city court authorized by charter.
7. "Department" means the department of health services.
8. "Director" means the director of the administration.
9. "Evaluation" means a multidisciplinary professional analysis of a person's medical, psychological, social, financial and legal conditions. Persons providing evaluation services shall be properly qualified professionals and may be full-time employees of an approved treatment facility providing evaluation services or may be part-time employees or may be employed on a contractual basis.
10. "Incapacitated by alcohol" means that a person as a result of the use of alcohol is unconscious or has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the person's need for evaluation and treatment, is unable to take care of basic personal needs or safety such as food, clothing, shelter or medical care or lacks sufficient understanding or capacity to make or communicate rational decisions.
11. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the immediate effects of alcohol in the person's system.
12. "Local alcoholism reception center" or "center" means an initial reception agency for a person who is intoxicated or who is incapacitated by alcohol to receive initial evaluation and processing for assignment for further evaluation or into a treatment program.
13. "Treatment" means the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons.

**A.R.S. § 36-2501. Definitions**

A. In this chapter, unless the context otherwise requires:

1. "Board" means the Arizona state board of pharmacy.
2. "Cannabis" means the following substances under whatever names they may be designated:
  - (a) Marijuana.
  - (b) All parts of any plant of the genus cannabis, whether growing or not, its seeds, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt,

- derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of such plant which is incapable of germination.
- (c) Every compound, manufacture, salt, derivative, mixture or preparation of such resin, tetrahydrocannabinol (T.H.C.), or of such plants from which the resin has not been extracted.
3. "Controlled substance" means a drug, substance or immediate precursor in schedules I through V of article 2 of this chapter.
  4. "Department" means the department of public safety.
  5. "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuing basis in order to experience its psychic effects or to avoid the discomfort caused by its absence.
  6. "Drug enforcement administration" means the drug enforcement administration of the department of justice of the United States or its successor agency.
  7. "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.
  8. "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:
    - (a) Opium and opiate and any salt, compound, derivation or preparation of opium or opiate.
    - (b) Any salt, compound, isomer, derivative or preparation which is chemically equivalent or identical with any of the substances referred to in subdivision (a) of this paragraph but not including the isoquinoline alkaloids of opium.
    - (c) Opium poppy and poppy straw.
    - (d) Coca leaves and any salt, compound, derivation or preparation of coca leaves including cocaine and its optical isomers and any salt, compound, isomer, derivation or preparation which is chemically equivalent or identical with any of these substances but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
    - (e) Cannabis.
  9. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.
  10. "Opium poppy" means the plant of the genus papaver, except its seeds.
  11. "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

12. "Production" means the manufacture, planting, cultivating, growing or harvesting of a controlled substance.
  13. "Registrant" means a person registered under the provisions of the federal controlled substances act (P.L. 91-513; 84 Stat. 1242; 21 U.S.C. sec. 801 et seq.).
  14. "Schedule I controlled substances" means the controlled substances identified, defined or listed in section 36-2512.
  15. "Schedule II controlled substances" means the controlled substances identified, defined or listed in section 36-2513.
  16. "Schedule III controlled substances" means the controlled substances identified, defined or listed in section 36-2514.
  17. "Schedule IV controlled substances" means the controlled substances identified, defined or listed in section 36-2515.
  18. "Schedule V controlled substances" means the controlled substances identified, defined or listed in section 36-2516.
  19. "Scientific purpose" means research, teaching or chemical analysis.
  20. "State", when applied to a part of the United States, means any state, district, commonwealth, territory or insular possession of the United States and any area subject to the legal authority of the United States of America.
- B. Words or phrases in this chapter, if not defined in subsection A of this section, have the definitions given them in title 32, chapter 18, article 1, unless the context otherwise requires.

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

**Statutory Authority Including Relevant Statutory Definitions**

**General Authority for Rulemaking**

**A.R.S. § 28-366. Director; rules**

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

**Specific Authority for Rulemaking**

**A.R.S. § 28-364. Powers of the director**

- A.** The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning and guide local transportation planning to assure compliance with federal requirements. The planning authority granted by this subsection does not preempt planning responsibilities and decisions of local governments.
- B.** If the governor declares a state of emergency, the director may contract and do all things necessary to provide emergency transportation services for the residents in the affected areas whether the emergency transportation is by street, rail or air.
- C.** On a determination that it is in this state's best interest, the director may authorize payment for necessary relocation costs in advance of work being performed if an existing facility owned by the United States must be relocated or adjusted due to construction, modification or improvement of a state highway. The director shall base each advance payment on an estimate of cost of the proposed relocation or adjustment prepared by the federal government and acceptable to the director and shall base the final compensation on the actual agreed cost.
- D.** The director of the department of transportation in consultation with the director of the department of public safety shall develop procedures to exchange information for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
- E.** The director may establish a system or process that does all of the following:

1. Allows for mailing notices of service or other legal documents or records of the department electronically or digitally to a person who consents to receiving these notices, documents or records through a secure electronic or digital system.
  2. Enables a person to establish a financial account in the department's database. The account shall be accessible by the person or the person's authorized representative to review statements of all transactions associated with the person's account and to make prepayments or payments for authorized transactions with the department. Notwithstanding any other law, monies in financial accounts established pursuant to this section that remain unexpended for a period of five years or more revert to the Arizona highway user revenue fund and shall be distributed pursuant to section 28-6538.
  3. Allows a person to comply with the photograph update and proof of vision test requirements prescribed by section 28-3173 through electronic or digital means that meet the department's standards.
- F.** The director, in consultation with the Arizona medical board or the state board of optometry, may do all of the following:
1. Establish medical and vision standards for driver license applicants and examinations.
  2. Establish courses of training, training facilities and qualifications and methods of training for driver license examining personnel.
  3. Establish procedures for the certification of driver license examining personnel and driver license instructors personnel.
  4. Direct research in the field of licensing drivers. The director may accept public or private grants for the research.
  5. Conduct research in the field of examination or reexamination of licensing individual drivers with medical or vision problems.
  6. Set minimum vision standards for the operation of a motor vehicle in this state.
- G.** The director may implement electronic or digital versions of driver licenses, nonoperating identification licenses, vehicle registration cards, license plates or any other official record of the department.

**A.R.S. § 28-907. Child restraint system; civil penalty; exemptions; notice; child restraint fund; definitions**

- A.** Except as provided in subsection H of this section, a person shall not operate a motor vehicle on the highways in this state when transporting a child who is under five years of age unless that child is properly secured in a child restraint system.
- B.** The operator of a motor vehicle that is designed for carrying ten or fewer passengers, that is manufactured for the model year 1972 and thereafter and that is required to be equipped with an integrated lap and shoulder belt or a lap belt pursuant to the federal motor vehicle safety standards prescribed in 49 Code of Federal Regulations section 571.208 shall require each passenger who is at least five years of age, who is under eight years of age and who is not more than four feet nine inches tall to be restrained in a child restraint system.

- C. The department shall adopt standards in accordance with 49 Code of Federal Regulations section 571.213 for the performance, design and installation of child restraint systems for use in motor vehicles as prescribed in this section.
- D. A person who violates this section is subject to a civil penalty of fifty dollars, except that a civil penalty shall not be imposed if the person makes a sufficient showing that the motor vehicle has been subsequently equipped with a child restraint system that meets the standards adopted pursuant to subsection C of this section. A sufficient showing may include a receipt mailed to the appropriate court officer that evidences purchase or acquisition of a child restraint system. The court imposing and collecting the civil penalty shall deposit, pursuant to sections 35-146 and 35-147, the monies, exclusive of any surcharges imposed pursuant to sections 12-116.01 and 12-116.02, in the child restraint fund.
- E. If a law enforcement officer stops a vehicle for an apparent violation of this section, the officer shall determine from the driver the age and height of the child or children in the vehicle to assess whether the child or children in the vehicle should be in child restraint systems.
- F. If the information given to the officer indicates that a violation of this section has not been committed, the officer shall not detain the vehicle any further unless some additional violation is involved. The stopping of a vehicle for an apparent or actual violation of this section is not probable cause for the search or seizure of the vehicle unless there is probable cause for another violation of law.
- G. The requirements of this section or evidence of a violation of this section are not admissible as evidence in a judicial proceeding except in a judicial proceeding for a violation of this section.
- H. This section does not apply to any of the following:
  - 1. A person who operates a motor vehicle that was originally manufactured without passenger restraint devices.
  - 2. A person who operates a motor vehicle that is also a recreational vehicle as defined in section 41-4001.
  - 3. A person who operates a commercial motor vehicle and who holds a current commercial driver license issued pursuant to chapter 8 of this title.
  - 4. A person who must transport a child in an emergency to obtain necessary medical care.
  - 5. A person who operates an authorized emergency vehicle that is transporting a child for medical care.
  - 6. A person who transports more than one child under eight years of age in a motor vehicle that because of the restricted size of the passenger area does not provide sufficient area for the required number of child restraint systems, if both of the following conditions are met:
    - (a) At least one child is restrained or seated as required by this section.
    - (b) The person has secured as many of the other children in child restraint systems pursuant to this section as is reasonable given the restricted size of the passenger area and the number of passengers being transported in the motor vehicle.
- I. Before the release of any newly born child from a hospital, the hospital in conjunction with the attending physician shall provide the parents of the child with a copy of this section and information with regard to the

availability of loaner or rental programs for child restraint systems that may be available in the community where the child is born.

- J.** A child restraint fund is established. The fund consists of all civil penalties deposited pursuant to this section and any monies donated by the public. The department of child safety shall administer the fund.
- K.** The department of child safety shall purchase child restraint systems that meet the requirements of this section from monies deposited in the fund. If a responsible agency requests child restraint systems and if they are available, the department of child safety shall distribute child restraint systems to the requesting responsible agency.
- L.** On the application of a person to a responsible agency on a finding by the responsible agency to which the application was made that the applicant is unable to acquire a child restraint system because the person is indigent and subject to availability, the responsible agency shall lend the applicant a child restraint system at no charge for as long as the applicant has a need to transport a child who is subject to this section.
- M.** Monies in the child restraint fund shall not exceed twenty thousand dollars. All monies collected over the twenty thousand dollar limit shall be deposited in the Arizona highway user revenue fund established by section 28-6533.
- N.** For the purposes of this section:
  - 1. “Child restraint system” means an add-on child restraint system, a built-in child restraint system, a factory-installed built-in child restraint system, a rear-facing child restraint system or a booster seat as defined in 49 Code of Federal Regulations section 571.213.
  - 2. “Indigent” means a person who is defined as an eligible person pursuant to section 36-2901.01.
  - 3. “Responsible agency” means a licensed hospital, a public or private agency providing shelter services to victims of domestic violence, a public or private agency providing shelter services to homeless families or a health clinic.

**A.R.S. § 28-955.02. Motorcycle noise level rules**

- A.** The department shall establish by rule maximum operating noise levels for motorcycles operated in this state.
- B.** The rules shall:
  - 1. Provide for varying maximum operational noise levels for motorcycles, categorized by year of manufacture and speed of operation of the motorcycle.
  - 2. Be based on noise reduction levels achieved by reasonable and prudent operation of a motorcycle and proper maintenance of the noise reduction equipment.

**A.R.S. § 28-3005. Medical or psychological reports; immunity; definitions**

- A.** For medical conditions, a physician or registered nurse practitioner, for psychological conditions, a psychologist, physician, psychiatric mental health nurse practitioner or substance abuse counselor who provides information to the director in good faith and at the written request of a driver license applicant or licensee

concerning a person's medical or psychological condition with respect to operation of a motor vehicle is immune from personal liability with respect to the information provided.

**B.** Notwithstanding the physician-patient, nurse-patient or psychologist-client confidentiality relationship, a physician, registered nurse practitioner or psychologist may voluntarily report a patient to the department who has a medical or psychological condition that in the opinion of the physician, registered nurse practitioner or psychologist could significantly impair the person's ability to safely operate a motor vehicle. If a report is made, the physician, registered nurse practitioner or psychologist shall make the report in writing, including the name, address and date of birth of the patient. On receipt of the report, the department may require an examination of the person reported in the manner provided by section 28-3314. A person shall not bring an action against a physician, registered nurse practitioner or psychologist for not making a report pursuant to this subsection. The physician, registered nurse practitioner or psychologist submitting the report in good faith is immune from civil or criminal liability for making the report pursuant to this subsection. The physician's, registered nurse practitioner's or psychologist's report is subject to subpoena or order to produce in an action except an action against the physician, registered nurse practitioner or psychologist submitting the report.

**C.** In this section:

1. "Medical or psychological condition" means a condition that could affect a person's functional ability to safely operate a motor vehicle.
2. "Physician" means a medical doctor, optometrist, chiropractor, naturopathic physician, doctor of osteopathy or doctor of homeopathy who is licensed to practice in this state or another state or who is employed by the federal government and practicing in this state or their agents.
3. "Psychiatric mental health nurse practitioner" means a person certified as a registered nurse practitioner in a psychiatric mental health specialty area under the provisions of title 32, chapter 15.
4. "Psychologist" means a person who is licensed pursuant to title 32, chapter 19.1, who is licensed to practice psychology in another state or who is employed by the federal government and practicing in this state.
5. "Registered nurse practitioner" has the same meaning prescribed in section 32-1601.
6. "Substance abuse counselor" means a person who is licensed by the board of behavioral health examiners in this state, who is licensed or certified in another state, who is certified by a board for certification of addiction counselors, who is a nationally certified addiction counselor or who is employed by the federal government and practicing in this state.

**A.R.S. § 28-3153. Driver license issuance; prohibitions**

**A.** The department shall not issue the following:

1. A driver license to a person who is under eighteen years of age, except that the department may issue:
  - (a) A restricted instruction permit for a class D or G license to a person who is at least fifteen years of age.
  - (b) An instruction permit for a class D, G or M license as provided by this chapter to a person who is at least fifteen years and six months of age.
  - (c) A class G or M license as provided by this chapter to a person who is at least sixteen years of age.

2. A class D, G or M license or instruction permit to a person who is under eighteen years of age and who has been tried in adult court and convicted of a second or subsequent violation of criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or convicted of a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, or who has been adjudicated delinquent for a second or subsequent act that would constitute criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or adjudicated delinquent for an act that would constitute a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, if committed by an adult.
3. A class A, B or C license to a person who is under twenty-one years of age, except that the department may issue a class A, B or C license that is restricted to only intrastate driving to a person who is at least eighteen years of age.
4. A license to a person whose license or driving privilege has been suspended, during the suspension period.
5. Except as provided in section 28-3315, a license to a person whose license or driving privilege has been revoked.
6. A class A, B or C license to a person who has been disqualified from obtaining a commercial driver license.
7. A license to a person who on application notifies the department that the person is an alcoholic as defined in section 36-2021 or a drug dependent person as defined in section 36-2501, unless the person submits a medical examination report that includes a current evaluation from a substance abuse counselor indicating that, in the opinion of the counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle.
8. A license to a person who has been adjudged to be incapacitated pursuant to section 14-5304 and who at the time of application has not obtained either a court order that allows the person to drive or a termination of incapacity as provided by law.
9. A license to a person who is required by this chapter to take an examination unless the person successfully passes the examination.
10. A license to a person who is required under the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited the proof.
11. A license to a person if the department has good cause to believe that the operation of a motor vehicle on the highways by the person would threaten the public safety or welfare.
12. A license to a person whose driver license has been ordered to be suspended for failure to pay child support, except that a noncommercial restricted license may be issued pursuant to section 25-518.
13. A class A, B or C license to a person whose license or driving privilege has been canceled until the cause for the cancellation has been removed.
14. A class A, B or C license or instruction permit to a person whose state of domicile is not this state.

15. A class A, B or C license to a person who fails to demonstrate proficiency in the English language as determined by the department.
- B.** The department shall not issue a driver license to or renew the driver license of the following persons:
1. A person about whom the court notifies the department that the person violated the person's written promise to appear in court when charged with a violation of the motor vehicle laws of this state until the department receives notification in a manner approved by the department that the person appeared either voluntarily or involuntarily or that the case has been adjudicated, that the case is being appealed or that the case has otherwise been disposed of as provided by law.
  2. If notified pursuant to section 28-1601, a person who fails to pay a civil penalty as provided in section 28-1601, except for a parking violation, until the department receives notification in a manner approved by the department that the person paid the civil penalty, that the case is being appealed or that the case has otherwise been disposed of as provided by law.
- C.** The magistrate or the clerk of the court shall provide the notification to the department prescribed by subsection B of this section.
- D.** Notwithstanding any other law, the department shall not issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. For an application for a driver license or a nonoperating identification license, the department shall not accept as a primary source of identification a driver license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law. The director shall adopt rules necessary to carry out the purposes of this subsection. The rules shall include procedures for:
1. Verification that the applicant's presence in the United States is authorized under federal law.
  2. Issuance of a temporary driver permit pursuant to section 28-3157 pending verification of the applicant's status in the United States.

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

- A.** A person who applies for an instruction permit or for a driver license shall use a form furnished by the department.
- B.** An applicant shall pay the fee prescribed by section 28-3002 for a driver license or for an instruction permit issued under section 28-3154, 28-3155, 28-3156 or 28-3225. For a class A, B or C license application, payment of the fee required by this section entitles the applicant to not more than three attempts to pass the written examination or road test within twelve months from the date of the application. The department shall refund an application fee pursuant to section 28-373.
- C.** An applicant for an instruction permit or a driver license shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and domicile residence address in this state, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law.
- D.** The application for an instruction permit or a driver license shall state the following:

1. A brief description of the applicant and any other identifying information required by the department.
  2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued and what state or country issued the license.
  3. If the applicant was never licensed, the applicant's last previous state or country of residence.
  4. The social security number of the applicant.
- E.** The department shall:
1. Verify that a social security number provided by an applicant is a valid number assigned to that applicant.
  2. Retain the social security number in its records.
- F.** The social security number provided to the department pursuant to subsection D of this section for an applicant's driver license or instruction permit shall not appear on an applicant's driver license or instruction permit unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. Except as provided in sections 28-455 and 41-1954, the department shall not release the social security number to any person unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. The provisions of this subsection shall be included in each application.
- G.** The department may adopt and implement procedures to deny a driver license or instruction permit to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a driver license or permit if the person's legal presence status is restored.
- H.** On request of an applicant, the department shall allow the applicant to provide on the license or permit a post office box address that is regularly used by the applicant.
- I.** The department may request an applicant who appears in person for a license, a duplicate license or reinstatement of a driving privilege to complete satisfactorily the vision screening prescribed by the department.
- J.** If a driver license applicant submits satisfactory proof to the department that the applicant is a veteran, on request of the applicant, the department shall allow a distinguishing mark to appear on the license that identifies the person as a veteran.

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

- A.** With good cause, the department may issue the following restricted driver licenses:
1. A driver license with any of the following:
    - (a) Restrictions suitable to the licensee's driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.
    - (b) Restrictions suitable to the licensee's ability to drive a motor vehicle in areas, at locations or on highways or during certain times.
    - (c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.
  2. A class A, B or C driver license that restricts the driver from operating:

- (a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.
  - (b) A vehicle in interstate commerce, if the applicant is not subject to 49 Code of Federal Regulations part 391.
  - (c) A motor vehicle for the purposes of interstate commerce, if an applicant for a class A, B or C license is at least eighteen years of age.
- 3. A class A, B or C driver license with other restrictions that the department determines are appropriate to ensure the safe operation of a commercial motor vehicle by the licensee.
  - 4. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.
  - 5. A special ignition interlock restricted driver license pursuant to chapter 4, article 3.1 of this title.
  - 6. A license restricting the travel of the driver as provided in section 25-518.
- B.** The department may either issue a special restricted license or display the restrictions on the usual driver license form.

**A.R.S. § 28-3164. Original applicants; examination**

- A.** The department may do any of the following:
- 1. Examine an applicant for an original driver license.
  - 2. Accept the examination conducted by an authorized third party pursuant to chapter 13 of this title. Beginning July 1, 2014, the third party must be authorized pursuant to section 28-5101.01 or 28-5101.03.
  - 3. Accept documentation of successful completion of a driver training course approved by the department. Beginning July 1, 2014, for a class D or G license the documentation must be provided by a third party authorized pursuant to section 28-5101.02.
  - 4. Accept documentation that the applicant has successfully completed education on special performance equipment and medically related driving circumstances. Beginning July 1, 2014, the documentation must be provided by a third party authorized pursuant to section 28-5101.02.
  - 5. Accept documentation that the applicant has successfully completed driver education lessons provided by an instructor who is certified by the superintendent of public instruction.
- B.** The examination shall include all of the following:
- 1. A test of the applicant's:
    - (a) Eyesight.
    - (b) Ability to read and understand official traffic control devices.
    - (c) Knowledge of safe driving practices and the traffic laws of this state, including those practices and laws relating to bicycles.

- (d) Knowledge of the effect of using a portable wireless communication device as defined in section 28-914 or engaging in other actions that could distract a driver on the safe or effective operation of a motor vehicle.
  - 2. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a vehicle or vehicle combination of the type covered by the license classification or endorsement for which the applicant applies.
  - 3. Other physical and mental examinations if the department finds them necessary to determine the applicant's fitness to safely operate a motor vehicle on the highways.
- C. The department may examine an original applicant for a class M license or a motorcycle endorsement or the department may accept the examination conducted by an authorized third party pursuant to chapter 13, article 1 of this title or documentation of successful completion of a motorcycle training program approved by the department. Beginning July 1, 2014, the documentation of successful completion of a motorcycle training program must be provided by a third party motorcycle driver license training provider authorized pursuant to section 28-5101.02 or a motorcycle training program approved by the department and provided in another state or by the United States military. The department may examine an applicant who has a motorcycle license from another jurisdiction. This examination shall be the same as for all applicants, except that the department may make modifications it finds necessary to determine the applicant's fitness to operate a motorcycle, motor driven cycle or moped on the highways.
- D. The department shall examine a person who holds a driver license issued by another country and who applies for an initial license in this state as an original applicant, except that the department may waive an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motor vehicle if the person applies for a class D or G license and appears to meet the department's medical qualifications and if the out-of-state license is not revoked or is not expired for more than one year.
- E. The department may waive the driving examination for initial applicants for a class M license or a motorcycle endorsement if all of the following conditions exist:
- 1. The applicant's current license indicates the applicant has been specifically licensed to operate a motorcycle.
  - 2. The applicant appears to meet the department's medical qualifications.
  - 3. The applicant's out-of-state license is not revoked or is not expired for more than one year.

**A.R.S. § 28-3167. Medical code information on license; rules; immunity**

- A. The department shall provide on each driver license and on each nonoperating identification license a space where a licensee may indicate that the licensee suffers from some type of adverse medical condition using a medical code prescribed by the department if the licensee presents a signed statement from a physician who is licensed pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15 stating that the person suffers from the condition.

- B. The department shall prescribe by rule a medical code to identify the medical conditions using a system of numerals or letters commonly accepted by the medical profession. Except for the purposes of entering the medical code on the driver license or nonoperating identification license, and unless the person affirmatively requests in writing that the person wants the medical code as part of the computer record, the department shall not maintain the medical code in the department computer after the department issues the driver license or nonoperating identification license.
- C. The department and this state are exempt from liability for damages from the use of medical code information provided on a license pursuant to this section.

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

- A. Except as provided in subsection B, D or E of this section and unless medical restrictions require a shorter expiration period, a driver license:
  - 1. Is valid until the applicant's sixty-fifth birthday.
  - 2. Is renewable for successive periods of five years after the applicant's sixty-fifth birthday.
  - 3. Expires on the applicant's birthday if the license was issued pursuant to subsection B of this section.
- B. Notwithstanding subsection A of this section:
  - 1. The department shall issue to an applicant a driver license that is valid for not more than five years and six months if the applicant applies within six months of the applicant's next birthday and if the applicant is sixty-four years of age or older, unless medical restrictions require a shorter expiration period.
  - 2. On presentation of satisfactory proof of qualification, the director may issue a class D, G or M license or permit for a period of up to five years to:
    - (a) A person who is an out-of-state student or who is the spouse of an out-of-state student. For the purposes of this subdivision, "out-of-state student" has the same meaning prescribed in section 28-2001.
    - (b) An immediate family member of any active duty military personnel temporarily stationed in this state.
    - (c) Any other person for whom the director determines other circumstances justify the issuance.
- C. An applicant shall apply for renewal of a driver license before the expiration of a current license. The department may require an examination of a renewal applicant for a class D, G or M license as required of an original applicant.
- D. A veteran, as defined in section 41-601, whose driver license expires is not required to renew the veteran's driver license for six months from the date of the veteran's discharge from military service.
- E. The department may extend the expiration date of a class D or M license for a resident if the applicant is not in this state at the time the license expires and will not be in this state for at least thirty consecutive days after the expiration of the driver license. On payment by the applicant of the fee prescribed in section 28-3002, the department shall issue a certificate of extension that is valid only if accompanied by the applicant's previous license. An applicant for extension of a license shall comply with the following:
  - 1. The application requirements of section 28-3158.

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

**A.R.S. § 28-3173. License update**

- A. By written notice the department shall require a licensee to update the licensee's photograph or present or mail to the department in a form prescribed by the department a report based on a vision test performed by the department or an examination by an optometrist or an ophthalmologist or physician licensed to practice medicine, if the license has not been updated in the preceding twelve years.
- B. The director may require a licensee to update the licensee's license at any time during the twelve year period from the date of issuance.

**A.R.S. § 28-3223. Original applicant; requirements; expiration; renewal examination**

- A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:
  1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.
  2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.
  3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:
    - (a) Safety operation rules.
    - (b) Commercial motor vehicle safety control systems.
    - (c) Safe vehicle control.
    - (d) The relationship of cargo to vehicle control.
    - (e) Basic hazardous materials knowledge.
    - (f) The objectives and proper procedures for performing vehicle safety inspections.
    - (g) Air brake systems.
    - (h) Legal requirements for size, weight and vehicle configurations.
    - (i) Emergency procedures.
  4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:
    - (a) Vehicle coupling and uncoupling.
    - (b) Unique combination vehicle inspections.
  5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

- B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within five years according to procedures established by the department.
- C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every five years in a manner prescribed by the department.
- D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:
  - 1. Evidence of compliance with medical standards adopted by the department.
  - 2. Administration of knowledge tests or road tests, or both, as required of an original applicant.

**A.R.S. § 28-3306. Discretionary license suspension or revocation; traffic survival school; hearing**

- A. The department may suspend or revoke the license of a driver or require a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers on a showing by department records or other sufficient evidence that the licensee:
  - 1. Has committed an offense for which mandatory revocation of the license is required on conviction.
  - 2. Has been involved as a driver in an accident resulting in the death or personal injury of another or serious property damage.
  - 3. Has been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with such a frequency that it indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.
  - 4. Has been convicted of reckless driving as provided in section 28-693 or is a habitually reckless or negligent driver of a motor vehicle.
  - 5. Is medically, psychologically or physically incapable of operating a motor vehicle and, based on law enforcement, medical or other department information, the continued operation of a motor vehicle by the licensee would endanger the public health, safety and welfare.
  - 6. Has committed or permitted an act involving an unlawful or fraudulent use of the license.
  - 7. Has committed an offense in another jurisdiction that if committed in this state is grounds for suspension or revocation.
  - 8. Has been convicted of a violation of section 28-1381 or 28-1382.
  - 9. Has been convicted of a violation of section 28-1464.
- B. On receipt of satisfactory evidence of a violation of a driver license restriction, the department may suspend or revoke the driver license.
- C. On suspending or revoking the license of a person or requiring a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers pursuant to this section, the department shall notify the licensee in writing immediately.
- D. On the receipt of the person's request for a hearing, the department shall set the hearing within sixty days. The department may hold the hearing in person, by telephone or by videoconference. If the department holds the hearing in person, the department shall hold the hearing in the county where the licensee resides unless the law

enforcement agency issuing the citation or affidavit that authorizes the suspension or revocation requests at the time of issuance that the hearing be held in the county where the violation allegedly occurred.

- E. If a hearing is held, the department or its duly authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee.
- F. At the hearing, the department shall either rescind its order of suspension or its order requiring the licensee to attend and successfully complete approved traffic survival school educational sessions or, if good cause exists, the department may uphold or extend the order, revoke the license or make any order that is within its discretionary power under this section and that is in the interest of public safety.
- G. If a licensee receives notice requiring the licensee to attend and successfully complete approved traffic survival school educational sessions and the department receives information of noncompliance with this order, the department shall amend the order to suspend or revoke the license.
- H. A person whose driver license is suspended or revoked as provided in subsection A, paragraph 5 of this section may submit a written request to the department for an administrative hearing. The person shall submit the request for a hearing within fifteen days after the department provides the person with notice of suspension or revocation. On receipt of a proper request for a hearing, the department shall provide the person with an opportunity for a hearing in the county where the person resides within thirty days after the department receives the request. The request for a hearing does not stay a summary suspension issued by the department.
- I. The department shall remove a suspension from a record if the person has completed all requirements imposed under this title or by a court in this state, including the successful completion of traffic survival school educational sessions, except for payment of reinstatement fees as prescribed by section 28-3002. The person shall pay the appropriate reinstatement fees that are required under section 28-3002 when conducting a transaction with the department.

**A.R.S. § 28-3314. License reexamination**

- A. If the department has good cause to believe that a licensed driver is incapable of operating a motor vehicle pursuant to section 28-3306, subsection A, paragraph 5 or is otherwise not qualified to be licensed, the department may require the licensee to submit to an examination as prescribed by the department after the department gives at least five days' advance written notice to the licensee. After the examination, the department shall take action as appropriate and may:
  - 1. Suspend or revoke the license.
  - 2. Permit the licensee to retain the license.
  - 3. Restrict the licensee's driving privileges as permitted under section 28-3159.
- B. Refusal or neglect of the licensee to submit to the examination under this section is grounds for suspension or revocation of the license.

- C. The department may use accident information received pursuant to this title and from other governmental agencies to determine if good cause exists to believe that a licensed driver is incapable of operating a motor vehicle pursuant to section 28-3306, subsection A, paragraph 5 or is otherwise not qualified to be licensed.

**A.R.S. § 28-3315. Period of suspension, revocation or disqualification; unlicensed drivers; definitions**

- A. The department shall not suspend, revoke or disqualify a driver license or privilege to drive a motor vehicle on the public highways for more than one year from the date of a conviction or judgment, if any, against a person for which this chapter makes revocation, suspension or disqualification mandatory or from the date the notice is sent pursuant to section 28-3318 if no conviction was involved, except as permitted under subsection E of this section and sections 28-3312, 28-3319 and 28-3320.
- B. A person whose license or privilege to drive a motor vehicle on the public highways has been revoked may apply for reinstatement of the person's license as provided by law after the cause of the revocation is removed or after expiration of the revocation period prescribed by law. The department may reinstate the person's driver license after the department reviews an applicant's driving record in this state or another state or other sufficient evidence to determine that:
  - 1. All withdrawal actions are complete.
  - 2. The applicant has not been convicted of or found responsible for any traffic violations within twelve months preceding application.
  - 3. All other statutory requirements are satisfied.
- C. The department shall not accept an application for reinstatement of a driver license until after the twelve month period prescribed in subsection B of this section has elapsed.
- D. If the department reinstates a person's driver license or driving privilege for a revocation that is related to alcohol or other drugs, the department may accept an evaluation that was performed within the previous twelve months from a physician, a psychologist, a physician assistant, a registered nurse practitioner or a substance abuse counselor indicating that, in the opinion of the physician, psychologist, physician assistant, registered nurse practitioner or substance abuse counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle. For the purposes of reinstating a license or driving privilege pursuant to this article, the department may rely on the opinion of a physician, a psychologist, a physician assistant, a registered nurse practitioner or a substance abuse counselor.
- E. Notwithstanding subsections A and B of this section:
  - 1. A person whose license or privilege to drive is revoked pursuant to section 28-3304, subsection A, paragraph 1 or 11 is not entitled to have the person's license or privilege renewed or restored for three years.
  - 2. A person whose license or privilege to drive is revoked pursuant to section 13-1209 is not entitled to have the person's license or privilege renewed or restored for the period of time ordered by the court.

3. If a license, permit or privilege to drive is revoked pursuant to section 28-661, subsection E the license, permit or privilege may not be renewed or restored except as prescribed by section 28-661, subsections E and F.
  4. A person whose license, permit or privilege to drive is revoked pursuant to section 28-661, subsection G is not entitled to have the person's license, permit or privilege renewed or restored for three years.
- F.** If an unlicensed driver commits an offense for which a driver license could be suspended, revoked or disqualified, the department shall not accept the unlicensed driver's application for a driver license for a period equal to the period of time that applies to a driver with a license. If the offense is one for which a driver license could be revoked, the department shall not accept the unlicensed driver's application for a driver license unless it includes an evaluation from a physician, psychologist, physician assistant, registered nurse practitioner or substance abuse counselor on the habits and driving ability of the person and that the evaluator is satisfied that it is safe to grant the privilege of driving a motor vehicle on the public highways.
- G.** The expiration of a person's license during the period of time it is under suspension, revocation or disqualification does not invalidate or terminate the suspension, revocation or disqualification.
- H.** A person whose license or privilege to drive a motor vehicle on the public highways has been suspended pursuant to section 28-3306, subsection A, paragraph 5 or section 28-3314 may apply for a new license as provided by law after the cause for suspension is removed or after expiration of the suspension period prescribed by law if both of the following conditions are met:
1. The department is satisfied, after reviewing the medical condition and driving ability of the person, that it is safe to grant the person the privilege of driving a motor vehicle on the public highways.
  2. If the person has a medical condition related to alcohol or other drugs, the department may accept an evaluation form from a physician, a psychologist, a physician assistant, a registered nurse practitioner or a substance abuse counselor indicating that, in the opinion of the physician, psychologist, physician assistant, registered nurse practitioner or substance abuse counselor, the condition does not affect or impair the person's ability to operate a motor vehicle in a safe manner.
- I.** For the purposes of this section:
1. "Physician" means a physician who is licensed pursuant to title 32, chapter 13, 17 or 29.
  2. "Physician assistant" means a physician assistant who is licensed pursuant to title 32, chapter 25.
  3. "Psychologist" means a psychologist who is licensed pursuant to title 32, chapter 19.1.
  4. "Registered nurse practitioner" means a registered nurse practitioner who is licensed pursuant to title 32, chapter 15.
  5. "Substance abuse counselor" has the same meaning prescribed in section 28-3005.

**BOARD OF BARBERS**

Title 4, Chapter 5, Articles 1-5, Board of Barbers



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT:** Board of Barbers  
Title 4, Chapter 5

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This Five-Year-Review Report (5YRR) from the Board of Barbers related to rules in Title 4, Chapter 5. The rules cover the following:

**Article 1** - General Provisions

**Article 2** - Examination; Barber and Instructor License Application

**Article 3** - Shops

**Article 4** - Schools

**Article 5** - Hearings

In the last 5YRR of these rules, the Board indicated it would amend several rules. The Board completed a rulemaking that addressed the changes shortly thereafter.

### **Proposed Action**

Currently, the Board is proposing to amend the following rules to improve their overall clarity, conciseness, understandability, and consistency with other rules and statutes.

**R4-5-109** - License Renewal

**R4-5-202** - Barber License Application

**R4-5-203** - Instructor License Application

**R4-5-301** - Application for a License to Operate a Shop

**R4-5-303** - Shop Supervision

**R4-5-401** - Application for a License to Operate a School

Specifically, the Board indicates it plans to amend R4-5-202 to be consistent with statutory changes made by Laws 2018, Chapter 274 and Laws 2019, Chapter 109. The statutory changes, requires the Board to remove language regarding a reciprocity agreement with other states and adding completion of an apprenticeship as an acceptable means of attaining required training.

The Board indicates it plans to complete a rulemaking that addresses the proposed changes by June 20, 2021.

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

Yes, the Board cites to both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board identifies stakeholders as licensees applying to renew a license, applicants seeking an initial license and the Board.

In a rulemaking that went into effect on December 8, 2015, the Board made or amended all of its rules because some rules were out of date with industry standards regarding safety and infection control and protecting the health and safety of barber and patrons. The rulemaking also added protections for students attending a school that closed. At the time of the rulemaking, the Board estimated the rulemaking would result in minor costs for the holder of a license to operate a shop that was not complying with current industry standards regarding safety and infection control and for the holder of a license to operate a school that closes. To reduce the cost of the rulemaking on holders of a license to operate a shop, the change regarding required equipment applied only to shops for which a license to operate was issued after the effective date of the rulemaking. The Board believes its estimate of the economic impact was correct.

At the end of FY2020, there were 7,480 licensed barbers in Arizona and 92 of these were licensed as an instructor. During FY2020, 637 applicants applied for licensure by examination as a barber and 35 applied for licensure by examination as an instructor. The applicants for licensure by examination represent a more than eight percent increase in the number of barbers in Arizona. There were 189 applicants for licensure by reciprocity and 126 applicants for universal recognition (13 percent of total applicants). There are currently 33 persons licensed to operate a school and 1,751 licensed to operate a shop.

In a rulemaking that went into effect on April 8, 2017, the Board amended a rule to indicate the Board would no longer accept cash as payment for a fee. The amendment was made at the request of the Arizona Department of Administration and the Treasurer's Office. The Board estimated the economic impact of the rule change would be minimal and impact only licensees and applicants without an account with a financial institution or a credit or debit card. To date, no one has objected to the fact the Board no longer accepts cash.

In FY2020, the Board received \$405,304 in fees and service charges and fines and was appropriated \$471,700 for FY2021. In response to Executive Order 2020-17, the Board has been waiving some renewal fees but has noticed an increase in the number of persons not renewing their licenses. The Board currently has four FTE employees.

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

The Board determined the benefits of the rules, protecting public health and safety and protecting students, outweigh the costs of the rules and the rules impose the least burden and cost possible to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Board indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates the rules are overall clear, concise, and understandable with the exception of R4-5-109(A)(3).

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

Yes, the Board indicates the rules are overall consistent with other rules and statutes, with the exception of the following, and for the reasons mentioned in the report:

R4-5-202(B) - Barber License Application  
R4-5-303(B)(2) - Shop Supervision

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are overall effective in achieving their objectives with the exception of the following:

R4-5-202 - Barber License Application

R4-5-203 - Instructor License Application  
R4-5-301 - Application for a License to Operate a Shop  
R4-5-401 - Application for a License to Operate a School

**8. Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board indicates the rules are overall enforced as written, with the exception of R4-5-107(B)(2), which indicates the Board will inspect establishments annually. The Board indicates due to the active COVID19 Pandemic, barber shops were shut down, and the Board was unable to inspect establishments. Additionally, the Board states they do not have a full-time inspector at the moment.

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

Not applicable. There are no corresponding federal laws.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a general permit.

**11. Conclusion**

As mentioned above, and for the reasons mentioned in the report, the Board indicates it plans to amend several of its rules to improve overall clarity, conciseness, understandability, and consistency with other rules and statutes. The Board plans to complete a rulemaking by June 30, 2021.

Council staff recommends approval of this report.



Arizona State Board of Barbers  
1740 West Adams Street, Suite 3011  
Phoenix, Arizona 85007  
(602) 542 4498  
Barberboard.az.gov

August 11, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Board of Barbers  
Five-year-review Report  
4 A.A.C. 5, Articles 1 through 5**

Dear Ms. Sornsin:

The Arizona Board of Barbers submits for Council's review and approval the attached five-year review report of its rules, which are at 4 A.A.C. 5. The report is due at the end of this month.

The Board certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Bruce Bueno, the Board's executive director, at 602-542-2716 or [bruce.bueno@barberboard.az.gov](mailto:bruce.bueno@barberboard.az.gov)

Sincerely,

Bruce Bueno  
Executive Director

A handwritten signature in blue ink, appearing to be "Bruce Bueno", written over a horizontal line.

**Five-year-review Report**  
**A.A.C. Title 4. Professions and Occupations**  
**Chapter 5. Board of Barbers**  
**Submitted for November 3, 2020**

INTRODUCTION

The mission of the Arizona Board of Barbers is to preserve the public health and welfare by developing and enforcing adequate sanitation procedures, rules, and laws governing barbers and barbering establishments. The Board accomplishes its mission by communicating with licensees regarding proper sanitation methods and changes in the law; administering barbering examinations; investigating consumer complaints regarding unlawful activities; and resolving complaints by holding hearings, levying fines, and suspending or revoking licenses.

Since the Board's last 5YRR, approved by the Council on March 1, 2016, the legislature made three statutory changes affecting the Board. Under Laws 2018, Chapter 274, the legislature amended several of the Board's statutes to allow completion of an apprenticeship program to substitute for graduation from a licensed school of barbering. The legislative change also authorized the Board to approve a licensed barber as an apprenticeship mentor. Under Laws 2019, Chapter 109, the legislature amended A.R.S. § 32-322 regarding licensure by reciprocity for either an individual licensed in another state or another country. Under Laws 2019, Chapter 55, the legislature amended A.R.S. § 32-4302 regarding universal recognition of an occupational or professional license issued by another state and held by an individual who has established residency in Arizona.

Statute that generally authorizes the agency to make rules:      A.R.S. § 32-304(A)(1)

1. Specific statute authorizing the rule:

R4-5-101: A.R.S. § 32-304(A)(1)

R4-5-102: A.R.S. § 32-328  
R4-5-103: A.R.S. § 32-328  
R4-5-104: A.R.S. § 32-304(A)(1)  
R4-5-106: A.R.S. § 32-328  
R4-5-107: A.R.S. §§ 32-304(B)(2) and 32-325(C)(5)  
R4-5-108: A.R.S. § 41-1073  
Table 1: A.R.S. § 41-1073  
R4-5-109: A.R.S. § 32-327  
R4-5-201: A.R.S. § 32-324  
R4-5-202: A.R.S. § 32-322  
R4-5-203: A.R.S. § 32-323  
R4-5-301: A.R.S. § 32-326  
R4-5-302: A.R.S. § 32-304(A)  
R4-5-303: A.R.S. §§ 32-326, 32-351, and 32-355(A)(6) and (9)  
R4-5-304: A.R.S. §32-304(A)(1)  
R4-5-305: A.R.S. §32-355(A)(4)  
R4-5-401: A.R.S. § 32-325  
R4-5-402: A.R.S. § 32-325  
R4-5-403: A.R.S. § 32-304  
R4-5-404: A.R.S. §§ 32-304(A)(1) and 32-325  
R4-5-405: A.R.S. § 32-325  
Exhibit 1: A.R.S. §§ 32-322 and 32-325  
Exhibit 2: A.R.S. §§ 32-323 and 32-325  
R4-5-406: A.R.S. §§ 32-304(A)(1) and 32-325  
R4-5-407: A.R.S. §§ 32-304(A)(7) and 32-325(B)  
R4-5-408: A.R.S. § 32-304  
R4-5-409: A.R.S. § 32-304  
R4-5-411: A.R.S. §§ 32-304 and 32-325  
R4-5-501: A.R.S. § 32-354  
R4-5-502: A.R.S. § 41-1092.09

2. Objective of the rules:

R4-5-101: Definitions: The objective of this rule is to make the rules clear and understandable by defining terms used in rule or statute.

R4-5-102: Fees and Service Charges: The objective of this rule is to establish the fees charged by the Board for various licensing activities and other services.

R4-5-103: Fee Payment: The objective of this rule is to indicate the methods of fee payment acceptable to the Board and the procedure for determining whether a fee is paid timely.

R4-5-104: Safety and Infection Control Provisions: The objective of this rule is to protect the public by establishing standards for safety and infection control.

R4-5-106: Change of Ownership or Location: The objective of this rule is to enable the Board to remain informed of the ownership and location of each shop and school for which a license to operate has been issued.

R4-5-107: Inspections: The objective of this rule is to provide information regarding the Board's procedure for inspecting schools and shops.

R4-5-108: Licensing Time-frames: The objective of this rule is to establish the time frame within which the Board will act on each license application received.

Table 1: Time-frames (in days): The objective of this rule is to provide in table form the time frame within which the Board will act on each license application received.

R4-5-109: License Renewal: The objective of this rule is to specify the process for renewing a license issued by the Board.

R4-5-201: Examinations: The objective of this rule is to establish procedures the Board follows in administering licensing examinations.

R4-5-202: Barber License Application: The objective of this rule is to establish the information and documents an applicant for licensure, whether by examination or reciprocity, must provide to the Board.

R4-5-203: Instructor License Application: The objective of this rule is to establish the information an applicant for an instructor license must provide to the Board.

R4-5-301: Application for a License to Operate a Shop: The objective of this rule is to prescribe the information that must be provided to the Board with an application for a license to operate a shop.

R4-5-302: Basic Equipment Required in a Shop: The objective of this rule is to specify the minimum equipment requirements for a shop for which a license has been issued.

R4-5-303: Shop Supervision: The objective of this rule is to specify the minimum requirements for supervision of a shop for which a license has been issued.

R4-5-304: Shop Mobile Units: The objective of this rule is to specify the additional requirements for obtaining a license to operate a shop in a mobile unit.

R4-5-305: Display of Barber Pole: The objective of this rule is to clarify that the trademarked barber pole requires a licensed barber be available to provide services when the barber pole is displayed.

R4-5-401: Application for a License to Operate a School: The objective of this rule is to prescribe the application form an applicant is required to submit for a license to operate a school.

R4-5-402: Notification of Changes: The objective of this rule is to ensure the Board has current information regarding a licensed school.

R4-5-403: Use of “Accredited,” “Approved,” or Similar Terms: The objective of this rule is to protect the public from false or misleading advertising.

R4-5-404: School Premises and Basic Equipment: The objective of this rule is to specify the minimum equipment required on the premises of a school.

R4-5-405: School Operations: The objective of this rule is to protect barber trainees by specifying minimum requirements for operating a school.

Exhibit 1: Required Notice to a Barber Trainee: The objective of this rule is to ensure a barber trainee is aware of the requirements for obtaining a barber license.

Exhibit 2: Required Notice to an Instructor Trainee: The objective of this rule is to ensure an instructor trainee is aware of the requirements for obtaining a barber license.

R4-5-406: Student Training and Supervision: The objective of this rule is to protect students by establishing minimum standards for training and supervision.

R4-5-407: School Curriculum: The objective of this rule is to establish minimum curricular requirements for a school.

R4-5-408: School Records: The objective of this rule is to protect students by requiring the owner of a school maintain records of the students' progress and provide regular progress reports to the Board.

R4-5-409: School Closure: The objective of this rule is to protect students by requiring the owner of a school provide notice to each student when a school closes and forward student records to the Board.

R4-5-411: Offsite Training Facility: The objective of this rule is to provide minimum requirements for a school to provide training in a shop rather than at a school location.

R4-5-501: Hearing Procedures: The objective of this rule is to indicate the Board conducts hearings according to the procedures at A.R.S. Title 41, Chapter 6, Article 10.

R4-5-502: Rehearing and Review of Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

3. Are the rules effective in achieving their objectives? Generally yes

The Board believes the rules are effective because it is able to achieve its statutory responsibilities to issue licenses and regulate the practice of barbering in a manner that protects public health and safety and to protect those who attend barbering schools.

However, the following changes are needed to make the rules more effective:

- R4-5-202, R4-5-203, R4-5-301, and R4-5-401 need to be amended to indicate applications are available online and notarization of the applicant's signature is no longer required.
- R4-5-202 and R4-5-203 need to be amended to remove reference to other states with which Arizona does not have a reciprocity agreement.

4. Are the rules consistent with other rules and statutes? No

Although the rules are generally consistent with statute and other rules, the Board needs to make small changes to address the statutory changes made by Laws 2018, Chapter 274 and Laws 2019, Chapter 109. In R4-5-202(B), this requires removing language regarding a reciprocity agreement with other states and adding completion of an apprenticeship as an acceptable means of attaining required training. In the interim, the Board changed its procedures to issue licenses by universal recognition and accept apprenticeship training as qualification for licensure.

R4-5-303(B)(2) cites A.R.S. § 32-351(A) as authority for requiring the most recent Board inspector's record be displayed in a shop. There is no authority for this requirement.

5. Are the rules enforced as written? Mostly yes  
During FY2020, the Board was unable to comply fully with R4-5-107(B)(2), which indicates the Board will inspect establishments annually. Because of the Covid19 pandemic, barbering establishments were closed for several months and Board staff teleworked. They were unable to inspect establishments during this time. At the moment, the Board does not have a full-time inspector.
  
6. Are the rules clear, concise, and understandable? Yes  
The Board determined the rules are clear, concise, and understandable. However, it noticed there is a typographical error in the internal citations in R4-5-109(A)(3).
  
7. Has the agency received written criticisms of the rules within the last five years? No
  
8. Economic, small business, and consumer impact comparison:  
In a rulemaking that went into effect on December 8, 2015 (See 21 A.A.R. 2528) the Board made or amended all of its rules. The economic, small business, and consumer impact statement prepared with that rulemaking was available for review.

The Board did the 2015 rulemaking because some of its rules were out of date with industry standards regarding safety and infection control and protecting the health and safety of barbers and patrons. The rulemaking also added protections for students attending a school that closed. At the time of the rulemaking, the Board estimated the rulemaking would result in minor costs for the holder of a license to operate a shop that was not complying with current industry standards regarding safety and infection control and for the holder of a license to operate a school that closes. To reduce the cost of the rulemaking on holders of a license to operate a shop, the change regarding required equipment applied only to shops for which a license to operate was issued after the effective date of the rulemaking. The Board believes its estimate of the economic impact was correct.

At the end of FY2020, there were 7,480 licensed barbers in Arizona and 92 of these were licensed as an instructor. During FY2020, 637 applicants applied for licensure by examination as a barber and 35 applied for licensure by examination as an instructor. The applicants for licensure by examination represent a more than eight percent increase in the number of barbers in Arizona. There were 189 applicants for licensure by reciprocity and 126 applicants for universal recognition (13 percent of total applicants). There are currently 33 persons licensed to operate a school and 1,751 licensed to operate a shop.

During FY2020, the Board conducted 600 inspections of shops to ensure safety and infections controls were maintained and issued 30 citations against licensees. Many of the citations were for lapsed establishment or personal license, employing an unlicensed individual, or unsanitary conditions. In most cases, the cited licensee consented to pay a civil penalty. During FY2020, the Board received 15 complaints against licensees or unlicensed individuals holding themselves out as licensed.

In a rulemaking that went into effect on April 8, 2017 (See 23 A.A.R. 490), the Board amended R4-5-103(A) to indicate the Board would no longer accept cash as payment for a fee. The amendment was made at the request of the Arizona Department of Administration and the Treasurer's Office, both of which were concerned about the risk of having sums of cash in an unsecured office building. The economic, small business, and consumer impact statement prepared with the rulemaking was available for review. The Board estimated the economic impact of the rule change would be minimal and impact only licensees and applicants without an account with a financial institution or a credit or debit card. To date, no one has objected to the fact the Board no longer accepts cash.

In FY2020, the Board received \$405,304 in fees and service charges and fines and was appropriated \$471,700 for FY2021. In response to Executive Order 2020-17, the Board has been waiving some renewal fees but has noticed an increase in the number of persons not renewing their licenses. The Board currently has four FTE employees.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action in the agency's previous 5YRR: Yes

In the Board's 2015 5YRR, which the Council approved on March 1, 2016, three months after a rulemaking that made or amended all of the Board's rules went into effect (See 21 A.A.R. 2528), the Board indicated no additional changes were needed to the rules.

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 benefits of the rules, protecting public health and safety and protecting students, outweigh the costs of the rules and the rules impose the least burden and cost possible to achieve the underlying regulatory objective.

It is statute that requires:

- Barbers, instructors, schools, and shops to be licensed;
- Licenses to be renewed. Barber and instructor licenses are renewed biennially. Licenses to operate a shop or school are renewed annually;
- An application to be made for any license;
- Licensure fees to be paid;
- A new license to be obtained when a shop or school changes location or ownership;
- Specified minimum qualifications for licensure to be met;
- A security bond be posted before obtaining a license to operate a school;
- A licensing examination that includes both a written part and practical demonstration be passed; and
- Shops and schools pass a Board inspection before beginning to operate.

The following rule provisions, which implement the Board's statutory authority, result in compliance costs for licensees and applicants:

- Paying the fee the Board determined necessary to allow it to fulfill its statutory responsibilities. The Board's fees have not been increased for approximately 15 years;
- Complying with specified safety and infection control provisions;
- Allowing annual inspections by the Board;
- Providing a live model and all necessary barbering implements and supplies for the practical portion of the licensing examination;
- Having an applicant's signature notarized;
- Having specified basic equipment in a shop or in a school;
- Ensuring a shop is properly supervised;
- Requiring the holder of a license to operate a school to provide notice to the Board when certain specified changes occur;
- Providing a non-returnable training kit to each barbering student;
- Providing notice of licensing requirements to students and getting a written acknowledgement of the notice;
- Providing written records of students to the Board;
- Complying with specified student training and supervision requirements;
- Maintaining specified student records;
- Reporting monthly to the Board regarding students;
- Providing notice to enrolled students and the Board when a school closes and obtain written documentation of the notice from all enrolled students; and
- Forwarding student records to the Board when a school closes.

12. Are the rules more stringent than corresponding federal laws? No  
 No federal law is directly applicable to the subject matter of the reviewed rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, does the rule comply with A.R.S. § 41-1037: Yes  
 All of the reviewed rules were made after July 29, 2010. However, the licenses listed in Table 1 are not general permits under A.R.S. § 41-1037. The Board's statutes require that individual licenses be issued to persons qualified by statute and rule:

- Barber: A.R.S. § 32-322
- Instructor: A.R.S. § 32-323
- School: A.R.S. § 32-325
- Shop: A.R.S. § 32-326

14. Proposed course of action:

The Board plans to conduct a rulemaking that addresses the issues identified in this report. It will complete the rulemaking by June 30, 2021.

## Title 4, Ch. 5

Board of Barbers

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 5. BOARD OF BARBERS**

Authority: A.R.S. § 32-301 et seq.

*Editor's Note: 4 A.A.C. 5 consists of new rules for the Board of Barbers that were made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).*

*Editor's Note: 4 A.A.C. 5, formerly the rules for the Board of Barber Examiners, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004. The rescinded Chapter, with Historical Notes, is on file in the Office of the Secretary of State (Supp. 04-2).*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of R4-5-101 through R4-5-108, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).*

Section	
R4-5-101.	Definitions
2	
R4-5-102.	Fees and Service Charges
2	
R4-5-103.	Fee Payment
3	
R4-5-104.	Safety and Infection Control Provisions
3	
R4-5-105.	Repealed 4
R4-5-106.	Change of Ownership or Location
4	
R4-5-107.	Inspections
4	
R4-5-108.	Licensing Time-frames
5	
Table 1.	Time-frames (in days)
5	
R4-5-109.	License Renewal
5	

**ARTICLE 2. EXAMINATION; BARBER AND INSTRUCTOR LICENSE APPLICATION**

*Article 2, consisting of R4-5-201 through R4-5-204, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).*

Section	
R4-5-201.	Examinations
5	
R4-5-202.	Barber License Application
6	
R4-5-203.	Instructor License Application
6	
R4-5-204.	Renumbered 7

**ARTICLE 3. SHOPS**

*Article 3, consisting of R4-5-301 through R4-5-304, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).*

Section	
R4-5-301.	Application for a License to Operate a Shop
7	
R4-5-302.	Basic Equipment Required in a Shop
8	
R4-5-303.	Shop Supervision
8	
R4-5-304.	Shop Mobile Units
8	
R4-5-305.	Display of Barber Pole
8	

**ARTICLE 4. SCHOOLS**

*Article 4, consisting of R4-5-401 through R4-5-411, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).*

05-2).

Section	
R4-5-401.	Application for a License to Operate a School
8	
R4-5-402.	Notification of Changes
9	
R4-5-403.	Use of "Accredited," "Approved," or Similar Terms
9	
R4-5-404.	School Premises and Basic Equipment
9	
R4-5-405.	School Operations
10	
R4-5-406.	Student Training and Supervision
11	
R4-5-407.	School Curriculum
11	
R4-5-408.	School Records
11	
R4-5-409.	School Closure
12	
R4-5-410.	Repealed 12
R4-5-411.	Offsite Training Facility
12	

#### **ARTICLE 5. HEARINGS**

*Article 5, consisting of R4-5-501 through R4-5-502, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp.*

05-2).

Section	
R4-5-501.	Hearing Procedures
12	
R4-5-502.	Rehearing and Review of Decision
12	

## ARTICLE 1. GENERAL PROVISIONS

### R4-5-101. Definitions

The definitions in A.R.S. § 32-301 apply to this Chapter. Additionally, the following definitions apply to this Chapter unless the context otherwise requires:

“Barber pole” means a stationary or revolving sign composed of a vertical cylinder or pole with alternating, diagonal, stripes of any combination including red, white, and blue or a likeness of the sign.

“Barbering implement” means any tool or device used for barbering.

“Certified hour” means instructional hours for which a barber school has issued a student a Certification of Completion or Withdrawal.

“Change of ownership” means there is a change of 10 percent or more of the owners holding a license to operate a shop or school.

“Diploma from a high school or its equivalent,” as used in A.R.S. § 32-323(B), means any of the following:

A document that certifies successful course completion from any accredited secondary school in the United States, a U.S. territory, the District of Columbia, or a foreign country;

A high school equivalency diploma that certifies successful passing of a General Education Development “GED” test; or

An academic degree from an accredited college or university.

“Direct supervision” means a supervisor is physically present and observing the work of a supervisee.

“Disinfect” means the use of chemicals to kill most microbial life that can lead to infection in humans.

“Domestic administration” means barbering performed:

On oneself, or

On another person to whom the practitioner is related as follows:

Father,  
Mother,  
Grandfather,  
Grandmother,  
Child,  
Step-child,  
Brother,  
Sister,  
Foster parent,  
Legal guardian,  
Step-parent, or  
Spouse.

“EPA” means the United States Environmental Protection Agency.

“Establishment” means a distinct physical location in which a shop or school is located but does not include an offsite training facility.

“Instructional hour” means 60 minutes during which a student receives classroom or practical instruction.

“Liquid sanitizer” means a container large enough to immerse completely any barbering implement that requires disinfecting by a solution made from an EPA-registered disinfectant.

“One year’s experience as a licensed barber,” as used in A.R.S. § 32-322(C), means that during 12 consecutive months, an individual:

Maintained a valid license prescribed under A.R.S. § 32-322, and

Engaged in barbering at least 1,500 hours.

“Owner” means a person that has controlling interest in a barber shop or school or the owner’s designee.

“Patron” means an individual who receives barbering services.

“Practiced barbering for at least two years,” as used in A.R.S. § 32-323(B), means that during 24 consecutive months, an individual engaged in barbering at least 1,500 hours during each 12-month consecutive period.

“Tool drawer” means an ultraviolet electrical sanitizer or a clean, dust-proof cabinet, drawer, or other container that is disinfected with an EPA-registered disinfecting agent and used exclusively to store disinfected barbering implements.

“Two years of high school education or its equivalent,” as used in A.R.S. § 32-322(B), means either of the following:

Successfully completing 10 high school credits,

or

Passing a GED test.

“Workstation” means a specific location within a shop, mobile unit, offsite training facility, or school where barbering is performed not including hair-cleaning activity.

### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

### R4-5-102. Fees and Service Charges

A. Under authority of A.R.S. § 32-328, the Board charges the following fees:

1. Barber:

- a. Examination \$100.
- b. License by reciprocity \$175.
- c. Initial license \$40.

- d. Renewal valid for two years \$80.
- 2. Instructor:
  - a. Examination \$100.
  - b. Initial license \$50.
  - c. Renewal valid for two years \$60.
- 3. Shop:
  - a. Application and initial inspection \$150.
  - b. Change of location \$85.
  - c. Change of ownership \$85.
  - d. Renewal \$50 annually.
- 4. Late-renewal fee for any license issued under subsections (A)(1) through (A)(3):
  - a. First time in a five-year period \$25 plus the renewal fee.
  - b. Second time in a five-year period \$50 plus the renewal fee.
  - c. Third time in a five-year period \$75 plus the renewal fee.
- 5. School:
  - a. Application and initial inspection \$1,000.
  - b. Change of location \$500.
  - c. Change of ownership \$500.
  - d. Renewal \$400 annually.
  - e. Late-renewal fee:
    - i. First time in five-year period \$50 plus the renewal fee.
    - ii. Second time in five-year period \$100 plus the renewal fee.
    - iii. Third time in five-year period \$150 plus the renewal fee.
- 6. Re-examination fee for an examinee who failed part of an examination after an original fee assessment under subsection (A)(1)(a) or (A)(2)(a):
  - a. Written \$25.
  - b. Practical \$50.
- 7. A duplicate of any license issued under this Chapter \$20.
- B.** The Board charges the following for copies of non-confidential records:
  - 1. Name and address of licensee \$.25 per licensee.
  - 2. Public records \$.50 per page.
- C.** As authorized under A.R.S. § 44-6852, the Board shall charge and collect from an applicant that provides the Board with a check that is dishonored by the bank the actual amount assessed by the bank plus a \$10 service fee.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-103. Fee Payment**

- A.** A person shall pay any fee required by the Board in full by certified instrument, money order, or credit or debit card.
- B.** The Board shall consider a fee payment timely if:
  - 1. The Board receives the fee on or before the date due, or
  - 2. The fee is postmarked or electronically submitted on or before the date due.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4). Section amended by final rulemaking at 23 A.A.R. 490, effective April 8, 2017 (Supp. 17-1).

**R4-5-104. Safety and Infection Control Provisions**

- A.** A licensee under A.R.S. Title 32, Chapter 3, and this Chapter shall adhere to the following safety and infection control procedures:
  - 1. Use barbering implements that are:
    - a. New if intended for use on a single patron and disposed of immediately after use in a covered waste receptacle; or
    - b. In good repair, free of defect, and disinfected as described in subsection (A)(2) if intended for multiple use;
  - 2. Disinfect any barbering implement intended for multiple use according to the following procedure:
    - a. For a non-electric barbering implement and removable parts of an electric barbering implement, other than a scissors or razor:
      - i. Remove all hair or debris;
      - ii. Wash with soap and water;
      - iii. Rinse with clean water;
      - iv. Completely immerse in an EPA-registered disinfectant used according to manufacturer's instructions;
      - v. Dry with a clean cloth or air dry; and
      - vi. Store in a tool drawer;
    - b. For a scissors or a razor:
      - i. Follow the procedure under subsection (A)(2)(a); or
      - ii. Wipe the scissors or razor with a cloth bearing an EPA-registered disinfectant used according to manufacturer's instructions and store the scissors or razor in a tool drawer; and
    - c. For an electric barbering implement:
      - i. Remove all hair or debris;
      - ii. Wipe or spray any parts that contact a patron with an EPA-registered disinfectant used according to manufacturer's instructions; and
      - iii. Store in a tool drawer.
  - 3. Care and storage of barbering products. A licensee shall dispense any barbering product listed under subsection (A)(3)(a) according to the procedure prescribed under subsection (A)(3)(b).
    - a. A barbering product under this subsection includes any:
      - i. Oil,
      - ii. Gel,
      - iii. Shampoo,
      - iv. Cream,

- v. Antiseptic,
  - vi. Clay,
  - vii. Ointment,
  - viii. Waxes, or
  - ix. Other product intended for use on a patron,
- b. Product-dispensing procedure. Avoid direct manual contact with a barbering product by:
    - i. Using a manufacturer's dispensing device included with the original container; or
    - ii. Using a new disposable or disinfected reusable spoon, spatula, or similar dispensing implement when no manufacturer dispensing device is included with the original container;
  - c. After a barbering product is dispensed, do not return any portion of the dispensed product to the original container; and
  - d. Maintain all barbering product containers with clear, correct labels indicating contents and intended use;
4. Ensure that the disinfecting solution required under subsection (A)(2) is changed if it becomes contaminated or according to the manufacturer's instructions;
  5. Maintain towels or cloths for patron use that are:
    - a. New and disposed immediately after use if intended for single use,
    - b. Disinfected by laundering with detergent and chlorine bleach if intended for multiple use,
    - c. Stored in a closed container when disinfected before use, and
    - d. Stored in a closed, ventilated, container separate from disinfected towels or cloths after use;
  6. Maintain a separate, covered, non-leaking, receptacle for garbage and hair and empty, clean, and disinfect the receptacle daily;
  7. Exposure to blood or other body fluids. If there is a blood spill or exposure to other body fluids while performing a barbering service, a licensee shall stop the service and:
    - a. If the blood spill or body fluid is on a patron, the licensee shall:
      - i. Put disposable gloves on both of the licensee's hands;
      - ii. Use a disposable instrument to clean the wound with an antiseptic solution and dispose of the soiled instrument immediately;
      - iii. Use a disposable instrument to apply powdered alum, styptic powder, or a cyanoacrylate to stop bleeding and dispose of the soiled instrument immediately;
      - iv. Cover the wound with a sterile bandage; and
      - v. Dispose of the gloves used;
    - b. If the blood spill or body fluid results from an injury to the licensee, the licensee shall comply with subsections (A)(7)(a) (ii) through (iv) and cover the affected area with a clean, fluid-proof glove or finger cover;
    - c. If the blood spill or body fluid contacts any surface area, the licensee shall disinfect the surface area with an EPA-registered disinfectant used according to the manufacturer's instructions; and
    - d. If the blood spill or body fluid contacts any barbering instrument, the licensee shall disinfect the barbering instrument as specified in subsection (A)(2);
  8. Patron protection. A licensee shall protect the health and safety of a patron by:
    - a. Washing the licensee's hands with liquid or powder soap and water before serving each patron;
    - b. Disinfecting the head rest of the barber or styling chair after each use or at least daily;
    - c. Placing a clean towel or paper sheet on the head rest of the barber or styling chair for each patron;
    - d. Using a clean neck strip with each patron to avoid having the patron contact a non-sanitized object;
    - e. Not performing a barbering service on a patron while the licensee has a contagious disease unless a medically-approved measure is used to prevent transmission of the disease; and
    - f. Not knowingly performing a barbering service on a patron who has a contagious disease;
  9. Prohibited products. To protect the health and safety of a patron, a licensee shall not use any of the following products when performing barbering services:
    - a. Methyl Methacrylate liquid monomers;
    - b. Alum or other astringents in stick or lump form;
    - c. Fumigants such as formalin (formaldehyde) tablets or liquids;
    - d. Any product that penetrates the dermis layer of the skin; and
    - e. Any product that is banned or deemed to be poisonous or unsafe by any responsible federal, state, or local governmental entity.
  10. Prohibited practices. To protect the health and safety of a patron, a licensee shall not engage in the following practices when performing barbering services:
    - a. Allow any animal except a service animal on the establishment premises. A covered aquarium that is maintained in a sanitary condition is allowed; or
    - b. Use a shaving brush and mug unless the shaving brush and mug are personally owned by the patron.
- B.** In addition to licensee requirements under subsection (A), the holder of a license to operate a shop or school shall:
1. Ensure that flooring within six feet of each workstation is made of smooth, durable, and impervious material;
  2. Maintain all furniture and fixtures of each establishment in a clean and orderly manner at all times;
  3. Provide at least one restroom located on or near the establishment premises; and
  4. Comply with all state, local, and federal requirements.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-105. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section repealed by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-106. Change of Ownership or Location**

- A.** A license issued to operate a shop or school is not transferable to:
1. A location other than the location specified on the license; or
  2. An owner other than the owner specified on the license.
- B.** A change in the owner or location of a shop or school requires that the owner apply for a new license.
- C.** At least 15 days before a change in location or ownership of a shop or school, the owner of the re-located shop or school or the new owner shall submit the following to the Board:

1. Written notification of the change;
2. A completed application to operate a shop, as prescribed under R4-5-301, or school, as prescribed under R4-5-401; and
3. The applicable fee prescribed under R4-1-102(A)(3)(b), (A)(3)(c), (A)(5)(b), or (A)(5)(c).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-107. Inspections**

- A.** Applicability. This Section applies to any barbering establishment operating within Arizona and any establishment for which application for licensure has been made.
- B.** Time of inspection. An inspector designated by the Board:
  1. Shall inspect the premises of each establishment for which an application for licensure has been made,
  2. Shall inspect each establishment's premises one or more times per calendar year, and
  3. May inspect an establishment at any time permitted under A.R.S. § 32-304(B)(2).
- C.** Inspection procedure. According to the requirements of A.R.S. Title 32, Chapter 3, and this Chapter, the Board's inspector shall document that:
  1. Each applicable license issued is current and displayed as prescribed under A.R.S. § 32-351;
  2. Equipment and barbering implements are present, clean, and in appropriate quantity to the number of employees in the establishment;
  3. Each product, implement, and procedure is maintained or followed appropriately by establishment staff; and
  4. All applicable statutes and rules are followed.
- D.** Inspection findings. An inspector shall submit a copy of a completed inspection report to:
  1. The license holder or individual assigned by the license holder to operate the inspected establishment; and
  2. The Board.
- E.** Disciplinary action. The Board shall follow disciplinary procedures prescribed under A.R.S. §§ 32-352 through 32-356 for any inspection finding indicating a violation of any provision under A.R.S. Title 32, Chapter 3, or this Chapter.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-108. Licensing Time-frames**

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for all licenses issued by the Board under A.R.S. Title 32, Chapter 3, and this Chapter is specified in Table 1. An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no 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 a license issued by the Board is specified in Table 1 and begins on the date the Board receives a license application.
  1. If the application is incomplete, the Board shall send the applicant a notice of administrative deficiency specifying the information or documents required to complete the application. The administrative completeness review and overall time-frames are suspended until the Board receives the missing information or documents.
  2. If the application is complete, the Board shall send the applicant a notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) for a license issued by the Board begins on the postmark date of the notice of administrative completeness sent under subsection (B)(2).
  1. As part of the substantive review for an initial shop or school license, the Board shall inspect the applicant's premises according to the procedure prescribed under R4-5-107.
  2. During the substantive review time-frame, the Board may send a single comprehensive written notice of request for additional information that includes a written statement of the additional information needed for the Board to make a decision. The substantive review and overall time-frames are suspended from the postmark date of the comprehensive written request for additional information until the Board receives the additional information. The Board and the applicant may agree in writing to allow the Board to submit additional supplemental requests for information.
- D.** The Board shall close the file of an applicant if the applicant fails to submit all required information to the Board within the time specified in Table 1. If a person whose file is closed wishes to be considered further for licensure, the person shall submit another application and fee.
- E.** Within the overall time-frame specified in Table 1, the Board shall:
  1. Grant a license to a person that meets all requirements in A.R.S. Title 32, Chapter 3 and this Chapter; or
  2. Deny a license to a person that fails to meet all requirements in A.R.S. Title 32, Chapter 3 and this Chapter. The Board shall include in the notice of denial the reason for the denial and information regarding the right to appeal the denial under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**Table 1. Time-frames (in days)**

License	Authority	Overall Time-frame	Administrative Time-frame	Time to Respond	Substantive Time-frame	Time to Respond
Barber	A.R.S. §§ 32-322; 32-327	28	21	90	7	30
Instructor	A.R.S. §§ 32-323; 32-327	28	21	90	7	30
School	A.R.S. §§ 32-325; 32-327	90	30	30	60	60
Shop	A.R.S. §§ 32-326; 32-327	90	30	30	60	60

**Historical Note**

Table 1 made by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-109. License Renewal**

- A.** To renew any license issued under this Chapter, a licensee shall submit to the Board:
1. The application for renewal form attached to the license issued by the Board;
  2. The renewal fee for the applicable license as prescribed under R1-4-102(A)(1)(d), (A)(2)(c), (A)(3)(d), or (A)(5)(d):
    - a. No earlier than 30 days before the expiration date, and
    - b. No later than midnight on the expiration date; and
  3. If the documentation submitted under R4-5-202(D)(3), R4-5-203(C)(4), R4-5-301(B)(2)(a)(v), or R4-5-401(C)(4)(a)(iii) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired.
- B.** As provided under A.R.S. § 32-355, a licensee that fails to renew a license timely shall immediately cease providing the services authorized by the license.
- C.** An expired license issued under this Chapter may be renewed within five years after the date of expiration by complying with subsection (A) and paying the late-renewal fee prescribed under R4-5-102.

**Historical Note**

New Section R4-5-109 renumbered from R4-5-204 and amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**ARTICLE 2. EXAMINATION; BARBER AND INSTRUCTOR LICENSE APPLICATION****R4-5-201. Examinations**

- A.** Required examinations.
1. Except for an applicant for licensure by reciprocity, an applicant for:
    - a. A barber license shall pass an examination covering the topics listed in A.R.S. § 32-324(C); and
    - b. An instructor license shall pass the examination described in A.R.S. § 32-324(D);
  2. As authorized under A.R.S. § 32-322(A)(2) and A.R.S. § 32-323(A)(2), the Board shall ensure that applicants for licensure by reciprocity possess necessary qualifications by requiring:
    - a. All applicants for licensure by reciprocity to pass an examination regarding A.R.S. Title 32, Chapter 3 and this Chapter; and
    - b. Applicants for licensure by reciprocity as an instructor to pass an examination regarding procedures the Board uses to measure the practical skills of barbering students.
- B.** In addition to requirements prescribed under A.R.S. § 32-324, the Board shall make the following provisions for any examination administered by the Board:
1. The Board shall send an applicant written notification of an assigned examination time and location at least seven days before a scheduled examination.
  2. Examination language provision. The Board shall:
    - a. Administer an examination under this Section in English; and
    - b. Allow an applicant for a barber license to provide a reader or personal foreign language interpreter who shall not be:
      - i. A currently or previously licensed barber or cosmetologist,
      - ii. A barber or cosmetology instructor, or
      - iii. A barber or cosmetology student in any state or foreign country.
  3. Examination integrity provision. The Board shall not:
    - a. Disclose examination questions; or
    - b. Return a completed examination or other examination records kept by the Board to a school or applicant.
  4. The Board shall dismiss an applicant from an examination under penalty of examination fee forfeiture if the applicant:
    - a. Cheats, or
    - b. Solicits any information from another person except the examiner.
  5. The Board shall require re-examination if an applicant fails to apply for a license within one year after passing an examination.
  6. For purposes of an examination's practical portion, an applicant for a barber license shall supply:
    - a. All necessary barbering implements and supplies; and
    - b. A live model who shall not be:
      - i. A currently or previously licensed barber or cosmetologist,
      - ii. A barber or cosmetology instructor, or
      - iii. A barber or cosmetology student in any state or foreign country.
  7. If an applicant fails a portion of an examination, the Board shall allow the applicant to meet with Board staff and participate in a general discussion of the failed portion of the examination if the applicant submits a written request to the Board within 30 days after the examination.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-202. Barber License Application**

- A.** An applicant for licensure as a barber shall attach the following to the application attachments required under subsections (B) or (C):
1. Proof that the applicant is at least 16 years old;
  2. Proof that the applicant has at least two years of high school education or its equivalent. Acceptable proof includes an official transcript from the high school attended or a copy of a high school diploma or GED;
  3. Documentation specified under A.R.S. § 41-1080(A) that the applicant's presence in the U.S. is authorized under federal law;
  4. A photograph, as prescribed under A.R.S. § 32-322(A)(3), that is suitable for use on an identification card and:
    - a. Of the applicant only;
    - b. U.S. passport sized; and
    - c. Signed by the applicant across the front without blocking the face;
  5. If currently licensed as a barber in another state with which Arizona does not have a reciprocity agreement, a copy of the license; and
  6. The applicable fee specified in R4-5-102(A)(1).
- B.** License by examination. In addition to the requirements under subsection (A), an applicant for licensure by examination shall submit an application form, which is available from the Board, and provide the following information:
1. Full name;
  2. Other names, if any, by which the applicant has been known;
  3. Full address;

4. Telephone number;
  5. Social Security number;
  6. Date and place of birth;
  7. Unless currently licensed in another state with which Arizona does not have a reciprocity agreement, name and location of barber school attended;
  8. Unless currently licensed in another state with which Arizona does not have a reciprocity agreement, the number of certified hours obtained from a barber school;
  9. A statement whether the applicant has ever been licensed as a barber in Arizona and if so, when;
  10. A statement whether the applicant has ever been licensed in another state or country as a barber or apprentice barber and if so, when and where;
  11. A statement whether the applicant has had a barber license suspended or revoked in the five years before the date of application and if so, a complete explanation of the circumstances;
  12. Any other information required by the Board; and
  13. The applicant's notarized signature and verification that the information provided is correct and complete.
- C.** License by reciprocity. In addition to the requirements under subsections (A) and (B)(1) through (6) and (9) through (13), an applicant for licensure by reciprocity shall submit the following:
1. A copy of a current barber license issued by a state with which Arizona has a reciprocity agreement; and
  2. Documentation of at least one year of barbering work experience. The documentation shall contain the notarized signature of the barber where the work was performed.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

#### **R4-5-203. Instructor License Application**

- A.** An applicant for licensure as an instructor shall attach the following to the application required under subsections (B) and (C):
1. Proof that the applicant is at least 19 years old;
  2. Proof that the applicant has a high school diploma or its equivalent;
  3. Proof that the applicant has practiced barbering for at least two years. The proof shall contain the notarized signature of the barber or barbers where the work was performed;
  4. Documentation specified under A.R.S. § 41-1080(A) that the applicant's presence in the U.S. is authorized under federal law;
  5. A photograph that is suitable for use on an identification card and:
    - a. Of the applicant only;
    - b. U.S. passport sized; and
    - c. Signed by the applicant across the front without blocking the face;
  6. If currently licensed as a barber instructor in another state with which Arizona does not have a reciprocity agreement, a copy of the license; and
  7. The applicable fee specified in R4-5-102(A)(2).
- B.** License by examination. In addition to the requirements under subsection (A), an applicant for licensure by examination shall submit an application form, which is available from the Board, and provide the following information:
1. Full name;
  2. Other names, if any, by which the applicant has been known;
  3. Full address;
  4. Telephone number;
  5. Social Security number;
  6. Birth date;
  7. Current Arizona barber license number;
  8. If the applicant attended school for training as a barber instructor:
    - a. Name and address of barbering school attended for instructor training;
    - b. Total hours of instructor training; and
    - c. Dates during which instructor training was obtained;
  9. A statement regarding whether the applicant:
    - a. Has ever been licensed as a barber instructor in Arizona and if so, when;
    - b. Has ever been a licensed barber instructor in any other country or state and if so, the country or state and dates of licensure as a barber instructor; and
    - c. Has had a former instructor license suspended or revoked in the five years before the date of application and if so, a complete explanation of the circumstances;
  10. Any other information required by the Board; and
  11. The applicant's notarized signature verifying that the information provided is correct and complete.
- C.** License by reciprocity. In addition to the requirements under subsections (A) and (B)(1) through (6) and (9) through (11), an applicant for an instructor license by reciprocity shall submit the following:
1. A copy of the current license to instruct barber students issued by a state that has a reciprocity agreement with Arizona; and
  2. Documentation of at least one year's experience as a licensed instructor of barber students. The documentation shall contain the notarized signature of the owner of the barber school at which instruction was provided.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

#### **R4-5-204. Renumbered**

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section R4-5-204 renumbered to R4-5-109 by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

### **ARTICLE 3. SHOPS**

#### **R4-5-301. Application for a License to Operate a Shop**

- A.** To apply for a license to operate a shop, a person shall submit to the Board the items under subsections (B) and (C). A person that intends to operate more than one shop shall apply for and be issued a separate license to operate each shop. A person shall not operate a

shop before a license is issued.

- B.** On a form available from the Board, an applicant for a license to operate a shop shall provide the following information:
1. Indicate the applicant's requested licensing action:
    - a. A license to operate a new shop;
    - b. A change of location of an operating shop including the following information:
      - i. The Board file number, and
      - ii. Both the old and new addresses of the shop; or
    - c. A change of ownership of an operating shop including the following information:
      - i. Former owner's name;
      - ii. Former shop name, if the shop name is changed;
      - iii. Board file number; and
      - iv. A copy of the shop's bill of sale or the signature of the former owner on the application;
  2. Ownership information:
    - a. If the owner is an individual or partnership:
      - i. Name,
      - ii. Address,
      - iii. Telephone number,
      - iv. Social Security number of the individual or each partner owning at least 10 percent of the partnership, and
      - v. Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of the individual or each partner owning at least 10 percent of the partnership is authorized under federal law; or
    - b. If the owner is a corporation:
      - i. Corporate name;
      - ii. Names of all individuals owning at least 10 percent of the corporation;
      - iii. Tax identification number of the corporation;
      - iv. Name and telephone number of a contact person;
      - v. Name and address of the statutory agent, if required by law;
      - vi. Address of the corporation; and
      - vii. Telephone number of the corporation;
  3. Shop information:
    - a. Shop name,
    - b. Full physical address of the shop,
    - c. Telephone number, and
    - d. A map of approximate shop location indicating the names of major cross streets;
  4. If known at the time of application, the name and Arizona license number of the barber who will directly supervise the shop on behalf of the license holder;
  5. A projected date for the shop to open;
  6. A list of equipment in the shop including the total number of the following:
    - a. Barber or styling chairs,
    - b. Sinks with hot and cold running water,
    - c. Tool drawers,
    - d. Liquid sanitizers,
    - e. Workstations,
    - f. Soiled-towel receptacles, and
    - g. Garbage and hair receptacles;
  7. A description of the shop's floor covering;
  8. An indication of whether a license to operate the shop has been or will be obtained from the Board of Cosmetology;
  9. Any other information required by the Board; and
  10. The applicant's verification that the information contained on the application is correct and complete, and the applicant's notarized signature.
- C.** Fee. In addition to the completed application form required under subsection (B), an applicant shall submit to the Board the fee specified in R4-5-102(A)(3) for the licensing action requested under subsection (B)(1).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-302. Basic Equipment Required in a Shop**

- A.** The holder of a license to operate a shop shall ensure that the shop has at least the following equipment:
1. A barber or styling chair;
  2. One sink, which has hot and cold running water, for every two barber or styling chairs and located no more than six feet from the barber or styling chairs;
  3. Liquid or powder soap and paper towels for use at each sink;
  4. A separate, covered, receptacle for each of the following:
    - a. Garbage and hair, and
    - b. Reusable towels or cloths that are soiled;
  5. One tool drawer and one liquid sanitizer for each barber or styling chair and the necessary EPA-registered disinfectants for each;
  6. One wall mirror located near each barber or styling chair;
  7. One workstation for each barber or styling chair; and
  8. Cabinet in which to store additional supplies.
- B.** Subsection (A)(2) applies only to shops licensed under R4-5-301 after the effective date of this Section.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-303. Shop Supervision**

- A.** The holder of a license to operate a shop shall designate a barber licensed under this Chapter to directly supervise the shop during

all hours of operation.

- B.** A license holder or supervising barber shall ensure that:
1. Every individual, whether an employee or independent contractor, who practices barbering in the shop has a current license issued under A.R.S. § 32-322 and R4-5-202;
  2. Each required license and the most recent Board inspector's record are displayed according to A.R.S. § 32-351(A); and
  3. Each licensee complies with all applicable provisions of A.R.S. Title 32, Chapter 3, and this Chapter.
- C.** The Board shall hold a license holder and any supervising barber responsible for any violation of an applicable provision of A.R.S. Title 32, Chapter 3, or this Chapter.
- D.** The holder of a license to operate a shop who is an Arizona-licensed barber may directly supervise the shop.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-304. Shop Mobile Units**

- A.** To operate a mobile unit as a shop, the owner of the mobile unit shall make application for a license under R4-5-301.
- B.** The Board shall issue a license to operate a mobile unit as a shop only if:
1. The mobile unit is self-contained;
  2. The mobile unit meets all requirements for a shop specified under A.R.S. Title 32, Chapter 3, and this Chapter; and
  3. The owner of the mobile unit agrees to provide the Board with written or oral notice at least 15 days before the mobile unit is placed in a location or moved to a new location.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-305. Display of Barber Pole**

- A.** Under A.R.S. § 32-355(A)(4), it is unlawful to display a sign or advertise as being engaged in the practice or business of barbering without being licensed under A.R.S. Title 32, Chapter 3, and this Chapter.
- B.** The Board has trademarked through the Office of the Secretary of State the barber pole as a sign of the barbering business.
- C.** A business shall not display a barber pole unless a barber licensed under A.R.S. Title 32, Chapter 3, and this Chapter is available to provide barbering services during the business hours that the barber pole is displayed.

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**ARTICLE 4. SCHOOLS**

**R4-5-401. Application for a License to Operate a School**

- A.** Before submitting an application under this Section, an applicant for a license to operate a school may request that Board staff review the proposed application and perform a courtesy inspection of the proposed school location.
- B.** The owner of a barber school that operates in more than one location, except at an offsite training facility, shall apply for and obtain a separate license to operate the barber school at each location.
- C.** On a form available from the Board an applicant for a license to operate a barber school shall provide the following information:
1. Indicate the applicant's requested licensing action:
    - a. A license to operate a new school;
    - b. A change of location of an operating school including the following information:
      - i. The Board file number, and
      - ii. Both the old and new addresses of the school; or
    - c. A change of ownership of an operating school including the following information:
      - i. Former owner's name;
      - ii. Former school name, if the school name is changed;
      - iii. Board file number; and
      - iv. A copy of the school's bill of sale or the signature of the former owner on the application;
  2. School information:
    - a. School name;
    - b. Physical location address of the school; and
    - c. Telephone number;
  3. Applicant information:
    - a. Name,
    - b. Address, and
    - c. Telephone number;
  4. Owner information:
    - a. If the owner is an individual or partnership:
      - i. Name of the individual and all partners owning at least 10 percent of the partnership,
      - ii. Social Security number of the individual and all partners owning at least 10 percent of the partnership, and
      - iii. Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of the individual and all partners owning at least 10 percent of the partnership is authorized under federal law; or
    - b. If the owner is a corporation:
      - i. Corporate name;
      - ii. Names of all individuals owning at least 10 percent of the corporation;
      - iii. Tax identification number of the corporation;
      - iv. Name and telephone number of a contact person;
      - v. Name and address of the statutory agent, if required by law;
      - vi. Address of corporation; and
      - vii. Telephone number of corporation;
  5. School supervisor information:
    - a. Name, and
    - b. Arizona instructor license number;
  6. A list of equipment in the school including the total number of the following:
    - a. Barber chairs,
    - b. Sinks,

- c. Tool drawers,
  - d. Liquid sanitizers,
  - e. Latherizers,
  - f. Soiled-towel receptacles,
  - g. Garbage and hair receptacles,
  - h. Workstations, and
  - i. Student lockers;
7. A description of the floor covering in the area in which students practice barbering skills;
  8. Number and square footage of classrooms;
  9. Number of students to be admitted;
  10. Number of licensed instructors;
  11. Hours during which instruction will be provided;
  12. A projected date for the Board's initial inspection;
  13. Any other information required by the Board; and
  14. The applicant's verification, under oath, that the information contained on the application is correct and complete, and the applicant's notarized signature.
- D.** An applicant for a license to operate a school shall attach the following to the application required under subsection (C):
1. A current school catalog,
  2. A list of all courses offered at the school and the number of instructional hours devoted to each course, and
  3. A copy of the bond in the amount required under A.R.S. § 32-325(C)(6).
- E.** Fee. In addition to the completed application required under subsections (C) and (D), an applicant shall submit to the Board the fee specified under R4-5-102(A)(5) for the licensing action requested under subsection (C)(1).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-402. Notification of Changes**

The holder of a license to operate a school shall send written notice and updated information to the Board within 15 days if the license holder:

1. Amends the school catalog,
  2. Stops offering a course,
  3. Offers a new course,
  4. Changes the number of instructional hours devoted to a course listed under R4-5-401(D),
  5. Changes the hours during which instruction is provided,
  6. Changes the school name,
  7. Changes the school supervisor,
- or
8. Establishes an offsite training facility in a shop under the provisions of R4-5-411.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-403. Use of "Accredited," "Approved," or Similar Terms**

If "accredited," "approved," or a similar term appears in a school catalog or advertisement, the holder of the license to operate the school shall ensure that the catalog or advertisement includes the name of the accrediting or approving organization.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-404. School Premises and Basic Equipment**

**A.** In addition to the requirements of A.R.S. § 32-325(C)(2) and (C)(3), the holder of a license to operate a school shall ensure that the school has at least the following:

1. An instructor, licensed in Arizona, to teach each required course;
2. Instructional furnishings and fixtures for instructor and student use;
3. A workstation for each student scheduled for practical instruction;
4. Filing cabinets for school and student records;
5. Chalkboards or other writing boards;
6. A dispensary to prepare, mix, store, and dispose of supplies and chemicals used to disinfect barbering implements;
7. One latherizer for every five barber chairs;
8. One sink, with hot and cold running water, liquid or powder soap, and towels for every two barber chairs;
9. A student library that contains:
  - a. A dictionary;
  - b. Current barbering manuals and textbooks;
  - c. A current copy of A.R.S. Title 32, Chapter 3; and
  - d. A current copy of this Chapter;
10. A time clock; and
11. All equipment, implements, materials, and supplies necessary for student instruction.

**B.** The holder of a license to operate a school shall ensure that each student workstation has at least the following:

1. A barber chair;
2. A wall mirror located behind the barber chair;
3. A tool drawer that meets the standard in R4-5-101; and
4. One liquid sanitizer and one spray disinfectant.

**C.** The holder of a license to operate a school shall ensure that each student at a workstation has access to the following:

1. A covered receptacle for soiled towels and cloths;
2. A covered receptacle for garbage and hair; and
3. A sufficient supply of barbering products listed under R4-5-104(A)(3).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-405. School Operations**

- A.** The holder of a license to operate a school shall file the school's operating schedule with the Board before the first scheduled class begins.
- B.** The holder of a license to operate a school shall ensure that all equipment provided under this Chapter is of sufficient quality to meet the educational needs of students and maintained in good repair.
- C.** Unless a student who is studying barbering possesses the equipment listed under this subsection at the time of enrollment, the holder of a license to operate a school shall provide the student with a non-returnable training kit that includes the following equipment, all of which are new:
1. Course textbooks,
  2. One mannequin for barbering practice,
  3. Twelve combs and four brushes,
  4. One hair dryer,
  5. One straight razor with interchangeable blades,
  6. One pair of haircutting shears with at least six-inch blades,
  7. One pair of thinning shears,
  8. One clipper with interchangeable blades sizes 1 and .000 or an adjustable clipper,
  9. One neck duster, and
  10. One copy of the current statutes and rules governing the Board.
- D.** Trainee notices. At the time the holder of a license to operate a school enrolls a student, the license holder shall give Exhibit 1 or 2 to the student, as appropriate, and maintain the completed document for the time specified in R4-5-408(H).
- E.** An instructor trainee shall not teach students until the instructor trainee has received 40 instructional hours of training in methods of teaching. An instructor trainee shall complete all training in no more than six months.
- F.** An individual who is not an Arizona-licensed instructor shall not teach in a school but may demonstrate any process, product, or appliance to students when the individual is under the supervision of an Arizona-licensed instructor.
- G.** Within five days after enrolling a student, the holder of a license to operate a school shall send the following to the Board:
1. A copy of the student's written application to attend the school containing the following:
    - a. The student's name and address,
    - b. The student's enrollment date,
    - c. An indication regarding whether the student is enrolled in a barber or instructor course, and
    - d. The student's signature, and
  2. Two photographs of the student that meet the standards specified in R4-5-202(A)(4).
- H.** Within 90 days after enrolling a student, the holder of a license to operate a school shall send the following to the Board:
1. Proof that the student is at least 16 years old if enrolled in a barber course or at least 19 years old if enrolled in an instructor course;
  2. Proof that the student has at least a tenth-grade education if enrolled in a barber course or graduated from high school or its equivalent if enrolled in an instructor course; and
  3. Documentation specified under A.R.S. § 41-1080(A) that the student's presence in the U.S. is authorized under federal law.
- I.** The Board shall use the information provided under subsection (G) to prepare and issue an educational card to a student. The holder of a license to operate a school shall ensure that a student:
1. Displays the card at the student workstation, and
  2. Returns the card to the Board upon completion of, or withdrawal from, the course.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**Exhibit 1. Required Notice to a Barber Trainee**

NOTICE

This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training that will qualify you to apply for a license to be a barber in Arizona. The Arizona State Board of Barbers will not issue you a license unless:

1. You are at least 16 years of age when you apply for the license,
2. You demonstrate to the Board that you have completed and received appropriate credits for at least two years of high school education or its equivalent, and
3. You document that your presence in the U.S. is authorized under federal law.

It is your responsibility to make sure you meet the requirements of the Board of Barbers. If you are unsure about whether you meet the requirements, you should contact the Board of Barbers for further information.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I acknowledge that I received and understand the foregoing Notice.  
(student signature and date)

**Historical Note**

New Exhibit 1 made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Exhibit 1 amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**Exhibit 2. Required Notice to an Instructor Trainee**

NOTICE

This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training that will qualify you to apply for a license to be a barber instructor in Arizona. The Arizona State Board of Barbers will not issue you a license unless:

1. You are at least 19 years of age when you apply for the license,

2. You demonstrate to the Board that you hold a high school diploma or its equivalent; and
3. You document that your presence in the U.S. is authorized under federal law.

It is your responsibility to make sure you meet the requirements of the Board of Barbers. If you are unsure about whether you meet the requirements, you should contact the Board of Barbers for further information.

#### ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I acknowledge that I received and understand the foregoing Notice.  
(student signature and date)

#### Historical Note

New Exhibit 2 made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Exhibit 2 amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

#### **R4-5-406. Student Training and Supervision**

- A. The holder of a license to operate a school shall ensure that students are graded at least monthly and informed of their grades and instructional hours completed.
- B. A licensed instructor may assist students in the performance of barbering.
- C. A student shall not dismiss a patron until a licensed instructor inspects and approves the student's work.
- D. A student shall not attend a school for more than eight hours per day.
- E. A student may receive a maximum of 20 instructional hours for field trips pertaining to barbering.
- F. A student may receive up to 50 percent of the student's training at an offsite training facility operated under the provisions of R4-5-411.
- G. A licensed instructor shall not ask a student to perform barbering on a patron while the student is engaged in classroom instruction or taking a written examination.
- H. A student shall wear a name tag during school attendance that clearly identifies the student by name and student status.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

#### **R4-5-407. School Curriculum**

- A. The holder of a license to operate a school shall ensure that the barbering curriculum offered complies with A.R.S. § 32-325(B).
- B. In addition to the minimum requirements under A.R.S. § 32-325(B)(1), the license holder shall include instruction in the following:
  1. Professional ethics,
  2. Shop management, and
  3. Regulatory provisions prescribed under A.R.S. Title 32, Chapter 3, and this Chapter.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

#### **R4-5-408. School Records**

- A. The holder of one license to operate a school shall keep a student's records at the student's enrollment location.
- B. The holder of multiple licenses to operate multiple schools may keep a student's records at the student's enrollment location or a location that serves all the schools operated by the same license holder.
- C. The holder of a license to operate a school shall at least weekly enter into each student's record the following:
  1. The date of the recorded entry,
  2. Each subject studied and the number of instructional hours for each subject,
  3. An indication whether instruction in a subject listed under subsection (C)(2) was classroom or practical, and
  4. The student's signature on a paper copy of the record to acknowledge accuracy of information in the record within three days after each record update.
- D. The holder of a license to operate a school shall maintain a complete and accurate record file for each student that includes:
  1. The signed contract made between the student and the school,
  2. The student's current transcript,
  3. The applicable original notice required under R4-5-405(D), and
  4. Both the record created under subsection (C) and the student-signed paper copy of the record.
- E. Within 15 days after the end of each month, the holder of a license to operate a school shall submit a report to the Board that includes:
  1. A list of each student who graduated during the month;
  2. The name and license number of:
    - a. The supervising instructor, and
    - b. Each instructor providing classroom or practical instruction during the month;
  3. A list of all students currently enrolled and:
    - a. A list of total instructional hours earned by each student during the month;
    - b. A list of each student's cumulative instructional hours; and
    - c. A copy of the student-signed reports required under subsection (C)(4) and prepared during the month;
  4. The name of any student who, during the month:
    - a. Transferred to another school,
    - b. Withdrew, or
    - c. Took a leave-of-absence;
 and
  5. The signature of the holder of the license to operate the school or the license holder's representative verifying that all information provided is correct and complete.
- F. If a student transfers from one school to another, the holder of the license to operate the school from which the student transferred shall:
  1. Make final entries to ensure the student's transcript is complete and accurate, and
  2. Forward a copy of the student's transcript to the student and Board within three days after the student provides notice of transfer.
- G. When a student graduates or withdraws from a school, the holder of the license to operate the school shall:
  1. Complete a Student's Completion of Hours or Withdrawal form;
  2. Certify the number of hours completed by the student;

3. Have the form notarized; and
  4. Forward a copy of the form to the graduating or withdrawing student and the Board.
- H.** The holder of a license to operate a school shall maintain the student record file required under subsection (D) permanently unless required under R4-5-409(E) to forward the records to the Board.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-409. School Closure**

- A.** The Board shall consider a school closed if the school fails for five consecutive school days to provide instruction in accordance with the operating schedule on file with the Board.
- B.** Closure notification. The holder of the license to operate a school that is closing shall deliver written or oral notice of the school's closure to each currently enrolled student and the Board:
1. Ten days before closure if the license holder can reasonably anticipate the school closure, or
  2. Within five days after closure if the school's closure could not be reasonably anticipated by the license holder.
- C.** The holder of the license to operate a school that is closing shall ensure that the notice provided to currently enrolled students under subsection (B) includes the following information:
1. When a full refund of paid tuition will be provided to the student,
  2. How to make a claim against the bond required under A.R.S. § 32-325(C)(6) and R4-5-401(D)(3),
  3. How to obtain a copy of the student's transcript and certification of hours completed,
  4. How to obtain possession of the training kit provided under R4-5-405(C) and other personal possessions, and
  5. How to access the student's records in the future.
- D.** The holder of the license to operate a school that is closing shall obtain a signed statement from each currently enrolled student verifying that the license holder complied with subsection (C).
- E.** Disposition of student records. The holder of the license to operate a school that is closing shall:
1. Ensure that all student records are updated as required under R4-5-408(C) through the last day on which instruction was provided;
  2. Forward all records for currently enrolled students to the Board within 10 days after the school closes; and
  3. Forward to the Board a copy of all the signed statements required under subsection (D).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-410. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section repealed by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-411. Offsite Training Facility**

- A.** The holder of a license to operate a school may operate an offsite training facility in a shop that complies with the provisions of A.R.S. § 32-325(C) and R4-5-404(A)(11), R4-5-405(B), (E), and (F), and R4-5-406(B), (C), (D), (G), and (H).
- B.** In addition to subsection (A), a license holder operating an offsite training facility shall comply with the following:
1. R4-5-404(A)(1), (3), (6), (7), (8), and (9) if only practical instruction is provided at the facility; or
  2. Requirements of subsection (B)(1) and R4-5-404(A)(2) and (A)(5) if classroom instruction is provided at the facility.
- C.** In addition to the requirements of subsections (A) and (B), a license holder operating an offsite training facility shall:
1. Clearly indicate to the public the specific portion of the shop designated as an offsite training facility,
  2. Post a sign indicating that barbering services at the offsite training facility are provided by students,
  3. Require a student to give oral notice of status as a student to each patron, and
  4. Restrict student barbering to the portion of the shop designated as an offsite training facility.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**ARTICLE 5. HEARINGS**

**R4-5-501. Hearing Procedures**

For purposes of A.R.S. § 32-354(D), the Board shall conduct all formal hearings according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

**R4-5-502. Rehearing and Review of Decision**

- A.** The Board shall provide for a rehearing and review of a decision under A.R.S. Title 41, Chapter 6, Article 10.
- B.** Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision 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, an administrative law judge, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
  7. The Board's decision is a result of passion or prejudice; or

8. 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 to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F.** If a motion for rehearing or review is based upon an affidavit, the affidavit shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days if the parties agree.
- G.** Not later than 30 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H.** If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.
- I.** If the Board makes a specific finding that a particular administrative decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final administrative decision without an opportunity for rehearing or review.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2). Section amended by final rulemaking at 21 A.A.R. 2528, effective December 8, 2015 (Supp. 15-4).

As of 3/16/2020

### 32-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Barber" means a person who is licensed to practice barbering pursuant to this chapter.
2. "Barbering" means any one or a combination of the following practices if they are performed on a person's head, face, neck or shoulders for cosmetic purposes:
  - (a) Cutting, clipping or trimming hair.
  - (b) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
  - (c) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.
  - (d) Providing hair attachments, extensions, hairpieces and wigs when performed by a barber.
  - (e) Shaving or trimming a beard.
  - (f) Providing skin care.
3. "Board" means the board of barbers.
4. "Instructor" means a person who is licensed to teach barbering pursuant to this chapter.
5. "Mentor" means a barber who is approved by the board to train a person in a department of economic security-approved apprenticeship program in barbering in an establishment that is licensed by the board.
6. "School" means an establishment that is operated for the purpose of teaching barbering.
7. "Shop" or "salon" means an establishment that is operated for the purpose of engaging in the practice of barbering.

### 32-302. Board of barbers; appointment; qualifications; terms

A. A board of barbers is established consisting of the following five members appointed by the governor:

1. One barber who has been actively practicing barbering in this state for at least five years.
2. One member who is a holder of a barber school license who is a barber or a holder of a shop or salon license who is a barber or a barber who has been actively practicing barbering in this state for at least five years. Preference will be given to a holder of a barber school license then to a holder of a barber shop or salon license and then to a barber.
3. One holder of a barber shop or salon license who is a barber.

4. Two public members preferably one of whom is an educator.

B. A public member shall not be associated, directly or indirectly, with the manufacture of barber appliances or supplies or their rental, sale or distribution to licensees or represent the barbering industry in any manner.

C. The terms of office of board members are five years beginning and ending June 30. Members shall not serve more than two consecutive terms.

D. The governor may remove a board member for neglect of duty, malfeasance or misfeasance.

32-303. Organization; meetings; compensation

A. The board shall annually elect a chairman and vice-chairman from its membership.

B. The board may hold meetings at times and places it designates.

C. A majority of the members of the board constitutes a quorum.

D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day of actual service in the business of the board.

32-304. Powers and duties

A. The board shall:

1. Make and adopt rules that are necessary or proper for the administration of this chapter, including sanitary and safety requirements for schools and shops or salons, sanitary and safety standards for the practice of barbering and mobile unit requirements.

2. Administer and enforce this chapter and rules adopted pursuant to this chapter.

3. Maintain a record of its acts and proceedings, including issuance, refusal, renewal, suspension and revocation of licenses, and a record of the name, address and license date of each licensee.

4. Keep the records of the board open to public inspection at all reasonable times.

5. Furnish a copy of its rules to a barber or to the owner or manager of each shop or salon on request.

6. Have a seal, the imprint of which shall be used to evidence its official acts.

7. Prescribe minimum school curriculum requirements.

8. Approve a barber as a mentor based on the barber's record of compliance with this chapter. The board may not condition the approval on the barber's payment of an additional fee or completion of an additional requirement.

B. The board may:

1. Subject to title 41, chapter 4, article 4, employ an executive director who has been a licensed barber for at least five years preceding employment and other personnel it deems necessary. The board shall compensate its executive director and other personnel as determined pursuant to section 38-611.
2. Inspect the premises of any school, shop or salon during business hours.

#### 32-305. Board of barbers fund

A. A board of barbers fund is established. Except as provided in subsection C of this section, before the end of each calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of barbers fund.

B. Monies deposited in the board of barbers fund are subject to section 35-143.01.

C. Monies from civil penalties received pursuant to section 32-352 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

#### 32-321. Nonapplicability of chapter

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Medical practitioners licensed pursuant to this title who treat physical or mental ailments or disease.
2. Persons who perform services without compensation in case of emergency or in domestic administration.
3. Commissioned physicians and surgeons serving in the armed forces of the United States or other federal agencies.
4. Students attending schools licensed pursuant to this chapter while they are on school premises during school hours.
5. Persons licensed pursuant to chapter 5 or 12 of this title.
6. Shampoo assistants who shampoo hair under the direction of a barber licensed pursuant to this chapter.
7. Persons who are in the custody of the state department of corrections and who perform services for persons in the custody of the state department of corrections.
8. Persons who are participating in a department of economic security-approved apprenticeship program in barbering as described in section 32-322 while working with a mentor in an establishment that is licensed by the board.

#### 32-322. Barber license; application; qualifications

A. An applicant for a barber license shall file the following with the board:

1. A written application on a form prescribed by the board.
2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.
3. One signed photograph.

B. Each applicant shall:

1. Be at least sixteen years of age.
2. Complete and receive appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submit satisfactory evidence that the person is at least sixteen years of age.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.

5. Either:

(a) Be a graduate of a school that is licensed pursuant to this chapter or a graduate of a school or program in another state that at the time of the applicant's graduation met the barber licensing requirements of that state.

(b) Complete a United States department of labor-approved or a department of economic security-approved apprenticeship program in barbering that includes at least two hundred fifty hours of instruction as described in section 32-325, subsection B, paragraph 1. The instruction prescribed by this subdivision shall be completed through either:

(i) A school that is licensed pursuant to this chapter or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.

(ii) A department of economic security-approved apprenticeship program.

C. An applicant who holds a valid license to practice barbering issued by another state is exempt from subsection B, paragraph 3 of this section if the applicant submits both of the following to the board:

1. Proof that the applicant has one year of experience as a barber.
2. A document signed by the applicant stating that the applicant has read and understands the laws prescribed by this chapter.

D. An applicant who holds a valid license or authorizing document to practice barbering issued by another country and whose presence in the United States is authorized under federal law is exempt from subsection B, paragraph 5 of this section if all of the following apply:

1. The board determines that the applicant is proficient in barbering.

2. The applicant completes at least three hundred fifty hours of education at a school or program that is licensed pursuant to this chapter.

3. The applicant signs a document stating that the applicant has read and understands the requirements of this chapter.

E. Notwithstanding subsection B, paragraph 5 of this section, an applicant for a barber license who holds a cosmetologist license or a hairstylist license issued pursuant to chapter 5 of this title shall complete a three hundred fifty-hour course of study consisting of barbering techniques in a barbering school licensed pursuant to this chapter.

### 32-323. Instructor license; application; qualifications

A. An applicant for an instructor license shall file the following with the board:

1. A written application on a form prescribed by the board.
2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.

B. An applicant shall:

1. Be at least nineteen years of age.
2. Hold a diploma from a high school or its equivalent as prescribed by the board in its rules.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.
5. Have practiced barbering for at least two years.

C. An applicant who holds a valid instructor's license to instruct barber students issued by another state which has, in the opinion of the board, licensure requirements which are substantially equivalent to the requirements of this state and which grants similar reciprocal privileges to barbers licensed by this state and who has at least one year's experience as a licensed instructor is exempt from subsection B, paragraph 3.

### 32-324. Examinations

A. Examinations shall be given at least every three months at times and places determined by the board.

B. Examinations shall contain a written part and a practical demonstration part which may include oral questions.

C. Barber examinations shall test the applicant's knowledge:

1. Of sanitary practices and safety for all barbering procedures.
2. In the use of all instruments, equipment or chemicals permitted in barbering.

D. Instructor examinations shall be limited to the subjects taught in courses that the applicant seeks to teach.

E. A passing grade on an examination is a score of seventy-five per cent or better on both the written and practical parts of the examination.

F. If an applicant who is eligible to take an examination fails to do so at either of the next two scheduled examinations, the application is deemed to be cancelled and the application fee is forfeited.

G. If an applicant fails an examination he is entitled to a reexamination.

H. If an applicant fails either part of the examination he shall only retake the part of the examination he failed.

I. An applicant desiring to be reexamined shall apply to the board on forms it prescribes and furnishes and pay the prescribed reexamination fee.

**32-325. School license; application; qualifications**

A. An applicant for a license to operate a school shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.

B. A course of instruction in a licensed school which teaches barbering shall consist of at least one thousand five hundred hours of instruction of not more than eight hours in any one working day. The course of instruction shall include:

1. At least two hundred fifty hours devoted to the study of the fundamentals of barbering, hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics and diseases of the skin, hair and glands.

2. At least one thousand two hundred fifty hours devoted to the practice and study of massaging and manipulating muscles of the scalp, face and neck, hair cutting, shaving and chemical work relating to permanent waves and hair straightening, coloring and bleaching.

C. A licensed school shall:

1. Be operated under the general supervision of a licensed instructor.

2. Have and maintain sufficient equipment to properly train all its students in the use, function and operation of equipment which is at the time in use in barbering.

3. Provide:

(a) Separate lecture rooms or classrooms.

(b) Locker spaces for students.

(c) An area appropriate in size for the placement of the training equipment.

4. Require that a student pass examinations in all phases of barbering before he graduates.
  5. Pass an inspection by the board before a school license is issued.
  6. Furnish to the board and maintain in force a bond in the sum of twenty-five thousand dollars approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of the state for failure to comply with the requirements of this chapter and conditioned that the school licensed pursuant to this chapter shall afford to its students the full course of instruction required pursuant to this chapter, in default of which the full amount of the tuition paid by the student shall be refunded.
- D. The student to instructor ratio in a school shall be not more than twenty to one.
- E. Instructors shall not apply their time to private practice with or without compensation in a school or during school hours.
- F. Students shall not teach other students.
- G. Students shall be under the constant supervision of an instructor.

**32-326. Shop or salon license; application; qualifications**

- A. An applicant for a license to operate a shop or salon shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.
- B. An applicant shall:
1. Comply with the rules of the board concerning health, safety and sanitation.
  2. Comply with the applicable health and safety laws and rules of other state agencies and political subdivisions.
  3. Pay the prescribed fee.
- C. A shop or salon licensed pursuant to this chapter shall be under the direct supervision of a barber.

**32-327. License expiration and renewal**

- A. Except as provided in section 32-4301, a barber or instructor license expires every two years on the licensee's birth date, unless it is renewed within thirty days before the licensee's birth date by payment of the prescribed renewal fee and compliance with other requirements for renewal.
- B. Except as provided in section 32-4301, a school or shop or salon license expires June 30 each year, unless it is renewed within thirty days before its expiration date by payment of the prescribed renewal fee and compliance with other requirements for renewal.
- C. A barber or instructor license which is not renewed before it expires may be renewed within five years after its expiration by payment of the prescribed renewal fee and late renewal fee for each year the license is expired and compliance with other requirements for renewal.

D. Any license paid for with an insufficient funds check is deemed null and void until such time as a certified check, money order or cash is tendered as payment for the license.

32-328. Fees; penalty

A. The board shall establish and collect fees, not to exceed the following amounts:

1. Barber examination, two hundred dollars.
2. Barber license, one hundred dollars.
3. Barber license by reciprocity, two hundred dollars.
4. Barber license renewal fee, one hundred dollars.
5. Barber late renewal fee, one hundred fifty dollars.
6. Instructor examination, two hundred dollars.
7. Instructor license, one hundred dollars.
8. Instructor license renewal fee, one hundred dollars.
9. Instructor late renewal fee, one hundred fifty dollars.
10. Application for school license and initial inspection fee, one thousand dollars.
11. School license after change of location, five hundred dollars.
12. School license after change of ownership, five hundred dollars.
13. School license renewal fee, five hundred dollars.
14. School late renewal fee, five hundred fifty dollars.
15. Application for shop or salon license and initial inspection fee, two hundred fifty dollars.
16. Shop or salon license after change of location, two hundred dollars.
17. Shop or salon license after change of ownership, one hundred fifty dollars.
18. Shop or salon license renewal fee, one hundred dollars.
19. Shop or salon late renewal fee, one hundred fifty dollars.
20. Practical reexamination, fifty dollars.
21. Written reexamination, twenty-five dollars.

B. A duplicate license shall be issued to replace a lost license if a licensee files a verified statement as to its loss and pays a twenty dollar fee. Each duplicate license issued shall have the word "duplicate" stamped across the face.

C. If the board receives an insufficient funds check, it may charge a ten dollar penalty fee.

### 32-329. Schools; postsecondary educational institutions

A school shall be recognized as a postsecondary educational institution if both of the following apply:

1. The school admits as regular students only individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma or who are beyond the age of compulsory education as provided by section 15-802.

2. The school is licensed by name by the board under this chapter to offer one or more training programs beyond the secondary school level.

### 32-351. Display of license

A. Barbers and holders of shop licenses shall display their licenses in a conspicuous place within the shop.

B. Instructors and holders of school licenses shall display their licenses in a conspicuous place within the school.

### 32-352. Disciplinary action

The board may take any one or a combination of the following disciplinary actions:

1. Revoke a license.

2. Suspend a license.

3. Impose a civil penalty in an amount not to exceed five hundred dollars.

4. Impose probation requirements best adapted to protect the public safety, health and welfare including requirements for restitution payments to patrons.

5. Publicly reprove a licensee.

6. Issue a letter of concern.

### 32-353. Grounds for refusal to issue or renew a license or disciplinary action

The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Continued performance of barbering by a person knowingly having an infectious or communicable disease.

2. Malpractice or incompetency.
3. Advertising by means of known false or deceptive statements.
4. Advertising, practicing or attempting to practice under a trade name other than the one in which the license is issued.
5. Violating any provision of this chapter or any rule adopted pursuant to this chapter.
6. Making false statements to the board.

**32-354. Procedure for disciplinary action; appeal**

A. The board on its own motion may investigate any information which appears to show the existence of any of the causes set forth in section 32-353. The board shall investigate the report of any person which appears to show the existence of any of the causes set forth in section 32-353. A person reporting pursuant to this section who provides the information in good faith is not subject to liability for civil damages as a result.

B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license, it may take either of the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against his license.

C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview.

D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.

E. If, after an informal interview, the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof it may take the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that

continuation of the activities which led to the information or report being made to the board may result in action against the licensee's license.

3. Impose probation requirements.

F. 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.

### 32-355. Unlawful acts; violation; classification

A. A person shall not:

1. Practice or attempt to practice barbering without a current barber license issued pursuant to this chapter.
2. Practice or teach in or operate a school or operate a shop or salon which does not have a current license issued pursuant to this chapter.
3. Operate a shop or salon unless it is under the direct supervision of a barber.
4. Display a sign or in any way or hold oneself out as a barber or as being engaged in the practice or business of barbering without being licensed pursuant to this chapter.
5. Knowingly make a false statement on an application for a license pursuant to this chapter.
6. Permit an employee or another person under his supervision or control to practice barbering without a license issued pursuant to this chapter.
7. Practice barbering in any place other than in a shop or salon licensed pursuant to this chapter unless he is requested by a customer to go to a place other than a shop or salon licensed pursuant to this chapter and is sent to the customer from the shop or salon.
8. Obtain or attempt to obtain a license by the use of money other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.
9. Violate any provision of this chapter or any rule adopted pursuant to this chapter.

B. An instructor shall not render barbering services in a school unless the services are directly incidental to the instruction of students.

C. A school shall clearly indicate to the public that all services are performed by students under the direct supervision of an instructor.

D. A person who violates this section is guilty of a class 1 misdemeanor.

### 32-356. Injunctions

The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules

adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

**DEPARTMENT OF TRANSPORTATION**  
Title 17, Chapter 5, Article 3, Professional Driver Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT:** Department of Transportation  
Title 17, Chapter 5, Article 3

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This Five-Year-Review Report (5YRR) from the Department of Transportation relates to rules in Title 17, Chapter 5, Article 3, regarding professional driver services.

In the last 5YRR the Department indicated it would amend several of its rules to remove outdated references and archaic language. The Department last amended these rules by regular rulemaking effective September 5, 2017.

### **Proposed Action**

The Department is not currently proposing any changes to the rules. The rules were last amended in September 2017, and are overall clear, concise, understandable, effective, and consistent with other rules and statutes.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department believes that the economic impact of the rules has been as estimated in the economic impact statements submitted in support of rulemaking efforts for this article. As of August 2020, the Department provides administrative oversight for 123 privately operated professional driver training schools offering services at 199 locations.

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

The Department states that the rules support the efforts, in partnership with the Arizona Chapter of the National Safety Council, to prevent unnecessary regulatory burden by recognizing and eliminating any duplicative reporting, eliminating the unnecessary administrative costs previously expended by the Department and these industries as a result of the excessive monitoring and record keeping involved with the reporting, maintaining, and storing of unnecessary information. The Department estimates that the benefits of ensuring public safety and the creation of private sector business opportunities far outweighs any costs resulting from the Department's regulation of Professional Driver Training Schools and Traffic Survival Schools.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable.

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

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

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

Not applicable. There are no corresponding federal laws.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules require the issuance of a regulatory license. The licenses are in compliance with the general permit criteria under A.R.S. § 41-1037.

**11. Conclusion**

As mentioned above, the Department is not proposing any changes to the rules. The rules are overall clear, concise, understandable, effective, and consistent with other rules and statutes. Council staff recommends approval of this report.

August 31, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Ms. Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 N 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Department of Transportation, 17 A.A.C. Chapter 5, Article 3, Five-year Review Report**

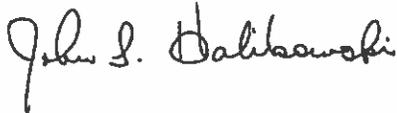
Dear Ms. Sornsins:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering all rules located under 17 A.A.C. Chapter 5, Article 3, which is due on August 31, 2020.

This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (602) 712-8804 or email [JLindley@azdot.gov](mailto:JLindley@azdot.gov).

Sincerely,



John Halikowski  
Director  
Arizona Department of Transportation



**Government Relations & Rules  
Office of the Director**

**Five-Year Review Report**

**A.A.C. Title 17 – Transportation**

**Chapter 5. Department of Transportation**

**Commercial Programs**

**Article 3. Professional Driver Services**

*Douglas A. Ducey*

*Governor*

*John S. Halikowski*

*ADOT Director*

Submitted to the Governor's Regulatory Review Council August 2020

**Arizona Department of Transportation**  
**5-YEAR REVIEW REPORT**  
**Title 17. Transportation**  
**Chapter 5. Department of Transportation - Commercial Programs**  
**Article 3. Professional Driver Services**  
**August 31, 2020**

**1. Authorization of the rule by existing statutes**

**General Statutory Authority:**

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ 28-366 and 28-7045 for these rules. This authority allows the Department to adopt rules for the collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and the use of state highways and routes to prevent abuse and unauthorized use of all highways and routes under the jurisdiction of the Department.

**Specific Statutory Authority:**

R17-5-301 to R17-5-323	The specific statutory authority used by the Department for maintaining these rules is provided under A.R.S. §§ <u>28-3411</u> , <u>28-3413</u> , <u>28-3415</u> , <u>32-2352</u> , <u>32-2371</u> , <u>32-2372.01</u> , and <u>32-2374</u> .
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**2. The objective of each rule:**

The stated objectives for each of the rules maintained by the Department under 17 A.A.C. 5, Article 3, are as follows:

Rule	Objective
R17-5-301	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-5-302	To provide uniform application procedures for use by any private business seeking a license to conduct professional driver training services or traffic survival educational courses on behalf of the Department or its authorized contractor.
R17-5-303	To provide professional driver training schools and instructors with information regarding the continuing requirement of maintaining specific documentation relative to each qualified instructor.
R17-5-304	To provide applicants seeking a license with information regarding the statutory requirements for obtaining a fingerprint background check and maintaining a fingerprint clearance card.
R17-5-305	To provide eligibility and application requirements for use by traffic survival schools and their instructor applicants seeking qualification by the Department to conduct training

	and educational sessions through a traffic survival school licensed by the Department.
R17-5-306	To provide traffic survival school instructor applicants with information regarding the training and examination required to become a traffic survival school qualified instructor.
R17-5-307	To provide professional driver training schools, traffic survival schools, and traffic survival school instructors with information regarding the right to receive written approval or denial of a license or qualification application within an appropriate timeframe. This rule also provides information on the applicant's right to request an administrative hearing if an application is denied by the Department.
R17-5-308	To provide professional driver training and traffic survival schools with information regarding the issuance, effective date, expiration, and display requirements of a license issued by the Department.
R17-5-309	To provide professional driver training and traffic survival schools with information regarding the Department's annual license renewal process.
R17-5-310	To provide the guidelines and timeframes that a professional driver training or traffic survival school licensee and instructor must follow after making certain business decisions that will require a modification or update to the licensee's or instructor's original application information already on file with the Department.
R17-5-311	To provide professional driver training and traffic survival school licensees and qualified instructors with information regarding the Department's ongoing requirements for ensuring a certain level of professional conduct, identifying conflicts of interest, and prohibiting false advertising.
R17-5-312	To provide professional driver training and traffic survival school licensees and qualified instructors with guidelines for helping the Department ensure continuity of services to enrolled students if the school is cancelling courses or going out of business.
R17-5-313	To provide professional driver training and traffic survival school licensees and qualified instructors with information regarding the uniform standards of conduct, methods of instruction, and the delivery of all approved curriculum as established by the Department.
R17-5-314	To provide professional driver training and traffic survival school licensees and qualified instructors with guidelines for completing and processing a certificate of completion for each student after course completion.
R17-5-315	To provide professional driver training and traffic survival school licensees and qualified instructors with guidelines for electronically transmitting proof of course completion to the Department and retaining all appropriate attendance records for three years.

R17-5-316	To provide professional driver training and traffic survival school licensees and qualified instructors with information regarding the handling and security of Department-approved inventory.
R17-5-317	To provide professional driver training and traffic survival school licensees and qualified instructors with information regarding their obligation to ensure and maintain compliance with all federal regulations involving Civil Rights, Limited English Proficiency, and the Americans with Disabilities Act, as well as ensuring that the Department is informed within 24 hours if the driver license of any school principal, manager, or instructor is suspended, revoked, cancelled, or disqualified.
R17-5-318	To provide ongoing requirements that each professional driver training school instructor or traffic survival school qualified instructor must follow to remain active and in good standing with the Department.
R17-5-319	To provide specific guidelines and operational parameters each traffic survival school and qualified instructor must follow to remain in good standing with the Department, and in compliance with this Article, including the appropriate collection and remittance of all statutorily prescribed enrollee fees before commencing any traffic survival course.
R17-5-320	To provide specific guidelines and operational parameters applicable only to high school driver educational programs and qualified instructors subject to oversight by the Arizona Department of Education.
R17-5-321	To provide all licensees and qualified instructors operating under this Article with information regarding their ongoing obligation to assist the Department in preserving the public safety. This rule includes procedures relating to the subject, manner, and conduct of periodic audits, monitoring, inspections, and investigations, which may be conducted by the Department or its contractor when necessary to preserve the public safety.
R17-5-322	To provide information for all licensees regarding the Department's authority and process for serving a cease and desist order when the Department finds reasonable cause to prohibit certain conduct or activities. This rule also provides information regarding a licensee's right to request an administrative hearing on the matter or to appeal the Department's findings.
R17-5-323	To provide information for all licensees regarding the Department's corrective action process and the licensee's administrative hearing and appeal rights for use if the Department has reasonable cause to issue a Notice of Corrective Action for non-compliance before suspending, revoking, or cancelling a license issued under this Article.

3. Are the rules effective in achieving their objectives?

Yes X No \_\_\_

If not, please identify the rules that are not effective and provide an explanation for why the rules are not effective.

The Department believes that these rules are effective in achieving all stated objectives.

4. **Are the rules consistent with other rules and statutes?** Yes  No

If not, please identify the rules that are not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rules.

The Department believes that these rules are consistent with all other rules and statutes.

5. **Are the rules enforced as written?** Yes  No

If not, please identify the rules that are not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issues.

The Department enforces these rules as written.

6. **Are the rules clear, concise, and understandable?** Yes  No

If not, please identify the rules not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rules to improve clarity, conciseness, and understandability.

The Department believes that these rules are clear, concise, and understandable as written.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. **Economic, small business, and consumer impact comparison:**

The economic impact of each of these rules has been the same as estimated in the economic impact statement prepared by the Department and submitted to the Council in support of the last rulemaking effort completed for this Article.

As of August 2020, the Department provides administrative oversight for 123 privately operated professional driver training schools offering services at 199 Arizona locations that include:

Type of Licensed Professional Driver Training School	Licensed Schools	Licensed Branch Locations	Total Licensed Locations	Total Qualified Instructors
Commercial Driver License Training	10	14	24	96*
Traffic Survival Training	75	62	137	166*
High School Driver Education Services	38	N/A	38	67
Total:	123	76	199	329

\*Actual number of individuals, some instructors work for multiple schools.

The Department and Professional Driver Training Schools (PDTs) incur moderate to substantial costs from \$10,000 to \$100,000 while providing these vital services to Arizona's motoring public in accordance with these rules, depending on the size of the business and the types of activities each business is able to provide. However, the costs incurred are the costs of successfully running a business in this state and are not costs imposed by the rules. Conversely, these rules increase business opportunities for any individual or entity able to meet the reasonable licensing requirements contained in the rules, which are designed to ensure that Arizona's motoring public will have the freedom, ability, and confidence to engage with business entities that are assuredly safe and effective in providing the vital services a driver may need to remain in compliance with Arizona law.

As provided under A.R.S. § 28-3307, each PDTs or Traffic Survival School (TSS) may charge a reasonable and commensurate fee to each enrollee for providing this training. However, the Department does not regulate or require the reporting of any reasonable and commensurate fees that a school may collect from its customers.

As indicated in the Department's last rulemaking effort involving these rules, PDTs and PDTs instructors incur minimal administrative costs in relation to the rules, depending on the individual activities each licensee is authorized to offer and the type of curriculum or services they intend to provide. The recent legislation and subsequent rulemaking implemented by the Department provided a benefit for both schools and instructors in decreased costs and time savings by no longer having to go through an application process for licensing each instructor. The schools and instructors no longer need to pay an instructor licensing fee (\$10) to the Department or a fingerprint clearance card fee (\$67) to the Arizona Department of Public Safety (DPS).

The Department has experienced a minimal annual cost savings by not having to print applicable forms, purchase associated office or operational supplies, or pay postage and archival fees for the administration of PDTs instructors.

While most of the recent changes to these rules benefited PDTs and their instructors, some of the streamlining, technical changes, and removal of the age, education, and examination requirements also reduced the regulatory burden to the benefit of licensed TSSs who are now able to utilize the services of a larger pool of eligible owners and instructors.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

The Department has not received any business competitive analyses of these rules.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Yes X No \_\_\_ Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

The Department amended the outdated references and archaic language identified in its last five-year review report on these rules (approved by the Council on April 5, 2011) by exempt rulemaking at 21 A.A.R. 1096, effective September 1, 2015. The rules were then substantively amended by regular rulemaking at 23 A.A.R. 2045, effective September 5, 2017, which took into account all amendments anticipated in the Department's 2011 report on these rules. This is the first five-year review conducted by the Department on these rules since they were substantively amended.

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives:**

The Department's last rulemaking effort involving this Article included amendments for the implementation of Laws 2016, Chapter 371, which eliminated a long-standing requirement for licensing Professional Driver Training School (PDTs) instructors and required that the Department adopt rules to establish requirements and minimum standards that each instructor must follow when working for a PDTs. The statutory mandates for licensing PDTs and agents still remain under A.R.S. §§ 32-2371 and 32-2371.01, respectively.

PDTs are privately operated businesses licensed by the Department under A.R.S. Title 32, Chapter 23, and this Article to educate and train persons, either practically or theoretically, or both, to operate or drive commercial motor vehicles in preparation for licensing examinations administered by, or on behalf of, the Department on application for issuance of a commercial driver license or instruction permit. These schools administer commercial driver knowledge and skills training, perform the necessary evaluations, and provide proper certification for enrolled students as elements of successful completion of professional driver training.

To reduce regulatory burden, the Department removed the requirements that school licensees and instructors (PDTs and TSS) must be at least 21 years of age and have a high school diploma or equivalent. The Department also removed a requirement that an applicant for a school license attend Department-approved training and pass one or more required examinations administered by the Department or private entity. The Department determined that those requirements were unnecessary since the Department has other methods of determining applicant eligibility.

The Department's Professional Driver Services Program also includes the oversight of Traffic Survival Schools (TSS), which offer training and educational sessions designed to improve the safety and habits of drivers when required by the Department to attend and successfully complete such training and educational sessions as prescribed under A.R.S. Title 28. TSS training and education is only available through a licensed PDTs and participation may be necessary for an individual to avoid a driver license suspension after receiving a conviction for certain moving violations. Additionally, the Department licenses high school instructors approved by the Department of Education to educate and train students to safely operate

a motor vehicle or to prepare applicants for examinations given by the Department for a driver license or instruction permit.

These rules support efforts by the Department, in partnership with the Arizona Chapter of the National Safety Council, to prevent unnecessary regulatory burden by recognizing and eliminating any duplicative reporting, eliminating the unnecessary administrative costs previously expended by the Department and these industries as a result of the excessive monitoring and record keeping involved with the reporting, maintaining, and storing of unnecessary information. However, the qualifications and requirements of instructors contained in the rules will continue to support the Department's ability to ensure some measure of consumer protection for individuals utilizing PDTS services.

As a benefit, certification issued to a student by a licensed PDTS alleviates the need for the Department to expend additional resources on administering additional examinations to the student at a Department field office. Since the training and evaluation of these students is performed through a licensed PDTS, the Department's Customer Service Representatives that would otherwise be performing examinations can assist other consumers of Department products or services who may experience the benefit of shorter wait times. Additionally, PDTS instruction is made available at nontraditional times and locations and via nontraditional media for the convenience of all consumers of these services.

Enrollees in Professional Driver Training Schools (PDTSSs) and Traffic Survival Schools (TSSs) have the benefit of knowing that all licensed schools and their qualified instructors are able to deliver the Department's approved curriculum and can assist them in successfully resolving any issues that may hinder their ability to maintain a valid driver license in this state.

The benefits of ensuring the public safety and the creation of private sector business opportunities far outweigh any costs resulting from the Department's regulation of PDTSSs and instructors under these rules.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

*Please provide a citation for the federal laws. And if the rules are more stringent, is there statutory authority to exceed the requirements of federal laws?*

These rules are not more stringent than any applicable federal law because federal law is not applicable to Traffic Survival Schools and the rules concerning Professional Driver Training Schools are in conformance with all federal motor carrier safety regulations.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules require the issuance of a regulatory license and Department qualification for the lawful operation of professional driver training schools, traffic survival schools, and their qualified instructors. These licenses are in compliance with the general permit criteria and requirements prescribed under A.R.S.

§ 41-1037, since the activities and practices licensed or qualified are substantially similar in nature for all who perform each specified activity or function.

**14. Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

No action is necessary. All rules located in this Article were last amended by Final Rulemaking at 23 A.A.R. 2045, effective September 5, 2017, and generally meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

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

**TITLE 17. TRANSPORTATION**

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION**

**COMMERCIAL PROGRAMS**

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

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

**1. Identification of the proposed rulemaking:**

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

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

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

**b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1. Identification of the proposed rulemaking:**

See paragraph (A)(1) above.

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

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

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

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

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

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

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

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

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

Not applicable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

None

## CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

- i. A transporter's place of business, or
    - ii. Any other in-state location, or
  - b. Outside Arizona at a transporter's place of business.
- 4. A transporter shall make records available for audit:
  - a. During the transporter's normal business hours, and
  - b. In a specific location as follows:
    - i. The transporter's Arizona place of business, or
    - ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
- 5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.
- C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
- D. Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
  - 1. R17-5-201 through R17-5-209; and
  - 2. A.R.S. Title 28, Chapter 14.
- E. Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

**Historical Note**

New Section recodified from R17-4-439 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

**R17-5-212. Motor Carrier Safety: Hearing Procedure**

- A. Scope.
  - 1. This Section applies only to a motor carrier enforcement action under:
    - a. R17-5-201 through R17-5-209; and
    - b. A.R.S. Title 28, Chapter 14.
  - 2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) and (C).
- B. Initiation of proceedings; service.
  - 1. The Director shall initiate a hearing under this Section by:
    - a. Signing and serving a complaint in the form prescribed under subsection (C) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
    - b. Submitting to the Department's Executive Hearing Office a copy of the complaint and notification of the date the complaint was served.
  - 2. The date of service is the date of mailing.
- C. Complaint; order to show cause.
  - 1. The complaint shall contain the following:
    - a. The Department as the designated petitioner;

- b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
  - c. The relief sought by the Department; and
  - d. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.
- 2. Upon receipt of a copy of the complaint, the Executive Hearing Office shall issue an order to show cause for a respondent to appear at an administrative hearing to explain why the requested relief should not be granted.
- 3. The Executive Hearing Office shall hold a hearing under this Section within the time-frame required by statute.
- 4. The parties may resolve a complaint before the hearing date.
  - a. The parties shall file notice of settlement with the Executive Hearing Office.
  - b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

**Historical Note**

New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

**ARTICLE 3. PROFESSIONAL DRIVER SERVICES****R17-5-301. Definitions**

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

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

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

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

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

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

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

"Business manager" means an owner or employee of a licensed school who has primary and sufficient oversight, supervision, and responsibility for all operations necessary to

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ensure full compliance with all applicable federal or state laws, rules, and school guidelines.

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

“Character and reputation” means a person:

- Has not been convicted of a class 1 or 2 felony by a court of competent jurisdiction,
- Has not within five years of application date been convicted of any other felony or misdemeanor offense having a reasonable relationship to the functions of the activity or the employment or category for which the qualification is sought, and
- Has not within 12 months of application date had an application or an examination required for license or qualification under this Chapter denied or revoked due to fraud or misrepresentation.

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

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

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

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

“Good standing” means an applicant:

- Has not had a similar business license, qualification, or approval suspended, revoked, canceled, or denied within the previous three years of the application date;
- Does not have any pending corrective action, as defined under R17-5-323, relating to a Department-issued business license, qualification, or approval;
- Has not had a fingerprint clearance card required for licensure under this Article suspended, revoked, or canceled;
- Does not owe delinquent fees, taxes, or unpaid balances to the Department or private entity;
- Has not had any substantiated derogatory information relevant to the requested license reported to the Department about the applicant from any state agency contacted by the Department; or
- Has not been dismissed, or resigned in lieu of dismissal, from a position for cause following allegations of misconduct having a reasonable relationship to the person’s proposed area of licensure or qualification, if the applicant is a former Department employee or a former principal or employee of a licensed professional driver training school or licensed traffic survival school.

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

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

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

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

“Principal” means any of the following:

- If a sole proprietorship, the sole proprietor;
- If a partnership, limited partnership, limited liability partnership, limited liability company or corporation, the:
  - Partner;
  - Manager;
  - Member;
  - Officer;
  - Director;
  - Agent; or
- If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or
- If a political subdivision or government agency, the political subdivision or agency head.

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

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

“Professional driver training school instructor” means an individual meeting the qualifications under R17-5-303 who can present specific training and educational curriculum to professional driver training school students as provided under this Article.

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

- A conviction for driving under the influence, reckless or aggressive driving, racing on a highway, or leaving the scene of an accident;
- A driver license previously canceled, suspended, revoked, or disqualified for any reason except for failing to meet or maintain the commercial driver license physical qualifications under 49 CFR 391.41 and A.A.C. R17-4-508; and
- More than three previous assignments to attend traffic survival school and no pending assignment.

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

#### Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective Septem-

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ber 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

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

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

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

**Historical Note**

New Section recodified from R17-4-512 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section amended by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

**R17-5-303. Professional Driver Training School Instructor Qualifications and Requirements**

- A. A professional driver training school instructor shall:
1. Work for a professional driver training school licensed by the Department or private entity under A.R.S. § 32-2371 and R17-5-302,
  2. Possess a valid Arizona commercial driver license with applicable endorsements representative of the vehicle to be used in training,
  3. Meet the character and reputation requirements as defined in R17-5-301, and
  4. Meet all applicable instructor requirements under state law and this Article.
- B. Each professional driver training school licensed under A.R.S. § 32-2371 and this Article shall maintain a file for each professional driver training school instructor that contains the following:
1. A copy of a valid Arizona commercial driver license with applicable endorsements representative of the vehicle to be used in training, and

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2. An annual commercial driver license motor vehicle record which indicates the instructor has maintained a satisfactory driver record as defined in R17-5-301.
- C. A business manager of a professional driver training school licensed under A.R.S. § 32-2371 and this Article shall submit to the Department or private entity a list of all of its professional driver training school instructors, including full name and commercial driver license number, at the time of hiring the instructors, within 10 calendar days of making any changes to the instructors as required under R17-5-310, and when renewing the school license as required under R17-5-309.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

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

- A. An applicant for a license issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23, Article 2 and this Article, as applicable, shall:
  1. Successfully complete a fingerprint background check conducted by the Arizona Department of Public Safety under A.R.S. § 41-1758.01, and
  2. Submit to the Department or private entity a copy of the fingerprint clearance card issued to the applicant under A.R.S. § 41-1758.03 as part of the application packet.
- B. An applicant is responsible for all costs associated with obtaining the fingerprint clearance card.
- C. A licensee, as applicable, shall maintain a valid fingerprint clearance card while licensed under this Article, and shall provide written notice to the Department or private entity within 10 calendar days if the fingerprint clearance card is cancelled, suspended, or revoked.

**Historical Note**

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

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

- A. An applicant for traffic survival school qualified instructor status shall:
  1. Apply through a traffic survival school licensed by the Department or private entity under A.R.S. § 28-3413 and this Article,
  2. Possess a valid Arizona driver license,
  3. Meet all applicable requirements under this Article, and
  4. Meet the good standing and character and reputation requirements as defined in R17-5-301.
- B. Each traffic survival school qualified instructor applicant shall complete an application packet that contains the following:
  1. An application, completed on a form approved by the Department;
  2. A copy of a valid Arizona driver license;
  3. Documentation prescribed under A.R.S. § 41-1080 indicating that the applicant's presence in the United States is authorized under federal law;
  4. A motor vehicle record, dated within 30 days of the application date, which indicates that the applicant maintained a satisfactory driver record as defined in R17-5-301;
  5. An affidavit from the business manager of the traffic survival school certifying that the qualified instructor appli-

cant has the necessary skills and abilities to give instruction at a professional level; and

6. Payment of authorized fees as required by the private entity for application and administration of the instructor qualification process and for required instructor continuing education, which shall be negotiated by the Department and the private entity and shall be set forth in their contract.
- C. An applicant for instructor qualification shall have successfully completed a traffic survival school educational workshop or similar curriculum approved by the Department or private entity before being permitted to instruct any traffic survival school course.
- D. An applicant for instructor qualification shall have successfully completed an examination given for qualification of instructors by the Department or private entity as required under R17-5-306 before being permitted to instruct any traffic survival school course.
- E. A business manager of a traffic survival school licensed under A.R.S. § 28-3413 and this Article shall submit to the Department or private entity the complete application packet for each qualified instructor applicant.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

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

- A. An applicant for traffic survival school instructor qualification under this Article shall attend Department-approved training and shall pass one or more required examinations administered by the Department or private entity.
- B. The Department or private entity shall limit a traffic survival school qualified instructor applicant to three opportunities within 90 days, based on scheduling, to successfully complete and achieve a passing score or grade on each examination required under this Section.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

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

- A. An application will not be approved by the Department or private entity unless it is properly and fully completed with all required supporting documents and applicable fees as identified in this Article.
- B. The Department or private entity shall provide written notification to the professional driver training school or traffic survival school of the approval or denial of a license or traffic survival school instructor qualification. A notice denying the applicant a license or qualification under this Article shall specify the basis for denial and indicate that the applicant may request a hearing on the denial with the Department's Executive Hearing Office within 30 calendar days of the date on the notice unless the application is withdrawn by the applicant.
- C. The Department or private entity may deem a traffic survival school instructor applicant qualified when a completed application is received and the applicant has successfully completed all required training and examinations.

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- D. Unless the application is withdrawn by the applicant, the Department or private entity may deny an application in which the applicant has:
1. Failed to have or to document a satisfactory driver record as required under R17-5-305, as applicable;
  2. Failed to meet the good standing or character and reputation requirements of the Department as defined in R17-5-301;
  3. Failed to meet the fingerprint clearance card requirement under R17-5-304, as applicable;
  4. Made a material misrepresentation or misstatement on the application;
  5. Violated a federal or state law or rule reasonably related in a business context to the authority applied for; or
  6. Failed to complete all applicable application requirements under this Article.
- E. If timely requested by an applicant under subsection (B), the Department shall schedule and conduct a hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5 for denial of a license.
- F. An applicant whose application was previously denied by the Department or private entity for making a material misrepresentation or misstatement on the application is not eligible to reapply for 12 months from the date of previous denial.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

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

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

3. Department-approved inventory, as applicable and as defined in this Article.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

**R17-5-309. Renewal of License**

- A. A completed renewal, consisting of the following, shall be submitted to the Department or private entity a minimum of 30 calendar days prior to license expiration, notwithstanding A.A.C. R17-1-102, failure to submit a renewal prior to December 1st shall result in the applicant being subject to all original licensing requirements:
1. A renewal application, completed on a form approved by the Department, including:
    - a. An updated list of all principals, instructors, contracted personnel, and employees of the school who are responsible for Arizona school operations, including full name and driver license number; and
    - b. The signature of all current principals on the completed application; and
  2. Payment of applicable license fees prescribed under A.R.S. § 28-3415 or 32-2374, for each activity and branch.
- B. Notwithstanding A.R.S. § 28-3415 or 32-2374, an annual license issued by the Department or private entity under this Article during the month of December shall not expire until the last day of the subsequent calendar year.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

**R17-5-310. Modifications of Original Application Information**

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

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**Historical Note**

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

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

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

- K. A full-time employee of the state of Arizona shall not receive any direct pecuniary payments from any fees paid by those who attend a licensed school.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

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

- A. A principal of a school ceasing operations or cancelling courses for any reason shall ensure continuity of services to each student currently enrolled in courses as follows:
1. A principal shall notify each student currently scheduled for, or enrolled in, a course that the school will be unable to provide the services previously offered 72 hours before the scheduled course; and
  2. A principal shall refund within four business days any payment received by the school for a course not yet provided.
- B. A principal of a school ceasing operations shall provide to the Department or private entity, upon request, a written list of all students notified under subsection (A) with an explanation of the final resolution reached as a result of the principal's contact with the student.
- C. A principal's failure to provide continuity of services to enrolled students as provided under this Section may result in the loss of the principal's status of good standing with the Department.

**Historical Note**

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

**R17-5-313. Method of Instruction; Curriculum**

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

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**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

**R17-5-314. Certificate of Completion**

- A. A qualified instructor for traffic survival school or high school driver education program shall accurately complete all required information on a certificate of completion:
1. The instructor providing the training listed on the certificate of completion shall sign the document once training is complete, or
  2. The instructor providing the final instruction or test shall sign the certificate of completion if training is provided by multiple instructors.
- B. A qualified instructor shall provide a certificate of completion to the student at the conclusion of the course. A traffic survival school qualified instructor shall print the certificate of completion from the web site of the Department's private entity or the Department's web site, as applicable.
- C. A high school qualified instructor shall not make a correction to a certificate of completion. If an error is made, the high school qualified instructor shall:
1. Void the certificate of completion,
  2. Write the word "VOID" or "VOIDED" clearly on the face of each voided certificate of completion, and
  3. Issue a new certificate of completion.
- D. The Department may elect not to accept a certificate of completion that contains an alteration, erasure, correction, or illegible information.
- E. A school or qualified instructor shall not withhold timely issuance of a certificate of completion due to a payment dispute between the school and the student.

**Historical Note**

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

**R17-5-315. Record Retention**

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

**Historical Note**

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

at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

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

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

**Historical Note**

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

**R17-5-317. School Responsibilities**

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

1. Comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and applicable federal regulations by providing appropriate auxiliary aids and services to students with disabilities requesting reasonable accommodation;
2. Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and applicable federal regulations. As a requirement of compliance, the school shall:
  - a. Provide public notification of its compliance with Title VI by displaying a Department-approved notice to the public;
  - b. Take reasonable steps to ensure that Limited English Proficient (non-English speaking) customers have meaningful access to the services or activities performed under this Article, which includes, providing the school's services and authorized transactions in languages other than English and providing these services at no additional cost to the customer or student;
  - c. Report promptly any customer complaints alleging discrimination or failure to meet the requirements of this Section to the Department's Civil Rights office for processing and investigation. The school shall immediately upon receipt of such complaints provide access to its facilities, books, records, accounts, and other sources of information as may be determined or requested by the Department to be pertinent, in order to ascertain compliance with Title VI; and
  - d. Inform and formally train all school officers, principals, employees, and contractors on the requirements to comply with Title VI; and
3. Provide written notice to the Department or private entity within twenty-four hours if the driver license of any of the school's principals, managers, or instructors is suspended, revoked, cancelled, or disqualified.

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**Historical Note**

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

**R17-5-318. Instructor Responsibilities**

A professional driver training school instructor or traffic survival school qualified instructor shall:

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

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

**R17-5-319. Traffic Survival Schools**

- A. The Department shall assign an individual only to a traffic survival school licensed by the Director under this Article.
- B. A traffic survival school or qualified instructor shall allow only students who provide acceptable proof of traffic survival school assignment to register for and attend a traffic survival school course. The following documents are acceptable proof of assignment:
  1. Notice of traffic survival school assignment or suspension for failure to attend traffic survival school,
  2. An order from a court or other appropriate tribunal from Arizona or another state indicating traffic survival school assignment,
  3. Traffic survival school proof of assignment form obtained from the Department,
  4. Electronic verification of traffic survival school assignment through the Department's private entity, or
  5. Motor vehicle record.
- C. On enrollment of a student in, or on a student's attendance of, a traffic survival school course, a licensed traffic survival school shall collect the statutory enrollee fee provided in A.R.S. § 28-3411, unless the student has paid the enrollee fee in advance. The licensed traffic survival school also shall collect the records fee prescribed by A.R.S. § 28-446, if applicable, before the student attends the traffic survival school course. The licensed traffic survival school shall fully remit these fees to the private entity within four business days after a student completes the traffic survival school course. If a licensed traffic survival school does not timely remit the enrollee fees, the Department or private entity may notify the traffic survival school that its prospective future students will be required to prepay the enrollee fees until remittances are current. The amount of the enrollee fee charged by the private entity shall be negotiated by the Department and the private entity and shall be set forth in their contract.
- D. A traffic survival school or qualified instructor shall not:
  1. Conduct courses with a number of students in excess of the classroom's fire safety capacity reported to the Department or private entity by the licensee under R17-5-321;
  2. Conduct courses with more than 30 students per qualified instructor;
  3. Exclude a translator, the Director, the private entity, or Department personnel from attending courses;
  4. Issue a certificate of completion to a student who has not fully completed the required curriculum; or
  5. Issue a certificate of completion for a student whom the instructor did not personally instruct.

**Historical Note**

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

**R17-5-320. High School Driver Education Program**

- A. The following definitions apply to this Section:
  1. "Accountable forms inventory" means a series of distinctly and consecutively numbered documents provided by the Department to an instructor qualified under this Section for:
    - a. Recording in a log, the assigned number of each document completed, issued, or voided by a high school qualified instructor; and
    - b. Reporting to the Department the assigned number of each document completed, issued, or voided by a high school qualified instructor.
  2. "Certified instructor report" means a report prepared and certified monthly by each high school qualified instructor listing all certificates of completion that were issued and voided.
- B. The Department shall cooperate with the Arizona Department of Education, under A.R.S. §§ 28-3174 and 32-2353, to enable the issuance of a certificate of completion to a regularly enrolled full-time student as part of a high school driver education program.
- C. The Director or private entity shall qualify an instructor approved by the Arizona Department of Education to issue a certificate of completion.
- D. A high school qualified instructor may issue a certificate of completion to a regularly enrolled full-time student who:
  1. Successfully completes the classroom course of instruction required by the Arizona Department of Education, which may waive the student's requirement to take the Department's written test; or
  2. Successfully completes the skills course of instruction required by the Arizona Department of Education, which may waive the student's requirement to take the Department's skills test.

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

**Historical Note**

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

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

- A. To determine compliance with license requirements, qualification requirements and applicable federal and state laws and rules, the Department or private entity may:
1. Monitor for compliance by attending any licensed school's course or other activities on a scheduled or unscheduled basis;
  2. Audit for compliance by performing periodic reviews of the operations, facilities, equipment, and records;
  3. Inspect for compliance by making random, on-site visits during posted business hours; or
  4. Investigate for compliance by interviewing or submitting questions to school owners, instructors, and former or current students.
- B. Failure of a school or instructor to allow or cooperate in an audit, monitoring, inspection, or investigation may result in the Department issuing an immediate cease and desist order or requesting a hearing for suspension or revocation of a license issued under this Article.
- C. During an audit, monitoring, inspection, or investigation of a licensee, the Department, the private entity, a law enforcement agency, or employee of the Federal Motor Carrier Safety Administration may:
1. Review and copy paper and electronic records;
  2. Examine the licensee's principal and established place of business, all branches, training, or road training sites; and
  3. Interview the school's employees, instructors, and customers.
- D. A licensee shall make records available for audit, monitoring, inspection, or investigation at the licensee's principal place of business.
- E. After an audit or monitoring, the Department or private entity shall send a report of the results in writing to the school.
- F. If instances of non-compliance are found as a result of an audit, monitoring, inspection, or investigation, the Department or private entity may determine if either of the following actions is required:
1. An informal meeting to discuss findings, or
  2. A written compliance plan addressing findings.
- G. If greater instances of non-compliance are found as a result of an audit, monitoring, inspection, or investigation, the Department may determine if either of the following actions is required:
1. A probationary period; or
  2. A request for a hearing to cancel, suspend, or revoke a license to operate a school or conduct instruction under this Article.
- H. The Department or private entity may issue a notice of corrective action to a licensee if the licensee fails to comply with a warning letter, with an audit, inspection or investigation request, a monitoring request, or with written findings provided by the Department or private entity. Only the Department may initiate a corrective action provided under subsection (G).
- I. Each site used by a school as an office, training location, or classroom location shall:
1. Be inspected and approved by the Department or private entity prior to initial use or relocation,
  2. Be licensed by the Department or private entity, and
  3. Have office hours displayed in a conspicuous location at each site open to the public during the posted hours.

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- J. There shall be a clearly defined and visible separation between a school and any other business if a professional driver training school or traffic survival school is located in an office building, store, or other physical structure shared with any other business or enterprise.
- K. Any request by a school for inspection and approval of a site on a recognized Indian reservation shall contain the written permission of the appropriate Tribal authority.
- L. Any request by a school for inspection and approval of a site on a military base shall contain the written permission of the appropriate military authority.
- M. A school shall submit to the Department or private entity a copy of the written lease or contract agreement or deed of ownership, if the site is owned by the school, for each site, as applicable.
- N. Any request by a traffic survival school for inspection and approval of a site to be used for educational sessions shall include the approved fire safety capacity of the classroom(s) at that site and shall be signed by a principal of the traffic survival school.
- B. The Department or private entity may initiate corrective action on a licensee or a traffic survival school qualified instructor as provided under A.R.S. Title 28, Chapter 8, Article 7.1, Title 32, Chapter 23, Article 3, or Title 41, Chapter 6, Article 6, and this Article, if satisfactory evidence shows that a licensee or instructor, individually or collectively:
1. Violated a federal or state law or rule reasonably relating in a business context to a duty prescribed under this Article;
  2. Failed to maintain a status of good standing or character and reputation as defined in R17-5-301; or
  3. Provided false, deceptive, or misleading information to the Department or private entity in either an application or in response to an audit or inspection conducted pursuant to R17-5-321.

**Historical Note**

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

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

- A. The Department may immediately issue and serve a cease and desist order on a licensee, as prescribed under A.R.S. § 28-3417 or 32-2394, if the Department or private entity has reasonable cause to believe that the licensee has violated or is violating a federal or state law or rule relating to a duty prescribed under this Article.
- B. A cease and desist order issued by the Department to a licensee under this Article shall:
1. Require the person on receipt of the order to cease and desist from further engaging in the prohibited conduct or in any activity authorized under this Article as specified in the cease and desist order, and
  2. Provide information regarding the person's right to request a hearing to show cause as to why the Department's order should not be upheld.
- C. On failure or refusal of a licensee to comply with a cease and desist order, or after a requested hearing, the Department may cancel, suspend, or revoke the license of the licensee under A.R.S. § 28-3416 or 32-2391 and R17-5-323.

**Historical Note**

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

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

- A. The following definitions apply to this Section:
1. "Cancellation" means a Department action that withdraws a license or qualification of a traffic survival school instructor issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.
  2. "Revocation" means a Department action that terminates, for an indefinite period of time, a licensee's or traffic survival school qualified instructor's privilege to operate a school or conduct instruction under this Article.
  3. "Suspension" means a Department action that prohibits, for a stated period of time, a licensee or traffic survival

school qualified instructor from operating as a school or instructor under this Article.

- C. A corrective action initiated under subsection (B), depending on the severity or number of violations, may include the Department imposing a term of probation; issuing a cease and desist order under A.R.S. § 28-3417 or 32-2394; or requesting a hearing to cancel, suspend, or revoke an existing license under A.R.S. § 28-3416 or 32-2391.
- D. A notice of corrective action issued by the Department requesting a hearing to cancel, suspend, or revoke an existing school license shall include:
1. The grounds for the Department's action; and
  2. A brief written statement explaining that it will request that a hearing be held before the Department's Executive Hearing Office on the proposed cancellation, suspension, or revocation of a professional driver training school license or a traffic survival school license, as provided under A.R.S. § 28-3416 or 32-2391.
- E. A notice of corrective action issued by the Department to cancel, suspend, or revoke an existing qualification of a traffic survival school instructor shall include:
1. The grounds for the Department's action; and
  2. A brief written statement of the hearing and appeal rights, including that the instructor may request a hearing with the Department's Executive Hearing Office within 30 calendar days of the date on the notice for the cancellation, suspension, or revocation of the qualification of a traffic survival school instructor, as provided in A.R.S. §§ 41-1001(12) and 41-1064.
- F. The Department shall provide notice and conduct hearings as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5, as applicable.

**Historical Note**

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

**ARTICLE 4. DEALERS****R17-5-401. Definitions**

In addition to the definitions in A.R.S. §§ 28-4301 and 28-4410, the following definitions apply to this Article unless otherwise specified:

- "Dealer" or "motor vehicle dealer" has the same meaning as "motor vehicle dealer" in A.R.S. § 28-4301.
- "Director" has the same meaning as in A.R.S. § 28-101.
- "Owner" means a person who holds the legal title of a motor vehicle.

**Arizona Department of Transportation**  
**5-YEAR REVIEW REPORT**  
**Title 17. Transportation**  
**Chapter 5. Department of Transportation - Commercial Programs**  
**Article 9. Professional Driver Services**  
**August 31, 2020**

**Definitions**

**28-101. Definitions**

**(L19, Ch. 89, sec. 1 & Ch. 120, sec. 1)**

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
  - (a) The number of grams of alcohol per one hundred milliliters of blood.
  - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
  - (a) A motor vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is fifty or fewer inches in width.
    - (iii) Has an unladen weight of one thousand two hundred pounds or less.
    - (iv) Travels on three or more nonhighway tires.
    - (v) Is operated on a public highway.
  - (b) A recreational off-highway vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is eighty or fewer inches in width.
    - (iii) Has an unladen weight of two thousand five hundred pounds or less.
    - (iv) Travels on four or more nonhighway tires.
    - (v) Has a steering wheel for steering control.
    - (vi) Has a rollover protective structure.
    - (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
  - (a) A fire department vehicle.
  - (b) A police vehicle.
  - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
  - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
  - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
  - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
8. "Board" means the transportation board.
9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
11. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
13. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
14. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
15. "Conviction" means:
  - (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
  - (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
  - (c) A plea of guilty or no contest accepted by the court.
  - (d) The payment of a fine or court costs.
16. "County highway" means a public road that is constructed and maintained by a county.
17. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
18. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
19. "Digital network or software application" has the same meaning prescribed in section 28-9551.

20. "Director" means the director of the department of transportation.
21. "Drive" means to operate or be in actual physical control of a motor vehicle.
22. "Driver" means a person who drives or is in actual physical control of a vehicle.
23. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
24. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
- (a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
25. "Electric miniature scooter" means a device that:
- (a) Weighs less than thirty pounds.
  - (b) Has two or three wheels.
  - (c) Has handlebars.
  - (d) Has a floorboard on which a person may stand while riding.
  - (e) Is powered by an electric motor or human power, or both.
  - (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.
26. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
27. "Electric standup scooter":
- (a) Means a device that:
    - (i) Weighs less than seventy-five pounds.
    - (ii) Has two or three wheels.
    - (iii) Has handlebars.
    - (iv) Has a floorboard on which a person may stand while riding.
    - (v) Is powered by an electric motor or human power, or both.
    - (vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.
  - (b) Does not include an electric miniature scooter.

28. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

29. "Farm" means any lands primarily used for agriculture production.

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

31. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

32. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

33. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

34. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

35. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

36. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

- (i) Operate on a regular route or between specified places.
- (ii) Offer prearranged ground transportation service as defined in section 28-141.
- (iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

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

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

39. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

40. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

41. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

42. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

- (a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.
- (b) The vehicle has at least four wheels in contact with the ground.
- (c) The vehicle seats at least eight passengers, including the driver.
- (d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.
- (e) The vehicle is a commercial motor vehicle as defined in section 28-5201.
- (f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.
- (g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.
- (h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

43. "Motor vehicle":

(a) Means either:

- (i) A self-propelled vehicle.
  - (ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.
- (b) Does not include a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

44. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

45. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

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

47. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

48. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

49. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

50. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

51. "Personal delivery device":

(a) Means an electronically powered device that:

(i) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(ii) Weighs less than two hundred pounds, excluding cargo, unless otherwise authorized by a local authority pursuant to section 28-627.

(iii) Operates at a maximum speed of seven miles per hour, unless otherwise authorized by a local authority pursuant to section 28-627.

(iv) Is equipped with technology to allow for the operation of the device with or without the active control or monitoring of a natural person.

(v) Is equipped with a braking system that when active or engaged enables the personal delivery device to come to a controlled stop.

(b) Does not include a personal mobile cargo carrying device.

52. "Personal mobile cargo carrying device" means an electronically powered device that:

(a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(b) Weighs less than eighty pounds, excluding cargo.

(c) Operates at a maximum speed of twelve miles per hour.

(d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.

(e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

53. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

54. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

55. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

56. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

57. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

58. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

59. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

60. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

61. "State" means a state of the United States and the District of Columbia.

62. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

63. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

64. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

65. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

66. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

67. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.

68. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

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

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

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

72. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

73. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

74. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Personal mobile cargo carrying devices.

75. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

#### **28-101. Definitions (Version 2)**

**(L19, Ch. 89, sec. 2 & Ch. 120, sec. 2. Eff. 9/1/20)**

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.

2. "Alcohol concentration" if expressed as a percentage means either:

(a) The number of grams of alcohol per one hundred milliliters of blood.

(b) The number of grams of alcohol per two hundred ten liters of breath.

3. "All-terrain vehicle" means either of the following:

(a) A motor vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is fifty or fewer inches in width.

(iii) Has an unladen weight of one thousand two hundred pounds or less.

(iv) Travels on three or more nonhighway tires.

(v) Is operated on a public highway.

(b) A recreational off-highway vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is sixty-five or fewer inches in width.

(iii) Has an unladen weight of one thousand eight hundred pounds or less.

(iv) Travels on four or more nonhighway tires.

4. "Authorized emergency vehicle" means any of the following:

(a) A fire department vehicle.

(b) A police vehicle.

(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.

6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:

(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

(b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

8. "Board" means the transportation board.

9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

11. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.

12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.

13. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

14. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

15. "Conviction" means:

(a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.

(b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.

- (c) A plea of guilty or no contest accepted by the court.
- (d) The payment of a fine or court costs.
- 16. "County highway" means a public road that is constructed and maintained by a county.
- 17. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
- 18. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
- 19. "Digital network or software application" has the same meaning prescribed in section 28-9551.
- 20. "Director" means the director of the department of transportation.
- 21. "Drive" means to operate or be in actual physical control of a motor vehicle.
- 22. "Driver" means a person who drives or is in actual physical control of a vehicle.
- 23. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
- 24. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
  - (a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
- 25. "Electric miniature scooter" means a device that:
  - (a) Weighs less than thirty pounds.
  - (b) Has two or three wheels.
  - (c) Has handlebars.
  - (d) Has a floorboard on which a person may stand while riding.
  - (e) Is powered by an electric motor or human power, or both.
  - (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.
- 26. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
- 27. "Electric standup scooter":
  - (a) Means a device that:

- (i) Weighs less than seventy-five pounds.
- (ii) Has two or three wheels.
- (iii) Has handlebars.
- (iv) Has a floorboard on which a person may stand while riding.
- (v) Is powered by an electric motor or human power, or both.
- (vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.
- (b) Does not include an electric miniature scooter.

28. "Farm" means any lands primarily used for agriculture production.

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

30. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

31. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

32. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

33. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

34. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

35. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

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

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

38. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

39. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

40. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

41. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

42. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

43. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

44. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

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

46. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

47. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

48. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

49. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

50. "Personal mobile cargo carrying device" means an electronically powered device that:
- (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
  - (b) Weighs less than eighty pounds, excluding cargo.
  - (c) Operates at a maximum speed of twelve miles per hour.
  - (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
  - (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.
51. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.
52. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.
53. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
54. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.
55. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.
56. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:
- (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
  - (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.
57. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

58. "State" means a state of the United States and the District of Columbia.
59. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.
60. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.
61. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.
62. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:
- (a) Does not primarily operate on a regular route or between specified places.
  - (b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.
63. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
64. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.
65. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
66. "Transportation network company" has the same meaning prescribed in section 28-9551.
67. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.
68. "Transportation network service" has the same meaning prescribed in section 28-9551.
69. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.
70. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
71. "Vehicle":
- (a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.
  - (b) Does not include:
    - (i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.
    - (ii) Devices used exclusively on stationary rails or tracks.
    - (iii) Personal mobile cargo carrying devices.
72. "Vehicle transporter" means either:

- (a) A truck tractor capable of carrying a load and drawing a semitrailer.
- (b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

**28-101. Definitions (Version 3)**

**(L19, Ch. 89, sec. 3 & Ch. 120, sec. 3. Conditionally Eff.)**

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
  - (a) The number of grams of alcohol per one hundred milliliters of blood.
  - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
  - (a) A motor vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is fifty or fewer inches in width.
    - (iii) Has an unladen weight of one thousand two hundred pounds or less.
    - (iv) Travels on three or more nonhighway tires.
    - (v) Is operated on a public highway.
  - (b) A recreational off-highway vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is eighty or fewer inches in width.
    - (iii) Has an unladen weight of two thousand five hundred pounds or less.
    - (iv) Travels on four or more nonhighway tires.
    - (v) Has a steering wheel for steering control.
    - (vi) Has a rollover protective structure.
    - (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
  - (a) A fire department vehicle.
  - (b) A police vehicle.
  - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
  - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Automotive recycler" means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.
7. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
8. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
  - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
  - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
9. "Board" means the transportation board.
10. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
11. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
12. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
13. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
14. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
15. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
16. "Conviction" means:
  - (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
  - (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
  - (c) A plea of guilty or no contest accepted by the court.
  - (d) The payment of a fine or court costs.
17. "County highway" means a public road that is constructed and maintained by a county.
18. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.

19. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
20. "Digital network or software application" has the same meaning prescribed in section 28-9551.
21. "Director" means the director of the department of transportation.
22. "Drive" means to operate or be in actual physical control of a motor vehicle.
23. "Driver" means a person who drives or is in actual physical control of a vehicle.
24. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
25. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
- (a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
  - (c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
26. "Electric miniature scooter" means a device that:
- (a) Weighs less than thirty pounds.
  - (b) Has two or three wheels.
  - (c) Has handlebars.
  - (d) Has a floorboard on which a person may stand while riding.
  - (e) Is powered by an electric motor or human power, or both.
  - (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.
27. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
28. "Electric standup scooter":
- (a) Means a device that:
    - (i) Weighs less than seventy-five pounds.
    - (ii) Has two or three wheels.
    - (iii) Has handlebars.
    - (iv) Has a floorboard on which a person may stand while riding.
    - (v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

29. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

30. "Farm" means any lands primarily used for agriculture production.

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

32. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

33. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

34. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

35. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

36. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

37. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

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

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

40. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

41. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

42. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

43. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

44. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

45. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

46. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

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

48. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

49. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

50. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

51. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

52. "Personal delivery device":

(a) Means an electronically powered device that:

(i) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(ii) Weighs less than two hundred pounds, excluding cargo, unless otherwise authorized by a local authority pursuant to section 28-627.

(iii) Operates at a maximum speed of seven miles per hour, unless otherwise authorized by a local authority pursuant to section 28-627.

(iv) Is equipped with technology to allow for the operation of the device with or without the active control or monitoring of a natural person.

(v) Is equipped with a braking system that when active or engaged enables the personal delivery device to come to a controlled stop.

(b) Does not include a personal mobile cargo carrying device.

53. "Personal mobile cargo carrying device" means an electronically powered device that:

(a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(b) Weighs less than eighty pounds, excluding cargo.

(c) Operates at a maximum speed of twelve miles per hour.

(d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.

(e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

54. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

55. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

56. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

57. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

58. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

59. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

60. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.

61. "Scrap vehicle" has the same meaning prescribed in section 44-1641.

62. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

63. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

64. "State" means a state of the United States and the District of Columbia.

65. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

66. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

67. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

68. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

69. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

70. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.

71. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so

that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

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

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

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

75. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

76. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

77. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

78. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

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

In this article, unless the context otherwise requires:

1. "Immediate family member" means a spouse or a parent, child, brother or sister whether by adoption or blood.

2. "Special plates" means plates issued pursuant to this article.

#### **32-2351. Definitions**

In this chapter, unless the context otherwise requires:

1. "Agent" means any person who, for compensation, enrolls or attempts to enroll residents of this state in a professional driver training school through personal or telephone contact, advertisement, mail or any other type of publication.

2. "Director" means the director of the department of transportation.

3. "Instructor" means any person, whether acting for himself as an operator of a professional driver training school or for any such school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises the practice of persons learning to operate or drive motor vehicles or preparing to take an examination for a driver license or instruction permit, and any person who supervises the work of any other instructor.

4. "Professional driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation that educates and trains persons, either practically or theoretically, or both, to operate or drive commercial motor vehicles, that prepares applicants for an examination given by the state for a commercial driver license or instruction permit and that charges a consideration or tuition for these services.

#### **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, which is published pursuant to section 41-1011.

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, which is:

- (a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.
- (b) Published pursuant to section 41-1011.

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 to make a new rule or amend, repeal or renumber 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.

#### **49 CFR 384.105**

##### **§ 384.105 Definitions.**

- (a) The definitions in part 383 of this title apply to this part, except where otherwise specifically noted.
- (b) As used in this part:

*CDLIS motor vehicle record* (CDLIS MVR) means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by States to users authorized in § 384.225(e)(3) and (4), subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725.

*Issue and issuance* means the initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and the initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL, as described in § 383.73 of this subchapter.

*Licensing entity* means the agency of State government that is authorized to issue drivers' licenses.

*Year of noncompliance* means any Federal fiscal year during which—

- (1) A State fails to submit timely certification as prescribed in subpart C of this part; or
- (2) The State does not meet one or more of the standards of subpart B of this part, based on a final determination by the FMCSA under § 384.307(c) of this part.

[59 FR 26039, May 18, 1994, as amended at 73 FR 73125, Dec. 1, 2008; 76 FR 26893, May 9, 2011; 78 FR 17881, Mar. 25, 2013]

## Rule Authority

### 28-363. Duties of the Director; administration

#### A. The director shall:

1. Supervise and administer the overall activities of the department and its divisions and employees.
  2. Appoint assistant directors for each of the divisions.
  3. Provide for the assembly and distribution of information to the public concerning department activities.
  4. Delegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department.
  5. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes.
  6. Coordinate the design, right-of-way purchase and construction of controlled access highways that are either state routes or state highways and related grade separations of controlled access highways.
  7. Coordinate the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways under chapters 17 and 18 of this title.
  8. Assist regional transportation planning agencies, councils of government, tribal governments, counties, cities and towns in the development of their regional and local transportation plans to ensure that the streets, highways and other regionally significant modes of transportation within each county form an integrated and efficient regional system.
  9. Designate the necessary agencies for enforcing the provisions of the laws the director administers or enforces.
  10. Exercise other duties or powers as the director deems necessary to carry out the efficient operation of the department.
  11. 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.
  12. Develop a plan to increase use of bypass routes by vehicles on days of poor visibility in the Phoenix metropolitan area.
- B. The assistant directors appointed pursuant to subsection A of this section are subject to title 41, chapter 4, article 4.
- C. The director shall not spend any monies, adopt any rules or implement any policies or programs to convert signs to the metric system or to require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for any highway project before the conversion or use is required by federal law, except that the director may:
1. Spend monies and require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for a highway project that is awarded before October 1, 1997 and that is exclusively metric from its inception.

2. Prepare for conversion to and use of the metric system not more than six months before the conversion or use is required by federal law.

**28-364. Powers of the director**

A. The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning and guide local transportation planning to assure compliance with federal requirements. The planning authority granted by this subsection does not preempt planning responsibilities and decisions of local governments.

B. If the governor declares a state of emergency, the director may contract and do all things necessary to provide emergency transportation services for the residents in the affected areas whether the emergency transportation is by street, rail or air.

C. On a determination that it is in this state's best interest, the director may authorize payment for necessary relocation costs in advance of work being performed if an existing facility owned by the United States must be relocated or adjusted due to construction, modification or improvement of a state highway. The director shall base each advance payment on an estimate of cost of the proposed relocation or adjustment prepared by the federal government and acceptable to the director and shall base the final compensation on the actual agreed cost.

D. The director of the department of transportation in consultation with the director of the department of public safety shall develop procedures to exchange information for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

E. The director may establish a system or process that does all of the following:

1. Allows for mailing notices of service or other legal documents or records of the department electronically or digitally to a person who consents to receiving these notices, documents or records through a secure electronic or digital system.

2. Enables a person to establish a financial account in the department's database. The account shall be accessible by the person or the person's authorized representative to review statements of all transactions associated with the person's account and to make prepayments or payments for authorized transactions with the department. Notwithstanding any other law, monies in financial accounts established pursuant to this section that remain unexpended for a period of five years or more revert to the Arizona highway user revenue fund and shall be distributed pursuant to section 28-6538.

3. Allows a person to comply with the photograph update and proof of vision test requirements prescribed by section 28-3173 through electronic or digital means that meet the department's standards.

F. The director, in consultation with the Arizona medical board or the state board of optometry, may do all of the following:

1. Establish medical and vision standards for driver license applicants and examinations.

2. Establish courses of training, training facilities and qualifications and methods of training for driver license examining personnel.

3. Establish procedures for the certification of driver license examining personnel and driver license instructors personnel.

4. Direct research in the field of licensing drivers. The director may accept public or private grants for the research.

5. Conduct research in the field of examination or reexamination of licensing individual drivers with medical or vision problems.

6. Set minimum vision standards for the operation of a motor vehicle in this state.

G. The director may implement electronic or digital versions of driver licenses, nonoperating identification licenses, vehicle registration cards, license plates or any other official record of the department.

**28-446. Fees for copies; exemptions**

A. The department may furnish information from the records that are required to be kept by this title or may furnish copies from the records. The department may charge a fee for providing the information or copies that does not exceed three dollars for each item.

B. The department shall not charge any of the following for copies of records, for certified copies of records or for information furnished from its records:

1. This state or its departments, agencies or political subdivisions.

2. A court.

3. The federal government or its agencies.

4. A law enforcement agency in a foreign country.

5. A toll operator as defined in section 28-7751.

C. The department shall furnish either of the following to any person on payment of a fee of five dollars:

1. Certified copies of public records designated pursuant to section 28-447.

2. Vehicle title history information.

D. This section does not apply to information required by law to be kept confidential or to statistical information, the purpose of which relates to traffic accidents, traffic offenses or traffic enforcement.

E. The director shall deposit, pursuant to sections 35-146 and 35-147, fees collected under this section in the Arizona highway user revenue fund.

**28-3411. Enforcement; contract with private entity**

A. Subject to title 41, chapter 6, the director shall adopt rules for the administration and enforcement of this article. The director or the director's authorized representative shall inspect the school facilities and equipment used by applicants and licensees under this article.

B. The director shall administer and enforce this article.

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

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

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

**28-3413. License for schools; requirements; fingerprint clearance card**

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

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

C. Each applicant who owns twenty per cent or more of an entity and each partner or stockholder who owns twenty per cent or more of an entity and who seeks licensure pursuant to this article shall provide the department or a contracted private entity of the department pursuant to section 28-3411 with a valid fingerprint clearance card issued pursuant to section 41-1758.03.

**28-3415. License expiration; fees; disposition**

A. Except as provided in section 32-4301, all licenses expire on the last day of the calendar year and may be renewed on application to the director as prescribed by rule.

B. Each application for an original or renewal license to operate a traffic survival school shall be accompanied by a fee of two hundred dollars.

C. An application for a branch license shall be accompanied by a fee of fifty dollars.

D. A license fee may not be refunded if a license is suspended or revoked.

E. All monies received by the director from the fees provided in this article shall be deposited, pursuant to sections 35-146 and 35-147, in the state highway fund established by section 28-6991.

**28-5101.02. Authorized third party driver license training providers; requirements; applicability**

A. Beginning July 1, 2014, a person must be an authorized third party driver license training provider to perform driver license training.

B. A person who applies for authorization pursuant to this section is not required to submit a bond with the application.

C. A third party driver license training provider authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

D. This section does not apply to any professional driver training school licensed pursuant to title 32, chapter 23.

**28-5101.03. Authorized third party commercial driver license examiners; requirements**

A. Beginning July 1, 2014, a person must be a separately authorized third party commercial driver license examiner to perform commercial driver license skills testing.

B. A third party commercial driver license examiner authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

**32-2352. Enforcement; contract with private entity**

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

B. The director shall administer and enforce this chapter.

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

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

**32-2353. Exemptions**

This chapter does not apply to any person who gives driver training lessons without charge, to employers maintaining driver training schools without charge for their employees only or to schools or classes conducted by colleges, universities and high schools for regularly enrolled, full-time students as a part of the normal program for such institutions.

**32-2371. License for schools; requirements; fingerprint clearance card**

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

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

C. Each applicant who owns twenty per cent or more of an entity, and each partner or stockholder who owns twenty per cent or more of an entity and who seeks licensure pursuant to this chapter shall provide the department or a

contracted private entity of the department pursuant to section 32-2352 with a valid fingerprint clearance card issued pursuant to section 41-1758.03.

**32-2371.01. License for agents; requirements**

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

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

**32-2372.01. Commercial motor vehicle instructors; rules**

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

**32-2374. Fees**

Except as provided in section 32-4301, all licenses expire on the last day of the calendar year and may be renewed on application to the director as prescribed by rule. Each application for an original or renewal license to operate a professional driver training school shall be accompanied by a fee of two hundred dollars. Each application for an original or renewal agent's license shall be accompanied by a fee of ten dollars. An application for a branch license shall be accompanied by a fee of fifty dollars. No license fee may be refunded in the event a license is suspended or revoked.

**32-2375. Disposition of fees**

All monies received by the director from the fees provided in this article shall be deposited, pursuant to sections 35-146 and 35-147, in the state highway fund.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 14, Article 6, Department of Health Services - Licensing of Environmental Laboratories



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT:** Department of Health Services  
Title 9, Chapter 14, Article 6

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This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 14, Article 6 regarding licensing of Environmental Laboratories.

In the last 5YRR of these rules, the Department indicated it would amend several rules. The Department completed rulemaking that addressed the changes in October 2016.

### **Proposed Action**

The Department is not proposing any changes to the rules.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department licenses environmental laboratories engaged in compliance testing; establishes minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; and develops rules in cooperation with the Arizona Department of Environmental Quality (ADEQ) that are consistent with A.R.S. Title 49 rules adopted by ADEQ. The rules were updated in 2006 and 2016 and after review the Department believes that the economic impact was as estimated.

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

The Department believes that the rules help to ensure the compliance testing provided by these laboratories is accurate to help protect the health and safety of the people of Arizona. The Department believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms on these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable.

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

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

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

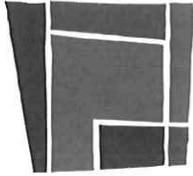
No. The Department indicates the rules are not more stringent than the corresponding federal laws; 33 U.S.C. Chapter 26, § § 1251-1376, 42 U.S.C. §300f-300, 15 U.S.C. 53, 42 U.S.C. 82, 42 U.S.C. 85, and 42 U.S.C. 103.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a general permit.

11. **Conclusion**

As mentioned above, the Department is not proposing any changes to the rules. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

September 24, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 14, Article 6, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 14, Article 6, Licensing of Environmental Laboratories, which is due on November 30, 2020.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a circular scribble.

Robert Lane  
Director's Designee

RL:rms

Enclosures

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

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247    P | 602-542-1025    F | 602-542-1062    W | [azhealth.gov](http://azhealth.gov)

*Health and Wellness for all Arizonans*



**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 14. Department of Health Services**

**Laboratories**

**Article 6. Licensing of Environmental Laboratories**

**September 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-495, 36-495.01, 36-495.02, 36-495.03, 36-495.04, 36-495.05, 36-495.06, 36-495.07, 36-495.08, 36-495.09, 36-495.13, 36-495.14, 36-495.15, and 41-1073 through 41-1076

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R9-14-601	To define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-14-602	To establish exemptions from the Article's applicability.
R9-14-603	To specify the content of an initial or renewal license application, time period for submission of a license application, criteria for the Department's issuance of a single laboratory license, and conditions under which a license is valid. To provide notice that non-payment of applicable fees constitutes a violation of the requirements for licensure and that no fee is charged for a new license issued in response to a change in laboratory name, laboratory director, or ownership reported to the Department within 20 days after the change.
R9-14-604	To specify the conditions under which accreditation of a laboratory by a third party is acceptable in lieu of licensure.
R9-14-605	To establish requirements for compliance monitoring to help ensure the health of members of the public, including specifying requirements for mandatory and permissive inspections, investigations, and proficiency testing; the actions the Department may take in response to deficiencies found during compliance monitoring; and requirements related to corrective action plans.
R9-14-606	To specify conditions under which the Department may issue a provisional license to a licensee, the elements the Department will consider in deciding whether to issue a provisional license, the period of time during which a provisional license is valid, and how a licensee with a provisional license may request and obtain a regular license.
R9-14-607	To specify the fees an applicant is required to submit to the Department with an application for an initial or renewal license to sustain the environmental laboratory licensure program.
R9-14-608	To specify the conditions of and requirements for fee installment payments by a small business.
R9-14-609	To specify the frequency of proficiency testing and the mechanism by which an applicant or licensee may demonstrate proficiency in the type of compliance testing performed by the laboratory to help ensure the health of members of the public.

R9-14-610	<p>To require that compliance testing be performed by an approved method or a method alteration approved by the Department.</p> <p>To incorporate by reference the publications containing the approved methods.</p> <p>To specify the mechanism by which a person may request approval of a different method or method alteration.</p> <p>To establish the criteria the Department will use in making the decision of whether or not to approve a different method or method alteration.</p>
R9-14-611	To specify requirements for laboratories performing compliance testing of drinking water to help ensure the health of members of the public.
R9-14-612	To specify requirements for laboratories performing compliance testing of wastewater to help ensure the health of members of the public.
R9-14-613	To specify requirements for laboratories performing solid waste compliance testing to help ensure the health of members of the public.
R9-14-614	To specify requirements for laboratories performing air or stack compliance testing to help ensure the health of members of the public.
R9-14-615	To establish minimum standards for quality assurance, including the development and implementation of a quality assurance plan and standard operation procedures, to help ensure the health of members of the public; and requirements and processes for obtaining an exemption from the requirement for a licensee or applicant to have available at the laboratory all methods, equipment, reagents, and glassware necessary for compliance testing of all licensed parameters.
R9-14-616	To establish the minimum standards for environmental laboratory operations.
R9-14-617	To establish the minimum standards for compliance testing records and reports and for the maintenance and accessibility of records and reports.
R9-14-618	To require a mobile laboratory be licensed and comply with the Article; and the licensee for a mobile laboratory provide to the Department, upon request, the mobile laboratory's location and a list of the parameters for which testing is performed at the mobile laboratory.
R9-14-619	To require an out-of-state environmental laboratory to comply with the statutes and rules applicable to an out-of-state environmental laboratory and to pay the Department's expenses incurred as a result of the laboratory's out-of-state location.
R9-14-620	To specify the mechanism by which a licensee may request a change to the parameters for which the laboratory is licensed.
R9-14-621	To specify the administrative processes the Department will perform during the time-frames in Table 6.1.
Table 6.1	To establish the time-frames for the Department's administrative processes for the approvals issued under this Article.
Table 6.2.A	To provide a list of drinking water parameters and specify the methods by which each analyte may be tested, the licensing fee for each method, and a reference for the method.
Table 6.2.B	To provide a list of wastewater parameters and specify the methods by which each analyte may be tested, the licensing fee for each method, and a reference for the method.
Table 6.2.C	To provide a list of solid waste parameters and specify the methods by which each analyte may be tested, the licensing fee for each method, and a reference for the method.
Table 6.2.D	To provide a list of air and stack parameters and specify the methods by which each analyte may be tested, the licensing fee for each method, and a reference for the method.
Table 6.2.E	To provide a list of director-approved methods and specify the licensing fee for each method..
Table 6.3	To specify the licensing fee associated with each type of instrument used in compliance testing.
Table 6.4	To specify the default limits for quality control parameters without acceptance criteria specified in the method.

3. **Are the rules effective in achieving their objectives?** Yes  No   
*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes  No   
*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation

5. **Are the rules enforced as written?** Yes  No   
*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes  No   
*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No   
*If yes, please fill out the table below:*

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

A.R.S. § 36-495.01 requires the Department to license environmental laboratories engaged in compliance testing; establish minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; and develop rules in cooperation with the Arizona Department of Environmental Quality (ADEQ) that are consistent with A.R.S. Title 49 and rules adopted by ADEQ. The Department adopted rules implementing A.R.S. § 36-495.01 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 14, Article 6. The rules in 9 A.A.C. 14, Article 6, establish application and fee requirements and the process for licensing environmental laboratories that perform compliance testing. The rules include minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; minimum standards for laboratory records and reports; specific requirements for mobile laboratories and out-of-state laboratories; and time-frames. Under these rules, the Department licenses approximately 133 environmental laboratories, including 52 environmental laboratories that are located out-of-state. From these environmental laboratories, the Department annually collects over \$700,000 in licensing fees, with approximately half of the funds submitted in March through June. These funds are deposited into the environmental laboratory licensure revolving fund established under A.R.S. § 36-495.15, from which the Department receives a legislative appropriation to run the Environmental Laboratory Licensure Program (Program) within the Department. In the past five years, the Department has collected approximately \$325,000 in civil penalties from two laboratories, which were deposited into the general funds.

Three rules, R9-14-604, R9-14-618, and R9-14-619, were last revised in a rulemaking effective December 5, 2006. An EIS is available from the rulemaking and stated that minimal means less than \$1,000; moderate means \$1,000 to \$9,999; substantial means \$10,000 or more; and significant means meaningful or important, but not readily subject to quantification. R9-14-604 clarifies and implements the exemption authorized by A.R.S. § 36-495.02(A)(5) that a laboratory that holds current and valid accreditation issued by the National Voluntary Laboratory Accreditation Program administered by the National Institute of Standards and Technology is exempt from licensure for the term of the accreditation. This rule was believed to impose no costs and to provide a significant benefit to the owner of a laboratory that qualifies for the exemption, by making it clear that the exemption is available and for what duration. Changes to R9-14-618 corrected a cross reference and clarified existing requirements, and were believed to result in a minimal benefit to the Department, licensees, and applicants from the improved clarity. In R9-14-619, existing fees were increased, which was anticipated to result in a minimal cost increase to out-of-state licensees or applicants and a minimal benefit to the Department. A new fee for laboratories located in foreign countries was added, which was estimated to provide a minimal-to-moderate benefit to the Department and impose a minimal-to-moderate cost to each licensee or applicant whose laboratory is located in a foreign country, depending on how many ADHS representatives are required to complete a laboratory inspection or investigation. The Department believes the economic impact is as estimated.

The Department made extensive changes to the rest of the rules in a rulemaking effective October 1, 2016. An EIS is available from the rulemaking. In the rulemaking, the Department made changes to be consistent with ADEQ rules and 40 CFR parts 141 and 142. The Department also made changes to address written criticisms of

the rules, updated obsolete methodologies and references, and made other changes to the rules, as described in the November 2015 five-year-review report for the rules, to reduce the regulatory burden while achieving the same regulatory objective. Those affected by the rules included the Department, ADEQ, environmental laboratories, environmental organizations, and the general public. Annual costs/revenues changes were designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification.

The EIS stated that the Department might incur minimal costs due to additional time being spent providing technical assistance and a moderate cost for permission to copy the Standard Methods. The Department was expected to receive a significant benefit from improved clarity in the rules, having more up-to-date references and methods, and being able to suspend the use of the installment payment plan in R9-14-608 under the circumstances described in the rule. The Department was also expected to receive a minimal benefit from being able to rescind approval of an alternate method or method alteration and from the removal of unnecessary requirements in R9-14-603 and R9-14-615. The Department believed that ADEQ would receive a significant benefit from having rules in 9 A.A.C. 14, Article 6, that were consistent with ADEQ rules and federal regulations and a significant benefit from having the flexibility to address local concerns through retaining primacy.

A regional or municipal water system performing in-house compliance testing and other governmental entities were believed to receive a minimal-to-moderate benefit from being able to use up-to-date methods when testing water supplies but to possibly incur minimal additional costs, depending on the parameters tested and the methods currently used. The Department anticipated that being able to use up-to-date methods when performing compliance testing might provide a minimal-to-substantial benefit to a governmental or private environmental laboratory, depending on the parameters tested and the methods currently used, and might cause minimal additional costs. An environmental laboratory, including a regional or municipal water system or an environmental laboratory owned by a governmental entity or a private person, that complies with the requirements in R9-14-602(4) or (5) were estimated to receive a minimal-to-moderate benefit from being exempt from the requirement to have every field/satellite site licensed as an environmental laboratory. The Department anticipated that the elimination of unnecessary requirements and having rules that were clearer and easier to understand might provide a significant benefit to an environmental laboratory. An environmental laboratory might also receive a significant benefit from Arizona retaining primacy since ADEQ and the Department might have more flexibility when addressing issues specific to Arizona. A health care institution, adding chlorine to its water supply to reduce cross-infection rates and increase patient safety and monitoring the effect of the chlorine addition on the water, was also believed to receive a minimal-to-moderate benefit from not having to be licensed as an environmental laboratory.

Environmental organizations include organizations representing water/wastewater professionals and the water-treatment industry, as well as consulting firms representing construction projects that impact the environment. The Department anticipated that the rules might provide a significant benefit to an environmental

organization by helping to ensure that the data produced are considered to be in compliance with federal requirements and are defensible in court; that pollutants in the air, wastewater, and other environmental media are adequately assessed and enhance the professionalism of those using them; and that the rules are easier to use.

In the 2016 EIS, the Department estimated that the general public might receive a significant benefit from having safe water to drink and being assured that pollutants in the air, wastewater, and other environmental media are adequately assessed. The Department also stated that it was possible the general public could incur minimal additional costs if any costs incurred by regional or municipal water systems were passed on to the customers of the water systems. The Department believes the economic impact in the 2016 EIS is as estimated.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The 2015 five-year-review report indicated that the Department planned to amend the rules to address issues identified in the report. The Department completed the planned course of action in a rulemaking effective October 1, 2016.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules in 9 A.A.C. 14, Article 6, implement the statutes in A.R.S. Title 36, Chapter 4.3 by establishing application and fee requirements and the process for licensing environmental laboratories; minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; minimum standards for laboratory records and reports; specific requirements for mobile laboratories and out-of-state laboratories; and time-frames. These rules ensure that the compliance testing provided by these laboratories is accurate to help protect the health and safety of the people of Arizona. As such, the Department believes that the rules specify the minimum requirements necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules. The Department also believes that, with the 2016 rulemaking, the rules impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

The rules are based on state statutes. However, they are consistent with several federal laws. These include the Clean Water Act (33 U.S.C. Chapter 26, §§ 1251 through 1376), the Safe Drinking Water Act (42 U.S.C. §§ 300f through 300), the Toxic Substance Control Act as related to the regulation of polychlorinated biphenyls and asbestos (15 U.S.C. 53, subchapters I and II, §§ 2601 through 2654), the Resource Conservation and Recovery Act (42 U.S.C. 82, subchapters I, II, and III, §§ 6921 through 6939b), the Clean Air Act (42 U.S.C. 85, §§ 7401 through 7642), and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 103, §§ 9601 through 9657).

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules require a permit as specified in A.R.S. § 36-495.01. However, A.R.S. § 36-495.03 requires a license application to be for a specific location and for specific services and tests, so a general permit is not used.

**14. Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Department does not plan to revise the rules in 9 A.A.C. 14, Article 6, unless substantive issues arise.

**TITLE 9. HEALTH SERVICES**

**CHAPTER 14. DEPARTMENT OF HEALTH SERVICES**

**LABORATORIES**

**ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES**

Section

R9-14-601.	Definitions
R9-14-602.	Exemptions from Applicability
R9-14-603.	License Application and Process; Transferability
R9-14-604.	Third Party Accreditation
R9-14-605.	Compliance Monitoring
R9-14-606.	Provisional Licensing
R9-14-607.	Fees
R9-14-608.	Installment Payment of Fees by Small Businesses
R9-14-609.	Proficiency Testing
R9-14-610.	Approved Methods and References
R9-14-611.	Compliance Testing for Drinking Water Parameters
R9-14-612.	Compliance Testing for Wastewater Parameters
R9-14-613.	Compliance Testing for Waste Parameters
R9-14-614.	Compliance Testing for Air and Stack Parameters
R9-14-615.	Quality Assurance
R9-14-616.	Operation
R9-14-617.	Laboratory Records and Reports
R9-14-618.	Mobile Laboratories
R9-14-619.	Out-of-State Environmental Laboratory Licensing
R9-14-620.	Changes to a License
R9-14-621.	Time-frames
Table 6.1	Time-frames (in days)
Table 6.2.A.	Approved Methods and Method Fees for Drinking Water Parameters
Table 6.2.B.	Approved Methods and Method Fees for Wastewater Parameters
Table 6.2.C.	Approved Methods and Method Fees for Waste Parameters
Table 6.2.D.	Approved Methods and Method Fees for Air and Stack Parameters
Table 6.2.E.	Methods Director-Approved under R9-14-610(E) and Method Fees
Table 6.3.	Instrumentation Fees
Table 6.4.	Alternate Default Limits

**ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES**

**R9-14-601. Definitions**

In addition to the definitions in A.R.S. § 36-495, the following definitions apply in this Article, unless otherwise specified:

1. “Acceptance criteria” means the range of satisfactory test results for a parameter.
2. “ADEQ” means the Arizona Department of Environmental Quality.
3. “Affiliate” means a business organization that:
  - a. Controls or has the power to control the business organization that owns the laboratory,
  - b. Is controlled by or could be controlled by the business organization that owns the laboratory, or
  - c. Could be controlled by a third business organization that could also control the business organization that owns the laboratory.
4. “Alternate method” means an analytical test procedure or technique that is not an approved method and for which approval is requested under R9-14-610(C).
5. “Analyst” means an individual who performs compliance testing at a laboratory.
6. “Analyte” means the substance or chemical constituent being sought or measured in an analytical procedure.
7. “Applicant” means a person or persons requesting an initial or renewal license under R9-14-603, approval of an alternate method or method alteration under R9-14-610(C), or approval of an exemption under R9-14-615(D), and includes, as required under A.R.S. § 36-495.03(D), the owner and, if the owner is not the laboratory director, the laboratory director.
8. “Approved method” means an analytical test procedure or technique authorized by the Department to test for the presence of a particular contaminant or characteristic and includes:
  - a. An alternate method approved by the Department under R9-14-610(E), and
  - b. An analytical test procedure or technique currently authorized by the Department that is used with a method alteration approved by the Department under R9-14-610(E).
9. “ASTM” means American Society for Testing and Materials.
10. “Blind proficiency testing” means the Department’s determination of a laboratory analyst’s ability to analyze samples correctly, accomplished by submitting samples for

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testing in such a manner that the laboratory analyst is not aware that the proficiency testing is occurring.

11. “Business organization” means an entity such as a sole proprietorship, an unincorporated association, a corporation, a limited liability company, a partnership, or a governmental entity.
12. “Calibration curve” means a graphical display of the functional relationship between the instrument or analytical device response and the analyte amount.
13. “Calibration model” means a mathematical form for a calibration curve.
14. “CCC” means calibration check compounds.
15. “CCV” means continuing calibration verification standard.
16. “Client” means a person that submits a sample to a laboratory for compliance testing.
17. “Contaminant” means a matter, pollutant, hazardous substance, or other substance for which a sample is being tested.
18. “Contiguous grounds” means real property that can be enclosed by a single unbroken boundary line that does not enclose property owned or leased by another.
19. “Critical step” means a task in the testing procedure that is required to be performed within a specified time period by regulation, method, standard operating procedure, or quality assurance plan.
20. “Current” means up-to-date and extending to the present time.
21. “Data outlier” means a test result that falls outside of acceptance criteria.
22. “Days” means calendar days, excluding the day of the act, event, or default from which a designated period of time begins to run and excluding the last day of the period if it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.
23. “DBCP” means 1,2-Dibromo-3-chloropropane.
24. “DDT” means dichloro-diphenyl-trichloroethane.
25. “DOC” means dissolved organic carbon.
26. “ECD” means electron capture detector.
27. “EDB” means 1,2-Dibromoethane.
28. “Effluent” means an outflow, as of a stream that flows out of a facility.
29. “EOX” means extractable organic halides.
30. “EP” means extraction procedure.
31. “EPA” means the United States Environmental Protection Agency.
32. “FID” means flame ionization detector.

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33. “FL” means fluorescence.
34. “FT-IR” means Fourier transform infrared.
35. “GC” means gas chromatography.
36. “HEM” means n-Hexane extractable material.
37. “HPLC” means high performance liquid chromatography.
38. “HRGC” means high resolution gas chromatography.
39. “HRMS” means high resolution mass spectrometry.
40. “ICV” means initial calibration verification.
41. “Initial Demonstration of Capability” or “IDOC” means a test performed by an analyst, as prescribed by a method, to document the analyst’s ability to perform the method.
42. “Investigation” means an evaluation of a licensee’s or applicant’s compliance with A.R.S. Title 36, Chapter 4.3 and this Article conducted by the Department upon its own initiative or upon receipt of a written complaint and may include a laboratory inspection.
43. “IPC” means instrument performance check.
44. “Key reference” means a document incorporated by reference in R9-14-610(B).
45. “Laboratory inspection” means the Department’s assessment of operations at a laboratory to determine an applicant’s or a licensee’s compliance with A.R.S. Title 36, Chapter 4.3 and this Article.
46. “LCS” means laboratory control sample.
47. “LDO” means Luminescence Measurement of Dissolved Oxygen.
48. “Level I license” means an approval issued by the Department authorizing compliance testing of one to nine total parameters at a laboratory.
49. “Level II license” means an approval issued by the Department authorizing compliance testing of 10 to 17 total parameters at a laboratory.
50. “Level III license” means an approval issued by the Department authorizing compliance testing of more than 17 total parameters at a laboratory.
51. “LFB” means laboratory fortified blank.
52. “LFM” means laboratory fortified sample matrix.
53. “Licensee” means a person or persons to whom the Department issues a license to operate a laboratory and includes, as required under A.R.S. § 36-495.03(D), the owner and, if the owner is not the laboratory director, the laboratory director.
54. “Limit of detection” means an analyte- and matrix-specific estimate of the minimum amount of a substance that an analytical process can reliably detect.
55. “Limit of quantitation” or “LOQ” means the minimum levels, concentrations, or

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quantities of a target variable such as an analyte that can be reported with a specific degree of confidence.

56. “LRMS” means low resolution mass spectrometry.
57. “Maximum holding time” means the greatest number of minutes, hours, or days that a sample may be kept between sampling and the beginning of analysis and still be considered a valid sample for compliance testing.
58. “Method” means an analytical test procedure or technique.
59. “Method alteration” means a change to an established method.
60. “Method reporting limit” means the minimum concentration of a contaminant reported after analyzing a sample in a given parameter, determined after corrections have been made for sample dilution and sample weight.
61. “Mobile laboratory” means a non-stationary facility where compliance testing is performed.
62. “MPN” means most probable number.
63. “MRL” means minimum reporting level.
64. “MS” means mass spectrometry.
65. “MSE” means microscale solvent extraction.
66. “MSRV” means Modified Semisolid Rappaport-Vassiliadis.
67. “NPD” means nitrogen phosphorous detector.
68. “NPDES” means national pollutant discharge elimination system.
69. “NTIS” means the National Technical Information Service, which is part of the U.S. Department of Commerce.
70. “NTU” means nephelometric turbidity units.
71. “ONPG-MUG” means ortho-nitrophenyl- $\beta$ -D-galactopyranoside-4-methylumbelliferyl- $\beta$ -D-glucuronide.
72. “Owner” means a person that has controlling legal or equitable interest in and authority over a laboratory’s operations.
73. “PAH” means polynuclear aromatic hydrocarbon.
74. “Parameter” means the combination of a particular type of sample with a particular approved method by which the sample will be analyzed for a particular analyte or characteristic.
75. “PB” means particle beam.
76. “PCB” means polychlorinated biphenyls.
77. “PCDD” means polychlorinated dibenzodioxins.

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78. “PCDF” means polychlorinated dibenzofurans.
79. “PDA” means photodiode array.
80. “PID” means photoionization detection.
81. “POX” means purgeable organic halides.
82. “Precision” means repeatability of measurement data, specifically the similarity of successive independent measurements of a single magnitude generated by repeated applications of a process under specified conditions.
83. “Proficiency testing” means a mechanism in which samples with known characteristics are submitted to a laboratory for analysis to determine a laboratory analyst’s ability to analyze samples correctly.
84. “Proficiency testing service” means an independent company or other person acceptable to the EPA or, if the EPA has not indicated acceptance of an independent company or other person for a parameter, acceptable to the Department based on recognition from a national organization such as the National Environmental Laboratory Accreditation Program that:
  - a. Is the source for samples with known characteristics for proficiency testing, and
  - b. Assesses the acceptability of a laboratory analyst’s results from the samples with known characteristics during proficiency testing.
85. “Qualified” means explained in documentation.
86. “Quality assurance plan” means documentation that meets the requirements of R9-14-615(B).
87. “Quality control checks” means the steps taken by laboratory analysts to monitor the accuracy and precision of sample analysis.
88. “QCS” means quality control sample.
89. “RDX” means Hexahydro-1,3,5-trinitro-1,3,5-triazine.
90. “Records” means all written, recorded, and electronic documentation necessary to reconstruct all laboratory activities that produce data and includes all information relating to the laboratory’s equipment, analytical test methods, and related activities.
91. “RPD” means relative percent difference.
92. “Ruggedness” means the ability of a method to withstand changes in environmental factors and produce repeatable results.
93. “Sample” means a specimen that is a representative part of a whole or a single item from a group.
94. “Single laboratory” means an individual laboratory facility or multiple laboratory

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facilities located on contiguous grounds and having the same owner.

95. “Small business” means a business organization, including its affiliates, that is independently owned and operated, that is not dominant in its field, and that employs fewer than 100 full-time employees or had gross annual receipts of less than \$4 million in its last fiscal year.
96. “SOUR” means specific oxygen uptake rate.
97. “SPE” means solid-phase extraction.
98. “SPLP” means synthetic precipitation leaching procedure.
99. “Standard operating procedure” means a documented process for carrying on business, analysis, or action, with instructions for performing routine or repetitive tasks.
100. “Statistical outlier” means an individual data point that has a value far from those of the other data points in a set and that has been determined through statistical analysis to have been derived from a different population than the other data points.
101. “TCLP” means toxicity characteristics leaching procedure.
102. “TDS” means total dissolved solids.
103. “TE” means thermal extraction.
104. “TNT” means trinitrotoluene.
105. “TOC” means total organic carbon.
106. “TOX” means total organic halides.
107. “Traceability” means the establishment of an unbroken chain of comparisons to the reference of origin.
108. “TS” means thermospray.
109. “TSS” means total suspended solids.
110. “UV” means ultraviolet.
111. “Valid” means that a license, certificate, or other form of authorization is in full force and effect and not suspended.
112. “VOC” means volatile organic compound.
113. “VOST” means volatile organic sampling train.

### **R9-14-602. Exemptions from Applicability**

This Article does not apply to:

1. The laboratories exempted by A.R.S. § 36-495.02(A);
2. Compliance testing performed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y;

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3. An out-of-state laboratory at which only microbiology testing of bottled water is performed and for which the owner holds a current and valid environmental laboratory license or certificate, issued by another state of the United States, that specifically authorizes drinking water testing;
4. A person that:
  - a. Employs methods approved by either ADEQ or the Department; and
  - b. Tests compliance samples either:
    - i. For turbidity or conductivity at the time of sampling, or
    - ii. With a maximum holding time of 15 minutes after sampling; or
5. A laboratory that only performs compliance testing on daily chlorine dioxide or chlorite drinking water samples or ultra-low-range total residual chlorine wastewater samples as long as that laboratory is:
  - a. Employing methods approved by either ADEQ or the Department; and
  - b. Testing compliance samples immediately at the time of sampling, from which results may be obtained more than 15 minutes after sampling.

**R9-14-603. License Application and Process; Transferability**

- A. To obtain an initial or renewal license to operate a laboratory, an applicant shall submit to the Department, within the time prescribed in subsection (B), an application that contains:
  1. The following information in a Department-provided format:
    - a. The name of the laboratory;
    - b. The current Arizona license number for the laboratory, if any;
    - c. The current EPA certification number for the laboratory, if any;
    - d. Whether the applicant is applying to license:
      - i. A single laboratory,
      - ii. Multiple laboratories located on contiguous grounds according to subsection (C)(2), or
      - iii. One of multiple laboratories under a single license according to subsection (C)(3);
    - e. The physical and mailing addresses for each laboratory for which the application is being submitted;
    - f. The telephone number, fax number, and e-mail address for the laboratory;
    - g. The type of laboratory:
      - i. Governmental;
      - ii. Company, performing internal work only;

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- iii. Commercial, for profit; or
- iv. Other, with a description of the type of laboratory operation;
- h. For a type of laboratory specified in subsection (A)(1)(g)(ii) through (iv):
  - i. The name and address of the owner and of each additional person that has an ownership interest in the laboratory; and
  - ii. For each person specified in subsection (A)(1)(h)(i), the name of each officer, principal, and statutory agent;
- i. The name of the laboratory director;
- j. Whether the applicant is applying for a:
  - i. Level I license,
  - ii. Level II license, or
  - iii. Level III license;
- k. If the applicant is applying to license a mobile laboratory:
  - i. The vehicle make, vehicle identification number, and Arizona vehicle license number of the mobile laboratory; and
  - ii. If the mobile laboratory is affiliated with a non-mobile laboratory, the name of the non-mobile laboratory;
- l. If the application is for an initial license:
  - i. A list of the parameters for which the applicant is requesting to be licensed,
  - ii. A list of the instruments and equipment to be used at the laboratory for compliance testing,
  - iii. A list of the software to be used at the laboratory for instrument control and data reduction interpretation, and
  - iv. A list of the states in which the laboratory is licensed or certified and the corresponding license or certificate number for each state;
- m. If the application is for a renewal license, whether the applicant:
  - i. Is requesting to be licensed for the same parameters as on the current license;
  - ii. Is using the same instruments and equipment as used under the current license;
  - iii. Is using the same software as used under the current license; and
  - iv. Is requesting to make payments in installments, as permitted under R9-14-608, and, if so, an indication of the monthly, bimonthly, or quarterly schedule for the payments;

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- n. If the information provided according to subsection (A)(1)(m) indicates a change in parameters, instruments or equipment, or software for a renewal license, the changes to the:
    - i. Parameters on the current license,
    - ii. Instruments or equipment used under the current license, or
    - iii. Software used under the current license;
  - o. If the applicant is applying for an out-of-state laboratory, whether the applicant wants to receive technical updates at the laboratory by fax or by e-mail;
  - p. Whether the applicant agrees to allow the Department to submit supplemental requests for information; and
  - q. The dated signature of the laboratory director and:
    - i. If the owner is an individual, the individual;
    - ii. If the owner is a corporation, an officer of the corporation;
    - iii. If the owner is a partnership, one of the partners;
    - iv. If the owner is a limited liability company, a manager or, if the limited liability company does not have a manager, a member of the limited liability company;
    - v. If the owner is an association or cooperative, a member of the governing board of the association or cooperative;
    - vi. If the owner is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing by that individual; or
    - vii. If the owner is a business organization type other than those described in subsections (A)(1)(q)(ii) through (v), an individual who is a member of the business organization;
2. A notarized attestation in a Department-provided format, made under oath, and signed by the individuals in subsection (A)(1)(q) stating that:
- a. The owner and the laboratory director will comply with all applicable requirements in A.R.S. Title 36, Chapter 4.3 and this Article; and
  - b. The information and documents provided as part of the application are true and accurate;
3. If the application is for an initial license:
- a. A copy of a proficiency testing report, for the current or most recently completed year, for the state in which the laboratory is located or, if that state does not require proficiency testing, for another state in which the laboratory is licensed or certified, for each of the parameters for which licensure is requested; and

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- b. A copy of a current quality assurance plan for the laboratory;
  - 4. If the application is for a renewal license, a copy of a current standard operating procedure, limit of detection, and, if available, proficiency testing report for each new parameter specified according to subsection (A)(1)(n)(i); and
  - 5. Except as provided in subsection (I), the fees required under R9-14-607 and R9-14-608, payable to the Arizona Department of Health Services by credit card; certified check; business check; money order; or, if the owner is an Arizona state agency, purchase order.
- B.** An applicant shall submit an application:
  - 1. For an initial license for an in-state laboratory, at least 30 days before the applicant intends to begin operating the in-state laboratory;
  - 2. For an initial license for an out-of-state laboratory, at least 60 days before the applicant intends to begin performing Arizona compliance testing;
  - 3. For a renewal license for an in-state laboratory, at least 30 days before the expiration date of the current license; and
  - 4. For a renewal license for an out-of-state laboratory, at least 60 days before the expiration date of the current license.
- C.** The Department may issue a single laboratory license for:
  - 1. A single laboratory;
  - 2. Multiple laboratories that are located on contiguous grounds and have the same owner, if the applicant submits one application and combined fees for the laboratories; or
  - 3. Multiple laboratories, including mobile laboratories, that have the same owner but are not located on contiguous grounds, if:
    - a. The applicant submits a separate application and fees for each laboratory,
    - b. Each non-mobile laboratory is located in Arizona, and
    - c. Each mobile laboratory has a current and valid Arizona vehicle registration.
- D.** The Department shall not issue a single laboratory license for multiple laboratories that do not meet the requirements of subsection (C)(2) or (3).
- E.** The Department shall not consider an applicant to be in compliance with the requirements for licensure, as provided under A.R.S. § 36-495.09(A)(5), if the applicant does not pay the appropriate fees required under R9-14-607 and R9-14-608.
- F.** The Department shall process an application as provided in R9-14-621.
- G.** A laboratory license is valid only for the facility or facilities for which the license is issued and cannot be transferred to another facility.

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- H.** A laboratory license is valid only in the name of the persons to whom it is issued and expires upon a change in laboratory name, laboratory director, or ownership, unless within 20 business days after the change, the Department receives written notice of the change and an application for a new license.
- I.** The Department shall not charge a fee for a license application submitted under subsection (H) and shall issue a new license reflecting the change upon determining continued compliance with A.R.S. Title 36, Chapter 4.3 and this Article.

**R9-14-604. Third Party Accreditation**

- A.** A laboratory that holds current and valid accreditation issued by the National Voluntary Laboratory Accreditation Program administered by the National Institute of Standards and Technology is exempt from licensure under this Article, as authorized under A.R.S. § 36-495.02, for the term of the accreditation.
- B.** If a laboratory's accreditation issued by the National Voluntary Laboratory Accreditation Program expires or is suspended, revoked, or voluntarily terminated, the laboratory is required to be licensed as provided under A.R.S. Title 36, Chapter 4.3 and this Article.

**R9-14-605. Compliance Monitoring**

- A.** The Department may conduct a laboratory inspection, investigation, or proficiency testing, or any combination of the three, at any time before or during a laboratory's license period.
- B.** The Department shall conduct at least an initial laboratory inspection and a follow-up annual laboratory inspection before determining how often to conduct subsequent laboratory inspections, as provided under subsection (C).
- C.** In determining how often to conduct a laboratory inspection, the Department shall consider:
  - 1. The Department's findings at the last two laboratory inspections;
  - 2. The licensee's adherence to any corrective action plans created as a result of the last two laboratory inspections;
  - 3. Whether there has been a change in ownership or laboratory director since the last laboratory inspection;
  - 4. The extent to which the compliance testing performed at the laboratory has changed since the last laboratory inspection or would change as a result of a renewal application; and
  - 5. Performance on the most recent proficiency testing completed at the laboratory.

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- D.** For a laboratory at which drinking water compliance testing is performed, the Department shall conduct a laboratory inspection at least once every three years or as otherwise required by the EPA.
- E.** The Department shall comply with A.R.S. § 41-1009 in conducting laboratory inspections and investigations that occur at a laboratory.
- F.** If the Department determines, based on a laboratory inspection, investigation, or proficiency testing, or any combination of the three, that a laboratory owner, officer, agent, or employee has engaged in conduct described under A.R.S. § 36-495.09(A), the Department shall request that the licensee or applicant submit to the Department a written corrective action plan, unless the Department determines one of the following, in which case the Department may take action under A.R.S. § 36-495.09:

  - 1. That the deficiencies were committed intentionally;
  - 2. That the deficiencies cannot be corrected within a reasonable period of time;
  - 3. That the deficiencies are evidence of a pattern of noncompliance;
  - 4. That the deficiencies are a risk to any person; the public health, safety, or welfare; or the environment; or
  - 5. That there is a reasonable belief, as stated in A.R.S. § 36-495.09(B), that a violation of A.R.S. § 36-495.09(A)(5) has occurred and that the life or safety of the public is immediately affected.
- G.** Within 30 days after receiving a request for a written corrective action plan, a licensee or applicant shall submit to the Department a written corrective action plan that includes the following for each identified deficiency:

  - 1. A description of how the deficiency will be corrected, and
  - 2. A date of correction for the deficiency.
- H.** The Department shall accept a written corrective action plan if the plan:

  - 1. Describes how each identified deficiency will be corrected, and
  - 2. Includes a date for correcting each deficiency as soon as practicable based upon the actions necessary to correct the deficiency.
- I.** If the Department disapproves a corrective action plan, the Department shall send to the licensee or applicant a written notice of disapproval requesting that the licensee or applicant submit to the Department a revised corrective action plan for the items that the Department disapproves.

  - 1. A licensee or applicant shall submit a revised corrective action plan to the Department within 21 days after the date of a written notice of disapproval.

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2. If a licensee or applicant does not submit a revised corrective action plan within 21 days after the date of a written notice of disapproval, the Department may take action under A.R.S. § 36-495.09.
- J.** A licensee or applicant shall notify the Department when corrective action has been completed.
- K.** Within 30 days after receiving notice that corrective action has been completed, the Department shall determine whether each deficiency has been corrected and whether the corrective action brings the laboratory operations into substantial compliance with A.R.S. Title 36, Chapter 4.3 and this Article.
- L.** If the Department determines that a licensee or applicant has not corrected a deficiency or that the licensee or applicant has not corrected a deficiency within a reasonable period of time, the Department may take any enforcement action authorized by law as a result of the deficiency.
- M.** Under A.R.S. § 41-1009(G), the Department's decision regarding whether a licensee or applicant may submit a corrective action plan or whether a deficiency has been corrected or has been corrected within a reasonable period of time is not an appealable agency action as defined by A.R.S. § 41-1092.

**R9-14-606. Provisional Licensing**

- A.** The Department may issue a provisional license to a licensee when the Department suspends the licensee's regular license because of deficiencies identified in an investigation, laboratory inspection, or proficiency testing, or any combination of the three, if the licensee agrees to carry out a corrective action plan acceptable to the Department to eliminate the deficiencies.
- B.** In determining whether to issue a provisional license, the Department shall consider:
  1. The nature of the deficiencies upon which the suspension is based;
  2. The licensee's history of compliance with A.R.S. Title 36, Chapter 4.3 and this Article;
  3. The extent to which the public health and safety may be impacted by the continued operation of the laboratory with a provisional license; and
  4. The extent to which the public's interests are served by allowing the licensee the opportunity to correct the deficiencies and continue operating with a provisional license.
- C.** The Department shall issue an amended list of parameters for a provisional license.
- D.** A licensee shall return its regular license to the Department within 14 days after receiving written notification of license suspension.
- E.** A provisional license is valid for a period established by the Department, not to exceed 12 months.

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- F.** A licensee with a provisional license may submit an application to obtain a regular initial license according to R9-14-603 at least 30 days before the provisional license expires.
- G.** The Department shall issue a regular initial license as described in subsection (F) only upon determining that a licensee is in full compliance with the corrective action plan developed according to subsection (A); A.R.S. Title 36, Chapter 4.3; and this Article.
- H.** The Department shall not issue a provisional license to an applicant submitting an application for an initial license according to R9-14-603.

**R9-14-607. Fees**

- A.** Except as provided in R9-14-608, an applicant shall submit the following fees to the Department with each application for an initial or renewal license:
  - 1. The cumulative method and instrumentation fees for each laboratory, as determined according to Tables 6.2.A, 6.2.B, 6.2.C, 6.2.D, 6.2.E, and 6.3;
  - 2. The following application fees:
    - a. If applying for a single license for a single laboratory, which may include multiple laboratories located on contiguous grounds and having the same owner, the following fee:
      - i. For a Level I license, \$1,677;
      - ii. For a Level II license, \$2,130; or
      - iii. For a Level III license, \$2,348; or
    - b. If applying for a single license for multiple laboratories not located on contiguous grounds, the following fee for each laboratory:
      - i. For a Level I license, \$1,442;
      - ii. For a Level II license, \$1,895; and
      - iii. For a Level III license, \$2,130;
  - 3. An administrative fee of \$130 for the proficiency testing to occur during the license period; and
  - 4. If applying for an out-of-state laboratory, an annual information update fee of \$126.
- B.** The fees paid to the Department under this Article are nonrefundable, unless A.R.S. § 41-1077 applies.

**R9-14-608. Installment Payment of Fees by Small Businesses**

- A.** A licensee may, for license renewal, pay the fees calculated under R9-14-607(A)(1), (3), and (4) to the Department in 12 or fewer installments if the owner is a small business.

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- B.** A licensee who desires to make payments in installments as described in subsection (A) shall indicate this on the application for license renewal and shall indicate a monthly, bimonthly, or quarterly schedule for the payments, which shall result in full payment within 12 or fewer months.
- C.** A licensee making installment payments shall submit the first installment payment to the Department along with the application for license renewal and the application fee calculated under R9-14-607(A)(2), and each subsequent installment payment on a monthly, bimonthly, or quarterly basis, as indicated on the application, or until the fees are paid in full, whichever comes first.
- D.** A licensee shall ensure that each installment payment is:
  - 1. Paid by the first day of the month in which it is due; and
  - 2. At least equal to the amount calculated by dividing the total fees due under R9-14-607(A)(1), (3), and (4) by the number of payments indicated on the application for license renewal.
- E.** If a licensee fails to submit an installment payment within seven days after its due date, the Department shall charge a \$50 fee for processing the late payment.
- F.** If a licensee fails more than twice during the license period to submit an installment payment within seven days after the due date of the installment payment, the Department may suspend the licensee's authorization to make installment payments and require the licensee to pay all pending fees.
- G.** If a licensee fails to submit an installment payment within 30 days after its due date, the Department may initiate action under A.R.S. § 36-495.09.

**R9-14-609. Proficiency Testing**

- A.** At least once in each 12-month period, and more often if requested by the Department, each licensee or applicant shall have at least one laboratory analyst participate in proficiency testing provided by the Department, the EPA, or a proficiency testing service that:
  - 1. Includes at least one proficiency testing sample for each parameter for which an initial license or renewal license has been issued or requested and for which proficiency testing samples are available;
  - 2. Demonstrates the laboratory analyst's proficiency in compliance testing of:
    - a. Applicable drinking water parameters in Table 6.2.A, if:
      - i. The applicant plans to perform compliance testing of drinking water parameters, or

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- ii. The licensee is approved to perform compliance testing of drinking water parameters; and
  - b. Applicable parameters other than drinking water parameters, if:
    - i. The applicant plans to perform compliance testing of the parameters, or
    - ii. The licensee is approved to perform compliance testing of the parameters; and
  - 3. If the licensee or applicant has been issued or has requested a license that includes approval for testing an analyte by different methods, may use the same proficiency testing sample for each method.
- B.** To demonstrate proficiency for a parameter, test results reported for the parameter shall be within acceptance limits established for:
  - 1. Drinking water inorganic chemistry parameters by the EPA, as provided in 40 CFR 141.23;
  - 2. Drinking water organic chemistry parameters by the EPA, as provided in 40 CFR 141.24;
  - 3. Lead or copper in drinking water by the EPA, as provided in 40 CFR 141.89;
  - 4. Disinfection byproducts in drinking water by the EPA, as provided in 40 CFR 141.131; and
  - 5. Other parameters by the EPA or the proficiency testing service.
- C.** A licensee or applicant shall ensure that:
  - 1. Each proficiency testing sample accepted at the licensee's or applicant's laboratory is analyzed at the licensee's or applicant's laboratory;
  - 2. Each proficiency testing sample is tested within the maximum holding times allowed for its parameter, using the same procedures and techniques employed for routine sample testing, and calculating the holding time from the time the sample seal is broken or as indicated in the instructions accompanying the sample;
  - 3. A proficiency testing service provides proficiency testing results directly to the Department;
  - 4. If proficiency testing is provided by the Department, the licensee or applicant submits to the Department payment for the actual costs of the proficiency testing materials; and
  - 5. If proficiency testing is not provided by the Department or the EPA, the licensee or applicant selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing.
- D.** The Department may submit blind proficiency testing samples to a licensed laboratory at any time during the license period.

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### **R9-14-610. Approved Methods and References**

- A.** A licensee or applicant shall ensure that compliance testing is performed according to an approved method and may use method alterations approved by the Department under subsection (C).
- B.** The approved methods listed by parameter in Tables 6.2.A through 6.2.D are found in the following references, which are incorporated by reference with the modifications described below; are on file with the Department; include no future editions or amendments; and are available as provided below.

### **Key Reference**

- A** Environmental Monitoring and Support Laboratory–Cincinnati, EPA, Pub. No. EPA-/600/4-79-020 (600479020), Methods for Chemical Analysis of Water and Wastes (rev. March 1983), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- A1** Environmental Monitoring and Support Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-94/111 (600R94111), Methods for the Determination of Metals in Environmental Samples: Supplement I (May 1994), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- A2** Environmental Monitoring Systems Laboratory, EPA, Pub. No. EPA/600/R-93/100 (600R93100), Methods for the Determination of Inorganic Substances in Environmental Samples (August 1993), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- A3** Technicon Industrial Systems, Industrial Method No. 380-75WE, Fluoride in Water and Wastewater (February 1976), available from Mequon Technology Center, 10520-C North Baehr Road, Mequon, WI 53092 or by calling (262) 241-7900.
- A4** National Service Center for Environmental Publications (NSCEP), Online EPA Publication Title List available at <http://nepis.epa.gov/EPA/html/Pubs/pubtitle.html> or by calling (800) 490-9198. Publication numbers for the methods that are listed under this reference are:
  - 1. Method 317.0, Rev 2.0, July 2001, EPA 815-B-01-001
  - 2. Method 314.1, Rev 1.0, May 2005, EPA 815-R-05-009
  - 3. Method 326.0, Rev 1.0, June 2000, EPA 815-R-03-007
  - 4. Method 327.0, Rev 1.1, May 2005, EPA 815-R-05-008
  - 5. Method 331.0, Rev 1.0, January 2005, EPA 815-R-05-007
  - 6. Method 515.4, Rev 1.0, April 2000, EPA 800-R-00-016

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7. Method 527, Rev 1.0, April 2005, EPA 815-R-05-005
8. Method 531.2, Rev 1.0, September 2001, EPA 815-B-01-002
9. Method 552.3, Rev 1.0, July 2003, EPA 815-B-03-002
10. Method 200.5, Rev 4.2, October 2003, EPA 600-R-06-115
11. Method 332, Rev 1.0, March 2005, EPA 600-R-05-049
12. Method 415.3, Rev 1.1, February 2005, EPA 600-R-05-055
13. Method 415.3, Rev 1.2, September 2009, EPA 600-R-09-122
14. Method 521, Version 1.0, September 2004, EPA 600-R-05-054
15. Method 529, Rev 1.0, September 2002, EPA 600-R-05-052
16. Method 535, Rev 1.1, April 2005, EPA 600-R-05-053
17. Method 1631, Rev E, August 2002, EPA 821-R-02-019
18. Method 557, Version 1.0, September 2009, EPA 815-B-09-012
19. Method 524.4, May 2013, EPA 815-R-13-002
20. Method 524.3, Version 1.0, June 2009, EPA 815-B-09-009
21. Method 522, Version 1.0, September 2008, EPA 600-R-08-101
22. Method 1613, Rev B, October 1994, EPA 821-B-94-005
23. Method 245.7, Rev 2.0, February 2005, EPA 821-R-05-001
24. Method 1664, Rev B, February 2010, EPA 821-R-10-001
25. Method 1638, April 1995, EPA 821-R-95-031
26. Method OIA-1677 DW, January 2004, EPA 821-R-04-001
27. Method 1627, December 2011, Acid Mine Drainage, EPA 821-R-09-002
28. PCBs in Transformer Fluid and Oils, September 1982, EPA 600/4-81-045
29. Asbestos in Bulk Samples, December 1982, EPA 600/M4-82-020
30. Method 100.1, Asbestos Fibers, September 1993, EPA 600/4-83-043
31. Method 100.2, Asbestos Structures over 10m in Length, EPA/600/R-94/134
32. Method 1622, Cryptosporidium in Water, December 2005, EPA 815-R-05-001
33. Method 1623.1, Cryptosporidium and Giardia in Water, January 2012, EPA 816-R-12-001
34. Method 1682, Salmonella in Sewage Sludge, July 2006, EPA 821-R-06-014
35. Method 1605, Aeromonas in Finished Water by MF, October 2001, EPA 821-/R/01/034
36. Method 1604, Total coliforms and E.coli by MF, September 2002, EPA-821-02-024
37. Method 1601, Coliphage, April 2001, EPA 821-R-01-030
38. Method 1602, Coliphage, April 2001, EPA 821-R-01-029
39. Method 1623, Cryptosporidium and Giardia, December 2005, EPA 815-R-05-002

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40. Method 537, September 2009, EPA/600/R-08/092
  41. Method 302.0, September 2009, EPA-815-B-09-014
  42. Method 539, November 2010, EPA 815-B-10-001
  43. Method 218.7, November 2011, EPA 815-R-11-005
  44. Method 334.0. September 2009, EPA 815-B-09-013
- A5 EPA Pub. No. EPA 815-R-00-014 (815R00014), Volume 1, Methods for the Determination of Organic and Inorganic Compounds in Drinking Water (August 2000), available at <http://nepis.epa.gov/EPA/html/Pubs/pubtitle.html> or by calling (800) 490-9198, modified to require the following when testing for bromate using method 321.8: Samples must be preserved at the time of sampling with 50 mg ethylenediamine (EDA)/L of sample and must be analyzed within 28 days. Ion chromatography and post-column reaction or IC/ICP-MS must be used for monitoring of bromate for purposes of demonstrating eligibility of reduced monitoring, as prescribed in 40 CFR 141.132(b)(3)(ii).
- A6 Lachat Instruments, QuikChem Method 10-204-00-1-X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters Using MICRO DIST and Determination of Cyanide by Flow Injection Analysis (rev. 2.1 November 30, 2000), available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218-0204.
- A7 Standard Test Methods for Trace Uranium in Water by Pulsed-Laser Phosphorimetry, ASTM D5174-97, 02, available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959 or through [www.astm.org](http://www.astm.org).
- B Herman L. Krieger, EPA, Pub. No. EPA-600/4-75-008 (6004755008), Interim Radiochemical Methodology for Drinking Water (March 1976), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- C American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (22nd edition 2012), available from American Public Health Association, 800 I Street, NW, Washington, DC 20001 or at <http://www.standardmethods.org>, with the approved method having the same last two digits in the method number as the year in which the method was approved by the Standard Methods Committee, as published for the individual methods in the 22nd edition.
- C1 Hach Company, Hach Water Analysis Handbook (5th edition 2008), available from Hach Company, P.O. Box 389, Loveland, CO 80539-0389.
- C2 American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (21st edition 2005), available from American Public Health Association, 800 I St., NW, Washington, DC 20001.

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- C3 Hach Method 10360, Luminescence Measurement of Dissolved Oxygen in Water and Wastewater and for Use in the Determination of BOD5 and cBOD5, Revision 1.2, October 2011, available from Hach Company, P.O. Box 389, Loveland, CO 80539-0389.
- C4 Expedited Approval of Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act, August 04, 2014, available at <https://www.gpo.gov/fdsys/pkg/FR-2014-06-19/html/2014-14369.htm>.
- C5 Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Final Rule, May 18, 2012, available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-18/pdf/2012-10210.pdf>.
- C6 The quality control criteria and the modifications listed in the “Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge,” March 26, 2007, available at <http://www.epa.gov/fedrgstr/EPA-WATER/2007/March/Day-26/w1455.pdf>.
- C7 ChlordioX Plus “Chlorine Dioxide and Chlorite in Drinking Water by Amperometry using Disposable Sensors,” November 2013, available from Palintest Ltd., Jamike Avenue, Suite 100, Erlanger, KY 41018.
- C8 American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (20th ed. 1998), available from American Public Health Association, 800 I St., NW, Washington, DC 20001.
- D Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA/600/4-88/039 (600488039), Methods for the Determination of Organic Compounds in Drinking Water (rev. July 1991), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- D1 Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA/600/4-90/020 (600490020), Methods for the Determination of Organic Compounds in Drinking Water: Supplement I (July 1990), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- D2 Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-92/129 (600R92129), Methods for the Determination of Organic Compounds in Drinking Water: Supplement II (August 1992), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- D3 National Exposure Research Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-95/131 (600R95131), Methods for the Determination of Organic Compounds in Drinking Water: Supplement III (August 1995), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or

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- by calling (800) 490-9198.
- D4 Office of Ground Water and Drinking Water Technical Support Center, EPA, Pub. No. EPA 815-R-05-004 (815R05004), Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures Quality Assurance (5th edition January 2005), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- D5 Supplement I to the 5th edition of the Manual for the Certification of Laboratories Analyzing Drinking Water; EPA 815-F-08-006, June 2008, available at <http://water.epa.gov/scitech/drinkingwater/labcert/index.cfm>.
- D6 Supplement II to the 5th edition of the Manual for the Certification of Laboratories Analyzing Drinking Water; EPA 815-F-12-006, November 2012, available at <http://water.epa.gov/scitech/drinkingwater/labcert/index.cfm>.
- D7 LT2 Enhanced Surface Water Treatment Rule, January 05, 2006; available at <http://water.epa.gov/lawsregs/rulesregs/sdwa/lt2/regulations.cfm>.
- D8 Modified Colitag®, ATP D05-0035—“Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water,” August 28, 2009, available from CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA, 95403 or by calling (800) 878-7654.
- D9 Stage 2 Disinfectants and Disinfection Byproducts Rule, January 04, 2006, available at <https://www.federalregister.gov/articles/2006/01/04/06-3/national-primary-drinking-water-regulations-stage-2-disinfectants-and-disinfection-byproducts-rule>.
- D10 National Primary Drinking Water Regulations: Ground Water Rule, 11/08/2006; available at <https://www.federalregister.gov/articles/2006/11/08/06-8763/national-primary-drinking-water-regulations-ground-water-rule>.
- D11 Source Water Monitoring Guidance Manual for Public Water Systems for the Final Long Term 2 Enhanced Surface Water Treatment Rule; EPA 815-R06-005 (815R06005), February 2006, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- D12 Analytical Methods Recommended for Drinking Water Monitoring of Secondary Contaminants (PDF), EPA 815-B-14-005 (815B14005), January 2014, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- D13 Analytical Methods Approved for Drinking Water Compliance Monitoring under the Disinfection Byproduct Rules, EPA 815-B-14-004 (815B14004), January 2014, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- D14 National Primary Drinking Water Regulations: Revisions to the Total Coliform Rule; Final Rule; Federal Register / Vol. 78, No. 30 / Wednesday, February 13, 2013 / Rules and Regulations.
- E 40 CFR Part 136 app. A (January 2016), available through <http://www.ecfr.gov/cgi-bin/text->

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- idx?tpl=/ecfrbrowse/Title40/40cfr136\_main\_02.tpl.
- E1 Office of Water Engineering and Analysis Division, EPA, Pub. No. EPA-821-R-93-010-A (821R93010A), Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater: Volume I (rev. 1 August 1993), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- E2 EPA Methods 608.1, 608.2, 614, 614.1, 615, 617, 619, 622, 622.1, 627, and 632, found in Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, EPA 821-R-92-002 (821R92002), April 1992, U.S. EPA, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- E3 “White House Document” Environmental Regulations and Technology-Control of Pathogens and Vector Attraction in Sewage Sludge, EPA 625/R-92/013 (625R92013), revised July 2003, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- E4 Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk; revised October 28, 1994, 3M Corporation, available from 3M Corporation, at [http://www.horizontechinc.com/PDF/epa\\_methods/method\\_608\\_3m.pdf](http://www.horizontechinc.com/PDF/epa_methods/method_608_3m.pdf) or by calling (800) 440-2966, ext. 67.
- E5 American Public Health Association, et al., Standard Methods for the Examination of Water and Wastewater (18th edition 1992), available from American Public Health Association, 800 I St., NW, Washington, DC 20001.
- E6 CEM Corporation, Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals (April 1992), available from CEM Corporation, P.O. Box 200, 3100 Farm Road, Matthews, NC 28106-0200.
- E7 Kelada-01, Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate, EPA 821-B-01-009, revision 1.2, August 2001, available from NTIS, 5285 Port Royal Road, Springfield, VA 22161 or by calling (800) 490-9198. EPA Note: A 450-W UV lamp may be used in this method instead of the 550-W lamp specified if it provides performance within the quality control acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the quality control acceptance criteria are met.
- E8 Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Book 5, Chapter A1, 1985, USGS, available at U.S. Geological Survey Information Services, Box 25286, Federal Center, Denver, CO 80225-0425.
- F Office of Solid Waste and Emergency Response, EPA, Pub. No. SW-846, Test Methods for

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- Evaluating Solid Waste, Physical/Chemical Methods (3rd edition 1986), as amended by Update I, July 1992; Update IIA, August 1993; Update II, September 1994; Update IIB, January 1995; Update III, December 1996; Update IIIA, April 1998; Update IIIB, November 2004; Update IV, February 2007; and Update V, August 18, 2015, available from NTIS, 5285 Port Royal Rd., Springfield, VA 22161, by calling (800) 490-9198, and at <http://www.epa.gov/epaoswer/hazwaste/test/main.htm>.
- F1 8260B AZ Vapor Method for the Determination of VOCs in Vapor Samples, Revision 0.0, dated April 14, 2009, available at <http://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/technical-resources/additional-resources/az-vapor-method.pdf>.
- F2 EPA, Method 5035A: Closed-System Purge-and-Trap and Extraction for Volatile Organics in Soil and Waste Samples (draft rev. 1 July 2002), available at <https://www.epa.gov/homeland-security-research/epa-method-5035a-sw-846-closed-system-purge-and-trap-and-extraction>.
- F3 EPA, Method 4025: Screening for Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans (PCDD/Fs) by Immunoassay (rev. 0 October 2002), available at <https://www.epa.gov/hw-sw846/sw-846-test-method-4025-screening-polychlorinated-dibenzodioxins-and-polychlorinated>.
- F4 EPA, Method 3570: Microscale Solvent Extraction (MSE) (rev. 0 November 2002), available at <https://www.epa.gov/homeland-security-research/epa-method-3570-sw-846-microscale-solvent-extraction-mse>.
- F5 EPA, Method 3511: Organic Compounds in Water by Microextraction (rev. 0 November 2002), available at <https://www.epa.gov/hw-sw846/sw-846-test-method-3511-organic-compounds-water-microextraction>.
- F6 EPA, Method 5030C: Purge-and-Trap for Aqueous Samples (rev. 3 May 2003), available at <https://www.epa.gov/homeland-security-research/epa-method-5030c-sw-846-purge-and-trap-aqueous-samples>.
- F7 EPA, Method 8015D: Nonhalogenated Organics Using GC/FID (rev. 4 June 2003), available at <https://www.epa.gov/hw-sw846/validated-test-method-8015d-nonhalogenated-organics-using-gas-chromatographyflame>.
- F8 EPA, Method 5021A: Volatile Organic Compounds in Various Sample Matrices Using Equilibrium Headspace Analysis (rev. 1 June 2003), available at <https://www.epa.gov/hw-sw846/validated-test-method-5021a-volatile-organic-compounds-vocs-various-sample-matrices-using>.
- F9 EPA, Method 9015: Metal Cyanide Complexes by Anion Exchange Chromatography and UV Detection (rev. 0 November 2004), available at <https://www.epa.gov/hw-sw846/sw-846-test>

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- method-9015-metal-cyanide-complexes-waters-and-waste-extracts-using-anion.
- F10 EPA, Method 9013A: Cyanide Extraction Procedure for Solids and Oils (rev. 1 November 2004), available at <https://www.epa.gov/hw-sw846/sw-846-test-method-9013a-cyanide-extraction-procedure-solids-and-oils>.
- F11 Method 8330B, Nitroaromatics, Nitramines, and Nitrate Esters by High Performance Liquid Chromatography, Revision 2, October 2006, available at <https://www.epa.gov/hw-sw846/validated-method-8330b-nitroaromatics-nitramines-and-nitrate-esters-high-performance-liquid>.
- F12 EPA 8260C (SW-846) Volatile Organic Compounds by Gas Chromatography-Mass Spectrometry (GC-MS), Revision 3, 2006, available at <https://www.epa.gov/hw-sw846/validated-test-method-8260c-volatile-organic-compounds-gas-chromatographymass-spectrometry>.
- F13 SW 846 Update V, Revision 2, July 2014, Chapters ONE through FIVE, applicable to 6010D, 6020B, 8260C, and 8270D, available at <https://www.epa.gov/hw-sw846/sw-846-compendium>.
- F14 EPA Method 8000C: Determinative Chromatographic Separations (rev. 3 March 2003), available at <https://archive.epa.gov/epawaste/hazard/testmethods/web/pdf/method%208000c,%20revision%2003%20-%202003.pdf>.
- G National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, Pub. No. 94-113, NIOSH Manual of Analytical Methods (4th edition, August 1994), available from Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325.
- G1 Method for the Determination of Asbestos in Bulk Building Materials, EPA/600R-93/116, July 1993, available at <http://www.nist.gov/nvlap/upload/EPA-600-R-93-116.pdf>. A concurrent certification is also required for Asbestos in Bulk samples, December 1982, EPA 600/M4-82-020 (A4.29), as outlined in NVLAP Lab Bulletin, LB-68-2012, available at [http://www.nist.gov/nvlap/upload/LB\\_68\\_2012.pdf](http://www.nist.gov/nvlap/upload/LB_68_2012.pdf).
- H National Environmental Laboratory Accreditation Conference, 2009 NELAC, available from the National Environmental Laboratory Accreditation Conference, P.O. Box 2439, Weatherford, TX 76086 or at [www.nelac-institute.org](http://www.nelac-institute.org).
- I ASTM, individual standards available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959 or at [www.astm.org](http://www.astm.org).
- J L.L. Thatcher et al., U.S. Department of the Interior, "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments," Chapter A5 in Book of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977, available from U.S.

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- Geological Survey Information Services, Box 25286, Federal Center, Denver, CO 80225-0425.
- K Bureau of State Laboratory Services, Arizona Department of Health Services, Method No. BLS-188, Ethylene Glycol in Waste Water (rev. April 1991); and Bureau of State Laboratory Services, Arizona Department of Health Services, C<sub>10</sub> - C<sub>32</sub> Hydrocarbons in Soil - 8015AZ (rev. 1.0 September 1998), available from the Bureau of State Laboratory Services, 250 N. 17th Ave., Phoenix, AZ 85007, and at <http://www.azdhs.gov/preparedness/state-laboratory/lab-licensure-certification/index.php#technical-resources-additional>.
- K1 Office of Water, EPA, Pub. No. EPA-821-B-98-016 (821B98016), Analytical Methods for the Determination of Pollutants in Pharmaceutical Manufacturing Industry Wastewater (July 1998), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- L Herman L. Krieger and Earl L. Whittaker, EPA, Pub. No. EPA-600/4-80-032 (600480032), Prescribed Procedures for Measurement of Radioactivity in Drinking Water (August 1980), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- M1 Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA/600/4-90/027F (600490027F), Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (4th edition August 1993), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- N1 Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA-600-4-91-002 (600491002), Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms (3rd edition July 1994), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- O 40 CFR Part 50, Chapter 1, Subchapter C (2015), available at [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr50\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr50_main_02.tpl).
- O1 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method IO-3.4, Determination of Metals in Ambient Particulate Matter Using Inductively Coupled Plasma (ICP) Spectroscopy, EPA/625/R-96/010AC (625R96010AC), June 1999, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- O2 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method IO-3.5, Determination of Metals in Ambient Particulate Matter Using Inductively Coupled Plasma/Mass Spectrometry (ICP/MS), EPA/625/R-96/010AB (625R96010AB), June 1999, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- O3 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method IO-3.1, Selection, Preparation and Extraction, EPA/625/R-96/010AD

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- (625R96010AD), June 1999, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- O4 Determination of Lead in TSP by Inductively Coupled Plasma Mass Spectrometry (ICP-MS) with Heated Ultrasonic Nitric and Hydrochloric Acid Filter Extraction; available from the Bureau of State Laboratory Services, 250 N. 17th Ave., Phoenix, AZ 85007, and at <http://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/technical-resources/additional-resources/lead-in-ambient-air-by-icp-ms-eql-0510-191.pdf>.
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- X Office of Ground Water and Drinking Water, EPA, Pub. No. EPA/600/4-91/016 (600491016), Test Methods for *Escherichia coli* in Drinking Water: EC Medium with Mug Tube Procedure, Nutrient Agar with Mug Membrane Filter Procedure (July 1991), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- Y Method OIA-1677-09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA). 2010, available from ALPKEM, a Division of OI Analytical, 151 Graham Road, College Station, TX 77845 or by calling (979) 690-1711.
- Z IDEXX Colilert\*-18 and Quanti-Tray\* Test Method for the Detection of Fecal Coliforms in Wastewater, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.
- Z1 EPA Method 1681, July 2006, EPA-821-R-06-013, Fecal Coliform in Sewage Sludge (Biosolids) by Multiple Tube Fermentation using A-1 Medium, available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- Z2 EPA, Pub. No. EPA-821-R-02-013 (821R02013), Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (4th edition October 2002), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- Z3 IDEXX Laboratories, Inc., IDEXX SimPlate™ HPC Method for Heterotrophs in Water (November 2000), available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092.
- Z4 William A. Yanko, EPA, Pub. No. EPA/600/1-87/014 (600187014), Occurrence of Pathogens in Distribution and Marketing Municipal Sludges (1987), available at <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
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- Z6 m-ColiBlue 24 Test, Total Coliforms and *E. coli* Membrane Filtration Method with m-ColiBlue 24 Broth, Method No. 10029, Revision 2, August 17, 1999, available at Hach Company, P.O. Box 389, Loveland, Colorado 80539-0389 or by calling 1-800-227-4224.
- Z7 Colisure Test, IDEXX Laboratories Inc., February 28, 1994, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.
- Z8 Presence/Absence for Coliforms and *E. coli* in Water, Charm Sciences, Inc., December 21, 1997, available at 659 Andover Street, Lawrence, MA 01843, 987-687-9200, <http://www.charm.com>.
- Z9 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK01 (Block Digestion, Steam Distillation, Titrimetric Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.
- Z10 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK02 (Block Digestion, Steam Distillation, Colorimetric Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.
- Z11 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK03 (Block Digestion, Automated FIA Gas Diffusion) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.
- Z12 EPA, Pub. No. EPA-821-R-02-012, Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (5th edition October 2002), available <http://nepis.epa.gov/EPA/html/pubs/pubtitle.html> or by calling (800) 490-9198.
- Z13 Lozarchak, J. 2001, "Short-term Chronic Toxicity Tests on *Daphnia magna* (Survival and Growth Tests)", USEPA, available from the Department at 250 N. 17th Ave, Phoenix, AZ 85007, and at <http://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/technical-resources/additional-resources/lazorchak-toxicity-method.pdf>.
- Z14 ReadyCult Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters, Version 1.1, January 2007, available from EM Science, EMD Millipore, 290 Concord Road, Billerica, MA 01821, at <http://www.emdmillipore.com>, or by calling 781-533-6000.
- Z15 Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters, Version 1.0, November 2000, available from EM Science, EMD Millipore, 290 Concord Road, Billerica, MA 01821, at <http://www.emdmillipore.com>, or by calling 781-533-6000.

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- C. If an approved method is not available for a particular parameter, or a method or method alteration that is not an approved method is required or authorized to be used for a particular parameter by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, a licensee or a person exempt under R9-14-602(4) or (5) may request approval of an alternate method or method alteration by submitting to the Department:
1. For an alternate method or method alteration required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the following information:
    - a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) submitting the request;
    - b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
    - c. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
    - d. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement or authorization for the use of the alternate method or method alteration for which approval is requested;
  2. For an alternate method or method alteration to be used because an approved method is not available for a particular parameter, the following information:
    - a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) submitting the request;
    - b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
    - c. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
    - d. Written justification for using the alternate method or method alteration for which approval is requested, including the following:
      - i. A detailed description of the alternate method or method alteration;
      - ii. References to published or other studies confirming the general applicability of the alternate method or method alteration to the parameter for which its use is intended;
      - iii. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement to test the parameter; and
      - iv. Data that demonstrate the performance of the alternate method or method alteration in terms of accuracy, precision, reliability, ruggedness, ease of

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use, and ability to achieve a detection limit appropriate for the proposed use of the alternate method or method alteration; and

3. An alternate method or method alteration approval fee of \$50, payable to the Arizona Department of Health Services, in the form of a certified check, business check, money order, or credit card payment.
- D.** Before approving an alternate method or method alteration that is not required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may require that the alternate method or method alteration be performed by a laboratory designated by the Department to verify that, using the parameter for which its use is intended, the alternate method or method alteration produces data that comply with subsection (C)(2)(d)(iv).
- E.** The Department may approve an alternate method or method alteration if the Department determines:
1. One of the following:
    - a. Use of the alternate method or method alteration is required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8; or
    - b. Use of the alternate method or method alteration is justified as described in subsection (C)(2)(d); and
  2. If the alternate method or method alteration pertains to drinking water compliance testing, the EPA concurs that the alternate method or method alteration may be used.
- F.** The Department may rescind the approval of an alternate method or method alteration approved by the Department according to subsection (E), if, as applicable:
1. For an alternate method or method alteration requested under subsection (C)(1), the alternate method or method alteration is no longer required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8; or
  2. For an alternate method or method alteration requested under subsection (C)(2), an approved method becomes available for the particular parameter.

**R9-14-611. Compliance Testing for Drinking Water Parameters**

- A.** A licensee for a laboratory at which compliance testing for drinking water parameters is performed, including compliance testing performed according to 9 A.A.C. 8, Article 2, shall ensure that:
1. Except as provided in subsection (B), the laboratory is operated in compliance with the guidelines in Key References D4, D5, and D6, excluding the requirements for laboratory personnel education and experience;

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2. Each sample for Arizona drinking water parameter compliance testing is analyzed:
    - a. Using an approved method:
      - i. Listed in Table 6.2.A; or
      - ii. Approved by the Department for compliance testing for drinking water parameters under R9-14-610(E); and
    - b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method; and
  3. If the licensee requests approval to perform testing for vinyl chloride, the licensee also obtains approval to perform testing for each of the analytes listed in 40 CFR 141.61(a)(2)-(21).
- B.** If an approved method does not include a specific quality control guideline, a licensee for a laboratory at which compliance testing for drinking water parameters is performed shall ensure that the laboratory is operated in compliance with the guidelines in Key References C4, D7, D9, D10, D11, D12, D13, or D14, as applicable.

**R9-14-612. Compliance Testing for Wastewater Parameters**

A licensee for a laboratory at which compliance testing for wastewater parameters is performed shall ensure that:

1. The laboratory is operated in compliance with the guidelines in Key References C5 and C6; and
2. Each sample for Arizona wastewater parameter compliance testing is analyzed:
  - a. Using an approved method:
    - i. Listed in Table 6.2.B; or
    - ii. Approved by the Department for wastewater parameter compliance testing under R9-14-610(E); and
  - b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method.

**R9-14-613. Compliance Testing for Waste Parameters**

- A.** A licensee for a laboratory at which compliance testing for waste parameters is performed shall ensure that each waste sample for Arizona compliance testing is analyzed using an approved method:
1. Listed in Table 6.2.C; or
  2. Approved by the Department-for waste compliance testing under R9-14-610(E).

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- B.** A licensee for a laboratory at which compliance testing for waste parameters is performed using an 8000 series method from Key Reference F shall:
1. If the method includes specific quality control requirements, follow the specific quality control requirements in the method;
  2. If the method does not include specific quality control requirements, follow all requirements in Key Reference F14; and
  3. If the method does not include specific sample extraction procedures, follow the procedures in the following from Key Reference F, as applicable:
    - a. Method 3500B,
    - b. Method 3600C, or
    - c. Method 5000.
- C.** A licensee for a laboratory at which compliance testing for waste parameters is performed using a non-8000 series method from Key Reference F shall comply with the following from Key Reference F, as applicable, according to the requirements of the specific method:
1. Method 4000, or
  2. Methods 7000B and 7010.
- D.** A licensee for a laboratory at which compliance testing for waste parameters is performed using a method from Key Reference F shall comply with Chapters 1 through 8 of Update IV, February 2007, of Key Reference F, as applicable, according to the requirements of the specific method.

**R9-14-614. Compliance Testing for Air and Stack Parameters**

A licensee for a laboratory at which compliance testing for air or stack parameters is performed shall ensure that each air or stack sample for Arizona compliance testing is analyzed using an approved method:

1. Listed in Table 6.2.D; or
2. Approved by the Department for compliance testing for air or stack parameters under R9-14-610(E).

**R9-14-615. Quality Assurance**

- A.** A licensee or applicant shall ensure that the analytical data produced at the licensee's or applicant's laboratory are of known and acceptable precision and accuracy, as prescribed by the approved method for each analysis or as prescribed by the limits described under subsection (C)(8), and are scientifically valid and defensible.

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- B.** A licensee or applicant shall establish, implement, and comply with a written quality assurance plan that contains the following and is available at the laboratory for Department review:
1. A title page identifying the laboratory and date of review and including the laboratory director's signature of approval;
  2. A table of contents;
  3. An organization chart or list of the laboratory personnel, including names, lines of authority, and identification of principal quality assurance personnel;
  4. A copy of the current laboratory license and a list of licensed parameters;
  5. A statement of quality assurance objectives, including data quality objectives with precision and accuracy goals and the criteria for determining the acceptability of each testing;
  6. Specifications for:
    - a. Sample containers,
    - b. Preparation of sample containers,
    - c. Preservation of samples, and
    - d. Maximum holding times allowed;
  7. A procedure for documenting laboratory receipt of samples and tracking of samples during laboratory testing;
  8. A procedure for analytical instrument calibration, including frequency of calibration and complying with the requirements for calibration in subsection (C);
  9. A procedure for compliance testing data reduction and validation and reporting of final results, including the identification and treatment of data outliers, the determination of the accuracy of data transcription, and all calculations;
  10. A statement of the frequency of all quality control checks;
  11. A statement of the acceptance criteria for all quality control checks;
  12. Preventive maintenance procedures and schedules;
  13. Assessment procedures for data acceptability, including appropriate procedures for manual integration of chromatograms and when manual integration is inappropriate;
  14. Corrective action procedures to be taken when results from analytical quality control checks are unacceptable, including steps to demonstrate the presence of any interference if the precision, accuracy, or limit of quantitation of the reported compliance testing result is affected by the interference; and

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15. Procedures for chain-of-custody documentation, including procedures for the documentation and reporting of any deviation from the sample handling or preservation requirements listed in this Section.
- C. A licensee or applicant shall:
1. Have available at the laboratory all methods, equipment, reagents, and glassware necessary for the compliance testing for which the licensee or applicant is licensed or is requesting a license;
  2. Use only reagents of a grade equal to or greater than that required by the approved methods and document the use of the reagents;
  3. Maintain and require each analyst to comply with a complete and current standard operating procedure that meets the requirements for each licensed method, which shall include at least:
    - a. A description of all procedures to be followed when the method is performed;
    - b. A list of the concentrations for calibration standards, check standards, and spikes;
    - c. Requirements for instrumental conditions and set up;
    - d. A requirement for frequency of calibration;
    - e. The quantitative methods to be used to calculate the final concentration of an analyte in samples, including any factors used in the calculations and the calibration algorithm used; and
    - f. Requirements for preventative maintenance;
  4. Calibrate each instrument as required by each approved method for which the equipment is used, as follows:
    - a. If a calibration model is specified in the method, using the specified calibration model or, if another calibration model has been approved by the Department as a method alteration, using the calibration model approved as a method alteration;
    - b. If multiple calibration models are included as options in the method, using one of the included calibration models or, if another calibration model has been approved by the Department as a method alteration, using the calibration model approved as a method alteration; or
    - c. If the method does not include a calibration model, using the manufacturer's specifications for calibration;
  5. Maintain calibration documentation, including documentation that demonstrates the calculations performed using each calibration model;

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6. Develop, document, and maintain a current limit of detection and limit of quantitation for each compliance parameter for each instrument;
  7. Develop each limit of detection using:
    - a. The protocol in the applicable test method;
    - b. The protocol in the applicable federal regulation; or
    - c. A process that complies with the guidelines in Section D.1.2 of Chapter 5, Appendix D—Essential Quality Control Requirements, in Key Reference H;
  8. For each parameter tested at the laboratory for which quality control acceptance criteria are not specified in the approved method or by EPA or ADEQ:
    - a. Use default limits provided in Table 6.4; or
    - b. Statistically develop limits from historical data by:
      - i. Determining the mean and standard deviation for a minimum of 20 data points not invalidated for cause, excluding statistical outliers;
      - ii. Setting the limits no more than three standard deviations from the mean and in the detectable range, using as the lower end of the detectable range the limit of quantitation or the lowest standard value represented in the initial calibration; and
      - iii. Explaining the origin of the lower end of the detectable range in the laboratory's standard operating procedure;
  9. Discard or segregate all expired standards or reagents;
  10. Maintain a record showing the traceability of reagents; and
  11. Ensure that a calibration model is not used or changed to avoid necessary instrument maintenance.
- D.** A licensee or applicant may submit a written request to the Department for an exemption from subsection (C)(1) for a specific parameter if the licensee or applicant documents:
1. That the approved method has been performed at the laboratory and that the analytical data generated were scientifically valid and defensible and of known and acceptable precision and accuracy; and
  2. The licensee's or applicant's ability to obtain the equipment, reagent, or glassware necessary to perform the approved method.
- E.** The written request for an exemption under subsection (D) shall include:
1. The name, address, and main telephone number of the laboratory;
  2. The name, address, and telephone number of the licensee or applicant submitting the request;

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3. Identification of the parameter and the equipment, reagent, or glassware for which the licensee or applicant is requesting an exemption; and
  4. The documentation described in subsections (D)(1) and (2).
- F.** The Department may approve a request for an exemption under subsection (D) if the Department determines that the:
1. Approved method has been performed at the laboratory;
  2. Analytical data generated were scientifically valid and defensible and of known and acceptable precision and accuracy; and
  3. Licensee or applicant is able to obtain the equipment, reagent, or glassware necessary to perform the approved method.
- G.** A licensee or applicant shall ensure that a laboratory's written quality assurance plan is a separate document available at the laboratory and includes all of the components required in subsection (B), but a licensee or applicant may satisfy the components required in subsections (B)(3) through (15) through incorporating by reference provisions in separate documents, such as standard operating procedures.
- H.** Except as provided in subsection (I), a licensee or applicant shall ensure that each laboratory standard operating procedure is a separate document available at the laboratory and includes all of the components required in subsection (C)(3).
- I.** A licensee or applicant may satisfy the components required in subsections (C)(3)(e) and (f) through incorporating by reference provisions in separate documents, such as other standard operating procedures.

### **R9-14-616. Operation**

A licensee shall ensure that:

1. A compliance testing sample accepted at the licensee's laboratory is analyzed at:
  - a. The licensee's laboratory,
  - b. Another laboratory licensed under this Article, or
  - c. A laboratory exempt under R9-14-602;
2. The facility and utilities required to operate equipment and perform compliance testing are maintained;
3. Environmental controls are maintained within the laboratory to ensure that laboratory environmental conditions do not affect analytical results beyond quality control limits established for the methods performed at the laboratory;

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4. Storage, handling, and disposal of hazardous materials at the laboratory are in accordance with all state and federal regulations;
5. The following information is maintained for all supervisory, quality assurance, and analytical personnel:
  - a. A summary of each individual's education and professional experience;
  - b. Documentation of each individual's review of the quality assurance plan required under R9-14-615(B) and the approved methods and laboratory standard operating procedures for each area of testing performed by the individual or for which the individual has supervisory or quality assurance responsibility;
  - c. Documentation of each analyst's completion of training on the use of equipment and of proper laboratory technique, including the name of the analyst, the name of the instructor, the duration of the training, and the date of completion of the training;
  - d. Documentation of each analyst's completion of training classes, continuing education courses, seminars, and conferences that relate to the testing procedures used by the analyst for compliance testing;
  - e. Documentation of each analyst's completion of Initial Demonstration of Capability as required ~~by~~ for each approved method performed by the analyst, as applicable;
  - f. Documentation of each analyst's performance of proficiency testing, as applicable;
  - g. Documentation of each analyst's completion of training related to instrument calibration that includes:
    - i. Instruction on each calibration model that the analyst will use or for which the analyst will review data;
    - ii. For each calibration model described in subsection (5)(g)(i), the specific aspects of the calibration model that might compromise the data quality, such as detector saturation, lack of detector sensitivity, the calibration model's not accurately reflecting the calibration points, inappropriate extension of the calibration range, weighting factors, and dropping of mid-level calibration points without justification; and
    - iii. Instruction that a calibration model shall not be used or changed to avoid necessary instrument maintenance; and

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- h. Documentation of each individual's applicable certifications and specialized training; and
- 6. The licensee complies with all applicable federal, state, and local occupational safety and health regulations.

**R9-14-617. Laboratory Records and Reports**

A licensee or applicant shall ensure that:

- 1. Each record and report required to be maintained by this Article is available for inspection and copying by the Department during a laboratory's normal business hours;
- 2. The Department is permitted to remove copied records and reports from a laboratory;
- 3. The licensee or applicant maintains records and reports of compliance testing for at least five years after the date of compliance testing, with:
  - a. All records and reports for at least the most current two years maintained onsite at the laboratory and the remaining records and reports stored in a secure storage facility;
  - b. Each hard copy document containing data either maintained as a hard copy document or scanned into a PDF file or another electronic file format that preserves an exact copy of the hard copy data; and
  - c. All instrument-generated electronic data maintained in a reproducible format from which reports can be produced and printed;
- 4. No portion of a record or report of compliance testing is altered or deleted to hide or misrepresent any part of the data;
- 5. The licensee or applicant produces all records and reports requested by the Department within 24 hours after the request or, if the licensee or applicant requests a period longer than 24 hours, the longer period of time agreed upon by the Department;
- 6. Upon Department request, the licensee or applicant makes available for inspection and copying the requested data from non-Arizona compliance samples;
- 7. A compliance testing record contains:
  - a. Sample information, including the following:
    - i. A unique sample identification assigned at the laboratory,
    - ii. The location or location code of sample collection,
    - iii. The sample collection date and time,
    - iv. The type of testing to be performed, and
    - v. The name of the individual who collected the sample;

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- b. The name and address of the client submitting the sample to the laboratory;
  - c. The name of the individual who submitted the sample to the laboratory;
  - d. The date and time of receipt of the sample at the laboratory;
  - e. The name of the individual who received the sample at the laboratory;
  - f. The dates and times of testing, including the date and time of each critical step;
  - g. The actual results of compliance testing, including all raw data, work sheets, and calculations performed;
  - h. The actual results of quality control data validating the test results, including the calibration and calculations performed;
  - i. The name of each analyst or who performed the testing; and
  - j. A copy of the final report; and
8. A final report of compliance testing contains:
- a. The name, address, and telephone number of the laboratory;
  - b. The license number assigned to the laboratory by the Department;
  - c. Actual scientifically valid and defensible results of compliance testing in appropriate units of measure, obtained in accordance with an approved method and quality assurance plan;
  - d. Qualified results of compliance testing not obtained in accordance with an approved method and quality assurance plan;
  - e. A list of each approved method used to obtain the reported results;
  - f. Sample information, including the following:
    - i. The unique sample identification assigned at the laboratory,
    - ii. The location or location code of sample collection,
    - iii. The sample collection date and time,
    - iv. The name of the individual who collected the sample,
    - v. The name of the client that submitted the sample to the laboratory, and
    - vi. The name of the individual who submitted the sample to the laboratory;
  - g. The date of analysis for each parameter reported;
  - h. The date of the final report; and
  - i. The laboratory director's or designee's signature.

**R9-14-618. Mobile Laboratories**

- A. An applicant shall obtain a license for each mobile laboratory, unless the applicant chooses the single license option for multiple laboratories as described in R9-14-603(D).

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- B.** A licensee or applicant for a mobile laboratory shall ensure that the mobile laboratory is operated in compliance with all of the requirements of this Article.
- C.** Upon Department request, a licensee or applicant for a mobile laboratory shall provide to the Department the mobile laboratory's location and a list of the parameters for which testing is performed at the mobile laboratory.

**R9-14-619. Out-of-State Environmental Laboratory Licensing**

- A.** A licensee or applicant for an out-of-state laboratory at which Arizona compliance testing is performed shall comply with the requirements of A.R.S. Title 36, Chapter 4.3 and this Article.
- B.** A licensee or applicant for an out-of-state laboratory shall pay all actual expenses incurred by the Department as a result of the laboratory's location, including:
  - 1. The estimated costs of each laboratory inspection or investigation at the laboratory;
  - 2. The amount by which the actual costs of each laboratory inspection or investigation at a laboratory exceed the estimated costs;
  - 3. Additional expenses incurred by the Department for each investigation at the laboratory; and
  - 4. A zone fee for each Department representative required to appear at the laboratory to perform the laboratory inspection or investigation, as follows:
    - a. For zone 1, including California, Nevada, Utah, Colorado, and New Mexico: \$114;
    - b. For zone 2, including all states west of the Mississippi River not listed in subsection (B)(4)(a): \$179;
    - c. For zone 3, including all states east of the Mississippi River and Alaska and Hawaii: \$290; and
    - d. For zone 4, including all countries outside of the United States: \$516.
- C.** The Department shall:
  - 1. Determine the estimated costs and zone fees for a laboratory inspection or investigation after making travel arrangements to visit an out-of-state laboratory;
  - 2. Send the licensee or applicant for an out-of-state laboratory a bill for the estimated costs and zone fees, with instructions to submit the amount billed to the Department within 20 days after the date that the Department sends the bill; and
  - 3. After a laboratory inspection or investigation is completed, determine the actual costs for the inspection or investigation and any additional expenses incurred for an investigation and:

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- a. If the actual costs and additional expenses exceed the estimated costs and zone fees already paid, send a bill to the licensee or applicant for the out-of-state laboratory for the amount by which the actual costs and expenses exceed the estimated costs and zone fees paid, with instructions to submit the amount billed to the Department within 20 days after the date that the Department sends the bill; or
- b. If the actual costs and expenses are less than the estimated costs and zone fees already paid, notify the licensee or applicant, determine whether the licensee or applicant desires a refund or a credit, and send a refund or issue a credit within 45 days after the date that the licensee or applicant specifies the desired form of payment.

**R9-14-620. Changes to a License**

- A. During the term of a license, a licensee may request to have one or more parameters added to the license.
- B. To request to have one or more parameters added to a license, a licensee shall submit to the Department:
  1. A written request that includes:
    - a. The name, address, and telephone number of the licensee submitting the request;
    - b. The name, address, and telephone number of the laboratory for which the addition is requested; and
    - c. Identification of each parameter requested to be added;
  2. The applicable method and instrumentation fees, as determined according to Tables 6.2.A, 6.2.B, 6.2.C, 6.2.D, 6.2.E, and 6.3, payable to the Arizona Department of Health Services by credit card; certified check; business check; or money order; or, if the owner is an Arizona state agency, purchase order;
  3. If the addition results in a different Level of license, the difference between the application fee paid with the most recent application and the application fee for the new Level of license required under R9-14-607(A)(2), payable to the Arizona Department of Health Services as provided in subsection (B)(2); and
  4. The following for each parameter requested to be added:
    - a. The limit of detection, if applicable;
    - b. A copy of a proficiency testing report; and
    - c. A copy of the standard operating procedure.

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- C. The Department may conduct a laboratory inspection during the substantive review period for a request to have one or more parameters added to a license.
- D. The Department shall process a request to have one or more parameters added to a license as provided in R9-14-621.
- E. A licensee may submit up to three requests for deletion of parameters during a license period at no charge, but shall pay \$17 per request for each subsequent request for deletion of parameters submitted during the license period.

**R9-14-621. Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is set forth in Table 6.1.
  - 1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  - 2. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is set forth in Table 6.1 and begins on the date that the Department receives an application or request for approval.
  - 1. The Department shall send a notice of administrative completeness or deficiencies to an applicant within the administrative completeness review time-frame.
    - a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application or request for approval.
    - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that a notice of deficiencies is sent until the date that the Department receives all of the missing information or items from an applicant.
  - 2. If an applicant fails to submit to the Department all of the information and items listed in a notice of deficiencies within 60 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn.
  - 3. If the Department issues a license or other approval to an applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

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- C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 6.1 and begins on the date of a notice of administrative completeness.
1. As part of the substantive review for an initial license application, the Department may conduct a laboratory inspection, investigation, or proficiency testing, or a combination of the three, as described in R9-14-605.
    - a. The Department shall commence a laboratory inspection, investigation, or proficiency testing, or combination of the three, no more than 30 days after notice of administrative completeness has been mailed for an in-state laboratory or no more than 60 days after notice of administrative completeness has been mailed for an out-of-state laboratory.
    - b. The Department and an applicant may mutually agree in writing to schedule a laboratory inspection, proficiency testing, or investigation later than the date required under subsection (C)(1)(a).
  2. The Department shall send written notification of approval or denial of a license or other approval to an applicant within the substantive review time-frame.
  3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and applicant have agreed in writing to allow the Department to submit supplemental requests for information.
  4. If the Department issues a comprehensive written request or a supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date that the Department issues the request until the date that the Department receives all of the information requested.
  5. If an applicant fails to submit to the Department all of the information and items listed in a comprehensive written request or a supplemental request for information within 60 days after the date that the Department sent the comprehensive written request or supplemental request for information, the Department shall deny the license or other approval requested.
  6. The Department shall grant a license or other approval unless:
    - a. An applicant fails to submit requested information or a requested item as described in subsection (B)(2) or (C)(5);
    - b. For an initial license application or a regular license renewal application where the regular license is not suspended, the Department determines that grounds to deny the license exist under A.R.S. § 36-495.09;

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- c. For a regular license renewal application where the regular license is suspended, the Department determines that the licensee is not in full compliance with the corrective action plan; A.R.S. Title 36, Chapter 4.3; or this Article;
  - d. For a request for approval of an alternate method or method alteration, the Department determines that the alternate method or method alteration does not meet the standard for approval under R9-14-610(E); or
  - e. For a request for approval of an exemption under R9-14-615(D), the Department determines that the request does not meet the standard for approval under R9-14-615(F).
7. If the Department denies a license or other approval, the Department shall send to the applicant a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

**Table 6.1. Time-frames (in days)**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time-frame</b>	<b>Administrative Completeness Review Time-frame</b>	<b>Substantive Review Time-frame</b>
Initial License–In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	201	21	180
Initial License–Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	231	21	210
Regular License Renewal–In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	37	14	23
Regular License Renewal–Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07, 36-495.14	67	14	53
Regular License Renewal–In-State Laboratory with Provisional License	A.R.S. §§ 36-495.01, 36-495.03, 36-495.05, 36-495.06, 36-495.07	70	21	49
Regular License Renewal–Out-of-State Laboratory with Provisional License	A.R.S. §§ 36-495.01, 36-495.03, 36-495.05, 36-495.06, 36-495.07, 36-495.14	100	21	79
Request for Approval of an Alternate Method or Method Alteration–Required or Authorized by EPA/ADEQ	A.R.S. §§ 36-495.01, 36-495.06	105	15	90

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Request for Approval of an Alternate Method or Method Alteration Due to an Approved Method Not Being Available	A.R.S. §§ 36-495.01, 36-495.06	210	30	180
Request for Approval of an Exemption under R9-14-615(D)	A.R.S. § 36-495.01	60	15	45
Request to Have One or More Parameters Added to a License under R9-14-620 – In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	91	21	70
Request to Have One or More Parameters Added to a License under R9-14-620 –Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	121	21	100

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**Table 6.2.A. Approved Methods and Method Fees for Drinking Water Parameters**

<b>1. Microbiology of Drinking Water</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Aeromonas	A4.35	1605	\$228
Coliforms, Fecal	C	9221E (2006)	\$228
		9222D (2006)	\$228
Coliforms, Total and <i>E. coli</i> , by Colilert (ONPG-MUG)	C and Z	9223B (2004) and IDEXX	\$152
Coliforms, Total, and <i>E. coli</i> , by Colisure	C2 and Z7	9223B (2004) and IDEXX	\$152
Coliforms, Total, by Membrane Filtration	C	9222B (2006)	\$228
		9222C (2006)	\$228
Coliforms, Total and <i>E. coli</i> , by Membrane Filtration	A4.36	1604	\$228
Coliforms, Total, and <i>E. coli</i> by Colitag	C and Z5	9223B (2004) and CPI	\$152
Coliforms, Total, and <i>E. coli</i> by Modified Colitag	C and D8	9223B (2004) and Modified Colitag	\$152
Coliforms, Total, and <i>E. coli</i> by E.colite	C and Z8	9223B (2004) and Charm Sciences, Inc.	\$152
Coliforms, Total, and <i>E. coli</i> by m-ColiBlue24 Test	C and Z6	9222H (2006) and Hach 10029	\$228
Coliforms, Total, and <i>E. coli</i> by Readycult Coliforms 100 Presence/Absence	C and Z14	9223B (2004) and EM Science	\$152
Coliforms, Total, and <i>E. coli</i> by MF using Chromocult Coliform Agar	C and Z15	9223B (2004) and EM Science	\$152
Coliforms, Total, by Multiple Tube Fermentation	C	9221B and C (2006)	\$228
Coliforms, Total, by Presence/Absence	C	9221D (2006)	\$228
<i>Escherichia coli</i>	C	9222G (2006)	\$228
	X	Tube Procedure	\$228
		Membrane Filter Procedure	\$228
<i>Cryptosporidium</i>	A4.32	1622	\$381
<i>Giardia</i> and <i>Cryptosporidium</i>	A4.39	1623	\$381
	A4.33	1623.1	\$381
Heterotrophic Plate Count	C	9215B (2004)	\$152
	Z3	SimPlate	\$152
Heterotrophic Plate Count (For Bottled Water Only)	C	9215D (2004)	\$152
Microscopic Particulate Analysis	P1	910/9-92-029	\$228

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Viruses	P2	600/R-95/178	\$381
Coliphage	A4.37	1601	\$228
	A4.38	1602	\$228
<b>2. Inorganic Chemistry and Physical Properties of Drinking Water</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Alkalinity	C	2320B (2011)	\$19
Asbestos	A4.30	100.1 (9/83)	\$503
	A4.31	100.2 (6/94)	\$503
Bromate	A4.1	317.0 (2.0)	\$76
	A4.3	326.0 (1.0)	\$76
	A5	300.1 (1.0)	\$26
		321.8 (1.0)	\$152
	A4.41	302.0 (1.0)	\$26
Bromide	A2	300.0 (2.1)	\$26
	A4.1	317.0 (2.0)	\$76
	A4.3	326.0 (1.0)	\$76
	A5	300.1 (1.0)	\$26
Calcium	A1	200.7 (4.4)	\$10
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3500-Ca B (2011)	\$76
Carbon, Dissolved Organic	A4.12	415.3 (1.1)	\$76
	A4.13	415.3 (1.2)	\$76
	C	5310B (2011)	\$39
		5310C (2011)	\$39
		5310D (2011)	\$39
Carbon, Total Organic	A4.12	415.3 (1.1)	\$76
	A4.13	415.3 (1.2)	\$76
	C	5310B (2011)	\$39
		5310C (2011)	\$39
		5310D (2011)	\$39

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Chloride	A2	300.0 (2.1)	\$26
	A5	300.1 (1.0)	\$26
	C	4500-CI B (2011)	\$39
		4500-CI D (2011)	\$39
4110B (2011)		\$26	
Chloramine	C	4500-CI F (2011)	\$39
		4500-CI G (2011)	\$76
Chlorate	A5	300.1 (1.0)	\$26
Chlorine, Total Residual and Free	A4.44	334.0 (9/2000)	\$39
	C	4500-CI D (2011)	\$39
		4500-CI E (2011)	\$39
		4500-CI F (2011)	\$39
		4500-CI G (2011)	\$39
		4500-CI H (2011)	\$39
		4500-CI I (2011)	\$39
Chlorine Dioxide	A4.4	327.0 (1.1)	\$76
	C	4500-CIO <sub>2</sub> E (2011)	\$39
	C7	ChlordioX Plus	\$79
Chlorite	A2	300.0 (2.1)	\$26
	A4.1	317.0 (2.0)	\$76
	A4.3	326.0 (1.0)	\$76
	A4.4	327.0 (1.1)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-CIO <sub>2</sub> E (2011)	\$39
	C7	ChlordioX Plus	\$79
Color	C	2120B (2011)	\$32
Corrosivity	C	2330B (2010)	\$39
Cyanide	A2	335.4 (1.0)	\$76
	A6	QuikChem 10-204-00-1-X (2.1)	\$76
	C	4500-CN B (2011)	\$7
		4500-CN C (2011)	\$13

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		4500-CN E (2011)	\$76
		4500-CN F (2011)	\$76
	E7	Kelada-01	\$76
Cyanide, Available/Amenable	A4.26	OIA-1677 DW	\$76
	C	4500-CN G (2011)	\$76
	I	D6888-04	\$76
Fluoride	A2	300.0 (2.1)	\$26
	A3	380-75WE (2/76)	\$39
	A5	300.1 (1.0)	\$26
	C	4500-F B (2011)	\$39
		4500-F C (2011)	\$26
		4500-F D (2011)	\$39
		4500-F E (2011)	\$39
4110B (2011)		\$26	
Hardness	A1	200.7 (4.4), Sum of Ca and Mg as their carbonates	\$10
	C	2340 B (2011), Sum of Ca and Mg as their carbonates	\$10
		2340 C (2011)	\$39
Magnesium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3500-Mg B (1997)	\$76
Methylene Blue Active Substances	C	5540 C (2011)	\$39
Nitrate	A2	300.0 (2.1)	\$26
		353.2 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-NO <sub>3</sub> D (2011)	\$39
		4500-NO <sub>3</sub> E (2011)	\$76
		4500-NO <sub>3</sub> F (2011)	\$76
		4110B (2011)	\$26

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Nitrite	A2	300.0 (2.1)	\$26
		353.2 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-NO <sub>2</sub> B (2011)	\$76
		4500-NO <sub>3</sub> E (2011)	\$76
4500-NO <sub>3</sub> F (2011)		\$76	
		4110B (2011)	\$26
Odor	C	2150B (2011)	\$32
Orthophosphate	A2	300.0 (2.1)	\$26
		365.1 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-P E (2011)	\$76
		4500-P F (2011)	\$76
4110B (2011)		\$26	
Ozone	C	4500-O <sub>3</sub> B (2011)	\$39
Perchlorate	A4.2	314.1 (1.0)	\$76
	A4.5	331.0 (1.0)	\$76
	A4.11	332.0 (1.0)	\$76
	A5	314.0 (1.0)	\$76
pH (Hydrogen Ion)	A	150.1	\$39
		150.2	\$39
	C	4500-H B (2011)	\$39
Residue, Filterable (TDS)	C	2540C (2011)	\$39
Sediment Concentration	I	D 3977-97	\$13
Silica	A1	200.7 (4.4)	\$10
	A4.10	200.5 (4.2)	\$10
	C	4500-SiO <sub>2</sub> C (2011)	\$76
		4500-SiO <sub>2</sub> D (2011)	\$76
4500-SiO <sub>2</sub> E (2011)		\$76	
Sodium	A1	200.7 (4.4)	\$10
	A4.10	200.5 (4.2)	\$10

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	C	3111B (2011)	\$26
Specific Conductance	C	2510B (2011)	\$39
Sulfate	A2	300.0 (2.1)	\$26
		375.2 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-SO <sub>4</sub> C (2011)	\$76
		4500-SO <sub>4</sub> D (2011)	\$76
		4500-SO <sub>4</sub> E (2011)	\$76
		4500-SO <sub>4</sub> F (2011)	\$76
		4110B (2011)	\$26
Temperature, Degrees Celsius	C	2550 (2010)	\$13
Turbidity, Nephelometric (NTU)	A2	180.1 (2.0)	\$39
	C	2130B (2011)	\$39
UV-Absorption at 254 nm	A4.12	415.3 (1.1)	\$76
	A4.13	415.3 (1.2)	\$76
	C	5910B (2011)	\$76
<b>3. Metals in Drinking Water</b>			
<b>a. Sample Preparation for Metals in Drinking Water</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Acid Extractable Metals	C	3030C (2004)	\$7
Microwave Assisted Digestion	C	3030K (2004)	\$7
Nitric Acid	C	3030E (2004)	\$7
Nitric Acid/Hydrochloric Acid	C	3030F (2004)	\$7
Nitric Acid/Perchloric Acid	C	3030H (2004)	\$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I (2004)	\$7
Nitric Acid/Sulfuric Acid	C	3030G (2004)	\$7
Preliminary Filtration	C	3030B (2004)	\$7
<b>b. Methods to Analyze Metals in Drinking Water</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Aluminum	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26

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	A4.10	200.5 (4.2)	\$10
	C	3111D (2011)	\$26
		3113B (2010)	\$26
Antimony	A1	200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
Arsenic	A1	200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
		3114B (2011)	\$76
Barium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111D (2011)	\$26
		3113B (2010)	\$26
Beryllium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
Cadmium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
Chromium, Hexavalent by IC	A4.43	218.7 (1.0)	\$116
Chromium, Total	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
Cobalt	A1	200.8 (5.4)	\$26

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Copper	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
3113B (2010)		\$26	
Iron	A1	200.7 (4.4)	\$10
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3113B (2010)	\$26
Lead	A1	200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
Manganese	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	C	3111B (2011)	\$26
		3113B (2010)	\$26
Mercury	A	245.2	\$52
	A1	245.1 (3.0)	\$52
		200.8 (5.4)	\$26
	C	3112B (2011)	\$52
Molybdenum	A1	200.8 (5.4)	\$26
Nickel	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3113B (2010)	\$26
Selenium	A1	200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10

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	C	3113B (2010)	\$26
		3114B (2011)	\$76
Silver	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3113B (2010)	\$26
Strontium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	C	3500-Sr B (2011)	\$26
		3500-Sr C (2011)	\$20
		3500-Sr D (2011)	\$26
Thallium	A1	200.8 (5.4)	\$26
		200.9 (2.2)	\$26
Uranium	A1	200.8 (5.4)	\$26
	C	7500 U-C (2011)	\$206
	I	D3972-97, 02	\$206
		D5174-97, 02	\$206
Vanadium	A1	200.8 (5.4)	\$26
Zinc	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
<b>4. Organic Chemistry of Drinking Water</b>			
<b>a. Methods to Comply with National Primary Drinking Water Regulations</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

<p>Disinfectant Byproducts, Solvents and Pesticides:</p> <ul style="list-style-type: none"> <li>Alachlor</li> <li>Atrazine</li> <li>Dibromochloropropane</li> <li>Endrin</li> <li>Ethylene dibromide</li> <li>Heptachlor</li> <li>Heptachlorepoide</li> <li>Hexachlorobenzene</li> <li>Hexachlorocyclopentadiene</li> <li>Lindane</li> <li>Methoxychlor</li> <li>Simazine</li> <li>1,1,2-Trichloroethane</li> <li>Trichloroethylene</li> <li>1,1,1-Trichloroethane</li> <li>Tetrachloroethylene</li> <li>Carbontetrachloride</li> <li>Chloroform</li> <li>Bromodichloromethane</li> <li>Dibromochloromethane</li> <li>Bromoform</li> <li>Total Trihalomethanes</li> </ul>	<p>D3</p>	<p>551.1 (1.0)</p>	<p>\$116</p>
<p>VOCs by GC:</p> <ul style="list-style-type: none"> <li>Benzene</li> <li>Carbon Tetrachloride</li> <li>(mono) Chlorobenzene</li> <li>o-Dichlorobenzene</li> <li>para-Dichlorobenzene</li> <li>1,2-Dichloroethane</li> <li>cis-1,2-Dichloroethylene</li> <li>Trans-1,2-Dichloroethylene</li> <li>Dichloromethane</li> <li>1,2-Dichloropropane</li> <li>Ethylbenzene</li> <li>Styrene</li> <li>Tetrachloroethylene</li> <li>1,1,1-Trichloroethane</li> <li>Trichloroethylene</li> <li>Toluene</li> <li>1,2,4-Trichlorobenzene</li> <li>1,1-Dichloroethylene</li> <li>1,1,2-Trichloroethane</li> <li>Vinyl chloride</li> <li>Xylenes, Total</li> <li>Chloroform</li> <li>Bromodichloromethane</li> <li>Dibromochloromethane</li> <li>Bromoform</li> <li>Total Trihalomethanes</li> </ul>	<p>D3</p>	<p>502.2 (2.1)</p>	<p>\$152</p>

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

<p>VOCs by GC-MS:          Benzene          Carbon Tetrachloride          (mono) Chlorobenzene          o-Dichlorobenzene          para-Dichlorobenzene          1,2-Dichloroethane          cis-1,2-Dichloroethylene          Trans-1,2-Dichloroethylene          Dichloromethane          1,2-Dichloropropane          Ethylbenzene          Styrene          Tetrachloroethylene          1,1,1-Trichloroethane          Trichloroethylene          Toluene          1,2,4-Trichlorobenzene          1,1 Dichloroethylene          1,1,2-Trichloroethane          Vinyl Chloride          Xylenes, Total          Chloroform          Bromodichloromethane          Dibromochloromethane          Bromoform          Total Trihalomethanes</p>	<p>A4.19</p>	<p>524.4</p>	<p>\$152</p>
<p>VOCs by GC:          Benzene          Carbon Tetrachloride          (mono) Chlorobenzene          o-Dichlorobenzene          para-Dichlorobenzene          1,2-Dichloroethane          cis-1,2-Dichloroethylene          Trans-1,2-Dichloroethylene          Dichloromethane          1,2-Dichloropropane          Ethylbenzene          Styrene          Tetrachloroethylene          1,1,1-Trichloroethane          Trichloroethylene          Toluene          1,2,4-Trichlorobenzene          1,1-Dichloroethylene          1,1,2-Trichloroethane          Vinyl chloride          Xylenes, Total          Chloroform          Bromodichloromethane          Dibromochloromethane          Bromoform          Total Trihalomethanes          Dibromochloropropane          Ethylenedibromide</p>	<p>D3</p>	<p>524.2 (4.1)</p>	<p>\$152</p>
<p>EDB/DBCP</p>	<p>D3</p>	<p>504.1 (1.1)</p>	<p>\$116</p>

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

Pesticides and PCBs by GC (Microextraction): Alachlor Atrazine Chlorodane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Simazine Toxaphene	D3	505 (2.1)	\$152
Phthalate and Adipate Esters by GC-PID: Di (2-ethylhexyl)adipate Di (2-ethylhexyl)phthalate	D3	506 (1.1)	\$116
Pesticides by GC-NPD Atrazine Alachlor Simazine	D3	507 (2.1)	\$116
Chlorinated Pesticides by GC-ECD: Chlordane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Toxaphene	D3	508 (3.1)	\$152

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

Chlorinated Pesticides, Herbicides, Organohalides by GC-ECD: Alachlor Atrazine Chlorodane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Simazine Toxaphene	D3	508.1(2.0)	\$152
Organics by GC-MS: Alachlor Atrazine Benzo(a)pyrene Chlorodane Di (2-ethylhexyl)adipate Di (2-ethylhexyl)phthalate Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Pentachlorophenol Simazine Toxaphene	D3	525.2 (2.0)	\$152
1, 4-Dioxane by GC/MS	A4.21	522	\$152
Carbamates by HPLC/Post Column: Carbofuran Oxamyl	A4.8	531.2 (1.0)	\$116
	D3	531.1 (3.1)	\$116
Chlorinated Acids and Dalapon by GC-ECD: 2,4-D Dalapon Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	A4.6	515.4 (1.0)	\$116
	A5	515.3 (1.0)	\$116
	D	515.1 (4.0)	\$116

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

Chlorinated Acids By GC-ECD 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D3	515.2 (1.1)	\$116
Haloacetic Acids, Bromate and Dalapon By IC-ESI-MS/MS	A4.18	557 (1.0)	\$152
Perfluorinated Compounds by LC/MS/MS	A4.40	537 (1.1)	\$152
Hormones by LC/MS/MS	A4.42	539	\$152
PAHs By HPLC/UV/FL: Benzo(a)pyrene	D1	550 (7/90)	\$116
		550.1 (7/90)	\$116
Haloacetic Acids and Dalapon by GC-ECD: Dalapon Monochloroacetic Acid Dichloroacetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid HAA5	D2	552.1 (1.0)	\$116
	D3	552.2 (1.0)	\$116
Haloacetic Acids: Monochloroacetic Acid Dichloroacetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid Dalapon HAA5	A4.9	552.3 (1.0)	\$116
Disinfection Byproducts by Micro Liquid-Liquid Extraction/GC-ECD	C8	6251B (1994)	\$116
Chlorinated Acids By HPLC/PDA/UV: 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D2	555 (1.0)	\$116
1,4 Dioxane by GC/MS	A4.21	522 (1.0)	\$152
Dioxin	A4.22	1613 Rev B (10/94)	\$258
Diquat	A5	549.2 (1.0)	\$116
Endothall	D2	548.1 (1.0)	\$116
Glyphosate	D1	547 (7/90)	\$116
PCBs (as decachlorobiphenyl)	D	508A (1.0)	\$152
<b>b. Additional Methods and Compounds Required by Other Programs</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Disinfectant Byproducts, Solvents and Pesticides	D3	551.1 (1.0)	\$26
VOCs by GC	D3	502.2 (2.1)	\$26

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VOCs by GC-MS	A4.20	524.3 (1.0)	\$26
	D3	524.2 (4.1)	\$26
EDB/DBCP	D3	504.1 (1.1)	\$26
Pesticides and PCBs by GC (Microextraction)	D3	505 (2.1)	\$26
Phthalate and Adipate Esters by GC-PID	D3	506 (1.1)	\$26
Pesticides by GC-NPD	D3	507 (2.1)	\$26
Chlorinated Pesticides by GC-ECD	D3	508 (3.1)	\$26
Chlorinated Pesticides, Herbicides, Organohalides by GC-ECD	D3	508.1(2.0)	\$26
Organics by GC-MS	D3	525.2 (2.0)	\$26
Carbamates by HPLC/Post Column	A4.8	531.2 (1.0)	\$26
	D3	531.1 (3.1)	\$26
Chlorinated Acids and Dalapon by GC-ECD	A4.6	515.4 (1.0)	\$26
	A5	515.3 (1.0)	\$26
	D	515.1 (4.0)	\$26
Chlorinated Acids By GC-ECD	D3	515.2 (1.1)	\$26
PAHs By HPLC/UV/FL	D1	550 (7/90)	\$26
		550.1 (7/90)	\$26
Haloacetic Acids and Dalapon by GC-ECD	D2	552.1 (1.0)	\$26
	D3	552.2 (1.0)	\$26
Chlorinated Acids By HPLC/PDA/UV	D2	555 (1.0)	\$26
Dioxins and Furans	A4.22	1613 Rev B (10/94)	\$65
Paraquat	A5	549.2 (1.0)	\$26
Benzidines and Nitrogen Compounds	D2	553 (1.1)	\$116
Carbonyl Compounds	D2	554 (1.0)	\$116
Phenols	A5	528 (1.0)	\$152
Phenylurea Compounds	A5	532 (1.0)	\$116
Selected Semivolatiles	A5	526 (1.0)	\$152
Pesticides and Flame Retardants by GCMS	A4.7	527 (1.0)	\$152
Explosives and Related Compounds	A4.15	529 (1.0)	\$152
Acetanilide Degradation Products	A4.16	535 (1.1)	\$194

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Acetanilide Parent Compound	D3	525.2 (2.0)	\$26
Nitrosamines by MS/MS	A4.14	521 (1.0)	\$194
<b>5. Radiochemistry of Drinking Water</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Cesium	B	p. 4	\$206
	C	7500-Cs B (2011)	\$206
		7120 (2011)	\$206
	J	R-1110-76	\$206
		R-1111-76	\$206
	L	901	\$206
		901.1	\$206
U	Ga-01-R	\$206	
W	p. 92	\$206	
Gamma Emitters	C	7500-Cs B (2011)	\$206
		7500-I B (2011)	\$206
		7120 (2011)	\$206
	L	901.1	\$206
		901.0	\$206
		902.0	\$206
	U	Ga-01-R	\$206
W	p. 92	\$206	
Gross Alpha	B	EPA 00-02	\$206
	C	7110C (2011)	\$206
	L	900.0	\$206
	V	00-01	\$206
		00-02	\$206
Gross Alpha and Beta	B	p. 1	\$206
	C	7110B (2011)	\$206
	J	R-1120-76	\$206
	L	900.0	\$206
	V	00-01	\$206
	W	p. 1	\$206

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Iodine	B	p. 6, p. 9	\$206
	C	7120 (2011)	\$206
		7500-I B (2011)	\$206
		7500-I C (2011)	\$206
		7500-I D (2011)	\$206
	L	901.1	\$206
		902.0	\$206
	U	Ga-01-R	\$206
W	p. 92	\$206	
Radium 226	B	p. 13, p. 16	\$206
	C	7500-Ra B (2011)	\$206
		7500-Ra C (2011)	\$206
	L	903.0	\$206
		903.1	\$206
	U	Ra-04	\$206
		Ra-05	\$206
	V	EPA Ra-03	\$206
EPA Ra-04		\$206	
W	p. 19	\$206	
Radium 228	B	p. 24	\$206
	C	7500-Ra D (2011)	\$206
	L	904.0	\$206
	V	Ra-05	\$206
	W	p. 19	\$206
Strontium	B	p. 29	\$206
	C	7500-Sr B (2011)	\$206
	J	R-1160-76	\$206
	L	905.0	\$206
	U	Sr-01	\$206
		Sr-02	\$206
	V	Sr-04	\$206
W	p. 65	\$206	
Tritium	B	p. 34	\$206
	C	7500- <sup>3</sup> H B (2011)	\$206
	J	R-1171-76	\$206

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	L	906.0	\$206
	V	H-02	\$206
	W	p.87	\$206
Uranium	A1	200.8 (5.4)	\$26
	A7	D5174-97, 02	\$206
	C	7500-U B (2011)	\$206
		7500-U C (2011)	\$206
	J	R-1180-76	\$206
		R-1181-76	\$206
		R-1182-76	\$206
	L	908.0	\$206
		908.1	\$206
	U	U-02	\$206
		U-04	\$206
	V	00-07	\$206
	W	p. 33	\$206

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

**Table 6.2.B. Approved Methods and Method Fees for Wastewater Parameters**

<b>1. Microbiology of Wastewater and Sewage Sludge</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
<i>Ascaris lumbricoides</i>	C8	10550	\$228
	P3	UofA2000	\$228
Coliforms, Fecal, number per 100 ml or number per gram dry weight, by Membrane Filter	C	9222D (2006)	\$228
Coliforms, Fecal, by Multiple Tube Fermentation (may be used for sewage sludge), number per 100 ml by MPN	C	9221C, E (2006)	\$228
Coliforms, Total, by Membrane Filter	C	9222B (2006)	\$228
Coliforms, Total, by Multiple Tube Fermentation	C	9221B (2006)	\$228
Control of pathogens and vectors in sewage	E3	625/R-92/013	\$76
<i>Cryptosporidium</i>	A4.32	1622	\$381
<i>Cryptosporidium</i> and <i>Giardia</i>	A4.39	1623	\$381
	C	9711B (2011)	\$381
	P2	600/R-95/178	\$381
<i>E. coli</i> , number per 100 ml, MPN multiple tube	C	9222B (2006)	\$228
<i>E. coli</i> , number per 100 ml, MPN multiple tube/multiple well	C	9223B (2004)	\$228
<i>E. coli</i> by m-ColiBlue	C1 and Z6	Hach 10029	\$228
<i>Enterococci</i> , number per 100 ml MF	C	9230C (2007)	\$228
<i>Escherichia coli</i> by Colilert MPN, in conjunction with SM 9221B and 9221C	C	9223B (2004)	\$152
<i>Escherichia coli</i> in conjunction with SM 9221B and 9221C	C	9221F (2006)	\$152
<i>Entamoeba histolytica</i>	C	9711C (2011)	\$228
Enteric viruses	I	D4994-89	\$381
Enteric viruses in sewage sludge	E3	EPA 625/R-92/103	\$381
Fecal Coliforms by Colilert-18 (APP and Reuse only)	C	9020B (2005)/9223B (2004)	\$152
Fecal Coliforms by Colilert-18 (NPDES-ATP Permits only)	C	9020B (2005)/9223B (2004)	\$152
Fecal Coliforms in sewage sludge by MTF	Z1	EPA 1681	\$228
Helminth Ova in sludge	Z4	600/1-87-014	\$381
<i>Salmonella</i> in sludge MPN	E5	9260D (1988)	\$228
<i>Salmonella</i> in Sewage Sludge (Biosolids) by Modified MSR/V	A4.34	1682	\$228
Streptococcus, Fecal, by Membrane Filter	C	9230C (2007)	\$194
Streptococcus, Fecal, by Multiple Tube Fermentation	C	9230B (2007)	\$194
Viruses	C	9510 (2011)	\$381

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	P	Methods for Virology	\$381
	P2	600/R-95/178	\$381
<b>2. Wastewater Inorganic Chemistry, Nutrients and Demand</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Acid Mine Drainage	A4.27	1627	\$303
Acidity	C	2310B (2011)	\$39
Alkalinity, Total	A	310.2 (1974)	\$19
	C	2320B (2011)	\$19
Ammonia	A2	350.1 (2.0)	\$39
	C	4500-NH <sub>3</sub> B (2011)	\$39
		4500-NH <sub>3</sub> C (2011)	\$39
		4500-NH <sub>3</sub> D (2011)	\$39
		4500-NH <sub>3</sub> E (2011)	\$39
		4500-NH <sub>3</sub> G (2011)	\$39
C1	Hach 10205	\$39	
Ammonia in sludge only	E5	4500-NH <sub>3</sub> B&C (1990)	\$39
Biochemical Oxygen Demand/Carbonaceous Biochemical Oxygen Demand	C	5210B (2011)	\$152
	C3	Hach 10360	\$152
Boron	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	4500-B B (2011)	\$76
Bromide	A2	300.0 (2.1)	\$26
	A5	300.1 (1.0)	\$26
Calcium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3500-Ca B (2011)	\$39
Carbon, Total Organic (TOC)	C	5310 B (2011)	\$39
		5310 C (2011)	\$39
		5310D (2011)	\$39
Chemical Oxygen Demand	A	410.3 (1978)	\$39
	A2	410.4 (2.0)	\$76

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	C	5220 B (2011)	\$39
		5220 C (2011)	\$39
		5220 D (2011)	\$76
	C1	Hach 8000	\$39
Chloride	A2	300.0 (2.1)	\$26
	A5	300.1 (1.0)	\$26
	C	4500-C1 B (2011)	\$39
		4500-C1 C (2011)	\$39
		4500-C1 D (2011)	\$39
4500-C1 E (2011)		\$39	
Chlorine, Total Residual	C	4500-C1 B (2011)	\$39
		4500-C1 C (2011)	\$39
		4500-C1 D (2011)	\$39
		4500-C1 E (2011)	\$39
		4500-C1 F (2011)	\$39
	4500-C1 G (2011)	\$39	
	C1	Hach 10014	\$39
Color	C	2120 B (2011)	\$32
Cyanide, Available	C	4500-CN G (2011)	\$76
	E7	Kelada-01	\$76
	Y	OIA-1677-09 (8/99)	\$76
Cyanide, Free	Y	OIA-1677-09 (8/99)	\$76
Cyanide, Total	A2	335.4 (1.0)	\$76
	A6	QuickChem 10-204-00-1-X (2.1)	\$76
	C	Combination of 4500-CN B (2011) and 4500-CN C (2011), followed by 4500-CN D (2011), 4500-CN E (2011), or 4500-CN F (2011)	\$89
	E7	Kelada-01	\$76
Fluoride	A2	300.0 (2.1)	\$26
	A5	300.1 (1.0)	\$26
	C	4500-F B (2011)	\$39
		4500-F C (2011)	\$39
4500-F D (2011)		\$39	

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		4500-F E (2011)	\$39
Hardness	A	130.1 (1976)	\$10
	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	2340B (2011)	\$39
		2340C (2011)	\$39
Kjeldahl, Total Nitrogen	A	351.1 (1978)	\$76
	A2	351.2 (2.0)	\$76
	C	Combination of 4500-NH <sub>3</sub> B (2011) and either 4500-N <sub>org</sub> B (2011) or 4500-N <sub>org</sub> C (2011)	\$115
		4500-NH <sub>3</sub> C (2011)	\$39
		4500-NH <sub>3</sub> D (2011)	\$39
		4500-NH <sub>3</sub> E (2011)	\$39
		4500-NH <sub>3</sub> F (2011)	\$39
		4500-NH <sub>3</sub> G (2011)	\$39
	4500-NH <sub>3</sub> H (2011)	\$39	
	Z9	PAI-DK01 (12/94)	\$76
	Z10	PAI-DK02 (12/94)	\$76
Z11	PAI-DK03 (12/94)	\$76	
Methylene Blue Active Substances	C	5540C (2011)	\$39
Nitrate (as N)	A	352.1 (1971)	\$76
	A2	300.0 (2.1)	\$26
	A5	300.1 (1.0)	\$26
	C	3500-NO <sub>3</sub> D (2011)	\$39
Nitrate-Nitrite (as N)	A2	300.0 (2.1)	\$26
		353.2 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-NO <sub>3</sub> E (2011)	\$76
		4500-NO <sub>3</sub> F (2011)	\$76
		4500-NO <sub>3</sub> H (2011)	\$76
Nitrite (as N)	A2	300.0 (2.1)	\$26
		353.2 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-NO <sub>2</sub> B (2011)	\$76

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		4500-NO <sub>3</sub> E (2011)	\$76
		4500-NO <sub>3</sub> F (2011)	\$76
Oil and Grease and Total Petroleum Hydrocarbons	A4.24	1664 Rev B	\$76
	C	5520B (2011)	\$76
Orthophosphate	A	365.3 (2.0)	\$76
	A2	300.0 (2.1)	\$26
		365.1 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-P E (2011)	\$76
		4500-P F (2011)	\$76
Oxygen-consumption Rate (SOUR)	C	2710B (2011)	\$39
Oxygen, Dissolved	C	4500-O B (2011)	\$26
		4500-O C (2011)	\$26
		4500-O D (2011)	\$26
		4500-O E (2011)	\$26
		4500-O F (2011)	\$26
		4500-O G (2011)	\$26
	C1	1002-8-2009	\$26
C3	Hach 10360	\$26	
pH (Hydrogen Ion)	A	150.2	\$39
	C	4500-H B (2011)	\$39
Phenols	A	420.1 (1978)	\$116
	A2	420.4 (1.0)	\$116
	C	5530 B (2010)	\$116
		5530 D (2010)	\$116
Phosphorus, Total	A	365.3 (1978)	\$76
		365.4 (1974)	\$76
	A1	200.7 (4.4)	\$10
	A2	365.1 (2.0)	\$76
	C	4500-P B (2011)	\$76
		4500-P E (2011)	\$76
		4500-P F (2011)	\$76
4500-P G (2011)		\$76	
4500-P H (2011)		\$76	
Potassium	A1	200.7 (4.4)	\$10

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		200.8 (5.4)	\$26
	C	3111B (2011)	\$26
		3500-K B (2011)	\$26
Residue, Filterable (TDS)	C	2540C (2011)	\$39
	E8	I-1750-85	\$39
Residue, Nonfilterable (TSS)	C	2540D (2011)	\$39
Residue, Settleable Solids	C	2540F (2011)	\$39
Residue, Total	C	2540B (2011)	\$39
Residue, Volatile	A	160.4 (1971)	\$39
	C	2540E (2011)	\$39
Silica, Dissolved	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	4500-SiO <sub>2</sub> B (2011)	\$76
		4500-SiO <sub>2</sub> C (2011)	\$76
		4500-SiO <sub>2</sub> E (2011)	\$76
		4500-SiO <sub>2</sub> F (2011)	\$76
	Sodium	A1	200.7 (4.4)
200.8 (5.4)			\$26
A4.10		200.5 (4.2)	\$10
C		3500-Na B (2011)	\$26
		3500-Na D (2011)	\$26
		3111B (2011)	\$26
Sodium Azide	C	4110C (2011)	\$76
Specific Conductance	A	120.1 (1982)	\$39
	C	2510B (2011)	\$39
Sulfate	A2	300.0 (2.1)	\$26
		375.2 (2.0)	\$76
	A5	300.1 (1.0)	\$26
	C	4500-SO <sub>4</sub> C (2011)	\$76
		4500-SO <sub>4</sub> D (2011)	\$76
		4500-SO <sub>4</sub> E (2011)	\$76
4500-SO <sub>4</sub> F (2011)		\$76	

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		4500-SO <sub>4</sub> G (2011)	\$76
Sulfide (includes total and soluble)	C	4500-S <sup>2-</sup> B (2011)	\$39
		4500-S <sup>2-</sup> D (2011)	\$76
		4500-S <sup>2-</sup> F (2011)	\$39
		4500-S <sup>2-</sup> G (2011)	\$39
	C1	Hach 8131	\$39
Sulfite	C	4500-SO <sub>3</sub> B (2011)	\$76
Temperature, Degrees Celsius	C	2550B (2010)	\$13
Total, Fixed and Volatile Solids in Solid and Semisolid Samples in Sludge	C	2540G (2011)	\$39
Turbidity, NTU	A2	180.1 (2.0)	\$39
	C	2130B (2011)	\$39
<b>3. Metals in Wastewater</b>			
<b>a. Sample Preparation for Metals in Wastewater</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Acid Extractable Metals	C	3030C (2004)	\$7
Digestion for Metals	C	3030D (2004)	\$7
Microwave Digestion	E6	CEM Microwave Digestion	\$7
Nitric Acid	C	3030E (2004)	\$7
Nitric Acid/Hydrochloric Acid	C	3030F (2004)	\$7
Nitric Acid/Perchloric Acid	C	3030H (2004)	\$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I (2004)	\$7
Nitric Acid/Sulfuric Acid	C	3030G (2004)	\$7
Preliminary Filtration	C	3030B (2004)	\$7
<b>b. Methods to Analyze Metals in Wastewater</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Aluminum	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
		3111D (2011)	\$26
Antimony	A1	200.7 (4.4)	\$10

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		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	A4.25	1638	\$26
	C	3111B (2011)	\$26
		3113B (2010)	\$26
Arsenic	A	206.5 (1978)	\$39
	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
		3500-As B (2011)	\$76
Barium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111D (2011)	\$26
		3113B (2010)	\$26
Beryllium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111D (2011)	\$26
		3111E (2011)	\$26
		3113B (2010)	\$26
Cadmium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	A4.25	1638	\$26
	C	3111B (2011)	\$26
		3111C (2011)	\$26
		3113B (2010)	\$26
3500-Cd D (2011)		\$76	

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Chromium (VI) Hexavalent	A1	218.6 (3.3)	\$26
	C	3500-Cr B (2011)	\$39
		3111C (2011)	\$26
Chromium, Total	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3111C (2011)	\$26
		3113B (2010)	\$26
		3500-Cr B (2011)	\$76
Cobalt	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3111C (2011)	\$26
		3113B (2010)	\$26
	Copper	A1	200.7 (4.4)
200.8 (5.4)			\$26
200.9 (2.2)			\$26
A4.10		200.5 (4.2)	\$10
A4.25		1638	\$26
C		3111B (2011)	\$26
		3111C (2011)	\$26
		3113B (2010)	\$26
		3500-Cu B (2011)	\$76
		3500-Cu C (2011)	\$76
Gold	A	231.2 (1978)	\$26
	A1	200.8 (5.4)	\$26
	C	3111B (2011)	\$26
Iridium	A	235.2 (1978)	\$26
	C	3111B (2011)	\$26
Iron	A1	200.7 (4.4)	\$10

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		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3111C (2011)	\$26
		3113B (2010)	\$26
		3500-Fe B (2011)	\$76
	Lead	A1	200.7 (4.4)
200.8 (5.4)			\$26
200.9 (2.2)			\$26
A4.10		200.5 (4.2)	\$10
A4.25		1638	\$26
C		3111B (2011)	\$26
		3111C (2011)	\$26
		3113B (2010)	\$26
		3500-Pb B (2011)	\$76
Lithium		A1	200.7 (4.4)
Magnesium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
Manganese	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3113B (2010)	\$26
		3500-Mn B (2011)	\$76
Mercury	A	245.2 (1974)	\$52
	A1	200.7 (4.4)	\$10
		245.1 (3.0)	\$52
	A4.17	1631E	\$152
	A4.23	245.7 (2.0)	\$15
	C	3112B (2011)	\$52

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Molybdenum	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111D (2011)	\$26
		3113B (2010)	\$26
Nickel	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	A4.25	1638	\$26
	C	3111B (2011)	\$26
		3111C (2011)	\$26
		3113B (2010)	\$26
	Osmium	A	252.2 (1978)
C		3111D (2011)	\$26
Palladium	A	253.2 (1978)	\$26
	C	3111B (2011)	\$26
Platinum	A	255.2 (1978)	\$26
	C	3111B (2011)	\$26
Rhodium	A	265.2 (1978)	\$26
	C	3111B (2011)	\$26
Ruthenium	A	267.2 (1978)	\$26
	C	3111B (2011)	\$26
Selenium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3113B (2010)	\$26
		3114B (2011)	\$76
Silver	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26

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		3111C (2011)	\$26
		3113B (2010)	\$26
Strontium	A1	200.7 (4.4)	\$10
	C	3111B (2011)	\$26
		3500-Sr B (2011)	\$26
		3500-Sr C (2011)	\$20
		3500-Sr D (2011)	\$26
Thallium	A	279.2 (1978)	\$26
	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	A4.25	1638	\$26
	C	3111B (2011)	\$26
Tin	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
		200.9 (2.2)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111B (2011)	\$26
		3113B (2010)	\$26
Titanium	A	283.2 (1978)	\$26
	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	C	3111D (2011)	\$26
Vanadium	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	C	3111D (2011)	\$26
		3500-V B (2011)	\$76
Zinc	A	289.2 (1978)	\$26
	A1	200.7 (4.4)	\$10
		200.8 (5.4)	\$26
	A4.10	200.5 (4.2)	\$10
	A4.25	1638	\$26
	C	3111B (2011)	\$26

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		3111C (2011)	\$26
		3500 Zn B (2011)	\$76
<b>4. Aquatic Toxicity Bioassay of Wastewater</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Toxicity, Acute	M1	EPA/600/4-90/027F	\$194
	Z12	821-R-02-012	\$194
Toxicity, Chronic	N1	EPA/600/4-91/002	\$194
	Z2	821-R-02-013	\$194
	Z13	Lozarchak, J. 2001	\$194
<b>5. Organic Chemicals of Wastewater</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Volatile Organics for Pharmaceuticals	D3	524.2 (4.1)	\$152
Purgeable Hydrocarbons	E	601	\$76
Purgeable Aromatics	E	602	\$76
Acrolein and Acrylonitrile	E	603	\$76
		624	\$152
Phenols	E	604	\$116
Benzidines	E	605	\$116
Phthalate ester	E	606	\$116
Nitrosamines	E	607	\$116
Organochlorine Pesticides and PCBs	E	608	\$152
	E2	608.1	\$152
		608.2	\$152
E4	608 (3M)	\$152	
Nitroaromatics and Isophorone	E	609	\$116
PAHs	E	610	\$116
Haloethers	E	611	\$116
Chlorinated Hydrocarbons	E	612	\$116
2, 3, 7, 8-Tetrachlorodibenzo-p-Dioxin	E	613	\$457
Chlorinated Herbicides	E2	615	\$116
Organohalide Pesticides and PCB	E2	617	\$116
Triazine Pesticides	E2	619	\$116
Thiophosphate Pesticides	E2	622.1	\$116
Purgeables	E	624	\$152

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Base/Neutrals and Acids (all analytes excluding pesticides)	E	625	\$152
Base/Neutrals and Acids (pesticides only)	E	625	\$152
Carbamate and Urea Compounds	E2	632	\$116
Tetra- through Octa-Chlorinated Dioxins and Furans	A4.22	1613 Rev B (10/94)	\$258
VOCs by Isotope Dilution GC/MS	E	1624B	\$152
Semivolatile Organic Compounds by Isotope Dilution GC/MS	E	1625B	\$152
Organophosphorus Pesticides	E1	1657	\$116
	E2	614	\$116
		614.1	\$116
		622	\$116
VOCs Specific to the Pharmaceutical Manufacturing Industry by Isotope Dilution GC/MS	K1	1666 (A)	\$152
Herbicides	C	6640B (2006)	\$116
Ethylene Glycol	K	BLS-188	\$152
<b>6. Radiochemistry of Wastewater</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Alpha-Total pCi per liter	C	7110B (2011)	\$206
	L	900.0	\$206
Alpha Counting Error, pCi per liter	C	7110B (2011)	\$206
Beta-Total pCi per liter	C	7110B (2011)	\$206
	L	900.0	\$206
Beta Counting Error, pCi	C	7110B (2011)	\$206
Radium, Total pCi per liter	C	7500-Ra B (2011)	\$206
	L	903.0	\$206
Radium	C	7500-Ra C (2011)	\$206
	L	903.1	\$206

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**Table 6.2.C. Approved Methods and Method Fees for Waste Parameters**

<b>1. Microbiology of Waste</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Coliforms, Total, by Membrane Filter	F	9132	\$228
Coliforms, Total, by Multiple Tube Fermentation	F	9131	\$228
<b>2. Sample Preparation for Waste</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Acid Digestion of Water	F	3005A	\$7
Alkaline Digestion for Hex Chome	F	3060A	\$7
Bomb Preparation Method for Solid Waste	F	5050	\$7
EP for Oily Wastes	F	1330A	\$76
EP Toxicity	F	1310B	\$76
Microwave Assisted Digestions	F	3015A	\$7
		3051A	\$7
		3052	\$7
		3546	\$7
Multiple EP	F	1320	\$152
Oils, Greases, and Waxes	F	3040A	\$7
Oils	F	3031	\$7
Sediments, Sludges, and Soils	F	3050B	\$7
SPLP	F	1312	\$303
TCLP	F	1311	\$303
Total Metals	F	3010A	\$7
		3020A	\$7
Total Recoverable in Water	F	3005A	\$7
<b>3. Inorganic Chemistry and Metals of Solid Waste</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Aluminum	F	6010C	\$10
		6020A	\$26
		7000B	\$26
	F and F13	6010D	\$10
		6020B	\$26
Ammonia	A	350.3	\$39

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Antimony	F	6010C	\$10
		6020A	\$26
		7062	\$76
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Arsenic	F	6010C	\$10
		6020A	\$26
		7010	\$26
		7061A	\$76
		7062	\$76
		7063	\$76
	F and F13	6010D	\$10
		6020B	\$26
Barium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Beryllium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Boron	F	6010C	\$10
	F and F13	6010D	\$10
Bromide	F	9056A	\$26
		9211	\$39
Cadmium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26

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	F and F13	6010D	\$10
		6020B	\$26
Calcium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
	F and F13	6010D	\$10
		6020B	\$26
Cation-Exchange Capacity of Soils	F	9080	\$34
		9081	\$34
Chloride	F	9056A	\$26
		9057	\$76
		9212	\$39
		9250	\$76
		9251	\$76
		9253	\$39
Chlorine, Total, in New and Used Petroleum Products	F	9075	\$76
		9076	\$39
		9077	\$39
Chromium, Hexavalent	F	7195	\$26
		7196A	\$76
		7197	\$26
		7198	\$40
		7199	\$76
Chromium, Total	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Cobalt	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26

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Compatibility Test for Wastes and Membrane Liners	F	9090A	\$152
Copper	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Corrosive to Steel	F	1110A	\$63
Corrosivity pH Determination	F	9040C	\$63
Cyanide	F	9010C	\$13
		9012B	\$76
		9213	\$76
		9014	\$76
	F9	9015	\$76
Cyanide Extraction for Solids and Oils	F10	9013A	\$39
Dermal Corrosion	F	1120	\$63
Ignitability of Solids	F	1030	\$32
Flash Point by Pensky Martens Cup	F	1010A	\$32
Flash Point by Set-a Flash	F	1020B	\$32
Fluoride	F	9056A	\$26
		9214	\$39
Iron	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Kjeldahl Total, Nitrogen	A	351.4	\$76
Lead	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Liquid Release Test Procedure	F	9096	\$39

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Lithium	F	6010C	\$10
		7000B	\$26
	F and F13	6010D	\$10
Magnesium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
	F and F13	6010D	\$10
		6020B	\$26
Manganese	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Mercury	F	6010C	\$10
		6020A	\$26
		7470A	\$52
		7471B	\$52
		7472	\$152
		7473	\$152
		7474	\$152
	F and F13	6010D	\$10
		6020B	\$26
Molybdenum	F	6010C	\$10
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
Nickel	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
6020B		\$26	
Nitrate	F	9210A	\$39
		9056A	\$26

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Nitrite	F	9056A	\$26
		9216	\$39
Oil and Grease and Petroleum Hydrocarbons	A4.24	1664B	\$76
O-Phosphate-P	F	9056A	\$26
Osmium	F	7000B	\$26
Paint Filter Liquids Test	F	9095B	\$19
Perchlorate	A5	314.0	\$76
	F	6850	\$152
pH (Hydrogen Ion)	F	9041A	\$39
		9045D	\$39
Phosphorus	F	6010C	\$10
	F and F13	6010D	\$10
Phosphorus, Total	A	365.3	\$76
Potassium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
	F and F13	6010D	\$10
		6020B	\$26
Saturated Hydraulic and Leachate Conductivity and Intrinsic Permeability	F	9100	\$152
Selenium	F	6010C	\$10
		6020A	\$26
		7010	\$26
		7741A	\$26
		7742	\$76
	F and F13	6010D	\$10
		6020B	\$26
Silica	F	6010C	\$10
	F and F13	6010D	\$10
Silver	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26

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Sodium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
	F and F13	6010D	\$10
		6020B	\$26
Sodium Azide	C	4110C (2011)	\$76
Specific Conductance	F	9050A	\$39
Strontium	F	6010C	\$10
		7000B	\$26
	F and F13	6010D	\$10
Sulfate	F	9035	\$76
		9036	\$76
		9038	\$76
		9056A	\$26
Sulfides	F	9030B	\$76
		9031	\$76
		9034	\$76
		9215	\$76
Thallium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Tin	F	6010C	\$10
		7000B	\$26
	F and F13	6010D	\$10
Titanium	F	6010C	\$10
Vanadium	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
Water	F	9000	\$32

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		9001	\$32
White Phosphorus by GC	F	7580	\$116
Zinc	F	6010C	\$10
		6020A	\$26
		7000B	\$26
		7010	\$26
	F and F13	6010D	\$10
		6020B	\$26
<b>4. Organics Procedures in Waste</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Separatory Funnel Liquid-Liquid Extraction	F	3510C	\$13
Organic Compounds in Water by Microextraction	F5	3511	\$13
Continuous Liquid-Liquid Extraction	F	3520C	\$13
SPE	F	3535A	\$13
Soxhlet Extraction	F	3540C	\$13
Automated Soxhlet Extraction	F	3541	\$13
Pressurized Fluid Extraction	F	3545A	\$13
Ultrasonic Extraction	F	3550C	\$13
Supercritical Fluid Extraction of Total Recoverable Petroleum Hydrocarbons	F	3560	\$13
Supercritical Fluid Extraction of PAHs	F	3561	\$13
SFE of PCBs and Organochlorine Pesticides	F	3562	\$13
MSE	F4	3570	\$13
Waste Dilution	F	3580A	\$13
Waste Dilution for Volatile Organics	F	3585	\$13
Alumina Cleanup	F	3610B	\$13
Alumina Column Cleanup and Separation of Petroleum Wastes	F	3611B	\$13
Florisil Cleanup	F	3620C	\$13
Silica Gel Cleanup	F	3630C	\$13
Gel-Permeation Cleanup	F	3640A	\$13
Acid-Base Partition Cleanup	F	3650B	\$13
Sulfur Cleanup	F	3660B	\$13
Sulfuric Acid/Permanganate Cleanup	F	3665A	\$13
Screening Solids for VOCs	F	3815	\$76

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

Hexadecane Extraction and Screening for Purgeable Organics	F	3820	\$76
Screening for Pentachlorophenol by Immunoassay	F	4010A	\$76
Screening for 2,4-Dichlorophenoxyacetic Acid by Immunoassay	F	4015	\$76
Screening for PCBs by Immunoassay	F	4020	\$76
Screening for PCDDs and PCDFs by Immunoassay	F3	4025	\$76
Soil Screening for Petroleum Hydrocarbons by Immunoassay	F	4030	\$76
Soil Screening for PAHs by Immunoassay	F	4035	\$76
Soil Screening for Toxaphene by Immunoassay	F	4040	\$76
Soil Screening for Chlordane by Immunoassay	F	4041	\$76
Soil Screening for DDT by Immunoassay	F	4042	\$76
TNT Explosives in Soil by Immunoassay	F	4050	\$76
RDX in Soil by Immunoassay	F	4051	\$76
Screening Environmental Samples for Planar Organic Compounds	F	4425	\$76
Triazine Herbicides by Quantitative Immunoassay	F	4670	\$76
VOCs in Various Sample Matrices Using Equilibrium Headspace Analysis	F8	5021A	\$13
Purge-and-Trap for Aqueous Samples	F6	5030C	\$13
Volatile, Nonpurgeable, Water-Soluble Compounds by Azeotropic Distillation	F	5031	\$13
VOCs by Vacuum Distillation	F	5032	\$13
Closed-System Purge-and-Trap and Extraction for Volatile Organics in Soil and Waste Samples	F2	5035A	\$13
Analysis for Desorption of Sorbent Cartridges from VOST	F	5041A	\$13
EDB and DBCP by Microextraction and GC	F	8011	\$116
C <sub>10</sub> – C <sub>32</sub> Hydrocarbons	K	8015AZ 1	\$116
Nonhalogenated Organics Using GC/FID	F7	8015D	\$116
Aromatic and Halogenated Volatiles by GC Using Photoionization and/or Electrolytic Conductivity Detectors	F	8021B	\$152
Acrylonitrile by GC	F	8031	\$76
Acrylamide by GC	F	8032A	\$76
Acetonitrile by GC with Nitrogen-Phosphorus Detection	F	8033	\$76
Phenols by GC	F	8041A	\$116
Phthalate Esters by GC/ECD	F	8061A	\$116
Nitrosamines by GC	F	8070A	\$116

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

Organochlorine Pesticides by GC	F	8081B	\$152
Elemental Quantitation by GC/AED	F	8085	\$116
PCBs by GC	F	8082A	\$152
Nitroaromatics and Cyclic Ketones by GC	F	8091	\$116
Explosives by GC	F	8095	\$116
PAHs	F	8100	\$116
Haloethers by GC	F	8111	\$116
Chlorinated Hydrocarbons by GC: Capillary Column Technique	F	8121	\$116
Aniline and Selected Derivatives by GC	F	8131	\$116
Organophosphorus Compounds by GC	F	8141B	\$152
Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzoylation Derivatization	F	8151A	\$152
VOCs by GC/MS, including n-Hexane	F	8260B	\$152
	F12 and F13	8260C/8000D	\$152
VOCs by VD/GC/MS	F	8261	\$152
Semivolatile Organic Compounds by GC/MS	F	8270C	\$152
	F and F13	8270D/8000D	\$152
Semivolatile Organic Compounds (PAHs and PCBs) in Soils/Sludges and Solid Wastes Using TE/GC/MS	F	8275A	\$152
8280A: Polychlorinated Dibenzo- <i>p</i> -Dioxins and PCDFs by HRGC/LRMS	F	8280B	\$258
PCDDs and PCDFs by HRGC/HRMS	F	8290A	\$258
PAHs	F	8310	\$116
Determination of Carbonyl Compounds by HPLC	F	8315A	\$116
Acrylamide, Acrylonitrile, and Acrolein by HPLC	F	8316	\$116
<i>N</i> -Methylcarbamates by HPLC	F	8318A	\$116
Solvent-Extractable Nonvolatile Compounds by HPLC/TS/MS or UV Detection	F	8321B	\$152
Solvent Extractable Nonvolatile Compounds by HPLC/PB/MS	F	8325	\$152
Nitroaromatics and Nitramines by HPLC	F	8330A	\$116
Nitroaromatics, Nitramines, and Nitrate Esters	F11	8330B	\$116
Tetrazene by Reverse Phase HPLC	F	8331	\$116
Nitroglycerine by HPLC	F	8332	\$116
GC/FT-IR Spectrometry for Semivolatile Organics: Capillary Column	F	8410	\$116
Analysis of Bis (2-chloroethyl) Ether and Hydrolysis Products by Direct Aqueous Injection GC/FT-IR	F	8430	\$116

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Total Recoverable Petroleum Hydrocarbons by Infrared Spectrophotometry	F	8440	\$116
Screening for RDX/MDX in Soil	F	8510	\$76
Colorimetric Screening Method for TNT in Soil	F	8515	\$76
Screening for Total VOH in Water	F	8535	\$76
PCP by UV Colorimetry	F	8540	\$108
TOX	F	9020B	\$76
POX	F	9021	\$76
TOX by Neutron Activation Analysis	F	9022	\$114
EOX in Solids	F	9023	\$114
TOCs	F	9060A	\$76
Phenolics	F	9065	\$152
		9066	\$152
		9067	\$152
HEM for Aqueous Samples	F	9070A	\$76
HEM for Sludge, Sediment, and Solid Samples	F	9071B	\$76
Screening for TRPH in Soil	F	9074	\$76
Screening for PCBs in Soil	F	9078	\$76
Screening for PCBs in Oil	F	9079	\$76
PCBs in Waste Oil	A4.28	600/4-81-045	\$152
<b>5. Bulk Asbestos Analysis of Waste</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Bulk Asbestos Analysis	A4.29	Bulk Asbestos	\$228
	G	9002	\$228
	G1 and A4.29	Bulk Asbestos	\$228
Fiber Counting	G	7400	\$228
		7402	\$228
<b>6. Radiochemistry of Waste</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Alpha-Emitting Radium Isotopes	F	9315	\$206
Gross Alpha and Beta	F	9310	\$206
Radium-228	F	9320	\$206

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**Table 6.2.D. Approved Methods and Method Fees for Air and Stack Parameters**

<b>1. Ambient Air Primary and Secondary Pollutants</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Carbon Monoxide	O	Appendix C	\$393
Formaldehyde	F	8520	\$393
Lead	O	Appendix G	\$393
Nitrogen Dioxide	O	Appendix F	\$393
Ozone	O	Appendix D	\$393
Particulate Matter	O	Appendix B	\$393
		Appendix J	\$393
		Appendix L	\$393
		Appendix O	\$393
Sulfur Oxides	O	Appendix A	\$393
<b>2. Stationary and Stack Sources</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Carbon Dioxide, Oxygen, and Excess Air	Q	Method 3C	\$393
Carbon Monoxide	Q	Method 10	\$393
		Method 10A	\$393
		Method 10B	\$393
Carbonyl Sulfide, Hydrogen Sulfide, and Carbon Disulfide	Q	Method 15	\$393
Fluoride	Q	Method 13A	\$393
		Method 13B	\$393
		Method 14	\$393
Fugitive Emissions	Q	Method 22	\$393
Gaseous Organic Compounds	Q	Method 18	\$393
		Method 25	\$393
		Method 25A	\$393
		Method 25B	\$393
Hydrogen Sulfide	Q	Method 11	\$393
Inorganic Lead	Q	Method 12	\$393
Mercury, Total Vapor Phase	Q1	PS-12B	\$393
Moisture Content	Q	Method 4	\$393

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Nitrogen Oxide	Q	Method 7	\$393
		Method 7A	\$393
		Method 7B	\$393
		Method 7C	\$393
		Method 7D	\$393
		Method 7E	\$393
		Method 20	\$393
Non-methane Organic Compounds	Q	Method 25C	\$393
Particulate Emissions by Asphalt Processing and Roofing	Q	Method 5A	\$152
Particulate Emissions by Fiberglass Insulation Plants	Q	Method 5E	\$152
Particulate Emissions of Nonsulfates	Q	Method 5F	\$152
Particulate Emissions by Nonsulfuric Acid	Q	Method 5B	\$152
Particulate Emissions by Pressure Filters	Q	Method 5D	\$152
Particulate Emissions by Stationary Sources	Q	Method 5	\$152
		Method 17	\$152
Particulate Emissions by Wood Heaters	Q	Method 5G	\$152
		Method 5H	\$152
Petroleum Products, Heat of Combustion	I	D240-92	\$76
		D240-87	\$76
Petroleum Products, Hydrometer Method	I	D287-92	\$76
Petroleum Products, Sulfur	I	D4294-90	\$152
Sulfur and Total Reduced Sulfur	Q	Method 15A	\$393
		Method 16	\$393
		Method 16A	\$393
		Method 16B	\$393
Sulfur Dioxide	Q	Method 6	\$393
		Method 6A	\$393
		Method 6B	\$393
		Method 6C	\$393
		Method 8	\$393
		Method 19	\$393
		Method 20	\$393
Sulfur Dioxide Removal and SO <sub>2</sub> /NO Emission Rates	Q	Method 19	\$152
Sulfuric Acid Mist	Q	Method 8	\$393
Vapor Tightness, Gasoline Delivery Tank	Q	Method 27	\$393

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

Volatile Matter Density, Solids and Water from Surface Coatings	Q	Method 24	\$393
		Method 24A	\$393
Volatile Matter and Density of Printing Inks	Q	Method 24A	\$393
VOCs	Q	Method 21	\$393
	S1	TO-3	\$152
		TO-14A	\$152
		TO-15	\$152
VOCs in Vapor	F1	8260B AZ (Vapor) (0.0)	\$152
Wood Heaters, Certification and Burn Rates	Q	Method 28	\$393
		Method 28A	\$393
<b>3. ADEQ Emission Test</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Particulate Emissions in the Presence of Sulfuric Acid Mist/Sulfur Oxides	R	Method A1	\$393
<b>4. National Emission Standards for Hazardous Air Pollutants</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Arsenic	S	Method 108	\$393
		Method 108A	\$393
		Method 108B	\$393
		Method 108C	\$393
Beryllium	S	Method 103	\$393
		Method 104	\$393
Mercury	S	Method 101	\$393
		Method 101A	\$393
		Method 102	\$393
		Method 105	\$393
Polonium 210	S	Method 111	\$393
Vinyl Chloride	S	Method 106	\$393
		Method 107	\$393
		Method 107A	\$393
<b>5. Determination of Metals in Ambient Particulate Matter</b>			
<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

Digestion of Ambient Matter	O3	IO-3.1	\$7
Aluminum	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
Antimony	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
Arsenic	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Barium	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Beryllium	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Bismuth	O1	IO-3.4	\$10
Cadmium	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Calcium	O1	IO-3.4	\$10
Cesium	O1	IO-3.4	\$10
Chromium	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Cobalt	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Copper	O1	IO-3.4	\$10
	O2	IO-3.5	\$26

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	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Germanium	O1	IO-3.4	\$10
Gold	O1	IO-3.4	\$10
Indium	O1	IO-3.4	\$10
Iron	O1	IO-3.4	\$10
Lanthanum	O1	IO-3.4	\$10
Lead	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	O4	EQL-0510-191	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Lithium	O1	IO-3.4	\$10
Magnesium	O1	IO-3.4	\$10
Manganese	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Mercury	O1	IO-3.4	\$10
	Q	Method 29 – CVAA	\$52
Molybdenum	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
Nickel	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Niobium	O1	IO-3.4	\$10
Palladium	O1	IO-3.4	\$10
Phosphorus	O1	IO-3.4	\$10
	Q	Method 29 – ICP	\$10
Platinum	O1	IO-3.4	\$10
Potassium	O1	IO-3.4	\$10
Rhenium	O1	IO-3.4	\$10
Rhodium	O1	IO-3.4	\$10

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Ruthenium	O1	IO-3.4	\$10
Samarium	O1	IO-3.4	\$10
Selenium	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Silicon	O1	IO-3.4	\$10
Silver	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Sodium	O1	IO-3.4	\$10
Strontium	O1	IO-3.4	\$10
Tantalum	O1	IO-3.4	\$10
Tellurium	O1	IO-3.4	\$10
Thallium	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Thorium	O2	IO-3.5	\$26
Tin	O1	IO-3.4	\$10
Titanium	O1	IO-3.4	\$10
Tungsten	O1	IO-3.4	\$10
Uranium	O2	IO-3.5	\$26
Vanadium	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
Yttrium	O1	IO-3.4	\$10
Zinc	O1	IO-3.4	\$10
	O2	IO-3.5	\$26
	Q	Method 29 – ICP	\$10
		Method 29 – ICPMS	\$26
Zirconium	O1	IO-3.4	\$10

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**Table 6.2.E. Methods Director-Approved under R9-14-610(E) and Method Fees**

<b>Description</b>	<b>Reference</b>	<b>Method/s</b>	<b>Fee Per Method</b>
Chromatographic Method	-	Any	\$116
Mass Spectrometric Method	-	Any	\$152
Toxicity Method	-	Any	\$194
Other Method	-	Any	\$75

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

**Table 6.3. Instrumentation Fees**

<b>Description</b>	<b>Subtype, if any</b>	<b>Fee Per Instrument</b>
Atomic Absorption	Cold Vapor	\$76
	Flame Burner	\$76
	Graphite Furnace	\$76
	Hydride Generator	\$76
	Other	\$76
Counters for Radioactivity	-	\$76
Gas Chromatograph	Electron Capture	\$76
	Flame Ionization	\$76
	Flame Photometric	\$76
	Halide Specific	\$76
	Nitrogen/Phosphorus	\$76
	Photoionization	\$76
	Other	\$76
Gas Chromatograph/Mass Spectrometer	High Resolution	\$194
	Other than High Resolution	\$152
High Pressure Liquid Chromatograph	Ultraviolet	\$76
	Fluorescence	\$76
	Other	\$76
High Pressure Liquid Chromatograph/Mass Spectrometer	-	\$152
Inductively Coupled Plasma	-	\$76
Inductively Coupled Plasma/Mass Spectrometer	-	\$152
Ion Chromatograph	-	\$76
Automated Autoanalyzer	-	\$76
Mercury Analyzer	-	\$76
Organic Halide, Total	-	\$76
Transmission Electron Microscope	-	\$396
X-Ray Diffraction Unit	-	\$76

**Current Rules in 9 A.A.C. 14, Article 6, as of September 2020**

**Table 6.4. Alternate Default Limits**

<b>QUALITY CONTROL PARAMETERS WITHOUT ACCEPTANCE CRITERIA SPECIFIED IN THE METHOD</b>	<b>DEFAULT LIMITS</b>
Matrix Spike/LFM (processed or non-processed)	LCS/LFB
Matrix Spike/LCS for 8000 methods	±30%.
LCS/LFB (processed or non-processed)/Second source reference standard	CCV/continuing IPC
LOQ/MRL (non-processed)	CCV/continuing IPC or ± 50%
LOQ/MRL (processed)	LCS/LFB or ± 50%
Methods that do not specify the LOQ/MRL	± 50%
QCS (non-processed)	ICV/continuing IPC/manufacture's limits
QCS (processed)	LCS/LFB/manufacture's limits
IDOC limits	LFB/LCS
LFB/LCS/LFM/duplicate RPD	IDOC limits/□20%
Non-CCC compounds	CCC limits
ICV/CCV	± 10%
500, 600, 1600, and 8000 series methods that do not specify surrogates or acceptance limits for surrogates	70-130%.
500, 600, 1600, and 8000 series methods that do not specify internal standards or acceptance limits for internal standards	70-130%.
Methods that do not list a precision measurement	20% RPD

## Statutory Authority for Rules in 9 A.A.C, 14, Article 6

### **36-132. Department of health services; functions; contracts**

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

**36-136. Powers and duties of director; compensation of personnel; rules; definitions**

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state

hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The

rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and

transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial

purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by

the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

### **36-495. Definitions**

In this chapter, unless the context otherwise requires:

1. "Compliance testing" means laboratory analysis of any matter, pollutant, contaminant, hazardous substance or other substance subject to regulation pursuant to:

(a) Title 49 or rules adopted or enforced by the department of environmental quality for the purpose of determining compliance with title 49.

(b) Federal environmental statutes or regulations administered or enforced by the United States environmental protection agency relating to the safe drinking water act (42 United States Code sections 300f through 300j), the clean air act (42 United States Code sections 7401 through 7642), the clean water act (33 United States Code sections 1251 through 1376), the resource conservation and recovery act (42 United States Code sections 6921 through 6939B), the comprehensive environmental response, compensation, and liability act (42 United States Code sections 9601 through 9657) and the toxic substance control act (42 United States Code sections 2601 through 2654) as they relate only to the regulation of polychlorinated biphenyls and asbestos.

(c) Federal or state statutes and rules relating to the safety, contamination and sanitation of drinking water sold in bottles, or ice or water sold by machine or hauled and enforced by the department of health services or the United States food and drug administration.

2. "Department" means the department of health services.

3. "Director" means the director of the department of health services.

4. "Environmental laboratory" or "laboratory" means a facility where compliance testing is performed.

5. "Facility" means a place, building, installation, structure or vehicle.

6. "Government agency" means an agency of the United States government, this state or a political subdivision of this state.

7. "Laboratory director" means an individual who administers the technical and scientific operation of an environmental laboratory and who is responsible for reporting laboratory test results as specified in this chapter or rules adopted pursuant to this chapter.

8. "License" means a regular license, renewal license or provisional license issued by the department pursuant to this chapter.

9. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, corporation, partnership, association, state or political subdivision of a state or the United States government.

#### **36-495.01. Licensure program; rules**

A. On or before July 1, 1991, the department shall license environmental laboratories engaged in compliance testing. Upon application for an environmental laboratory license, the department shall issue the license if, after investigation, the department determines that the application conforms with the standards established by the department.

B. The director shall prescribe rules providing for minimum standards of proficiency, methodology, quality assurance, operation and safety for environmental laboratories and may prescribe standards for personnel education, training and experience to meet federal environmental statutes or regulations, or enabling reciprocity with other states and the manner and form in which compliance testing results are reported. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with title 49 and rules administered or enforced by the director of environmental quality.

C. The director shall prescribe rules providing minimum standards for third party accreditation.

D. Unless exempted by section 36-495.02, no person may operate or maintain an environmental laboratory without a license issued by the department pursuant to this chapter.

### **36-495.02. Exemptions**

A. This chapter does not apply to an environmental laboratory in this state that is:

1. Certified or designated by the United States environmental protection agency as the laboratory that provides analytical services to this state required for the delegation of primary enforcement responsibility under a federal law or regulation administered by that agency.

2. Operated by the Arizona department of agriculture or the department of health services.

3. Performing only compliance testing of parameters that require analysis at the time of sample collection as long as the testing methodologies employed are approved by the director of the department of health services or the department of environmental quality.

4. Licensed to perform those analyses for which it is licensed or certified by another agency of this state.

5. Accredited by a national voluntary laboratory accreditation program administered by the national institute of standards and technology and approved by the department.

B. In addition to the exemptions established in subsection A of this section, the director of the department of health services may also exempt by rule certain classes of environmental laboratories and types of compliance testing, parameters and methods, if the director determines that the exemptions will not adversely affect the public health or the environment. The rules shall be developed in cooperation with the director of the department of environmental quality and the director of the Arizona department of agriculture.

### **36-495.03. License application; issuance; expiration**

A. Unless exempted pursuant to section 36-495.02, a person who operates or maintains an environmental laboratory located in this state shall file an application with the department at least thirty days before the anticipated operation of a new laboratory for an environmental laboratory license accompanied by the license application fee established by this chapter. A person shall obtain a license for each laboratory, except that only one license is required for contiguous or coterminous laboratories under the same ownership. The director, by rule, shall prescribe when noncontiguous laboratories with the same owners may be operated under a single license.

B. The application shall be on a form prescribed and furnished by the department. The application shall be under oath and shall contain:

1. The name and location of the environmental laboratory.

2. The name of the person owning the facility and the name of the individual directing the laboratory.

3. A description of the services and tests provided by the environmental laboratory.

4. Other information the department deems necessary to carry out its powers and duties under this chapter.

C. The department shall issue a regular license to an applicant to operate an environmental laboratory to

provide the services and tests described in the application if the department determines that the applicant is in compliance with the provisions of this chapter and rules adopted pursuant to this chapter.

D. If the owner is not the laboratory director, the director shall issue a license jointly to the owner and the laboratory director who are jointly responsible for the maintenance and operation of the laboratory and for violations of this chapter or rules adopted pursuant to this chapter.

E. A license issued by the department is valid only in the name of the persons to whom it is issued and cannot be sold, assigned or transferred. A license is valid only for the facility or facilities for which it is issued. If there is a change in the laboratory name, directorship or ownership or an appointment of an acting laboratory director, the license automatically expires, unless within twenty business days after the change the department is notified in writing of the change and an application for a new license is submitted to the department. A fee shall not be charged for this application. The director shall issue a new license reflecting the change if the laboratory is still in compliance with the provisions of this chapter and rules adopted pursuant to this chapter.

F. A regular license expires one year after the date of issuance and shall be renewed on submission of a renewal application and payment of the renewal application fee prescribed in section 36-495.06, at least thirty days before expiration of the license, unless the director determines pursuant to section 36-495.09 that grounds exist to deny the application.

#### **36-495.04. Laboratory director; duties**

The director of an environmental laboratory shall:

1. Ensure that all services and tests provided by the laboratory are performed in compliance with this chapter or rules adopted pursuant to this chapter.
2. Direct and supervise services and tests provided by the laboratory and be responsible for the work of all personnel in the laboratory.
3. Be responsible for safety and hazardous substance control in the laboratory.

#### **36-495.05. Provisional licenses**

A. The department may issue a provisional license for a period of not more than twelve months at the time it issues a notice of suspension of a regular license. The department may suspend a regular license if an inspection or investigation of a laboratory reveals a violation of the rules adopted by the director pursuant to this chapter and the director believes that the immediate interests of the public are best served by affording the laboratory the opportunity to correct the deficiencies. The director shall issue a provisional license only if the licensee agrees to carry out a plan acceptable to the department to eliminate the deficiencies within the term of the provisional license or period of time specified by the department.

B. A licensee's agreement to carry out a plan of correction does not constitute a waiver of its right to have a hearing on the notice of suspension. A hearing on the notice of suspension may include review of the appropriateness of the laboratory's plan of correction.

C. An application for a regular license may be submitted thirty days before the expiration of a provisional license issued pursuant to this section. The department shall condition its issuance of a regular license at the expiration of the term of the provisional license on the licensee being in full compliance with the correction plan and this chapter or rules adopted pursuant to this chapter.

#### **36-495.06. Fees**

A. The department shall charge and collect a nonrefundable fee for a regular or a renewal license.

B. The director shall establish by rule a fee schedule that does not exceed the cost to the department to conduct

an on-site inspection, approve third party accreditation, verify information submitted with the application and other activities related to licensure of environmental laboratories pursuant to this chapter or rules adopted pursuant to this chapter. The fee schedule for application for a regular or renewal license shall be based on the types of compliance testing that the laboratory is licensed to provide.

**36-495.07. Inspection; investigations**

- A. The department may make an initial inspection, and thereafter an annual inspection, of each laboratory to determine compliance with this chapter or rules adopted pursuant to this chapter.
- B. An application for licensure pursuant to this chapter constitutes permission for the department's entry or inspection of the laboratory during the pendency of the application and, if licensed, during the term of the license for the purpose of determining compliance with this chapter or rules adopted pursuant to this chapter.
- C. The department may require, as part of its inspections, that the laboratory demonstrate proficiency in performing tests that it offers by examining specimens submitted by the department, the United States environmental protection agency or other proficiency testing services approved by the department.
- D. In addition to the inspections provided for in subsection A of this section, the department, on its own initiative or on the receipt of a written complaint from a person setting forth facts which, if proven, constitute a violation of this chapter or rules adopted pursuant to this chapter, may make an investigation of the laboratory's operations, techniques and procedures. If the investigation or an inspection conducted pursuant to this section discloses past or current noncompliance with statutes and rules, the director, in accordance with section 36-495.09, may deny, suspend or revoke a license issued by the department pursuant to this chapter.
- E. At any time the department may conduct an investigation of the operation of an unlicensed laboratory performing compliance testing and may conduct on-site inspections of the laboratory, records, procedures and methods to determine whether the laboratory must be licensed pursuant to this chapter.
- F. The director by rule shall establish standards and procedures for third party accreditation and exempting inspections and inspection fees for a laboratory that is accredited by a third party.

**36-495.08. Reports by laboratories**

A laboratory shall make available to the department on written request information and data concerning its operation, techniques and procedures. The department may require that the information be submitted under oath and signed by the owner or director of the laboratory. The department may require the laboratory director or owner to submit other reports or information that it deems necessary to administer this chapter.

**36-495.09. Suspension, revocation or denial of license; hearing**

- A. Pursuant to title 41, chapter 6, article 10, the director may deny, revoke or suspend the license of a laboratory if its owners, officers, agents or employees do any of the following:
  - 1. Violate this chapter or rules adopted pursuant to this chapter.
  - 2. Issue or cause to be issued a report on environmental laboratory work performed in another laboratory without designating the name and address of the laboratory that performed the work.
  - 3. Commit a felony under the laws of any state or of the United States arising out of or in connection with the operation of a laboratory. The record of conviction or a certified copy is conclusive evidence of conviction.
  - 4. Knowingly aid, permit or abet the submission of false or inaccurate information required by this chapter or rules adopted pursuant to this chapter.
  - 5. Violate the requirements for licensure of the laboratory pursuant to this chapter.
- B. If the director reasonably believes that a violation of subsection A, paragraph 5 of this section has occurred

and that the life or safety of the public is immediately affected, on written notice to the owner or director of the laboratory, the director may order the immediate termination of specific testing services, procedures or practices.

C. Except as provided in subsection B of this section and section 41-1092.11, subsection B, the director shall not suspend, revoke or deny a license without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

D. A person whose application for a license is denied by the director or who has been ordered pursuant to subsection B of this section to immediately terminate specific services, procedures or practices, at any time within thirty days after notice of the denial or order, may request in writing a hearing before the director or a person designated by the director to review the director's action. The hearing shall be held within thirty days after the written request.

E. All hearings shall be held in accordance with title 41, chapter 6, article 10.

### **36-495.13. Powers of the director**

A. In addition to the rules required by section 36-495.01, the director may adopt other rules and prescribe forms that are necessary for the administration and enforcement of this chapter.

B. The director may issue interpretive guidelines on subjects relating to the rules adopted under this chapter.

C. The director may enter into intergovernmental agreements with other agencies of this state for the purpose of licensing environmental laboratories performing compliance testing.

### **36-495.14. Out-of-state laboratories; licensure; reciprocity**

A. Except as provided in this section, a laboratory located outside of this state that performs compliance testing shall be licensed pursuant to this chapter. The laboratory shall pay all applicable fees and is subject to the same investigatory and disciplinary powers of the department. In addition, the department, by rule, may require that the laboratory post a bond with the department to cover the travel costs of prelicensure and postlicensure inspections and evaluations.

B. A laboratory which is located outside of this state and is licensed by this state shall renew the license by submitting an application and fee at least sixty days before the expiration of the license. The department, by rule, may also prescribe that an out-of-state application be accompanied by an additional fee to cover the costs of prere licensure on-site evaluation and inspection.

C. The director shall designate the location of hearings held in relation to disciplinary matters or the issuance of a license.

D. The director may enter into a reciprocity agreement with the licensing agency of another state if the director determines that the licensing requirements of that state are substantially equal to those of this state. The agreement shall provide that the licensing agencies of both states shall recognize a current license issued by the other state for the purpose of meeting the licensure requirements of either state. The agreement shall also provide that both states, on the request of either state, shall conduct necessary investigations to determine compliance and shall allow on-site inspections by investigators from either state.

E. If a reciprocal state revokes, suspends or refuses to renew the license of a laboratory located in that state, this state shall recognize that action unless the laboratory notifies the department within five business days of the action that it wishes this state to undertake an independent review and investigation and posts a bond as prescribed by the department to conduct the review. If, at the conclusion of that review, this state determines that the laboratory meets the licensure requirements of this state, it shall issue a license to that laboratory on payment of all fees required by this chapter. Notwithstanding the terms of a reciprocity agreement, if either state takes action contrary to the action of the other, neither state has to recognize the license issued by the

other.

**36-495.15. Environmental laboratory licensure revolving fund; use**

A. The environmental laboratory licensure revolving fund is established in the department which consists of monies from gifts, grants, donations, fees derived from department sponsored workshops, conferences and seminars and fees collected pursuant to this chapter.

B. Subject to legislative appropriation, monies in the fund shall be used to support the administration of this chapter and for the costs incurred in administering this chapter and rules adopted for the implementation of this chapter.

C. Monies in the fund are exempt from section 35-190. Interest earned on monies in the fund shall be credited to the fund.

**41-1073. Time frames; exception**

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

#### **41-1074. Compliance with administrative completeness review time frame**

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

#### **41-1075. Compliance with substantive review time frame**

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

#### **41-1076. Compliance with overall time frame**

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

**DEPARTMENT OF HEALTH SERVICES (F20-1102)**

Title 9, Chapter 11, Department of Health Services - Health Care Institution Facility Data



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 5, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F20-1102)**  
Title 9, Chapter 11, All Articles, Department of Health Services - Health Care  
Institution Facility Data

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### Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 11, All Articles relating to Health Care Institution Facility Data. The rules address the following:

- **Article 1: Definitions;**
- **Article 2: Annual Financial Statements and Uniform Accounting Reports;**
- **Article 3: Rates and Charges Schedules;**
- **Article 4: Hospital Inpatient Discharge Reporting; and**
- **Article 5: Emergency Department Discharge Reporting.**

In the previous 5YRR for these rules, which the Council approved in November 2015, the Department did not propose to amend the rules unless substantive issues arose. In this report, the Department states that no issues arose, therefore it did not take any action on these rules.

## **Proposed Action**

In this 5YRR, the Department proposes to adopt rules for the health care professionals workforce data repository, required in A.R.S. § 36-171 as made by Laws 2019, Ch. 215, § 3, in 9 A.A.C. 11. Further, the Department proposes to make minor, technical changes as identified in this report to other sections in Chapter 11. The Department has already initiated the rulemaking process to make these changes, filing a Notice of Docket Opening in the March 27, 2020 issue of the Arizona Administrative Register ([26 A.A.R. 568](#)).

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

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

### **2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department receives annual financial statements and uniform accounting reports from 115 hospitals, 148 nursing care institutions, and 200 hospices. The Department states that the impact of the rules do not differ significantly from what it determined in the 2007 Economic, Small Business, and Consumer Impact Statement (EIS). Stakeholders incur a minimal to moderate cost.

The stakeholders include: the Department, hospices, home health agencies, outpatient treatment centers, hospitals, nursing homes, users of the Department's data, and the general public.

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

The Department anticipated to experience a minimal to moderate (\$1,000 to \$10,000) cost for educating affected health care institutions on the new requirements, and anticipated a substantial (more than \$10,000) cost for updating data systems to accept data in the specified uniform format. However, the Department expected to experience a minimal to moderate benefit from clarification of reporting requirements and from having all data be submitted in a uniform format.

Hospitals, hospices, home health agencies, outpatient treatment centers, and nursing care institutions were expected to incur minimal to moderate costs for changing data reporting to meet the uniform format, and for amending rates to meet the regulatory objective. All listed stakeholders were expected to benefit from the clarity of the rules and reporting requirements. Additionally, hospitals were expected to benefit from being able to correct errors in reporting without civil penalties. The uniform data reporting was expected to benefit other hospital and nursing care institutions, state and local agencies, and other entities to help determine where needs exist, or where improvements in health care utilization can be made.

The Department states that the economic impact of the rules still reflects what it described in the 2007 EIS.

The Department states that the benefits to stakeholders outweigh the costs necessary to achieve the regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department indicates in Item 6 of the 5YRR that some of the rules under review are not clear, concise, and understandable. For each rule identified as such, the Department provides an explanation as to how the rule could be improved.

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

Yes. The Department indicates in Item 4 of the 5YRR that some of the rules under review are not consistent with other rules and statutes. For each rule identified as such, the Department explains how the rule is inconsistent with other relevant rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that while the rules are generally effective, certain rules and an Article identified in Item 3 of the 5YRR could be made more effective.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department identifies one rule, R9-11-101 (Definitions), wherein the term "inpatient" is enforced with a different definition than how it is currently defined in the rule.

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

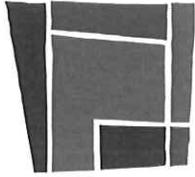
Not applicable. There is no corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Department states that the rules were adopted prior to July 29, 2010 and do not establish licensing, certification, or permit requirements.

**11. Conclusion**

Council staff finds that the Department prepared an adequate report that meets the requirements of A.R.S. § 41-1056(A). Further, Council staff notes that the Department already initiated the rulemaking process to make the changes it proposes in this report. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

September 1, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 11, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 11, Health Care Institution Facility Data, which is due on September 30, 2020.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over the printed name of Robert Lane.

Robert Lane  
Director's Designee

RL:rms

Enclosures

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

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247    P | 602-542-1025    F | 602-542-1062    W | [azhealth.gov](http://azhealth.gov)

*Health and Wellness for all Arizonans*



**Arizona Department of Health Services**  
**Five-Year-Review Report**  
**Title 9. Health Services**  
**Chapter 11. Department of Health Services**  
**Health Care Institution Facility Data**  
**September 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-125.04, 36-125.05, 36-436, 36-436.01, 36-436.02, 36-436.03, 36-2901.08

**2. The objective of each rule:**

Rule	Objective
R9-11-101	To define terms and phrases used in more than one Article in the Chapter to enable the reader to clearly understand requirements and allow for consistent interpretation.
R9-11-201	To define terms used only in Article 2 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-11-202	To specify: a. Requirements for a hospital to submit an annual financial statement or a combined annual financial statement, a report of an audit of the annual financial statement, and an attestation that the hospital has not passed on the cost of the assessment established in A.R.S. § 36-2901.08 to patients; b. The circumstances under which the Department will grant an extension for submission requirements and a hospital's recourse if the Department denies a request for an extension; c. The consequences, including civil penalties, for failure to comply with submission requirements.
R9-11-203	To specify submission requirements for a hospital uniform accounting report and the consequences for not complying.
R9-11-204	To specify submission requirements for a nursing care institution uniform accounting report and the consequences for not complying.
R9-11-205	To specify submission requirements for a hospice uniform accounting report and the consequences for not complying.
R9-11-301	To define terms used only in Article 3 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-11-302	To specify submission requirements for a hospital rates and charges schedule and the consequences for not complying.
R9-11-303	To specify submission requirements for a nursing care institution rates and charges schedule and the consequences for not complying.
R9-11-304	To specify submission requirements for a home health agency rates and charges schedule and the consequences for not complying.

R9-11-305	To specify submission requirements for an outpatient treatment center rates and charges schedule and the consequences for not complying.
R9-11-401	To define terms used only in Article 4 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-11-402	To specify submission requirements for a hospital's inpatient discharge report and the consequences for not complying.
R9-11-501	To define terms used only in Article 5 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-11-502	To specify submission requirements for a hospital's emergency department discharge report and the consequences for not complying.

3. **Are the rules effective in achieving their objectives?** Yes X No   

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules.
R9-10-202	The following issue is more pertinent to statute than rule and would need to be addressed legislatively, but it does affect the effectiveness of the rule. Based on A.R.S. § 36-125.04, a hospital is required to submit to the Department an annual financial statement and a report of an audit of the financial statement within 120 days after the end of the hospital's fiscal year. A hospital may request an automatic extension of 30 days, bringing the submission deadline to 150 days, which is consistent with the submission time for uniform accounting reports. The rule would be more effective if the statutory deadline were increased to 150 days and the automatic extension removed.
R9-11-205	Although it is required by A.R.S. § 36-125.04(C), the Department is unaware of any entity using the data collected through the hospice uniform accounting report.
Article 3	The following issue is more pertinent to statute than rule and would need to be addressed legislatively, but it does affect the effectiveness of the rules. As required by A.R.S. Title 9, Chapter 4, Article 3, the rules in A.A.C. Chapter 11, Article 3, require the submission of the rates and charges for services performed by a hospital, nursing care institution, outpatient treatment center, or home health agency. However, because gross rates and charges are subject to negotiated discounts due to their coverage by a third-party payor, these rates and charges may have no resemblance to what a patient may pay. In addition, because each health care institution may code or group rates or charges differently, the information submitted by one of these health care institutions and published by the Department, according to statute, cannot be compared from one health care institution to another, making it almost useless to the public.

4. **Are the rules consistent with other rules and statutes?** Yes    No X

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation
R9-11-101	Some of the citations to definitions in 9 A.A.C. 10 are incorrect due to rulemakings for 9

	A.A.C. 10. For example, the definitions of “emergency,” “hospital,” and “resident” are now in A.A.C. R9-10-101.
R9-11-201	Some of the citations to definitions in 9 A.A.C. 10 are incorrect due to rulemakings for 9 A.A.C. 10. For example, the definitions of “hospice inpatient facility,” “rehabilitation services,” and “volunteer” are now in A.A.C. R9-10-101, and the terms “hospice service” and “inpatient services” are no longer defined or used in 9 A.A.C. 10.
R9-11-301	The citation to A.A.C. R9-20-101 in the definition of “behavioral health service” is incorrect due to the definition now being in A.R.S. § 36-401, rather than in rule.

5. **Are the rules enforced as written?** Yes  No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.*

Rule	Explanation
R9-11-101	The rule is enforced with a definition of “inpatient” as an individual admitted for inpatient hospital services, which is different from how the term is defined in A.A.C. R9-10-201.

6. **Are the rules clear, concise, and understandable?** Yes  No

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
R9-11-101	The rule could be improved by revising the definition of “inpatient” in subsection (46). The current definition references the definition in A.A.C. R9-10-201, which defines an inpatient as an individual who either is admitted to a hospital or receives hospital services for 24 consecutive hours or more. Because a patient may receive hospital services in an emergency department for more than 24 hours but not be admitted to the hospital as an inpatient, the definition in R9-11-101 needs to be changed to better ensure that only information about individuals admitted to a hospital is reported as inpatient data under Article 4. In addition, the grammatical error in the definition of “discharge status” could be corrected to increase clarity. Because a hospital is no longer using ICD-9-CM codes for billing, that term could be removed from the definition of “International Classification of Diseases Code.” Although sufficient for now, the definitions of “revenue code” and “unit of service” could need to be made more specific if requirements for submission of rates and charges, as specified in Article 3 of the rules, were legislatively changed.
R9-11-201	The rule could be improved by clarifying that a hospice service agency or hospice inpatient facility is different from and licensed separately under 9 A.A.C. 10 from an assisted living facility, home health agency, hospital, or nursing care institution.
R9-11-202	The rule could be improved by adding the phrase “report of the” to subsections (C), (C)(4), (C)(5), (F), (F)(2), (F)(3), (G), and (H) before the phrase “audit of the annual financial statement”.
R9-11-203	The rule would be clearer if subsection (C)(7) included the beginning date, as well as the ending date, of the hospital’s reporting date, instead of allowing the ending date of the previous report to be assumed to be the beginning date of the current report.
R9-11-205	The information requested in subsections (C)(12)(b) through (e) and (13)(b)(i) through (iii) could be clearer. Under the rules in 9 A.A.C. 10, a hospice may be subclassified as a hospice service agency or hospice inpatient facility. There is no health care institution subclass of

	“hospital-based hospice,” “nursing care institution-based hospice,” “assisted living-based hospice, or “home health agency-based hospice.” While a hospice service agency may provide hospice services to patients in a hospital, a nursing care institution, or an assisted living facility, a hospice inpatient facility is a separately licensed facility from a hospital, a nursing care institution, or an assisted living facility.
R9-11-402	The rule would be improved if subsection (C)(3)(y) were changed from “E-codes,” a term specific to ICD-CM-9 codes, to “external cause of injury codes” or “location of injury codes,” terms used in the ICD-CM-10 coding system. In addition, it is possible that, in the future, a hospital may be able to use software to submit the information required in the rule on a real-time basis. If so, many of the rule’s subsections, including subsection (D), would need to be changed.
R9-11-502	The rule would be improved if subsection (C)(3)(x) were changed from “E-codes,” a term specific to ICD-CM-9 codes, to “external cause of injury codes” or “location of injury codes,” terms used in the ICD-CM-10 coding system. In addition, it is possible that, in the future, a hospital may be able to use software to submit the information required in the rule on a real-time basis. If so, many of the rule’s subsections, including subsection (D), would need to be changed.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

*If yes, please fill out the table below:*

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

The rules in 9 A.A.C. 11, Article 2, implement A.R.S. §§ 36-125.04 and 36-2901.08 by providing requirements for hospitals, nursing care institutions, and hospices to follow when submitting annual financial statements or uniform accounting reports (UARs) to the Department. The Department receives annual financial statements and UARs from 115 hospitals and UARs from 148 nursing care institutions and 200 hospices. During the five-year period of calendar 2015-2019, the Department has begun actions on three hospitals for failure to submit compliant annual financial statements, but no civil money penalties have been collected. The rules in 9 A.A.C. 11, Article 3, implement A.R.S. §§ 36-436 through 36-436.03 by providing requirements for submitting schedules of rates and charges or changes to the schedules. The Department receives rates and charges schedules and changes to the schedules from 115 hospitals, 148 nursing care institutions, 221 home health agencies, and 2,632 outpatient treatment centers. No civil money penalties have been imposed for failure to comply with these statutes and rules. The rules in 9 A.A.C. 11, Articles 4 and 5, implement A.R.S. § 36-125.05 by providing requirements for submitting hospital discharge data. As of December 2019, the Department receives inpatient discharge data from 115 hospitals and emergency department discharge data from 88 hospitals. During the five-year period of calendar 2015-2019, the Department has fined 8 hospitals and collected a total of \$10,257 in civil money penalties for late submissions or failures to correct errors.

The rules in 9 A.A.C. 11 were completely amended in a rulemaking effective December 1, 2007. An economic, small business, and consumer impact statement (EIS) was submitted with this rulemaking and

designated annual costs/revenues as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000 in additional costs or revenues. Costs were listed as significant when meaningful or important, but not readily subject to quantification. The Department believes the economic impact described below is as estimated.

The 2007 EIS stated that the Department might experience a minimal-to-moderate benefit from the clarification of reporting requirements, a minimal-to-moderate cost for educating affected health care institutions of the new requirements, a minimal-to-moderate benefit from the submission of updated reporting requirements in a uniform format, and a substantial cost for updating data systems to accept the data in the specified uniform format. AHCCCS was expected to receive a minimal-to-moderate benefit and the U.S. Department of Health and Human Services a minimal-to-substantial benefit from the improved accuracy of data submitted due to updated reporting requirements in a uniform format. The Department anticipated that counties, cities, tribes, and other governmental entities in Arizona would receive a minimal-to-substantial benefit from the more complete and accurate data that would result from the amended and clarified requirements for the submission of inpatient and emergency department discharge data.

The Department anticipated that hospitals might receive a minimal benefit from the ability to submit a combined annual financial statement and to request an extension for submitting an annual financial statement. Hospitals and nursing care institutions were expected to bear a minimal-to-moderate cost to change computer reports that generate UAR or rates and charges data and receive a significant benefit from the requirement to submit data in a uniform format, and a minimal-to-substantial benefit from the opportunity to use more accurate data from themselves and other hospitals/nursing care institutions to make better business decisions. Hospitals were also expected to incur minimal-to-moderate costs and receive minimal-to-moderate benefits from the clarification and adoption of new UAR requirements with fewer data elements and requirements for establishing and amending rates and changes schedules, the lengthening of time for UAR submission from 120 days to 150 days after the end of the hospital's fiscal year, and the adoption of a rates and charges overview form. Nursing care institutions were expected to incur minimal costs and receive minimal benefits from the clarification and adoption of new UAR requirements and the lengthening of time for UAR submission from 120 days to 150 days after the end of the nursing care institution's fiscal year, and to incur minimal-to-moderate costs and receive minimal-to-moderate benefits from the clarification and adoption of requirements for establishing and amending rates and changes schedules. In addition, hospitals were expected to experience a minimal-to-moderate cost for computer-related changes and minimal-to-substantial benefit from the clarification and adoption of requirements, such as the ability to correct errors without the assessment of civil penalties, for the submission of inpatient and emergency department discharge data.

Hospices, home health agencies, and outpatient treatment centers were expected to bear a minimal-to-moderate cost from the requirements for submitting UAR or rates and charges data and receive a minimal benefit from the clarity of the rules. The Department anticipated that hospices would experience a minimal-to-moderate cost and minimal-to-substantial benefit from the opportunity to correct errors in submitted data, and to incur

minimal costs and receive minimal-to-moderate benefits from the clarification and adoption of new UAR requirements and the lengthening of time for UAR submission from 120 days to 150 days after the end of the hospice's fiscal year. Home health agencies and outpatient treatment centers were expected to incur minimal costs from amended or new requirements for rates and charges schedules and receive minimal-to-moderate benefits from being able to submit a report already prepared for other purposes to satisfy rule requirements.

The Department anticipated that business users of data, such as health care consultants, developers, attorneys, banks, and insurance companies, as well as universities and research organizations might incur minimal costs related to requesting more reports, but could receive a minimal-to-substantial benefit from more complete and accurate reports and from requirements that reports be submitted in a uniform format. The public was also expected to receive a significant benefit from the submission of updated reporting requirements in a uniform format.

The Department further amended R9-11-202 in an exempt rulemaking effective January 1, 2014, in compliance with A.R.S. § 36-2901.08(G), as added by Laws 2013, Ch. 10, § 5, to require a hospital to submit to the Department an attestation as part of its financial statement that it has not passed on to patients the cost of the assessment funding the nonfederal share of the medical assistance costs under 42 U.S.C. § 1396a (a)(10)(A)(i)(viii). Since the attestation is specifically required by statute and the rulemaking just added the specific statutory requirement to the rule, any costs incurred by a hospital, associated with the addition of the attestation to the financial statement, are directly attributable to the statute, rather than to the rulemaking. Therefore, the Department believes there are no economic effects directly attributable to this rulemaking.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes  No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The 2015 five-year-review report stated that the Department did not plan to amend the rules in 9 A.A.C. 11 until substantive issues with the rules arose. No substantive issues have arisen. Therefore, the Department has complied with the action indicated in the previous five-year-review report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules in 9 A.A.C. 11, Article 2 provide requirements for hospitals, nursing care institutions, and hospices to follow when submitting annual financial statements or uniform accounting reports (UARs) to the Department. The rules in 9 A.A.C. 11, Article 3, provide requirements for submitting schedules of rates and charges or changes to the schedules from hospitals, nursing care institutions, home health agencies, and outpatient treatment centers. The rules in 9 A.A.C. 11, Articles 4 and 5 provide requirements for submitting hospital discharge data. These

health care institutions, state and local agencies, and other entities in Arizona and elsewhere in the country use this data in determining where needs exist or where improvements in health care utilization can be made, making business operational decisions, and many other ways. Thus, the probable benefits of the rules outweigh their costs. Despite the minor issues identified in this report, these rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

The rules are not related to federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules were adopted before July 29, 2010 and do not establish licensing, certification, or permit requirements.

14. **Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Department plans to adopt rules for the health care professionals workforce data repository, required in A.R.S. § 36-171 as made by Laws 2019, Ch. 215, § 3, in 9 A.A.C. 11. Concurrent with this rulemaking, the Department plans to make the minor, technical changes identified in this report to other Sections of the Chapter. The Department does not plan to otherwise amend the rules in 9 A.A.C. 11 until and unless legislative changes are made.

# **ATTACHMENT C**

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 11. DEPARTMENT OF HEALTH SERVICES**

**HEALTH CARE INSTITUTION FACILITY DATA**

**ARTICLE 1. DEFINITIONS**

**ARTICLE 2. ANNUAL FINANCIAL STATEMENTS AND  
UNIFORM ACCOUNTING REPORTS**

**ARTICLE 3. RATES AND CHARGES SCHEDULES**

**ARTICLE 4. HOSPITAL INPATIENT DISCHARGE REPORTING**

**ARTICLE 5. EMERGENCY DEPARTMENT DISCHARGE REPORTING**

**1. An identification of the rulemaking**

The Arizona Department of Health Services (Department), Cost Reporting and Discharge Data Review Section, collects financial statements, accounting reports, rates and charges information, and discharge data from health care institutions statewide. This data is used by the public, private industry, the Department, and other government agencies to promote health care cost containment and to identify the health care utilization needs of established and developing communities throughout Arizona.

A.R.S. § 36-125-04 requires hospitals to submit annual financial statements to the Department. A.R.S. § 36-125-04 also requires hospitals, nursing care institutions, and hospices to submit uniform accounting reports to the Department. 9 A.A.C. 11, Article 2 implements A.R.S. § 36-125-04 by providing requirements for hospitals, nursing care institutions, and hospices to follow when submitting annual financial statements or uniform accounting reports to the Department.

A.R.S. Title 36, Chapter 4, Article 3 requires hospitals, nursing care institutions, home health agencies, and outpatient treatment centers to submit to the Department a schedule of rates and charges and changes made to the schedule. 9 A.A.C. 11, Article 3 implements A.R.S. Title 36, Chapter 4, Article 3 by providing requirements for submitting to the Department a schedule of rates and charges or changes to the schedule.

A.R.S. § 36-125-05 requires hospitals to submit inpatient and emergency department discharge data to the Department. 9 A.A.C. 11, Articles 4 and 5 implement A.R.S. § 36-125-05 by providing requirements for submitting discharge data to the Department.

The purpose of this rulemaking is to clarify and update the reporting requirements in 9 A A C 11 according to current statutory authority and to reflect Department policy and practice requirements. The proposed rulemaking amends 9 A A C 11 by:

- Revising outdated language and amending, adopting, and repealing definitions to make the rules clearer and easier to use;
- Repealing the requirement for nursing care institutions to submit uniform accounting report data using the obsolete Arizona Reporting System for Nursing Institutional Costs (ARSNIC);
- Amending and clarifying reporting requirements for hospital, nursing care institution, and hospice uniform accounting reports;
- Amending and clarifying reporting requirements for hospital, nursing care institution, and home health agency rates and charges schedules;
- Repealing the use of Forms 301 and 302 for reporting rates and charges information because Forms 301 and 302 require a large amount of financial data that would be required for rate-setting but is unrelated to reporting rates and charges information;
- Adopting new reporting requirements for outpatient treatment center rates and charges schedules;
- Repealing the obsolete hospital discharge data format specifications and data transfer medium requirement in Table 1;
- Repealing the requirement for outpatient surgical centers to submit discharge data to the Department according to changes in statute; and
- Amending and clarifying hospital inpatient and emergency department discharge data reporting requirements according to the UB-04 National Billing Data Element Specifications

**2. The name and address of agency personnel with whom persons may communicate regarding the economic, small business, and consumer impact statement**

Name: Edward Welsh  
Manager, Cost Reporting and Discharge Data Review

Address: Arizona Department of Health Services  
Cost Reporting and Discharge Data Review Section  
Bureau of Public Health Statistics  
150 N 18th Avenue, Suite 550  
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or  
Name: Kathleen Phillips, Rules Administrator and Administrative Counsel  
Address: Arizona Department of Health Services  
Office of Administrative Rules and Counsel  
1740 W Adams, Suite 200  
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**3. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking**

**a. Cost bearers**

- The Department
- Hospitals
- Nursing Care Institutions
- Hospices
- Home Health Agencies
- Outpatient Treatment Centers

**b. Beneficiaries**

- The Department
- AHCCCS
- Counties, cities, tribes, and other governmental entities
- Hospitals
- Nursing Care Institutions
- Hospices
- Home Health Agencies
- Outpatient Treatment Centers
- Health Care Consultants
- Developers
- Attorneys
- Banks
- Insurance companies

- The U S Department of Health and Human Services
- Universities and research organizations
- The Public

**4. Cost/benefit analysis**

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000 in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
<b>A. Federal, State, and Local Government Agencies</b>			
The Department	-Clarification of reporting requirements -Submission of updated reporting requirements in a uniform format.	Minimal-to-moderate Substantial	Minimal-to-moderate Minimal-to-moderate
AHCCCS	-Submission of updated reporting requirements in a uniform format.	None	Minimal-to-moderate
Counties, cities, tribes, and other governmental entities in Arizona	-Amending and clarifying requirements for the submission of inpatient and emergency department discharge data.	None	Minimal-to-moderate
U S Department of Health and Human Services	-Submission of updated reporting requirements in a uniform format.	None	Minimal-to-substantial
<b>B. Privately Owned Business</b>			
Hospitals	-Ability to submit a combined annual financial statement	None	Minimal
	-Ability to request an extension for submitting an annual financial statement beyond 30 days after the end of the hospital's fiscal year	None	Minimal
	-Submission of data in a uniform format	Minimal-to-moderate	Significant
	-Opportunity to correct errors in submitted data	Minimal-to-moderate	Minimal-to-substantial
	-Clarifying and adopting new hospital uniform accounting report (UAR) requirements, including changing the submission date from 120 to 150 days after the end of the hospital's fiscal year	Minimal-to-moderate	Minimal-to-moderate
	-Clarifying and adopting requirements for establishing and amending hospital rates and charges schedules, including the submission of an overview form	Minimal-to-moderate	Minimal-to-moderate
	-Amending and clarifying requirements for the submission of inpatient and emergency department discharge data.	Minimal-to-moderate	Minimal-to-substantial

Nursing care institutions (NCIs)	-Submission of data in a uniform format -Opportunity to correct errors in submitted data -Clarifying and adopting new NCI UAR requirements, including changing the submission date from 120 to 150 days after the end of the NCI's fiscal year -Clarifying and adopting requirements for establishing and amending NCI rates and charges schedules.	Minimal-to-moderate Minimal-to-moderate Minimal Minimal-to-moderate	Significant Minimal-to-substantial Minimal Minimal-to-moderate
Hospices	-Submission of data in a uniform format -Opportunity to correct errors in submitted data -Clarifying and adopting new hospice UAR requirements, including changing the submission date from 120 to 150 days after the end of the hospice's fiscal year.	Minimal-to-moderate Minimal-to-moderate Minimal	Minimal Minimal-to-substantial Minimal-to-moderate
Home health agencies (HHAs)	-Submission of data in a uniform format -Clarifying and adopting requirements for establishing and amending HHA rates and charges schedules	Minimal-to-moderate Minimal-to-moderate	Minimal Minimal-to-moderate
Outpatient Treatment Centers (OTCs)	-Submission of data in a uniform format -Adopting requirements for establishing and amending OTC rates and charges schedules.	Minimal-to-moderate Minimal-to-moderate	Minimal Minimal-to-moderate
Business users of data (health care consultants, developers, attorneys, banks, and insurance companies)	-Submission of updated reporting requirements in a uniform format	Minimal	Minimal-to-substantial
Universities and research organizations	-Submission of updated reporting requirements in a uniform format.	Minimal	Minimal-to-substantial
<b>C. Consumers</b>			
The Public	-Submission of updated reporting requirements in a uniform format.	None	Significant

## Cost Bearers and Beneficiaries

- Department

The Cost Reporting and Discharge Data Review Section (CRDDRS) within the Department currently receives annual financial statements, uniform accounting reports, rates and charges schedules and overview forms, and Medicare cost reports. CRDDRS also currently receives hospital inpatient and emergency department discharge data. There are four types of financial reports required from hospitals. These include: 1) a copy of the hospital's annual audited financial statement, due to the Department no later than 120 days after the hospital's fiscal year end date, preferably as an electronic copy of the statement in PDF format; 2) the hospital uniform accounting report (UAR), due to the Department no later than 120 days after the hospital's fiscal year end date, containing more than 520 data elements specified in an online UAR template; 3) a copy of the hospital's Medicare cost report, due to the Department no later than 120 days after the hospital's fiscal year end date, preferably as an electronic copy of the report in PDF format; and 4) the hospital's rates and charges schedule and overview form. There are three types of financial reports required from nursing care institutions. These include: 1) a copy of the nursing care institution's Medicare cost report, due to the Department no later than 120 days after the nursing care institution's fiscal year end date, preferably as an electronic copy of the report in PDF format; 2) the nursing care institution's rates and charges schedule and overview form; and 3) a UAR. Since the nursing care institution UAR currently specified in rule, the ARSNIC report, is not Y2K compliant, it has not been submitted to the Department since 1999. While A.R.S. § 36-125 04 requires a UAR from all hospices, current rule only requires a UAR from inpatient hospices. The Department also requires in the current rule and should be receiving a rates and charges schedule from home health agencies. A.R.S. Title 36, Chapter 4, Article 3 requires a rates and charges schedule from outpatient treatment facilities, but this requirement is not in the current rule.

The Department currently receives hospital financial statements in either paper or electronic format from 96 licensed hospitals in Arizona, each accompanied by an audit of the financial statement and a Medicare cost report. Medicare cost reports are generally submitted in a paper format, often in binders, although some Medicare cost reports may occasionally be submitted in an electronic format that cannot be read by the Department or the public. All 96 licensed hospitals electronically submit a UAR. In 2006, the Department received only one initial hospital rates and charges schedule and overview form and over 1,000 revisions to hospital rates and charges schedules. A.R.S. § 36-125 05(F) provides an exception for hospitals providing primarily

psychiatric services from the requirement to submit hospital inpatient and emergency department discharge data, so the Department currently electronically receives hospital inpatient and emergency department discharge data from 87 hospitals in Arizona. Of the approximately 136 licensed nursing care institutions in Arizona, approximately 129 submitted a Medicare cost report for 2005. Four are late in submitting a Medicare cost report, and the Department is taking action to obtain a Medicare cost report for 2005 from them. Three nursing care institutions are not Medicare-certified and do not have a report that may be submitted to the Department. In 2006, no nursing care institutions submitted a UAR or an initial rates and charges schedule in 2006, and the Department received approximately 50 revised rates and charges schedules from nursing care institutions. The Department did not receive a Medicare cost report or UAR in 2006 from any of the approximately 58 hospices licensed by the Department. Nor did the Department receive a rates and charges schedule from any of the approximately 103 licensed home health agencies or 750 licensed outpatient treatment centers.

The Department performs a review of the submitted information and makes the financial information available to persons who request the information. Since inpatient and emergency department discharge data includes personal identifiers, the Department makes these data available to those who request it according to the privacy requirements in the Health Insurance Portability and Accountability Act. A version of the hospital inpatient and emergency department discharge data with all personal identifying information removed is also available to the public. Business users of the de-identified data are charged \$900 per data set, and academic or research users are charged \$300 per data set. These fees go into the state General Fund, as discussed in item #7. The Department does not charge for data shared with other Arizona government entities, such as county or tribal health departments.

The Department makes information from many of these reports, organized by calendar year, available online for review by interested persons. During April 2007, the webpages containing this information received more than 4,000 hits. Some of the most popular webpages were the:

- o Cost Reporting Section Main page (643 hits);
- o Cost Reporting and Review page, from which either hospital or nursing care institution cost reports may be selected (258 hits);
- o Cost Reporting and Review page, on which the four types of hospital financial reporting requirements are explained (218 hits);

- Cost Reporting and Review page, on which the three types of nursing care institution financial reporting requirements are explained (135 hits);
- Index page for the hospital UARs (109 hits);
- Index page for the hospital overview forms, which contain sample information from the hospital and nursing care institution rates and charges schedules (153 hits);
- Discharge Data Main page (274 hits); and
- Discharge Data Information, Specifications, and Forms page (167 hits)

The Department uses the data collected for many public health-related purposes. The Bureau of Public Health Statistics uses UAR data to review services offered by hospitals and nursing care institutions and to analyze the utilization of those services. The Division of Licensing Services may use hospital and nursing care institution UAR data and data from hospital annual financial statements when preparing for a licensing inspection or complaint investigation. Numerous programs within the Department utilize the hospital inpatient and emergency department discharge data. The data are used for epidemiological assessments that identify regions and specific health care programs where public funding should be allocated, influencing public health program assessment and development. The data also allow programs such as the Arizona Cancer Registry and Birth Defects Monitoring Program to verify the data reported directly to them by their provider groups. The Department only uses rates and charges schedules when an individual requests the Department to verify a rate or charge billed to the individual.

Since February 2005, the Department has been working with representatives of AHCCCS and the health care institutions affected by these rules to determine what information would be most useful to collect. Some of the information required in the current rules in R9-11-301 and R9-11-303 would enable the Department to perform a rate-setting function, which is not performed by the Department. Much of this information has been eliminated from the requirements in the new rules, and the information still required in the new rules has been clarified and organized in such a way as to make the information more straightforward, allow the information to be used for comparisons between different health care institutions, and match the collected information with licensing categories. In aligning the hospital inpatient and emergency department discharge data with the UB-04 reporting requirements, the Department will by rule be collecting several new data elements and in practice be expanding the number of existing data elements being collected. For example, the Department can currently collect up to nine diagnosis codes from the set input into a hospital's data system. However, hospitals may have as many as 30 diagnosis codes in

their data system. Since a patient may have multiple secondary diagnoses, the collection of these additional diagnosis codes will permit a more comprehensive picture of a patient's medical condition. With these changes, it is possible that the Department, as well as other entities, may be better able to use the information specified in the new rules. Although the new rules clarify the Department's requirements, they do not significantly change how the Department handles the information. However, the submission of data in a uniform format from each of the types of health care institutions will enable the Department to review, store, and utilize the submitted information in a more efficient and effective manner. The Department anticipates deriving a minimal-to-moderate benefit from the new rules due to their increased clarity, improved organization of reporting requirements, expanded discharge data requirements, and more uniform submission requirements. The Department will bear minimal-to-moderate costs for educating hospitals, nursing care institutions, hospices, home health agencies, and outpatient treatment centers about the revised reporting requirements and for enforcing the rules, and substantial costs for updating data systems within the Department to receive the data in a specified uniform format.

- AHCCCS

Each year, AHCCCS requests from the Department all nursing care institution UARs and rates and charges schedules and an occasional hospital UAR or rates and charges schedule. AHCCCS uses UARs and rates and charges schedules to (1) set disbursement monies to health care providers, (2) analyze costs of health care in specific geographic regions and individual health care institutions, and (3) project health care costs for the future. The Department anticipates that AHCCCS may use information from hospice UARs in a similar manner. AHCCCS reviews online hospital UAR data and overview forms that contain sample information from the hospital and nursing care institution rates and charges schedules. Representatives from AHCCCS have worked with the Department to ensure that the information required by AHCCCS will still be available under the new rules. The new rules require the submission of data in a uniform format and improve the content, organization, and accessibility of the data contained in the reports. Since the information reported in UARs will be more uniformly defined and may be more comparable from one health care institution to another, within each type of health care institution, the Department anticipates that under the new rules AHCCCS will need less time to compile and analyze collected data and that the data will be more accurate and complete, and therefore more useful. The Department estimates that AHCCCS may receive a minimal-to-moderate benefit from the clarity and updated reporting requirements of the rules and the uniformity of the resultant data submitted to the Department, as well as the ability to use data from hospice UARs.

- Hospitals

The current rules require a hospital to submit an audited annual financial statement and the annual Medicare cost report not later than 120 days after the end of the hospital's fiscal year, as required by A.R.S. § 36-125.04. The current rules also state that the Department may grant a 30-day extension for submission. The new rules do not change the requirements for a hospital to submit an audited annual financial statement and annual Medicare cost report. The new rules simply clarify the requirements and provide for a 30-day extension of the requirement from 120 days to 150 days, to match the time-frame in which a hospital is required to submit the hospital's Medicare cost report to the Centers for Medicare and Medicaid Services (CMS). The new rules also allow for a subsequent extension of time for submission of the annual financial statement, as well as allow a hospital to submit a combined annual financial statement. The Department estimates that these changes in the new rules will provide a minimal benefit to a hospital.

Hospitals currently submit an annual UAR to the Department, and have 120 days after the end of the hospital's fiscal year to submit the report. The content of the UAR is not specified in rule, but the online template for the report contains over 520 data elements that must be reported. Since February 2005, the Department has met with representatives of hospitals, the Arizona Hospital and Health Care Association, and AHCCCS to revise the content of the hospital UAR. The new UAR contains less than 185 data elements, approximately a 65% reduction. The new rules specify the content of the hospital UAR and align categories of required service utilization information with the categories of licensed beds, whenever appropriate, making it easier to compare one hospital to another. The new rules also require the UAR to be submitted within 150 days, rather than 120 days, after the end of the hospital's fiscal year. The Department anticipates that a hospital may need to alter the computer reports used to generate the data required in the hospital's UAR, and that these changes to the hospital's reports may impose a one-time minimal-to-moderate cost on the hospital, as well as possibly a minimal ongoing cost for revising incomplete or inaccurate reports. However, a hospital may also receive an ongoing minimal-to-moderate benefit due to less staff time being needed to compile and verify the accuracy of the fewer data elements being reported, having the submission time for the report match that for the Medicare cost report (information from which is needed to complete the UAR), and being able to more easily compare the hospital with other hospitals in the hospital's catchment area.

Before a hospital may begin operations in Arizona, the hospital is required to submit a rates and charges schedule to the Department. Any time the hospital makes a change to the hospital's rates

and charges schedule, the hospital is also required to report the change to the Department. These requirements are contained in the current rules, which also require Form 301 and a "per-unit cost analysis" based on data covering a 12-month period for a new service or procedure not associated with construction, and for two consecutive 12-month periods if associated with construction or modification of the hospital. Portions of Form 301 and the per-unit cost analysis would provide the Department with data to perform a rate-setting function, which the Department does not do. Therefore, while the Department requires hospitals to submit a rates and charges schedule before beginning operations and to inform the Department of changes to the rates and charges schedule, the Department does not enforce the requirement for Form 301 or a per-unit cost analysis. In the new rules, hospitals are still required to submit a rates and charges schedule or changes to a rates and charges schedule, but are not required to submit Form 301 or a per-unit cost analysis. The new rules also more clearly delineate the requirements for a hospital to submit a rates and charges schedule or changes to a rates and charges schedule, as well as clearly state the Department's role in the process. The Department anticipates that a hospital may need to alter the computer reports used to generate the data in a uniform format, as required in the new rules, and to report the data electronically, and that these changes to the hospital's reports may impose a one-time minimal-to-moderate cost on the hospital. The Department expects a hospital to receive a minimal-to-moderate benefit from the clarity of the new rules; from not being required to complete Form 301 or perform a per-unit cost analysis; and from being able to electronically generate a report, attach it to an e-mail, and electronically submit it to the Department rather than having to print, copy, collate, and mail a large rates and charges schedule. In addition, the new rules more closely follow statutory requirements in A.R.S. Title 36, Chapter 4, Article 3 by differentiating the implementation time-lines for decreasing or deleting a rate or charge from the time-lines for implementing an initial rates and charges schedule or increasing or adding a new rate or charge, giving the hospital more flexibility in when to implement a decrease or deletion in a rate or charge.

The current rules specify obsolete requirements for the submission of hospital inpatient and emergency department discharge data, such as using magnetic tape to submit the data. As a result, both hospitals and the Department may spend a large amount of time addressing questions that arise from the obsolete rules or just ignore the specifications in the current rules. The current rules also require hospitals to report to the Department in a format specified in the UB-92, National Uniform Billing Data Element Specifications. As of May 23, 2007, hospitals must use the new UB-04 uniform billing system when submitting claims for payment, making the UB-92 system

obsolete. The data elements required in the two systems are similar in names, but have differences in coding and layout. The new rules require the submission of data elements using the new UB-04 system.

Because data collected by the Department under these rules are used by so many persons, it is important that the data received be as accurate and complete as possible. The new rules provide an opportunity for a hospital that submits a report not meeting the requirements specified in rule to correct the report without civil penalties being assessed. The current rules do not have such a provision, so the Department may assess civil penalties if an accurate and complete report is not submitted within the statutory time period. The practice of the Department has been to work with a hospital to try to obtain an accurate and complete set of discharge data. The Department has monitored the success of hospitals in submitting an accurate and complete discharge data set for the last three years. Charts showing the number of attempts required by hospitals to achieve a successful discharge data submission are shown in Appendix A.

(<http://www.azdhs.gov/plan/cir/ddi/hospital/pdf/repperf2.pdf>) For the first submission period in 2004, only four hospitals were successful on the initial submission, while 57 additional hospitals had submitted an acceptable data set by the end of the second revision. By the second submission period of 2006, 30 hospitals submitted an acceptable data set on the initial submission and 56 additional hospitals (all but one hospital) were successful by the end of the second revision. These data show that hospitals need an opportunity to revise reports. The Department anticipates that the provisions in rule that allow a hospital to revise an inaccurate or incomplete report may provide a minimal-to-substantial benefit to a hospital.

The Department anticipates that a hospital may need to alter the computer reports used to extract the data reported in the hospital's inpatient and emergency department discharge reports from the hospital's UB-04 compatible billing system, and that these changes to the hospital's reports may impose a one-time minimal-to-moderate cost on the hospital. The Department also estimates that the new rules may provide a minimal benefit to a hospital from the clarification of reporting requirements, specification of data elements in a manner consistent with what a hospital would already be collecting for billing purposes, and elimination of the need for a hospital to maintain an obsolete system in order to comply with current rules.

A hospital may also receive a significant benefit from the reporting requirements in the new rules because the new rules require the submission of data in a uniform format and improve the

content, organization, and accessibility of the data contained in the reports. Therefore, a hospital that reviews the information collected by the Department may find it easier to gather the data contained in annual financial statements, UARs, and rates and charges schedules when considering developing new facilities, expanding existing facilities, increasing or decreasing services provided, and monitoring competition. Hospitals may also have less difficulty using their own inpatient and emergency department discharge data when performing quality assessments and market analysis. Since some hospitals obtain the de-identified hospital discharge data set from the Department, the improved quality and larger amount of information that may be gathered from the data may provide a hospital that obtains these data from the Department with a moderate-to-substantial benefit.

- Nursing Care Institutions

Because the ARSNIC report is obsolete and has not yet been replaced, nursing care institutions currently do not submit a UAR to the Department. Nursing care institutions do submit the annual Medicare cost report to the Department not later than 120 days after the end of the nursing care institution's fiscal year. Nursing care institutions also submit to the Department a form that provides an overview of costs and utilization. The Department uses this form when compiling a chart for the comparison of different nursing care institutions that is posted online. Since February 2005, the Department has met with representatives of nursing care institutions, the Arizona Health Care Association, and AHCCCS to revise the content of the nursing care institution UAR. The new rules specify the content of the nursing care institution UAR that was developed by this group. The new rules also require the UAR to be submitted within 150 days, rather than 120 days, after the end of the nursing care institution's fiscal year. The Department anticipates that a nursing care institution may need to develop computer reports to generate the data required in the nursing care institution's UAR, and that the development of the nursing care institution's reports may impose a one-time minimal-to-moderate cost on the nursing care institution, as well as possibly a minimal ongoing cost for revising incomplete or inaccurate reports. However, a nursing care institution may also receive an ongoing minimal benefit due to having the submission time for the report coincide with the time the Medicare cost report is due to CMS and from being able to more easily compare the nursing care institution with other nursing care institutions in the catchment area.

A nursing care institution is also required to submit a rates and charges schedule to the Department before the nursing care institution may begin operations in Arizona. Any time the

nursing care institution makes a change to the nursing care institution's rates and charges schedule, the nursing care institution must report the change to the Department before implementing the change. Just as with hospitals, these requirements, along with the requirements for completing Form 302 and a per-unit cost analysis, are in the current rules. The Department requires nursing care institutions to submit a rates and charges schedule before beginning operations and to inform the Department of changes to the rates and charges schedule, but the Department does not enforce the requirement for completing Form 302 or the per-unit cost analysis. In the new rules, nursing care institutions are still required to submit a rates and charges schedule and changes to a rates and charges schedule, but there is no requirement to submit Form 302 or a per-unit cost analysis. The new rules also more clearly state the content and submission requirements for the rates and charges schedule and the Department's role in the process. The Department anticipates that a nursing care institution may need to alter the computer reports used to generate the data required in the new rules in a uniform manner and to report the data electronically, and that these changes to the nursing care institution's reports may impose a one-time minimal-to-moderate cost on the nursing care institution. The Department expects a nursing care institution to receive a minimal-to-moderate benefit from the clarity of the new rules; from not being required to complete Form 302 or perform a per-unit cost analysis; and from being able to electronically generate a report, attach it to an e-mail, and electronically submit it to the Department rather than having to print, copy, collate, and mail a rates and charges schedule to the Department. The new rules also give the nursing care institution more flexibility in when to implement a decrease or deletion in a rate or charge in a manner similar to that for hospitals.

The Department is also concerned with obtaining accurate and complete data from nursing care institutions. Therefore, R9-11-204 and R9-11-303 provide an opportunity for a nursing care institution that submits a report not meeting the requirements specified in rule to correct the report without civil penalties being assessed. As with the similar provisions in the rules affecting hospitals, the Department anticipates that this provision may provide a minimal-to-substantial benefit to a nursing care institution.

A nursing care institution may also receive a significant benefit from the reporting requirements in the new rules because the new rules require the submission of data in a uniform format and improve the content, organization, and accessibility of the data contained in the reports. Therefore, a nursing care institution that reviews the information collected by the Department may find it easier to gather the data contained in UARs and rates and charges schedules when

considering developing new facilities, expanding existing facilities, increasing or decreasing services provided, and monitoring competition

- Hospices

Although A R S § 36-125 04 requires hospices to submit an annual UAR to the Department and R9-11-201(A) requires inpatient hospices to submit a UAR, these requirements have not been enforced. While the new rules clarify the requirements for submitting a UAR and conform to A R S § 36-125 04 by requiring all hospices to submit a UAR, the new rules do represent a change in practice and may, therefore, have more of an economic impact on hospices than may be apparent from just comparing the two sets of rules. Since April 2005, the Department has met with representatives of hospices and the Arizona Hospice and Palliative Care Association to develop the hospice UAR, which may be useful to hospices in justifying reimbursement rates and influencing policy changes on the national level. The new rules specify the content of the hospice UAR and provide for uniform submission of the UAR, making it easier to compare one hospice to another. The new rules also require the UAR to be submitted within 150 days after the end of the hospice's fiscal year. The Department anticipates that a hospice may need to develop computer reports to generate the data reported in the hospice's UAR, and that this may impose a one-time minimal-to-moderate cost on the hospice, as well as a minimal-to-moderate ongoing cost to prepare the report each year and possibly a minimal ongoing cost for revising incomplete or inaccurate reports.

A hospice may receive an ongoing minimal-to-substantial benefit from the new rules. Because the submission time for the UAR will coincide with that for the Medicare cost report, a hospice will be able to use information from the Medicare cost report in completing the UAR. A hospice will also have the benefit of resubmitting an inaccurate or incomplete UAR before civil penalties are assessed. A hospice may use information from UARs when considering developing new facilities, expanding existing facilities, and increasing or decreasing services provided. A hospice could also use this data to monitor and analyze the successes and failures of competing facilities, to illustrate utilization of hospice services and justify better reimbursement rates, and to more easily compare the hospice with other hospices.

- Home Health Agencies

In the current rules in R9-11-301, a home health agency is required to submit a rates and charges schedule to the Department before the home health agency begins operations in Arizona and to

submit changes to the home health agency's rates and charges schedule before implementing a change. The Department has not enforced the requirement for home health agencies to submit rates and charges schedules. To conform to the statutory requirement for the submission of rates and charges information, the new rules clearly state the content and submission requirements for the rates and charges schedule and the Department's role in the process. However, the Department is reducing the burden on home health agencies as much as possible by allowing a home health agency to submit another document prepared for government reporting purposes, such as the Medicare cost report, as long as the document contains the required information. The Department anticipates that a home health agency may bear a minimal-to-moderate cost as a result of these rules, compared to costs incurred under the present practice of not submitting a rates and charges schedule to the Department. The Department expects a home health agency to receive a minimal benefit from the clarity of the new rules. The home health agency may also receive a minimal-to-moderate benefit from being able to submit a report already prepared for other purposes, if the home health agency prepares such a report and chooses to submit it to the Department. Home health agencies could use rates and charges schedules to monitor competition, set rates and charges, and negotiate contracts with insurance companies.

- Outpatient Treatment Centers

Although an outpatient treatment center is required by A.R.S. Title 36, Chapter 4, Article 3 to submit a rates and charges schedule to the Department before the outpatient treatment center begins operations in Arizona and to submit changes to the outpatient treatment center's rates and charges schedule before implementing a change, these requirements were never put into the current rules. Very few outpatient treatment centers have submitted a rates and charges schedule to the Department in the past. To conform to statutory requirements while reducing the burden on outpatient treatment centers as much as possible, the new rules require outpatient treatment centers to submit either a rates and charges schedule or a report prepared for another government reporting purpose that contains the information required in a rates and charges schedule. The Department anticipates that an outpatient treatment center may bear a minimal-to-moderate cost as a result of these rules, compared to costs incurred under the present practice of not submitting any report to the Department. The Department expects an outpatient treatment center to receive a minimal benefit from the clarity of the new rules. An outpatient treatment center may also receive a minimal-to-moderate benefit from being able to submit a report already prepared for other purposes, if the outpatient treatment center prepares such a report and chooses to submit it to the

Department Outpatient treatment centers could use rates and charges schedules to monitor competition, set rates and charges, and negotiate contracts with insurance companies

- Business users of data (health care consultants, developers, attorneys, banks, and insurance companies)

Each year, business users make approximately 25 requests to the Department for hospital annual financial statements and UARs, 30 requests for hospital rates and charges schedules, 30 requests for hospital inpatient and emergency department discharge data, 45 requests for nursing care institution UARs, and 45 requests for nursing care institution rates and charges schedules. The Department charges a commercial use fee of \$900 per data set to business users of inpatient and emergency department discharge data. The Department posts hospital UAR information online for business users to review. Hospital overview forms that contain sample information from hospital and nursing care institution rates and charges schedules are also posted online. Health care consultants and developers use the information contained in these reports to consider developing new facilities, expanding existing facilities, and increasing or decreasing services provided within facilities. Attorneys use the information contained in these reports for legal matters such as mergers or malpractice lawsuits. Banks use the information for the financial review of existing or potential customers. Insurance companies use the information in their contract negotiations with health care institutions.

The Department does not currently receive a UAR from hospices or a rates and charges schedule from home health agencies or outpatient treatment centers, which could be useful to business users. The new rules require the submission of a UAR from hospices and a rates and charges schedule from home health agencies and outpatient treatment centers; require the submission of data in a uniform format; and improve the content, organization, and accessibility of the data contained in the reports. The Department anticipates that under the new rules business users will spend less time compiling data from all the reporting sources but may request more data sets, thereby incurring a minimal additional cost. The data itself will be easier to extract, more useful to those who review it, and contain information from hospices, home health agencies, and outpatient treatment centers that was previously unavailable. Since the data contained in these reports would be difficult or impossible to obtain from other sources, the Department estimates that business users will experience a minimal-to-substantial benefit from the rulemaking.

- Counties, cities, tribes, and other governmental entities in Arizona

The Department provides de-identified hospital inpatient and emergency department discharge data to county and tribal health departments and other governmental entities that request the data. Data is sent twice a year to both the Maricopa and Yavapai County Health Departments. The Department has also sent data upon request to the Pima County Health Department, the City of Scottsdale, and the Phoenix Area Indian Health Services. These data are provided free-of-charge. The data are used to perform epidemiological assessments of specific geographic areas and demographic groups to identify areas and specific health care problems that need to be addressed, to assess public health programs in these areas, and to solicit funding to support these programs. The Department anticipates that the more complete and accurate data that will result from this rulemaking will provide a minimal-to-moderate benefit to a county, city, tribe, or other governmental entity.

- U.S. Department of Health and Human Services, universities, and various research organizations

The Department receives approximately 15 requests each year from the U.S. Department of Health and Human Services (DHHS), universities, and various research organizations for hospital inpatient and emergency department discharge data. In FY2006, the Department received 12 requests from academic facilities for hospital inpatient and emergency department discharge data. In FY2007, as of May 1, 2007, the Department has received seven requests from academic facilities for hospital inpatient and emergency department discharge data. Like the counties, these persons use the data to perform epidemiological assessments of specific geographic regions and demographic groups. Much of this data is unavailable from other sources or would be time consuming and expensive to collect. Because of the clarity and improved organization of the new rules, hospitals are expected to provide more complete and accurate data in the discharge reports. Therefore, the Department anticipates that under the new rules DHHS and its subsidiaries, universities, and various research organizations will find it easier to compile and analyze hospital inpatient and emergency department discharge data and that the data will be more useful. Non-governmental research organizations may incur a minimal additional cost for obtaining more data sets. The Department estimates that the DHHS, universities, and various research organizations will experience a minimal-to-substantial benefit from the rulemaking.

The Department also provides de-identified hospital inpatient and emergency department discharge data to the Agency for Healthcare Research and Quality (AHRQ) within DHHS. AHRQ is the arm of DHHS that is responsible for performing or funding research on health

services. One of the activities sponsored by AHRQ is the Health Cost and Utilization Project (H-CUP), a set of health care databases and related software tools to access and analyze the data in the databases. The databases contain unit-of-service-level data collected from 40 states, including Arizona, which has been participating in the project for over 15 years. These data are used by hospitals and research organizations throughout the country, and are unavailable from other sources or would be time consuming and expensive to collect. The clarity and improved organization of the new rules are expected to enable hospitals to provide more complete and accurate data to the Department in the discharge reports, which will then be incorporated into the H-CUP databases. Therefore, the Department anticipates that under the new rules DHHS, its subsidiaries, hospitals, and various research organizations that use the H-CUP data will find the data to be more useful. The Department estimates that DHHS and its subsidiaries, hospitals, and other users of the H-CUP data will experience a minimal-to-moderate benefit from the rulemaking.

- The Public

The financial statements, accounting reports, rates and charges information, and discharge data collected under the new rules benefit the public in many ways. The data will be used to promote health care cost containment and to identify regions and specific health care programs where public funding should be allocated, influencing public health program assessment and development. The Department anticipates that this use of collected data will help contain out-of-pocket health care costs and rising insurance premiums, bring health care to underserved geographic regions, and improve the level of services in health care fields where it is needed the most.

Members of the public make an occasional request (once or twice each year) to the Department for a hospital or nursing care institution rates and charges schedule. A.R.S. Title 36, Chapter 4, Article 3 requires hospitals, nursing care institutions, home health agencies, and outpatient treatment centers to have their rates and charges on file with the Department before implementing them. Therefore, an individual who wants to dispute a bill can check to see if the facility imposed a rate or charge on the individual that was higher than the rates and charges the facility had on file with the Department at the time services were provided to the individual.

The Department estimates that the public will experience a significant benefit from the rulemaking.

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

In general, private and public employment in businesses, agencies, and political subdivisions will not be directly affected by this rulemaking. However, businesses or individuals providing accounting, computer programming, or data entry services could be hired by the health care institutions identified in item #4 to help prepare data for submission to the Department.

**6. A statement of the probable impact of the rulemaking on small businesses**

**a. An identification of the small businesses subject to the rules**

The rulemaking will directly impact approximately 136 nursing care institutions, 58 hospices, 103 home health agencies, and 750 outpatient treatment centers. The Department does not have precise data on the number of nursing care institutions, hospices, home health agencies, and outpatient treatment centers that are small businesses as defined in A.R.S. § 41-1001, but believes that many are small businesses. Currently, the Department does not collect data on the number of employees or gross annual receipts for these types of health care institutions.

**b. The administrative and other costs required for compliance with the rules**

The administrative and other costs required for compliance with the rules are addressed in the cost/benefit analysis in item #4.

**c. A description of the methods that the agency may use to reduce the impact on businesses**

Under the new rules, the economic impact is the same for a small business as it is for a large business, because A.R.S. Title 36, Chapter 1, Article 1.1 and Chapter 4, Article 3 do not differentiate between a small business and a large business with regard to the requirements that are used to promote health care cost containment and identify and understand the health care needs of established and developing communities throughout Arizona. The Department has determined that the requirements in the rules are the least intrusive and least costly to small businesses while still complying with statutory requirements and meeting the needs of the public, private industry, regulated community, and government agencies.

**d. The probable cost and benefit to private persons and consumers who are directly affected by the rules**

The probable costs and benefits to private persons and consumers are addressed in the cost/benefit analysis in item #4.

**7. A statement of the probable effect on state revenues**

The Department believes there are two factors that have the potential to effect state revenue as a result of this rulemaking. Because the rulemaking will promote the collection of more accurate, complete, and better organized health care institution facility data, the Department could see an increase in requests to use the data for commercial purposes and therefore collect more commercial use fees according to A.R.S. § 39-121.03. The Department estimates that an increase in requests to use the data for commercial purposes could result in a minimal-to-significant increase in state revenues. For FY2006, the Department collected \$61,500 in use fees from de-identified hospital discharge data. In FY2007, the Department collected \$63,000 in use fees.

Secondly, the Department may have to assess civil penalties according to A.R.S. §§ 36-126 and 36-431.01 to ensure compliance with the new reporting requirements. The Department estimates that civil penalties could result in a minimal-to-moderate increase in state revenues. For fiscal year 2006, the Department collected \$6,000 in civil penalties.

**8. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking**

The Department has determined that the requirements in the rules are the least intrusive and least costly while still complying with statutory requirements to collect and organize health care institution facility data for use by the public, private industry, and government agencies to promote health care cost containment and identify and understand the health care needs of established and developing communities throughout Arizona.

## TITLE 9. HEALTH SERVICES

CHAPTER 11. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTION FACILITY DATA

*Editor's Note: The headings for Articles 3, 4, and 5 were amended or created as part of a Notice of Recodification published at 10 A.A.R. 3835, effective August 24, 2004. The Department of Health Services did not go through regular rulemaking to make these changes (Supp. 04-3).*

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 03-2).*

*Chapter 11, consisting of Article 1 (Sections R9-11-101 through R9-11-109) and Article 2 (Sections R9-11-201 and R9-11-202) adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. Because this Chapter contains rules which are exempt from the regulator rulemaking process, the Chapter is printed on blue paper.*

*Chapter 11, consisting of Article 1 (Sections R9-11-101 through R9-11-121), Article 2 (Sections R9-11-201 through R9-11-213), and Article 3 (Section R9-11-301) repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.*

## ARTICLE 1. DEFINITIONS

*Article 1, consisting of Sections R9-11-101 through R9-11-109, adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).*

*Article 1, consisting of Sections R9-11-101 through R9-11-121, repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).*

Section	Definitions
R9-11-101.	Definitions
R9-11-102.	Recodified
R9-11-103.	Recodified
R9-11-104.	Recodified
R9-11-105.	Recodified
R9-11-106.	Recodified
R9-11-107.	Recodified
R9-11-108.	Recodified
R9-11-109.	Recodified
R9-11-110.	Repealed
R9-11-111.	Repealed
R9-11-112.	Repealed
R9-11-113.	Repealed
R9-11-114.	Repealed
R9-11-115.	Repealed
R9-11-116.	Repealed
R9-11-117.	Repealed
R9-11-118.	Repealed
R9-11-119.	Repealed
R9-11-120.	Repealed
R9-11-121.	Repealed

ARTICLE 2. ANNUAL FINANCIAL STATEMENTS AND  
UNIFORM ACCOUNTING REPORTS

*Article 2, consisting of Sections R9-11-201 and R9-11-202, adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).*

*Article 2, consisting of Sections R9-11-211 through R9-11-213,*

*repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).*

Section	Definitions
R9-11-201.	Definitions
R9-11-202.	Hospital Annual Financial Statement
R9-11-203.	Hospital Uniform Accounting Report
R9-11-204.	Nursing Care Institution Uniform Accounting Report
R9-11-205.	Hospice Uniform Accounting Report
R9-11-206.	Reserved
R9-11-207.	Reserved
R9-11-208.	Reserved
R9-11-209.	Reserved
R9-11-210.	Reserved
R9-11-211.	Repealed
R9-11-212.	Repealed
R9-11-213.	Repealed

## ARTICLE 3. RATES AND CHARGES SCHEDULES

*Article 3, consisting of Section R9-11-301 and R9-11-302, adopted effective February 22, 1995, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1994, Ch. 115, § 9 (Supp. 95-1).*

*Article 3, consisting of Section R9-11-301, repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).*

Section	Definitions
R9-11-301.	Definitions
R9-11-302.	Hospital Rates and Charges Schedule
Table 1.	Recodified
R9-11-303.	Nursing Care Institution Rates and Charges Schedule
R9-11-304.	Home Health Agency Rates and Charges Schedule
R9-11-305.	Outpatient Treatment Center Rates and Charges Schedule
R9-11-306.	Expired
R9-11-307.	Expired

#### ARTICLE 4. HOSPITAL INPATIENT DISCHARGE REPORTING

Article 4, consisting of Sections R9-11-401 and R9-11-402, made by final rulemaking at 9 A.A.R. 2105, effective June 3, 2003 (Supp. 03-2).

##### Section

R9-11-401.	Definitions
R9-11-402.	Reporting Requirements
Table 1.	Repealed

#### ARTICLE 5. EMERGENCY DEPARTMENT DISCHARGE REPORTING

##### Section

R9-11-501.	Definitions
R9-11-502.	Reporting Requirements

#### ARTICLE 1. DEFINITIONS

##### R9-11-101. Definitions

In this Chapter, unless otherwise specified:

1. "Admission" or "admitted" means documented acceptance by a health care institution of an individual as an inpatient of a hospital, a resident of a nursing care institution, or a patient of a hospice.
2. "AHCCCS" means the Arizona Health Care Cost Containment System, established under A.R.S. § 36-2902.
3. "Allowance" means a charity care discount, self-pay discount, or contractual adjustment.
4. "Arizona facility ID" means a unique code assigned to a hospital by the Department to identify the source of inpatient discharge or emergency department discharge information.
5. "Assisted living facility" means the same as in A.R.S. § 36-401.
6. "Attending provider" means the medical practitioner who has primary responsibility for the services a patient receives during an episode of care.
7. "Available bed" means an inpatient bed or resident bed, as defined in A.R.S. § 36-401, for which a hospital, nursing care institution, or hospice has health professionals and commodities to provide services to a patient or resident.
8. "Bill" means a statement for money owed to a health care institution for the provision of the health care institution's services.
9. "Business day" means any day of the week other than a Saturday, a Sunday, a legal holiday, or a day on which the Department is authorized or obligated by law or executive order to close.
10. "Calendar day" means any day of the week, including a Saturday or a Sunday.
11. "Cardiopulmonary resuscitation" means the same as in A.R.S. § 36-3251.
12. "Charge" means a specific dollar amount set by a health care institution for the use or consumption of a unit of service provided by the health care institution.
13. "Charge source" means the unit within a health care institution that provided services to an individual for which the individual's payer source is billed.
14. "Charity care" means services provided without charge to an individual who meets certain financial criteria established by a health care institution.
15. "Chief administrative officer" means the same as in A.A.C. R9-10-101.
16. "Chief financial officer" means an individual who is responsible for the financial records of a health care institution.
17. "Classification" means a designation that indicates the types of services a hospital provides.
18. "Clinical evaluation" means an examination performed by a medical practitioner on the body of an individual for the presence of disease or injury to the body, and review of any laboratory test results for the individual.
19. "Code" means a single number or letter, a set of numbers or letters, or a combination of numbers and letters that represents specific information.
20. "Commodity" means a non-reusable material, such as a syringe, bandage, or IV bag, utilized by a patient or resident.
21. "Contractual adjustment" means the difference between charges billed to a payer source and the amount that is paid to a health care institution based on an established agreement between the health care institution and the payer source.
22. "Control number" means a unique number assigned by a hospital for an individual's specific episode of care.
23. "Department" means the Arizona Department of Health Services.
24. "Designee" means a person assigned by the governing authority of a health care institution or by an individual acting on behalf of the governing authority to gather information for or report information to the Department.
25. "Diagnosis" means the identification of a disease or injury, by an individual authorized by law to make the identification, that is a cause of an individual's current medical condition.
26. "Discharge" means a health care institution's termination of services to a patient or resident for a specific episode of care.
27. "Discharge status" means the disposition of a patient, including whether the patient was:
  - a. Discharged home,
  - b. Transferred to another health care institution, or
  - c. Died.
28. "DNR" means Do Not Resuscitate, a document prepared for a patient indicating that cardiopulmonary resuscitation is not to be used in the event that the patient's heart stops beating.
29. "E-code" means an International Classification of Diseases code that is used:
  - a. In conjunction with other International Classification of Diseases codes that identify the principal and secondary diagnoses for an individual; and
  - b. To further designate the individual's injury or illness as being caused by events such as:
    - i. An external cause of injury, such as a car accident;
    - ii. A poisoning; or
    - iii. An unexpected complication associated with treatment, such as an adverse reaction to a medication or a surgical error.
30. "Electronic" means the same as in A.R.S. § 36-301.
31. "Emergency" means the same as in A.A.C. R9-10-201.
32. "Emergency department" means the unit within a hospital that is designed for the provision of emergency services.
33. "Emergency services" means the same as in A.A.C. R9-10-201.
34. "Episode of care" means medical services, nursing services, or health-related services provided by a hospital to

## Department of Health Services – Health Care Institution Facility Data

- a patient for a specific period of time, ending with a discharge.
35. “Fiscal year” means a consecutive 12-month period established by a health care institution for accounting, planning, or tax purposes.
  36. “Governing authority” means the same as in A.R.S. § 36-401.
  37. “Health care institution” means the same as in A.R.S. § 36-401.
  38. “Health-related services” means the same as in A.R.S. § 36-401.
  39. “Home health agency” means the same as in A.R.S. § 36-151.
  40. “Home health services” means the same as in A.R.S. § 36-151.
  41. “Home office” means the person that is the owner of and controls the functioning of a nursing care institution.
  42. “Hospice” means the same as in A.R.S. § 36-401.
  43. “Hospital” means the same as in A.A.C. R9-10-201.
  44. “Hospital administrator” means the same as “administrator” in A.A.C. R9-10-201.
  45. “Hospital services” means the same as in A.A.C. R9-10-201.
  46. “Inpatient” means the same as in A.A.C. R9-10-201.
  47. “International Classification of Diseases Code” means a code included in a set of codes such as the ICD-9-CM or ICD-10-CM codes, which is used by a hospital for billing purposes.
  48. “Licensed capacity” means the same as in A.R.S. § 36-401.
  49. “Management company” means an entity that:
    - a. Acts as an intermediary between the governing authority of a nursing care institution and the individuals who work in the nursing care institution,
    - b. Takes direction from the governing authority of the nursing care institution, and
    - c. Ensures that the directives of the governing authority of the nursing care institution are carried out.
  50. “Medical practitioner” means an individual who is:
    - a. Licensed:
      - i. As a physician;
      - ii. As a dentist, under A.R.S. Title 32, Chapter 11, Article 2;
      - iii. As a podiatrist, under A.R.S. Title 32, Chapter 7;
      - iv. As a registered nurse practitioner, under A.R.S. Title 32, Chapter 15;
      - v. As a physician assistant, under A.R.S. Title 32, Chapter 25; or
      - vi. To use or prescribe drugs or devices for the evaluation, diagnosis, prevention, or treatment of illness, disease, or injury in human beings in this state; or
    - b. Licensed in another state and authorized by law to use or prescribe drugs or devices for the evaluation, diagnosis, prevention, or treatment of illness, disease, or injury in human beings in this state.
  51. “Medical record number” means a unique number assigned by a hospital to an individual for identification purposes.
  52. “Medical services” means the same as in A.R.S. § 36-401.
  53. “Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.
  54. “National provider identifier” means the unique number assigned by the Centers for Medicare and Medicaid Services to a health care institution, physician, registered nurse practitioner, or other medical practitioner to submit claims and transmit electronic health information to all payer sources.
  55. “Newborn” means a human:
    - a. Whose birth took place in the reporting hospital, or
    - b. Who was:
      - i. Born outside a hospital,
      - ii. Admitted to the reporting hospital within 24 hours of birth, and
      - iii. Admitted to the reporting hospital before being admitted to any other hospital.
  56. “Nursing care institution” means the same as in A.R.S. § 36-446.
  57. “Nursing care institution administrator” means the same as in A.R.S. § 36-446.
  58. “Nursing services” means the same as in A.R.S. § 36-401.
  59. “Patient” means the same as in A.A.C. R9-10-101.
  60. “Payer source” means an individual or an entity, such as a private insurance company, AHCCCS, or Medicare, to which a health care institution sends a bill for the services provided to an individual by the health care institution.
  61. “Physician” means an individual licensed as a doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, as a doctor of naturopathic medicine under A.R.S. Title 32, Chapter 14, or as a doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17.
  62. “Principal diagnosis” means the reason established after a clinical evaluation of a patient to be chiefly responsible for a specific episode of care.
  63. “Principal procedure” means the procedure judged by an individual working on behalf of a hospital to be:
    - a. The most significant procedure performed during an episode of care, or
    - b. The procedure most closely associated with a patient’s principal diagnosis.
  64. “Priority of visit” means the urgency with which a patient required medical services during an episode of care.
  65. “Procedure” means a set of activities performed on a patient that:
    - a. Is intended to diagnose or treat a disease, illness, or injury;
    - b. Requires the individual performing the set of activities be trained in the set of activities; and
    - c. May be invasive in nature or involve a risk to the patient from the activities themselves or from anesthesia.
  66. “Prospective payment system” means a system of classifying episodes of care for billing and reimbursement purposes, based on factors such as diagnoses, age, and sex.
  67. “Refer” means to direct an individual to a health care institution for services provided by the health care institution.
  68. “Referral source” means a code designating the entity that referred or transferred a patient to a hospital.
  69. “Registered nurse practitioner” means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601, and is licensed under A.R.S. Title 32, Chapter 15.
  70. “Reporting period” means the specific fiscal year, calendar year, or portion of the fiscal or calendar year for which a health care institution is reporting data to the Department.

71. "Residence" means the place where an individual lives, such as:
- A private home,
  - A nursing care institution, or
  - An assisted living facility.
72. "Resident" means the same as in:
- A.A.C. R9-10-701, or
  - A.A.C. R9-10-901.
73. "Revenue code" means a code for a unit of service that a hospital includes on a bill for hospital services.
74. "Secondary diagnosis" means any diagnosis for an individual other than the principal diagnosis.
75. "Self-pay discount" means a reduction in charges billed to an individual.
76. "Service" means an activity performed as part of medical services, hospital services, nursing services, emergency services, health-related services, hospice services, home health services, or supportive services.
77. "Supportive services" means the same as in A.R.S. § 36-151.
78. "Transfer" means discharging an individual from a health care institution so the individual may be admitted to another health care institution.
79. "Trauma center" means the same as in:
- A.R.S. § 36-2201, or
  - A.R.S. § 36-2225.
80. "Treatment" means the same as in A.A.C. R9-10-101.
81. "Type of" means a specific subcategory of the following that is provided, enumerated, or utilized by a health care institution:
- An employee or contracted worker;
  - An accounting concept, such as asset, liability, or revenue;
  - A non-covered ancillary charge;
  - A payer source;
  - A charge source;
  - A medical condition; or
  - A service.
82. "Type of bed" means a category of available bed that specifies the services provided to an individual occupying the available bed.
83. "Unit" means an area within a health care institution that is designated by the health care institution to provide a specific type of service.
84. "Unit of service" means a procedure, service, commodity, or other item or group of items provided to a patient or resident for which a health care institution bills a payer source a specific amount.
85. "Written notice" means a document that is provided:
- In person,
  - By delivery service,
  - By facsimile transmission,
  - By electronic mail, or
  - By mail.

**Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Amended by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-102. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25,

1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-201 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-103. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-301 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-104. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-302 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-105. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-303 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-106. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-304 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-107. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-305 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-108. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-306 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-109. Recodified****Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the

Office of the Secretary of State June 10, 1993 (Supp. 93-2). Section recodified to R9-11-307 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-110. Repealed****Historical Note**

Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-111. Repealed****Historical Note**

Added Regulation 2-74. Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-112. Repealed****Historical Note**

Added Regulation 2-74. Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-113. Repealed****Historical Note**

Added Regulation 2.74. Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-114. Repealed****Historical Note**

Amended effective January 16, 1976 (Supp. 76-1). Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-115. Repealed****Historical Note**

Repealed effective January 16, 1976 (Supp. 76-1). Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-116. Repealed****Historical Note**

Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-117. Repealed****Historical Note**

Department correction of Form number (Supp. 75-1). Amended effective June 30, 1987 (Supp. 87-2). Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-118. Repealed****Historical Note**

Department correction of language of Regulation heading, Department correction of subsections (B) through (H). Initially this material was available upon request; it is now printed in full (Supp. 75-1). Amended effective June 30, 1987 (Supp. 87-2). Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-119. Repealed****Historical Note**

Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-120. Repealed****Historical Note**

Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-121. Repealed****Historical Note**

Department correction of language of regulation heading. Department correction of subsections (B) through (G) initially this material was available upon request, it is now printed in full (Supp. 75-1). Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

## ARTICLE 2. ANNUAL FINANCIAL STATEMENTS AND UNIFORM ACCOUNTING REPORTS

**R9-11-201. Definitions**

In this Article, unless otherwise specified:

1. "Accredited" means the same as in A.R.S. § 36-422.
2. "ALTCS" means the Arizona Long-term Care System established under A.R.S. § 36-2932.
3. "Asset" means the same as "asset" in generally accepted accounting principles.
4. "Assisted living facility-based hospice" means a hospice that operates as a part of an assisted living facility.
5. "Audit" means the same as "audit" in generally accepted accounting principles.
6. "Bereavement services" means activities provided by or on behalf of a hospice to the family or friends of an individual that are intended to comfort the family or friends before and after the individual's death.
7. "Building improvement" means an addition to or reconstruction, removal, or replacement of any portion or component of an existing building that affects licensed capacity, increases the useful life of an available bed, or enhances resident safety.
8. "Caseload" means the number of assigned patients for which an individual working for a hospice is to provide hospice services.
9. "Certified nursing assistant" means the same as "nursing assistant" in A.R.S. § 32-1601.

10. “Chaplain” means an individual trained to offer support, prayer, and spiritual guidance to a patient and the patient’s family.
11. “Continuous care” means hospice services provided in a patient’s residence to a patient who requires nursing services to be available 24 hours a day.
12. “Contracted worker” means an individual who:
  - a. Performs:
    - i. Hospital services in a hospital,
    - ii. Nursing services or health-related services in a nursing care institution,
    - iii. Hospice services for a hospice, or
    - iv. Labor as a medical record coder or transcriptionist for a hospital; and
  - b. Is paid by a person with whom the hospital, nursing care institution, or hospice has a written agreement to provide hospital services, nursing services, health-related services, hospice services, or medical record coder or transcriptionist labor.
13. “Covered services” means hospice services that are provided to an individual by a hospice and are paid for by a payer source.
14. “Daily census” means a count of the number of patients to whom hospice services were provided during a 24-hour period.
15. “Direct care” means services provided to a resident that require hands-on contact with the resident.
16. “Direction” means the same as in A.R.S. § 36-401.
17. “Employee” means an individual other than a contracted worker who works for a health care institution for compensation and provides or assists in the provision of a service to patients or residents.
18. “Employee-related expenses” means costs incurred by an employer to pay for the employer’s portion of Social Security taxes, Medicare taxes, and other costs such as health insurance.
19. “Equity” means the same as “equity” in generally accepted accounting principles.
20. “Expense” means the same as “expense” in generally accepted accounting principles.
21. “Free-standing” means that a health care institution does not operate as part of another health care institution.
22. “FTE” means full-time equivalent position, which is a job for which a health care institution expects to pay an individual for 2,080 hours per year.
23. “Generally accepted accounting principles” means the set of financial reporting standards administered by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or other specialized bodies dealing with accounting and auditing matters.
24. “Health professional” means the same as in A.R.S. § 32-3201.
25. “Home health agency-based hospice” means a hospice that operates as part of a home health agency.
26. “Hospice administrator” means the chief administrative officer for a hospice.
27. “Hospice chief financial officer” means an individual who is responsible for the financial records of a hospice.
28. “Hospice inpatient facility” means the same as in A.A.C. R9-10-801.
29. “Hospice service” means the same as in A.A.C. R9-10-801.
30. “Hospice service agency” means the same as in A.R.S. § 36-401.
31. “Hospital-based hospice” means a hospice that operates as a part of a hospital.
32. “Income” means the same as “income” in generally accepted accounting principles.
33. “Inpatient services” means the same as in A.A.C. R9-10-801.
34. “Inpatient surgery” means surgery that requires a patient to receive inpatient services in a hospital.
35. “Level of care” means a designation that indicates the scope of medical services, nursing services, and health-related services that are provided to a patient or resident.
36. “Liability” means the same as “liability” in generally accepted accounting principles.
37. “Licensed nurse” means a registered nurse practitioner, registered nurse, or practical nurse.
38. “Licensee” means the same as in R9-10-101.
39. “Median length of stay” means the midpoint in the number of patient care days for all patients who were discharged from a hospice during a specific period of time.
40. “Medicaid” means a federal health insurance program, administered by states, for individuals who meet specific income criteria established, in Arizona, by AHCCCS.
41. “Medical record coder” means an individual who assigns codes to a patient’s diagnoses and procedures for billing purposes.
42. “Medical record transcriptionist” means an individual who copies and edits dictation from medical practitioners into medical records.
43. “Medical records” mean the same as in A.R.S. § 12-2291.
44. “Medicare cost report” means the annual financial and statistical documents submitted to the United States Department of Health and Human Services as required by Title XVIII of the Social Security Act.
45. “Medicare-certified” means that a health care institution is authorized by the United States Department of Health and Human Services to bill Medicare for services provided to patients or residents who are eligible to receive Medicare.
46. “Midnight census” means a count of the number of patients or residents in a health care institution at 12:00 a.m.
47. “Net assets” means the same as “net assets” in generally accepted accounting principles.
48. “Non-covered ancillary services” means activities, such as rehabilitation services, laboratory tests, or x-rays, provided to an individual in a health care institution that are paid for by:
  - a. A payer source other than ALTCS, or
  - b. ALTCS to an entity that is not a health care institution.
49. “Nursery patient” means a newborn who was born in a hospital and not admitted to a type of bed that is counted toward the hospital’s licensed capacity.
50. “Nursing care institution-based hospice” means a hospice that operates as a part of a nursing care institution.
51. “Nursing personnel” means the individuals authorized by a health care institution to provide nursing services to a patient or resident.
52. “Occupancy rate” means the midnight census divided by the number of available beds, expressed as a percent.
53. “Operating expense” means the same as “operating expense” in generally accepted accounting principles.
54. “Outpatient hospice services” means hospice services provided at a location outside a hospice inpatient facility.
55. “Outpatient surgery” means surgery that does not require a patient to receive inpatient services in a hospital.
56. “Owner” means the same as in A.A.C. R9-10-101.

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57. "Patient care day" means a calendar day during which a hospice provides hospice services to a patient.
58. "Patient day" means a period during which a patient received inpatient services with:
- The time between the midnight census on two successive calendar days counting as one period, and
  - The day of discharge being counted only when the patient is admitted and discharged on the same day.
59. "Person" means the same as in A.R.S. § 41-1001.
60. "Practical nurse" means an individual licensed under A.R.S. Title 32, Chapter 15, Article 2, to practice practical nursing, as defined in A.R.S. § 32-1601.
61. "Registered nurse" means an individual licensed under A.R.S. Title 32, Chapter 15, Article 2, to practice professional nursing, as defined in A.R.S. § 32-1601.
62. "Rehabilitation services" means the same as in A.A.C. R9-10-201.
63. "Resident day" means a period during which a resident received nursing services or health-related services provided by a nursing care institution with:
- The time between the midnight census on two successive calendar days counting as one period, and
  - The day of discharge being counted only when the resident is admitted and discharged on the same day.
64. "Respite care services" means the same as in A.R.S. § 36-401.
65. "Revenue" means the same as "revenue" in generally accepted accounting principles.
66. "Routine home care" means hospice services provided in a patient's residence to a patient who does not require nursing services to be available 24 hours a day.
67. "Rural" means the same as in A.R.S. § 36-2171.
68. "Self-pay" means that charges for hospice services are billed to an individual.
69. "Social worker" means an individual licensed according to A.R.S. §§ 32-3291, 32-3292, or 32-3293.
70. "Statement of cash flows" means the same as "statement of cash flows" in generally accepted accounting principles.
71. "Surgery" means the excision of a part of a patient's body or the incision into a patient's body for the correction of a deformity or defect; repair of an injury; or diagnosis, amelioration, or cure of disease.
72. "Turnover rate" means:
- For a hospital, a percent calculated by dividing the number of individuals employed by the hospital who resign or retire from or are dismissed by the hospital during a reporting period by the average number of individuals employed during the reporting period; or
  - For a nursing care institution, a percent calculated by dividing the number of employees who resign or retire from or are dismissed by a nursing care institution during a reporting period by the average number of employees during the reporting period.
73. "Uniform accounting report" means a document that meets the requirements of A.R.S. § 36-125.04 and contains the information required in R9-11-203 for hospitals, R9-11-204 for nursing care institutions, and R9-11-205 for hospices.
74. "Unscheduled medical services" means the same as in A.R.S. § 36-401.
75. "Urban" means an area not defined as "rural."
76. "Urgent care unit" means a facility under a hospital's license that is:
- Located within one-half mile of the hospital, and
  - Designated by the hospital for the provision of unscheduled medical services for medical conditions that are of a less critical nature than emergency medical conditions.
77. "Vacancy rate" means a percent calculated by dividing the number of unfilled FTEs at the end of a hospital's reporting period by the sum of the unfilled FTEs and filled FTEs at the end of the hospital's reporting period.
78. "Volunteer" means the same as in A.A.C. R9-10-801.

**Historical Note**

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Former R9-11-201 recodified to R9-11-202; new R9-11-201 recodified from R9-11-102 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-202. Hospital Annual Financial Statement**

- A.** A hospital administrator or designee shall submit to the Department, no later than 120 calendar days after the ending date of the hospital's fiscal year:
- An annual financial statement prepared according to generally accepted accounting principles;
  - A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (A)(1); and
  - An attestation, signed and dated by the hospital administrator or designee, that the hospital is not passing on the cost of the hospital assessment, established in A.R.S. § 36-2901.08(A), to a patient or a third-party payor that is responsible for paying for the patient's care.
- B.** If a hospital is part of a group of health care institutions that prepares a combined annual financial statement and is included in the combined annual financial statement, the hospital administrator or designee may submit the combined annual financial statement if the combined annual financial statement:
- Is prepared according to generally accepted accounting principles,
  - Identifies the hospital, and
  - Contains a financial statement specific to the hospital.
- C.** The Department shall grant a hospital a 30-day extension for submitting an annual financial statement and audit of the annual financial statement required in subsection (A) if the hospital administrator or designee submits a written request for an extension that:
- Includes the name, physical address, mailing address, and telephone number of the hospital;
  - Includes the name, telephone number, mailing address, and e-mail address of:
    - The hospital administrator; and
    - An individual, in addition to the hospital administrator, who may be contacted about the extension request;
  - Includes the date the hospital's annual financial statement and audit of the annual financial statement is due to the Department;
  - Specifies that the hospital is requesting a 30-day extension from submitting the annual financial statement and audit of the annual financial statement required in subsection (A); and

5. Is submitted to the Department at least 30 calendar days before the annual financial statement and audit of the annual financial statement is due to the Department.
- D.** The Department shall send a written notice of approval of a 30-day extension to a hospital that submits a request for an extension that meets the requirements specified in subsection (C) within seven business days after receiving the request.
- E.** If a request by a hospital administrator or designee for a 30-day extension does not meet the requirements specified in subsection (C), the Department shall provide to the hospital a written notice that specifies the missing or incomplete information. If the Department does not receive the missing or incomplete information within 10 calendar days after the date on the written notice, the Department shall consider the hospital's request withdrawn.
- F.** Before the end of the 30-day extension specified in subsection (C), a hospital administrator or designee may request an additional extension for submitting an annual financial statement and audit of the annual financial statement by submitting a written request that:
1. Includes the information specified in subsections (C)(1) through (C)(3),
  2. Specifies for how many calendar days the hospital is requesting an extension from submitting the annual financial statement and audit of the annual financial statement,
  3. Is submitted to the Department at least 14 calendar days before the annual financial statement and audit of the annual financial statement is due to the Department, and
  4. Includes the reasons for the additional extension request.
- G.** In determining whether to approve or deny a request for a hospital to receive an additional extension as specified in subsection (F) for submitting an annual financial statement and audit of the annual financial statement, the Department shall consider the following:
1. The reasons for the additional extension request provided according to subsection (F)(4);
  2. The length of time for which the additional extension is being requested according to subsection (F)(2); and
  3. If the hospital has a history of the following items:
    - a. Repeated violations of the same statutes or rules,
    - b. Patterns of noncompliance with statutes or rules,
    - c. Types of violations of statutes or rules,
    - d. Total number of violations of statutes or rules,
    - e. Length of time during which violations of statutes or rules have been occurring, and
    - f. Noncompliance with an agreement between the Department and the hospital.
- H.** The Department shall send written notice of approval or denial to a hospital that requests an additional extension specified in subsection (F) for submitting an annual financial statement and audit of the annual financial statement within seven business days after receiving the request.
- I.** If the Department denies a request for an additional extension specified in subsection (F), a hospital may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.
- J.** If a hospital administrator or designee does not submit an annual financial statement and a report of an audit of the annual financial statement according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-126.
- 11-202 recodified from R9-11-201 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4). Amended by exempt rulemaking at 20 A.A.R. 99, effective January 1, 2014 (Supp. 13-4).
- R9-11-203. Hospital Uniform Accounting Report**
- A.** A hospital administrator or designee shall submit a uniform accounting report to the Department, in a format specified by the Department, no later than 150 calendar days after the ending date of the hospital's fiscal year.
- B.** A hospital administrator or designee shall submit a copy of the hospital's Medicare cost report, if applicable, as part of the uniform accounting report required in subsection (A).
- C.** The uniform accounting report required in subsection (A) shall include the following information:
1. The name, physical address, mailing address, county, and telephone number of the hospital;
  2. The name, telephone number, and e-mail address of the:
    - a. Hospital administrator,
    - b. Hospital chief financial officer, and
    - c. Individual who prepared the uniform accounting report;
  3. The identification number assigned to the hospital:
    - a. By the Department;
    - b. By AHCCCS, if applicable;
    - c. By Medicare, if applicable; and
    - d. As the hospital's national provider identifier;
  4. The hospital's classification;
  5. Whether the entity that is the owner of the hospital is:
    - a. Not for profit;
    - b. For profit; or
    - c. A federal, state, or local government agency;
  6. Whether or not the hospital is Medicare-certified;
  7. The ending date of the hospital's reporting period;
  8. If the hospital began operations during the hospital's reporting period, the date on which the hospital began operations;
  9. The date the uniform accounting report was submitted to the Department;
  10. The licensed capacity, for each type of bed, at the end of the reporting period;
  11. The licensed capacity at the end of the reporting period;
  12. The number of available beds, for each type of bed, at the end of the reporting period;
  13. The number of available beds at the end of the reporting period;
  14. The number of admissions, for each type of bed, during the reporting period;
  15. The total number of admissions during the reporting period;
  16. The total number of patient days:
    - a. During the reporting period, and
    - b. For each type of bed during the reporting period;
  17. The average occupancy rate for the reporting period;
  18. The number of inpatient surgeries during the reporting period;
  19. The number of outpatient surgeries during the reporting period;
  20. The number of births during the reporting period;
  21. The number of nursery patient admissions during the reporting period;
  22. The number of patient days for nursery patients during the reporting period;

#### Historical Note

Section repealed, new Section adopted effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). Former R9-11-202 recodified to R9-11-203; new R9-

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23. The number of episodes of care during the reporting period provided by the:
    - a. Emergency department,
    - b. Urgent care unit, and
    - c. Trauma center;
  24. The total number of episodes of care during the reporting period provided by the emergency department, urgent care unit, or trauma center;
  25. The number of episodes of care in the emergency department, urgent care unit, or trauma center during the reporting period for which the patient was subsequently admitted to the hospital;
  26. The total number of FTEs at the end of the reporting period;
  27. The turnover rate for the reporting period;
  28. The vacancy rate for the reporting period;
  29. The number of FTEs, for each type of employee, during the reporting period;
  30. The vacancy rate, for each type of employee, for the reporting period;
  31. The number of medical record coder FTEs during the reporting period;
  32. The vacancy rate for medical record coders for the reporting period;
  33. The number of medical record transcriptionist FTEs during the reporting period;
  34. The vacancy rate for medical record transcriptionists for the reporting period;
  35. For individuals who worked for the hospital as contracted workers during the reporting period, the number of hours worked by registered nurses;
  36. The amount of revenue generated, for each type of revenue, by the hospital during the reporting period;
  37. The amount of allowances given, for each type of allowance, by the hospital during the reporting period;
  38. The total amount of revenue generated and allowances given by the hospital during the reporting period;
  39. The operating expenses incurred, for each type of operating expense, by the hospital during the reporting period;
  40. The total operating expenses incurred by the hospital during the reporting period;
  41. The difference between the amount identified in subsection (C)(38) and the amount identified in subsection (C)(40);
  42. The income and expenses, other than revenue and operating expenses, for each type of income received and expense incurred by the hospital during the reporting period;
  43. The amount of assets, for each type of asset, of the hospital at the end of the reporting period;
  44. The total amount of assets of the hospital at the end of the reporting period;
  45. The amount of liabilities, for each type of liability, of the hospital at the end of the reporting period;
  46. The total amount of liabilities of the hospital at the end of the reporting period;
  47. The amount of net assets, for each type of net asset, of the hospital at the end of the reporting period;
  48. The total amount of net assets of the hospital at the end of the reporting period;
  49. The difference between the amount identified in subsection (C)(48) and the amount identified in subsection (C)(46); and
  50. The statement of cash flows required in A.R.S. § 36-125.04(C)(3), unless the statement of cash flows has been submitted as part of the annual financial statement required in R9-11-202.
- D.** A hospital administrator or designee shall:
1. On a form provided by the Department:
    - a. Attest that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (B) and (C) is accurate and complete; or
    - b. If the hospital administrator or designee has personal knowledge that the information submitted according to subsections (B) and (C) is not accurate or not complete:
      - i. Identify the information that is not accurate or not complete;
      - ii. Describe the circumstances that make the information not accurate or not complete;
      - iii. State what actions the hospital is taking to correct the inaccurate information or make the information complete; and
      - iv. Attest that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (B) and (C), except the information identified in subsection (D)(1)(b)(i), is accurate and complete; and
  2. Submit the form specified in subsection (D)(1) as part of the uniform accounting report required in subsection (A).
- E.** A hospital administrator who receives a request from the Department for revision of a uniform accounting report not prepared according to subsections (B), (C), and (D) shall ensure that the revised uniform accounting report is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- F.** If a hospital administrator or designee does not submit a uniform accounting report according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-126.

**Historical Note**

Section recodified from R9-11-202 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-204. Nursing Care Institution Uniform Accounting Report**

- A.** A nursing care institution administrator or designee shall submit a uniform accounting report to the Department, in a format specified by the Department, no later than 150 calendar days after the ending date of the nursing care institution's fiscal year.
- B.** A nursing care institution administrator or designee shall submit a copy of the nursing care institution's Medicare cost report, if applicable, as part of the uniform accounting report required in subsection (A).
- C.** The uniform accounting report required in subsection (A) shall include the following information:
1. The name, physical address, mailing address, county, and telephone number of the nursing care institution;
  2. The name, physical address, mailing address, and telephone number of the nursing care institution's:

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- a. Home office, if applicable; and
- b. Management company, if applicable;
3. An alternative name under which the nursing care institution provides nursing services or health-related services, if applicable;
4. The identification number assigned to the nursing care institution:
  - a. By the Department;
  - b. By AHCCCS, if applicable;
  - c. By Medicare, if applicable; and
  - d. As the nursing care institution's national provider identifier;
5. The name, telephone number, and e-mail address of the:
  - a. Nursing care institution administrator;
  - b. Nursing care institution chief financial officer;
  - c. Individual who prepared the uniform accounting report; and
  - d. Individual whom the Department may contact about the uniform accounting report at the:
    - i. Home office, if applicable; and
    - ii. Management company, if applicable;
6. The beginning and ending dates of the nursing care institution's reporting period;
7. If the nursing care institution began operations during the nursing care institution's reporting period, the date on which the nursing care institution began operations;
8. The date the uniform accounting report was submitted to the Department;
9. Whether the entity that is the owner of the nursing care institution is:
  - a. Not for profit;
  - b. For profit; or
  - c. A federal, state, or local government agency;
10. Whether or not the nursing care institution is Medicare-certified;
11. The licensed capacity at the beginning and end of the reporting period;
12. The total number of available beds at the beginning and end of the reporting period;
13. If the nursing care institution has a distinct unit for patients whose payer source is Medicare, the number of licensed beds in that unit at the beginning and end of the reporting period;
14. The number of resident admissions during the reporting period;
15. The number of resident days during the reporting period:
  - a. For each payer source that is not ALTCS, and
  - b. For each level of care for residents whose payer source is ALTCS;
16. The total number of resident days during the reporting period;
17. The average occupancy rate for the reporting period;
18. The number of paid hours during the reporting period for each of the following types of employees:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
19. The number of hours worked during the reporting period by each of the following types of employees:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
20. The amount in salaries paid, excluding employee-related expenses, for each of the following types of employees:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
21. The number of each of the following types of employees at the beginning of the reporting period:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
22. The number of each of the following types of employees at the end of the reporting period:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
23. For staff employed by the nursing care institution during the reporting period as registered nurses, practical nurses, or certified nursing assistants, the total:
  - a. Number of paid hours;
  - b. Number of hours worked;
  - c. Amount in salaries paid, excluding employee-related expenses;
  - d. Number of staff at the beginning of the reporting period; and
  - e. Number of staff at the end of the reporting period;
24. The turnover rate for the reporting period for:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
25. The total turnover rate for the reporting period for all employees of the nursing care institution who are registered nurses, practical nurses, or certified nursing assistants;
26. The number of hours worked during the reporting period by each of the following types of contracted workers:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
27. The total number of hours worked during the reporting period by contracted workers who are registered nurses, practical nurses, or certified nursing assistants;
28. The amount paid during the reporting period for each of the following types of contracted workers:
  - a. Registered nurses,
  - b. Practical nurses, and
  - c. Certified nursing assistants;
29. The total amount paid during the reporting period to contracted workers who are registered nurses, practical nurses, or certified nursing assistants;
30. The amount of revenue generated and allowances given, for each type of revenue or allowance, by the nursing care institution during the reporting period;
31. The total amount of revenue generated and allowances given by the nursing care institution during the reporting period;
32. The operating expenses incurred by the nursing care institution during the reporting period for each type of operating expense;
33. The total operating expenses incurred by the nursing care institution during the reporting period;
34. The income and expenses, other than revenue and operating expenses, for each type of income received and expense incurred by the nursing care institution during the reporting period;
35. The charges for non-covered ancillary services during the reporting period:
  - a. For each type of non-covered ancillary service,
  - b. For each type of payer source, and
  - c. For each type of non-covered ancillary service for each type of payer source;

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36. The total amount of non-covered ancillary charges for the reporting period;
  37. If the nursing care institution has documentation of building improvement costs that:
    - a. Affected the licensed capacity:
      - i. The year in which each building improvement was completed;
      - ii. The cost of each building improvement;
      - iii. The licensed capacity before the building improvement was begun;
      - iv. The number of beds that were added as a result of the building improvement, if applicable;
      - v. The number of beds that were removed as a result of the building improvement, if applicable; and
      - vi. The licensed capacity after the building improvement was completed; and
    - b. Did not affect the licensed capacity:
      - i. The year in which each building improvement was completed; and
      - ii. The cost of each building improvement;
  38. The amount of assets, for each type of asset, of the nursing care institution at the end of the reporting period;
  39. The total amount of assets of the nursing care institution at the end of the reporting period;
  40. The amount of liabilities, for each type of liability, of the nursing care institution at the end of the reporting period;
  41. The total amount of liabilities of the nursing care institution at the end of the reporting period;
  42. The amount of equity, for each type of equity, of the nursing care institution at the end of the reporting period;
  43. The total amount of equity of the nursing care institution at the end of the reporting period;
  44. The difference between the amount identified in subsection (C)(43) and the amount identified in subsection (C)(41); and
  45. An equity reconciliation statement, including:
    - a. Net equity at the beginning of the reporting period;
    - b. The difference between the amount identified in subsection (C)(31) and the amount identified in subsection (C)(33);
    - c. Additions to equity, for each type of additional equity, for the reporting period;
    - d. The total amount of additional equity for the reporting period;
    - e. Deductions from equity, for each type of equity deduction, for the reporting period;
    - f. The total amount of equity deduction for the reporting period; and
    - g. Net equity at the end of the reporting period.
- D.** A nursing care institution administrator or designee shall:
1. On a form provided by the Department:
    - a. Attest that, to the best of the knowledge and belief of the nursing care institution administrator or designee, the information submitted according to subsections (B) and (C) is accurate and complete; or
    - b. If the nursing care institution administrator or designee has personal knowledge that the information submitted according to subsections (B) and (C) is not accurate or not complete:
      - i. Identify the information that is not accurate or not complete;
      - ii. Describe the circumstances that make the information not accurate or not complete;
  - iii. State what actions the nursing care institution is taking to correct the inaccurate information or make the information complete; and
  - iv. Attest that, to the best of the knowledge and belief of the nursing care institution administrator or designee, the information submitted according to subsections (B) and (C), except the information identified in subsection (D)(1)(b)(i), is accurate and complete; and
2. Submit the form specified in subsection (D)(1) as part of the uniform accounting report required in subsection (A).
- E.** A nursing care institution administrator who receives a request from the Department for revision of a uniform accounting report not prepared according to subsections (B), (C), and (D) shall ensure that the revised uniform accounting report is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- F.** If a nursing care institution administrator or designee does not submit a uniform accounting report according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-126.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-205. Hospice Uniform Accounting Report**

- A.** A hospice administrator or designee shall submit a uniform accounting report to the Department, in a format specified by the Department, within 150 calendar days after the end of the hospice's fiscal year.
- B.** A hospice administrator or designee shall submit a copy of the hospice's Medicare and Medicaid cost reports, if applicable, as part of the uniform accounting report required in subsection (A).
- C.** The uniform accounting report required in subsection (A) shall include the following information:
1. The name, physical address, mailing address, county, and telephone number of the hospice;
  2. The identification number assigned to the hospice:
    - a. By the Department;
    - b. By AHCCCS, if applicable;
    - c. By Medicare, if applicable; and
    - d. As the hospice's national provider identifier;
  3. The beginning and ending dates of the hospice's reporting period;
  4. If the hospice began operations during the hospice's reporting period, the date on which the hospice began operations;
  5. The name, telephone number, and e-mail address of the:
    - a. Hospice administrator,
    - b. Hospice chief financial officer, and
    - c. Individual who prepared the uniform accounting report;
  6. The date the uniform accounting report was submitted to the Department;
  7. Whether the hospice operates as a:
    - a. Hospice service agency, or
    - b. Hospice service agency with one or more hospice inpatient facilities;
  8. Whether the entity that is the owner of the hospice is:
    - a. Not for profit;
    - b. For profit; or

- c. A federal, state, or local government agency;
9. Whether or not the hospice is Medicare-certified;
10. The entity by which the hospice is accredited, if applicable;
11. Whether the hospice provides hospice services in an area that:
  - a. Is equal to or more than two-thirds urban,
  - b. Is equal to or more than two-thirds rural, or
  - c. Is less than two-thirds urban and less than two-thirds rural;
12. Whether the hospice is:
  - a. Free-standing,
  - b. A hospital-based hospice,
  - c. A nursing care institution-based hospice,
  - d. An assisted living facility-based hospice, or
  - e. A home health agency-based hospice;
13. If the hospice operates one or more hospice inpatient facilities, list for each hospice inpatient facility:
  - a. The identification number assigned to the hospice inpatient facility by the Department;
  - b. Whether the hospice inpatient facility is:
    - i. Located within a hospital;
    - ii. Located within a nursing care institution;
    - iii. Located within an assisted living facility; or
    - iv. Not located within a hospital, nursing care institution, or assisted living facility;
  - c. The levels of care provided;
  - d. The licensed capacity of the hospice inpatient facility;
  - e. The total number of available beds at the beginning and end of the reporting period; and
  - f. The average occupancy rate for the reporting period;
14. The number of patients during the reporting period that were:
  - a. Referred to the hospice,
  - b. Admitted to the hospice,
  - c. Died while admitted to the hospice, and
  - d. Discharged from the hospice while living;
15. The number of patient care days, for all patients, during the reporting period in which the hospice provided:
  - a. Routine home care,
  - b. Respite care services,
  - c. Continuous care, and
  - d. Inpatient services;
16. The total number of patient care days during the reporting period for all patients;
17. The average daily census for the reporting period, calculated as the number specified in subsection (C)(16) divided by the number of days in the reporting period;
18. Average length of stay, calculated as the number of patient care days for patients discharged during the reporting period divided by the sum of the numbers specified in subsections (C)(14)(c) and (C)(14)(d);
19. Median length of stay for patients discharged during the reporting period;
20. The number of patients admitted to the hospice during the reporting period:
  - a. By gender;
  - b. By age group;
  - c. By race and ethnicity;
  - d. From:
    - i. A private home owned or leased by, or on behalf of, a patient;
    - ii. An assisted living facility;
    - iii. A nursing care institution;
    - iv. A hospital; and
    - v. A hospice;
- e. With a principal diagnosis of:
  - i. Cancer,
  - ii. Heart disease,
  - iii. Dementia,
  - iv. Lung disease,
  - v. Kidney disease,
  - vi. Stroke or coma,
  - vii. Liver disease,
  - viii. HIV-related disease,
  - ix. Motor neuron disorder,
  - x. Unspecified debility, and
  - xi. A disease not specified in subsections (C)(20)(e)(i) through (C)(20)(e)(x); and
- f. Whose payer source is:
  - i. Medicare,
  - ii. AHCCCS,
  - iii. Self-pay,
  - iv. A private insurance company, and
  - v. A payer source not specified in subsections (C)(20)(f)(i) through (C)(20)(f)(iv);
21. The total number of patient care days during the reporting period that the hospice provided hospice services to a patient whose principal diagnosis was related to:
  - a. Cancer,
  - b. Heart disease,
  - c. Dementia,
  - d. Lung disease,
  - e. Kidney disease,
  - f. Stroke or Coma,
  - g. Liver disease,
  - h. HIV-related disease,
  - i. Motor neuron disorder,
  - j. Unspecified debility, and
  - k. Any other disease not specified in subsections (C)(21)(a) through (C)(21)(j);
22. The number of FTEs providing hospice services, for each type of employee, during the reporting period;
23. The total number of FTEs providing hospice services during the reporting period;
24. The average caseload during the reporting period for a licensed nurse, calculated as the total number of patients assigned to licensed nurses working for the hospice during the reporting period, divided by the total number of licensed nurses working for the hospice during the reporting period, for:
  - a. Outpatient hospice services, and
  - b. Hospice services provided in hospice inpatient facilities;
25. The average caseload during the reporting period for a social worker, calculated as the total number of patients assigned to social workers working for the hospice during the reporting period, divided by the total number of social workers working for the hospice during the reporting period, for:
  - a. Outpatient hospice services, and
  - b. Hospice services provided in hospice inpatient facilities;
26. The average caseload during the reporting period for nursing personnel other than a licensed nurse, calculated as the total number of patients assigned to nursing personnel other than licensed nurses working for the hospice during the reporting period, divided by the total number

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- of nursing personnel other than licensed nurses working for the hospice during the reporting period, for:
- a. Outpatient hospice services, and
  - b. Hospice services provided in hospice inpatient facilities;
27. The average caseload during the reporting period for a chaplain, calculated as the total number of patients assigned to chaplains working for the hospice during the reporting period, divided by the total number of chaplains working for the hospice during the reporting period, for:
    - a. Outpatient hospice services, and
    - b. Hospice services provided in hospice inpatient facilities;
  28. The number of individuals who received bereavement services from the hospice during the reporting period;
  29. The number of individuals from the hospice who provided bereavement services during the reporting period;
  30. The total number of volunteers during the reporting period;
  31. The total number of hours that volunteers provided hospice services during the reporting period;
  32. The number of patient care days during the reporting period, for whom:
    - a. The payer source was:
      - i. Medicare,
      - ii. AHCCCS,
      - iii. Self-pay,
      - iv. A private insurance company, and
      - v. A payer source not specified in subsections (C)(32)(a)(i) through (C)(32)(a)(iv), and
    - b. There was no payer source identified;
  33. The total number of patient care days specified in subsections (C)(32);
  34. The total amount of money billed, during the reporting period to:
    - a. Medicare,
    - b. AHCCCS,
    - c. Self-pay,
    - d. A private insurance company, and
    - e. A payer source not specified in subsections (C)(34)(a) through (C)(34)(d);
  35. The total amount of money billed during the reporting period;
  36. The amount of revenue generated, for each type of revenue, by the hospice during the reporting period;
  37. The amount of allowances given, for each type of allowance, by the hospice during the reporting period;
  38. The total amount of revenue generated and allowances given by the hospice during the reporting period;
  39. The operating expenses incurred, for each type of operating expense, by the hospice during the reporting period;
  40. The total operating expenses incurred by the hospice during the reporting period;
  41. The difference between the amount identified in subsection (C)(38) and the amount identified in subsection (C)(40);
  42. The income and expenses, other than revenue and operating expenses, for each type of income received and expense incurred by the hospice during the reporting period;
  43. The amount of assets, for each type of asset, of the hospice at the end of the reporting period;
  44. The total amount of assets of the hospice at the end of the reporting period;
  45. The amount of liabilities, for each type of liability, of the hospice at the end of the reporting period;
  46. The total amount of liabilities of the hospice at the end of the reporting period;
  47. The amount of net assets, for each type of net asset, of the hospice at the end of the reporting period;
  48. The total amount of net assets of the hospice at the end of the reporting period;
  49. The difference between the amount identified in subsection (C)(48) and the amount identified in subsection (C)(46); and
  50. The statement of cash flows required in A.R.S. § 36-125.04(C)(3).
- D.** A hospice administrator or designee shall:
1. On a form provided by the Department:
    - a. Attest that, to the best of the knowledge and belief of the hospice administrator or designee, the information submitted according to subsections (B) and (C) is accurate and complete; or
    - b. If the hospice administrator or designee has personal knowledge that the information submitted according to subsections (B) and (C) is not accurate or not complete:
      - i. Identify the information that is not accurate or not complete;
      - ii. Describe the circumstances that make the information not accurate or not complete;
      - iii. State what actions the hospice is taking to correct the inaccurate information or make the information complete; and
      - iv. Attest that, to the best of the knowledge and belief of the hospice administrator or designee, the information submitted according to subsections (B) and (C), except the information identified in subsection (D)(1)(b)(i), is accurate and complete; and
  2. Submit the form specified in subsection (D)(1) as part of the uniform accounting report required in subsection (A).
- E.** A hospice administrator who receives a request from the Department for revision of a uniform accounting report not prepared according to subsections (B), (C), and (D) shall ensure that the revised uniform accounting report is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- F.** If a hospice administrator or designee does not submit a uniform accounting report according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-126.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-206. Reserved****R9-11-207. Reserved****R9-11-208. Reserved****R9-11-209. Reserved****R9-11-210. Reserved****R9-11-211. Repealed****Historical Note**

Adopted effective January 16, 1976 (Supp. 76-1).

Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-212. Repealed**

**Historical Note**

Adopted effective January 16, 1976 (Supp. 76-1).  
Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**R9-11-213. Repealed**

**Historical Note**

Adopted effective January 16, 1976 (Supp. 76-1).  
Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2).

**ARTICLE 3. RATES AND CHARGES SCHEDULES**

**R9-11-301. Definitions**

In this Article, unless otherwise specified:

1. “Adolescent” means an individual the hospital designates as an adolescent based on the hospital’s criteria.
2. “Adult” means the same as in A.A.C. R9-10-201.
3. “Behavioral health service” means the same as in A.A.C. R9-20-101.
4. “Blood bank cross match” means a laboratory analysis, performed by a facility that stores and preserves donated blood, to test the compatibility of a quantity of blood donated by one individual with another individual who is the intended recipient of the blood.
5. “Complete blood count with differential” means enumerating the number of red blood cells, platelets, and white blood cells in a sample of an individual’s blood, and including in the enumeration of white blood cells the number of each type of white blood cell.
6. “Contrast medium” means a substance opaque to x-rays, radio waves, or electromagnetic radiation that enhances an image of internal body structures.
7. “CT” means Computed Tomography, a diagnostic procedure in which x-ray measurements from many angles are used to provide images of internal body structures.
8. “Current rates and charges information” means the most recent rates and charges schedule for a health care institution on file with the Department, and all documents changing the most recent rates and charges schedule.
9. “Drug” means the same as in A.R.S. § 32-1901.
10. “EEG” means electroencephalogram, a diagnostic procedure used to measure the electrical activity of the brain.
11. “EKG” means electrocardiogram, a diagnostic procedure used to measure the electrical activity of the heart.
12. “Facility” means a building and associated personnel and equipment that perform a particular service or activity.
13. “Formulary” means a list of drugs that are available to a patient through a hospital.
14. “Home health agency” means the same as in A.R.S. § 36-151.
15. “Home health agency administrator” means the chief administrative officer for a home health agency.
16. “Hospital department” means a subdivision of a hospital providing administrative oversight for one or more charge sources.
17. “Implementation date” means the month, day, and year a health care institution intends to begin using specific rates and charges when billing a patient or resident.
18. “Intensive care bed” means an available bed used to provide intensive care services, as defined in A.A.C. R9-10-201, to a patient.
19. “IVP” means intravenous pyelography, a diagnostic procedure that uses an injection of a contrast medium into a vein and x-rays to provide images of the kidneys, ureters, bladder, and urethra.
20. “Labor and delivery” means services provided to a woman related to childbirth.
21. “Lithotripsy” means a procedure that uses sound waves to break up hardened deposits of mineral salts inside the human body.
22. “Mark-up” means the difference between the dollar amount a hospital pays for a drug, commodity, or service and the charge billed to a patient.
23. “MRI” means Magnetic Resonance Imaging, a diagnostic procedure that uses a magnetic field and radio waves to provide images of internal body structures.
24. “Neonate” means the same as in A.A.C. R9-10-201.
25. “Nursery bed” means an available bed used to provide hospital services to a neonate.
26. “Outpatient treatment center” means the same as in A.A.C. R9-10-101.
27. “Outpatient treatment center administrator” means the chief administrative officer for an outpatient treatment center.
28. “Overview form” means a document:
  - a. Submitted by a hospital to the Department as part of a rates and charges schedule or a change to the hospital’s current rates and charges information, and
  - b. That contains the information required in R9-11-302(B)(2) for the hospital.
29. “Pediatric” means the same as in A.A.C. R9-10-201.
30. “Pediatric bed” means an available bed used to provide hospital services to a pediatric patient.
31. “Physical therapy” means the same as in A.R.S. § 32-2001.
32. “Post-hospital extended care services” means the services that are described in and meet the requirements of 42 CFR 409.31.
33. “Private room” means a room that contains one available bed.
34. “Rate” means a specific dollar amount per unit of service set by a health care institution.
35. “Rates and charges schedule” means a document that meets the requirements of A.R.S. Title 36, Chapter 4, Article 3 and contains the information required in R9-11-302(B) for hospitals, R9-11-303(A)(2) for nursing care institutions, R9-11-304(A)(2) for home health agencies, or R9-11-305(A)(2) for outpatient treatment centers.
36. “Rehabilitation bed” means a type of bed used to provide services to a patient to restore or to optimize the patient’s functional capability.
37. “Review” means an analysis of a document to ensure that the document is in compliance with the requirements of this Article.
38. “Semi-private room” means a room that contains two available beds.
39. “Skilled nursing bed” means an available bed used for a patient requiring skilled nursing services.
40. “Skilled nursing services” means nursing services provided by an individual licensed under A.R.S. Title 32, Chapter 15.

41. “Small volume nebulizer” means a device that:
    - a. Holds liquid medicine that is turned into a mist by an air compressor, and
    - b. Is used for treatments lasting less than 20 minutes.
  42. “Swing bed” means an available bed for which a hospital has been granted an approval from the Centers for Medicare and Medicaid Services to provide post-hospital extended care services and be reimbursed as a swing-bed hospital.
  43. “Swing-bed hospital” means the same as in 42 CFR 413.114.
  44. “Trauma team activation” means a notification by a health care institution:
    - a. That alerts individuals designated by the health care institution to respond to a particular type of emergency;
    - b. That is based on a patient’s triage information; and
    - c. For which the health care institution uses Revenue Category 068X of the National Uniform Billing Committee, UB-04 Data Specifications Manual to bill charges.
  45. “Ultrasound” means a diagnostic procedure that uses high-frequency sound waves to provide images of internal body structures.
- a. Attests that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (A)(1) and (B) is accurate and complete; or
  - b. If the hospital administrator or designee has personal knowledge that the information submitted according to subsections (A)(1) and (B) is not accurate or not complete:
    - i. Identifies the information that is not accurate or not complete;
    - ii. Describes the circumstances that make the information not accurate or not complete;
    - iii. States what actions the hospital is taking to correct the inaccurate information or make the information complete; and
    - iv. Attests that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (A)(1) and (B), except the information identified in subsection (A)(3)(b)(i), is accurate and complete.
- B.** A hospital administrator shall ensure that a rates and charges schedule:

#### Historical Note

Adopted effective May 22, 1989 (Supp. 89-2). Repealed effective June 25, 1993, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 197, § 2; received in the Office of the Secretary of State June 10, 1993 (Supp. 93-2). New Section adopted effective February 22, 1995, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1994, Ch. 115, § 9 (Supp. 95-1). Former R9-11-301 recodified to R9-11-401; new R9-11-301 recodified from R9-11-103 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

#### R9-11-302. Hospital Rates and Charges Schedule

- A.** Before a hospital provides services to patients, a hospital administrator or designee shall submit to the Department a rates and charges package that contains:
1. A cover letter that includes:
    - a. The name, physical address, mailing address, county, and telephone number of the hospital;
    - b. The identification number assigned to the hospital:
      - i. By the Department;
      - ii. By AHCCCS, if applicable;
      - iii. By Medicare, if applicable; and
      - iv. As the hospital’s national provider identifier;
    - c. The name, telephone number, and e-mail address of:
      - i. The hospital administrator,
      - ii. The hospital chief financial officer, and
      - iii. Another individual involved in the preparation of the rates and charges package whom the Department may contact regarding the rates and charges package; and
    - d. The planned implementation date for the rates and charges;
  2. A rates and charges schedule prepared as specified in subsection (B); and
  3. A form provided by the Department, on which the hospital administrator or designee:
    - a. Attests that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (A)(1) and (B) is accurate and complete; or
    - b. If the hospital administrator or designee has personal knowledge that the information submitted according to subsections (A)(1) and (B) is not accurate or not complete:
      - i. Identifies the information that is not accurate or not complete;
      - ii. Describes the circumstances that make the information not accurate or not complete;
      - iii. States what actions the hospital is taking to correct the inaccurate information or make the information complete; and
      - iv. Attests that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (A)(1) and (B), except the information identified in subsection (A)(3)(b)(i), is accurate and complete.
- B.** Contains a table of contents for the rates and charges schedule that lists:
- a. The beginning line number or page number for the hospital rates and charges overview form required in subsection (B)(2);
  - b. For each hospital department:
    - i. The hospital department’s name and identification number,
    - ii. The beginning line number or page number of the rates and charges schedule for the hospital department, and
    - iii. The charge source’s name and identification number for each charge source within the hospital department;
  - c. The beginning line number or page number for the list required in subsection (B)(4) that matches the name of each charge source with its charge source identification number;
  - d. The beginning line number or page number for the formula section for formulary, commodity, and contracted services mark-ups required in subsection (B)(5); and
  - e. The beginning line number or page number for the copy of the hospital’s allowance rules and formulae required in subsection (B)(6);
2. Contains an overview form, in a format specified by the Department, that includes:
- a. The hospital’s name, city, and county;
  - b. The identification number assigned to the hospital by the Department;
  - c. The name, telephone number, and e-mail of the individual who prepared the overview form;
  - d. The date the overview form was submitted to the Department;
  - e. The hospital’s licensed capacity;
  - f. Whether the entity that is the owner of the hospital is:
    - i. Not for profit;
    - ii. For profit; or
    - iii. A federal, state, or local government agency;
  - g. The hospital’s classification;

- h. The planned implementation date for the rates and charges in the overview form;
  - i. The total percent increase of the rates and charges listed in the overview form compared with the rates and charges from the last overview form, if applicable;
  - j. The date the overview form was last changed, if applicable;
  - k. The daily charge for a private room;
  - l. The daily charge for a semi-private room;
  - m. The daily charge for a pediatric bed;
  - n. The daily charge for a nursery bed;
  - o. The daily charge for a pediatric intensive care bed;
  - p. The daily charge for a neonatal intensive care bed;
  - q. The daily charge for a cardiovascular intensive care bed;
  - r. The daily charge for a swing bed;
  - s. The daily charge for a rehabilitation bed;
  - t. The daily charge for a skilled nursing bed;
  - u. The minimum charges for labor and delivery;
  - v. The minimum charge for trauma team activation;
  - w. The minimum charge for an EEG;
  - x. The minimum charge for an EKG;
  - y. The minimum charge for a complete blood count with differential;
  - z. The minimum charge for a blood bank crossmatch;
  - aa. The minimum charge for a lithotripsy;
  - bb. The minimum charge for an x-ray;
  - cc. The minimum charge for an IVP;
  - dd. The minimum charge for a respiratory therapy session with a small volume nebulizer;
  - ee. The minimum charge for a CT scan of a head without contrast medium;
  - ff. The minimum charge for a CT scan of an abdomen with contrast medium;
  - gg. The minimum charge for an abdomen ultrasound;
  - hh. The minimum charge for a brain MRI without contrast medium;
  - ii. The minimum charge for 15 minutes of physical therapy;
  - jj. The daily rate for behavioral health services for:
    - i. An adult patient,
    - ii. An adolescent patient, and
    - iii. A pediatric patient; and
  - kk. The code, if applicable, for the units of service specified in subsections (B)(2)(k) through (B)(2)(jj);
3. Lists for each hospital department, in a format specified by the Department:
    - a. The hospital department name and identification number;
    - b. The charge source name and identification number for each charge source within the hospital department; and
    - c. For each unit of service offered by the hospital for which a separate rate or charge is billed from the charge source:
      - i. The unit of service code;
      - ii. A description of the unit of service;
      - iii. The rate or charge for the unit of service; and
      - iv. The number of times a separate charge was billed for the unit of service during the previous 12 months, if applicable;
  4. Contains a list that matches the name of each charge source with its charge source identification number;
  5. Contains a formula section for formulary, commodity, and contracted services mark-ups; and
  6. Contains a copy of the hospital's allowance rules and formulae, if applicable.
- C. To change a hospital's current rates and charges information, a hospital administrator or designee shall submit to the Department:
    1. A cover letter:
      - a. Containing the information specified in subsection (A)(1), and
      - b. Stating that the accompanying information is changing the hospital's current rates and charges information;
    2. Either:
      - a. The rates and charges schedule specified in subsection (A)(2); or
      - b. The following information:
        - i. A description of:
          - (1) The current and new rate or charge for each unit of service undergoing a change;
          - (2) The name of each charge source undergoing a change and its charge source identification number;
          - (3) The current and new formulary, commodity, and contracted services formulae for each change in the hospital's mark-up;
          - (4) The current and new allowance rules and formulae for each change in the hospital's allowance rules and formulae; and
          - (5) How the hospital rates and charges overview form required in subsection (B)(2) is affected by the changes specified in subsections (C)(2)(b)(i)(1) through (C)(2)(b)(i)(4);
        - ii. The line number or page number in the hospital's current rates and charges information for each change listed in subsection (C)(2)(b)(i); and
        - iii. A list of each previous change:
          - (1) To a rate; charge; charge source; formulary, commodity, or contracted services formula; or allowance rule or formula being changed;
          - (2) That was submitted since the last rates and charges schedule submitted according to subsection (A)(2) or (C)(2)(a); and
          - (3) Including:
            - (a) The date the rate; charge; charge source; formulary, commodity, or contracted services formula; or allowance rule or formula was previously changed; and
            - (b) A description of how the rate; charge; charge source; formulary, commodity, or contracted services formula; or allowance rule or formula was previously changed; and
    3. A form provided by the Department, on which the hospital administrator or designee:
      - a. Attests that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (C)(1) and (C)(2) is accurate and complete; or
      - b. If the hospital administrator or designee has personal knowledge that the information submitted according

- to subsections (C)(1) and (C)(2) is not accurate or not complete:
- i. Identifies the information that is not accurate or not complete;
  - ii. Describes the circumstances that make the information not accurate or not complete;
  - iii. States what actions the hospital is taking to correct the inaccurate information or make the information complete; and
  - iv. Attests that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsections (C)(1) and (C)(2), except the information identified in subsection (C)(3)(b)(i), is accurate and complete.
- D.** A hospital administrator shall implement rates and charges for a rates and charges schedule, submitted as specified in subsection (A), on a date determined by the hospital but not earlier than:
1. The date the Department notifies the hospital that the Department has completed a review of the rates and charges schedule, or
  2. Sixty calendar days after the Department notifies the hospital that the Department received the rates and charges schedule.
- E.** A hospital administrator shall implement a change in the hospital's current rates and charges information submitted as specified in subsection (C):
1. That is:
    - a. A new rate; charge; charge source; formulary, commodity, or contracted services formula; or allowance rule or formula;
    - b. An increase in a rate or charge;
    - c. A change to a formulary, commodity, or contracted services formula, which results in an increase in a rate or charge; or
    - d. A change to an allowance rule or formula, which results in an increase in a rate or charge; and
  2. On a date determined by the hospital, but not earlier than:
    - a. The date the Department notifies the hospital that the Department has completed a review of the information submitted as specified in subsection (C), or
    - b. Sixty calendar days after the Department notifies the hospital that the Department received the information submitted as specified in subsection (C).
- F.** A hospital administrator shall implement a change in the hospital's current rates and charges information submitted as specified in subsection (C):
1. That is:
    - a. A deletion of a rate; charge; charge source; formulary, commodity, or contracted services formula; or allowance rule or formula;
    - b. A reduction in a rate or charge;
    - c. A change to a formulary, commodity, or contracted services formula, which results in a reduction in a rate or charge; or
    - d. A change to an allowance rule or formula, which results in a reduction in a rate or charge; and
  2. On a date:
    - a. Determined by the hospital, and
    - b. Not earlier than the date the Department notifies the hospital that the Department received the information submitted as specified in subsection (C).
- G.** When the Department receives from a hospital a rates and charges schedule submitted as specified in subsection (A), or a change in the hospital's current rates and charges information submitted as specified in subsection (C), the Department shall:
1. Provide written notice to the hospital within five business days of receipt of the rates and charges information, and
  2. Provide written notice to the hospital within 60 calendar days that the Department has reviewed the rates and charges information.
- H.** A hospital administrator, who receives a request from the Department for a revision of a rates and charges schedule not prepared as specified in subsection (A) or for a revision of a change in the hospital's current rates and charges information not prepared as specified in subsection (C), shall ensure that the revised rates and charges schedule or the revised information changing the current rates and charges information is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- I.** If a hospital administrator or designee does not submit a rates and charges schedule or information about changes to the hospital's rates or charges according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-431.01.

**Historical Note**

Section adopted effective February 22, 1995, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1994, Ch. 115, § 9 (Supp. 95-1). Former R9-11-302 recodified to R9-11-402; new R9-11-302 recodified from R9-11-104 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**Table 1. Recodified****Historical Note**

Adopted effective February 22, 1995, through an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1994, Ch. 115, § 9 (Supp. 95-1). Table 1 recodified to Article 4 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3).

**R9-11-303. Nursing Care Institution Rates and Charges Schedule**

- A.** Before a nursing care institution provides services to residents, a nursing care institution administrator or designee shall submit to the Department a rates and charges package that contains:
1. A cover letter that includes:
    - a. The name, physical address, mailing address, county, and telephone number of the nursing care institution;
    - b. The name, physical address, mailing address, and telephone number of the nursing care institution's:
      - i. Home office, if applicable; and
      - ii. Management company, if applicable;
    - c. The identification number assigned to the nursing care institution:
      - i. By the Department;
      - ii. By AHCCCS, if applicable;
      - iii. By Medicare, if applicable; and
      - iv. As the nursing care institution's national provider identifier;

- d. The name, telephone number, and e-mail address of:
    - i. The nursing care institution administrator,
    - ii. The nursing care institution chief financial officer, and
    - iii. Another individual involved in the preparation of the rates and charges package whom the Department may contact regarding the rates and charges package; and
  - e. The planned implementation date for the rates and charges;
  - 2. A rates and charges schedule, in a format specified by the Department, containing:
    - a. A table of contents;
    - b. A description of and the rates and charges for:
      - i. Each type of bed; and
      - ii. Each unit of service, other than a type of bed, for which a separate rate or charge is billed; and
    - c. A copy of any nursing care institution rules or formulae which may affect the rate or charge for a type of bed or other unit of service; and
  - 3. A form provided by the Department, on which the nursing care institution administrator or designee:
    - a. Attests that, to the best of the knowledge and belief of the nursing care institution administrator or designee, the information submitted according to subsections (A)(1) and (A)(2) is accurate and complete; or
    - b. If the nursing care institution administrator or designee has personal knowledge that the information submitted according to subsections (A)(1) and (A)(2) is not accurate or not complete:
      - i. Identifies the information that is not accurate or not complete;
      - ii. Describes the circumstances that make the information not accurate or not complete;
      - iii. States what actions the nursing care institution is taking to correct the inaccurate information or make the information complete; and
      - iv. Attests that, to the best of the knowledge and belief of the nursing care institution administrator or designee, the information submitted according to subsections (A)(1) and (A)(2), except the information identified in subsection (A)(3)(b)(i), is accurate and complete.
- B.** To change a nursing care institution's current rates and charges information, a nursing care institution administrator or designee shall submit to the Department:
- 1. A cover letter:
    - a. Containing the information specified in subsection (A)(1), and
    - b. Stating that the accompanying information is changing the nursing care institution's current rates and charges information;
  - 2. Either:
    - a. The rates and charges schedule specified in subsection (A)(2); or
    - b. The following information:
      - i. A description of:
        - (1) The current and new rate or charge for each type of bed or other unit of service undergoing a change, and
        - (2) The current and new rules and formulae for each change to the nursing care institution rules or formulae that may affect the rate or charge for a type of bed or other unit of service;
      - ii. The line number or page number in the nursing care institution's current rates and charges information for each change listed in subsection (B)(2)(b)(i); and
      - iii. A list of each previous change:
        - (1) To a rate, charge, rule, or formula being changed;
        - (2) That was submitted since the last rates and charges schedule submitted according to subsection (A)(2) or (B)(2)(a); and
        - (3) Including:
          - (a) The date the rate, charge, rule, or formula was previously changed; and
          - (b) A description of how the rate, charge, rule, or formula was previously changed; and
- C.** A nursing care institution administrator shall implement rates and charges for a rates and charges schedule, submitted as specified in subsection (A), on a date determined by the nursing care institution but not earlier than:
- 1. The date the Department notifies the nursing care institution that the Department has completed a review of the rates and charges schedule, or
  - 2. Sixty calendar days after the Department notifies the nursing care institution that the Department received the rates and charges schedule.
- D.** A nursing care institution administrator shall implement a change in the nursing care institution's current rates and charges information submitted as specified in subsection (B):
- 1. That is:
    - a. A new rate, charge, rule, or formula;
    - b. An increase in a rate or charge; or
    - c. A change to a rule or formula, which results in an increase in a rate or charge; and
  - 2. On a date determined by the nursing care institution, but not earlier than:
    - a. The date the Department notifies the nursing care institution that the Department has completed a

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- review of the information submitted as specified in subsection (B), or
- b. Sixty calendar days after the Department notifies the nursing care institution that the Department received the information submitted as specified in subsection (B).
- E.** A nursing care institution administrator shall implement a change in the nursing care institution's current rates and charges information submitted as specified in subsection (B):
1. That is:
    - a. A deletion of rate or charge;
    - b. A reduction in a rate or charge; or
    - c. A change to a rule or formula, which results in a reduction in a rate or charge; and
  2. On a date:
    - a. Determined by the nursing care institution, and
    - b. Not earlier than the date the Department notifies the nursing care institution that the Department received the information submitted as specified in subsection (B).
- F.** When the Department receives from a nursing care institution a rates and charges schedule submitted as specified in subsection (A), or a change in the nursing care institution's current rates and charges information submitted as specified in subsection (B), the Department shall:
1. Provide written notice to the nursing care institution within five business days of receipt of the rates and charges information, and
  2. Provide written notice to the nursing care institution within 60 calendar days that the Department has reviewed the rates and charges information.
- G.** A nursing care institution administrator, who receives a request from the Department for a revision of a rates and charges schedule not prepared as specified in subsection (A) or for a revision of a change in the nursing care institution's current rates and charges information not prepared as specified in subsection (B), shall ensure that the revised rates and charges schedule or the revised information changing the current rates and charges information is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- H.** If a nursing care institution administrator or designee does not submit a rates and charges schedule or information about changes to the nursing care institution's rates and charges according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-431.01.
- Historical Note**
- Section recodified from R9-11-105 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).
- R9-11-304. Home Health Agency Rates and Charges Schedule**
- A.** Before a home health agency provides services to patients, a home health agency administrator or designee shall submit to the Department a rates and charges package that contains:
1. A cover letter that includes:
    - a. The name, physical address, mailing address, county, and telephone number of the home health agency;
    - b. The identification number assigned to the home health agency:
      - i. By the Department;
      - ii. By AHCCCS, if applicable;
      - iii. By Medicare, if applicable; and
      - iv. As the home health agency's national provider identifier;
  - c. The name, telephone number, and e-mail address of:
    - i. The home health agency administrator,
    - ii. The home health agency chief financial officer, and
    - iii. Another individual involved in the preparation of the rates and charges package whom the Department may contact regarding the rates and charges package; and
  - d. The planned implementation date for the rates and charges;
- 2. Either:**
- a. A rates and charges schedule, in a format specified by the Department, containing:
    - i. A table of contents;
    - ii. For each unit of service offered for which a separate rate or charge is billed:
      - (1) The unit of service code,
      - (2) A description of the unit of service, and
      - (3) The rate or charge for the unit of service; and
    - iii. A copy of any home health agency rules or formulae that may affect the rate or charge for a unit of service; or
  - b. Current cost reports and financial information that the home health agency files for other government reporting purposes if the current cost reports and financial information submitted to the Department contain the information required in subsections (A)(2)(a)(ii) and (A)(2)(a)(iii); and
- 3. A form provided by the Department, on which the home health agency administrator or designee:**
- a. Attests that, to the best of the knowledge and belief of the home health agency administrator or designee, the information submitted according to subsections (A)(1) and (A)(2) is accurate and complete; or
  - b. If the home health agency administrator or designee has personal knowledge that the information submitted according to subsections (A)(1) and (A)(2) is not accurate or not complete:
    - i. Identifies the information that is not accurate or not complete;
    - ii. Describes the circumstances that make the information not accurate or not complete;
    - iii. States what actions the home health agency is taking to correct the inaccurate information or make the information complete; and
    - iv. Attests that, to the best of the knowledge and belief of the home health agency administrator or designee, the information submitted according to subsections (A)(1) and (A)(2), except the information identified in subsection (A)(3)(b)(i), is accurate and complete.
- B.** To change a home health agency's current rates and charges information, a home health agency administrator or designee shall submit to the Department:
1. A cover letter:
    - a. Containing the information specified in subsection (A)(1), and

- b. Stating that the accompanying information is changing the home health agency's current rates and charges information;
2. Either:
- a. The rates and charges schedule specified in subsection (A)(2)(a) or the current cost reports and financial information specified in subsection (A)(2)(b); or
- b. The following information:
- i. A description of:
- (1) The current and new rate or charge for each unit of service undergoing a change, and
  - (2) The current and new rules and formulae for each change to the home health agency rules or formulae which may affect the rate or charge for a unit of service;
- ii. The line number or page number in the home health agency's current rates and charges information for each change listed in subsection (B)(2)(b)(i); and
- iii. A list of each previous change:
- (1) To a rate, charge, rule, or formula being changed;
  - (2) That was submitted since the last submission made according to subsection (A)(2) or (B)(2)(a); and
  - (3) Including:
    - (a) The date the rate, charge, rule, or formula was previously changed; and
    - (b) A description of how the rate, charge, rule, or formula was previously changed; and
3. A form provided by the Department, on which the home health agency administrator or designee:
- a. Attests that, to the best of the knowledge and belief of the home health agency administrator or designee, the information submitted according to subsections (B)(1) and (B)(2) is accurate and complete; or
- b. If the home health agency administrator or designee has personal knowledge that the information submitted according to subsections (B)(1) and (B)(2) is not accurate or not complete:
- i. Identifies the information that is not accurate or not complete;
  - ii. Describes the circumstances that make the information not accurate or not complete;
  - iii. States what actions the home health agency is taking to correct the inaccurate information or make the information complete; and
  - iv. Attests that, to the best of the knowledge and belief of the home health agency administrator or designee, the information submitted according to subsections (B)(1) and (B)(2), except the information identified in subsection (B)(3)(b)(i), is accurate and complete.
- C.** A home health agency administrator shall implement rates and charges for a rates and charges schedule submitted as specified in subsection (A) or for a change in the home health agency's current rates and charges information submitted as specified in subsection (B) on a date determined by the home health agency but not earlier than the date the Department notifies the home health agency that the Department received the rates and charges information.
- D.** When the Department receives from a home health agency a rates and charges schedule submitted as specified in subsection (A) or a change in the home health agency's current rates and charges information submitted as specified in subsection (B), the Department shall provide written notice to the home health agency within five business days of receipt of the rates and charges information.
- E.** A home health agency administrator, who receives a request from the Department for a revision of a rates and charges schedule not prepared as specified in subsection (A) or for a revision of a change in the home health agency's current rates and charges information not prepared as specified in subsection (B), shall ensure that the revised rates and charges schedule or the revised information changing the current rates and charges information is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- F.** If a home health agency administrator or designee does not submit a rates and charges schedule or information about changes to the home health agency's rates and charges according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-431.01.

#### Historical Note

Section recodified from R9-11-106 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

#### **R9-11-305. Outpatient Treatment Center Rates and Charges Schedule**

- A.** Before an outpatient treatment center provides services to patients, an outpatient treatment center administrator or designee shall submit to the Department a rates and charges package that contains:
1. A cover letter that includes:
    - a. The name, physical address, mailing address, county, and telephone number of the outpatient treatment center;
    - b. The identification number assigned to the outpatient treatment center:
      - i. By the Department;
      - ii. By AHCCCS, if applicable;
      - iii. By Medicare, if applicable; and
      - iv. As the outpatient treatment center's national provider identifier;
    - c. The name, telephone number, and e-mail address of:
      - i. The outpatient treatment center administrator,
      - ii. The outpatient treatment center chief financial officer, and
      - iii. Another individual involved in the preparation of the rates and charges package whom the Department may contact regarding the rates and charges package; and
    - d. The planned implementation date for the rates and charges;
  2. Either:
    - a. A rates and charges schedule, in a format specified by the Department, containing:
      - i. A table of contents;
      - ii. For each unit of service offered for which a separate rate or charge is billed:

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- (1) The unit of service code,
      - (2) A description of the unit of service, and
      - (3) The rate or charge for the unit of service; and
    - iii. A copy of any outpatient treatment center rules or formulae which may affect the rate or charge for a unit of service; or
    - b. Current cost reports and financial information that the outpatient treatment center files for other government reporting purposes if the current cost reports and financial information submitted to the Department contain the information required in subsections (A)(2)(a)(ii) and (A)(2)(a)(iii); and
  3. A form provided by the Department, on which the outpatient treatment center administrator or designee:
    - a. Attests that, to the best of the knowledge and belief of the outpatient treatment center administrator or designee, the information submitted according to subsections (A)(1) and (A)(2) is accurate and complete; or
    - b. If the outpatient treatment center administrator or designee has personal knowledge that the information submitted according to subsections (A)(1) and (A)(2) is not accurate or not complete:
      - i. Identifies the information that is not accurate or not complete;
      - ii. Describes the circumstances that make the information not accurate or not complete;
      - iii. States what actions the outpatient treatment center is taking to correct the inaccurate information or make the information complete; and
      - iv. Attests that, to the best of the knowledge and belief of the outpatient treatment center administrator or designee, the information submitted according to subsections (A)(1) and (A)(2), except the information identified in subsection (A)(3)(b)(i), is accurate and complete.
- B.** To change an outpatient treatment center's current rates and charges information, an outpatient treatment center administrator or designee shall submit to the Department:
1. A cover letter:
    - a. Containing the information specified in subsection (A)(1), and
    - b. Stating that the accompanying information is changing the outpatient treatment center's current rates and charges information;
  2. Either:
    - a. The rates and charges schedule specified in subsection (A)(2)(a) or the current cost reports and financial information specified in subsection (A)(2)(b); or
    - b. The following information:
      - i. A description of:
        - (1) The current and new rate or charge for each unit of service undergoing a change, and
        - (2) The current and new rules and formulae for each change to the outpatient treatment center rules or formulae which may affect the rate or charge for a unit of service;
      - ii. The line number or page number in the outpatient treatment center's current rates and charges information for each change listed in subsection (B)(2)(b)(i); and
- iii. A list of each previous change:
  - (1) To a rate, charge, rule, or formula being changed;
  - (2) That was submitted since the last submission made according to subsection (A)(2) or (B)(2)(a); and
  - (3) Including:
    - (a) The date the rate, charge, rule, or formula was previously changed; and
    - (b) A description of how the rate, charge, rule, or formula was previously changed; and
3. A form provided by the Department, on which the outpatient treatment center administrator or designee:
  - a. Attests that, to the best of the knowledge and belief of the outpatient treatment center administrator or designee, the information submitted according to subsections (B)(1) and (B)(2) is accurate and complete; or
  - b. If the outpatient treatment center administrator or designee has personal knowledge that the information submitted according to subsections (B)(1) and (B)(2) is not accurate or not complete:
    - i. Identifies the information that is not accurate or not complete;
    - ii. Describes the circumstances that make the information not accurate or not complete;
    - iii. States what actions the outpatient treatment center is taking to correct the inaccurate information or make the information complete; and
    - iv. Attests that, to the best of the knowledge and belief of the outpatient treatment center administrator or designee, the information submitted according to subsections (B)(1) and (B)(2), except the information identified in subsection (B)(3)(b)(i), is accurate and complete.
- C.** An outpatient treatment center administrator shall implement rates and charges for a rates and charges schedule submitted as specified in subsection (A) or for a change in the outpatient treatment center's current rates and charges information submitted as specified in subsection (B) on a date determined by the outpatient treatment center but not earlier than the date the Department notifies the outpatient treatment center that the Department received the rates and charges information.
- D.** When the Department receives from an outpatient treatment center a rates and charges schedule submitted as specified in subsection (A) or a change in the outpatient treatment center's rates and charges information submitted as specified in subsection (B), the Department shall provide written notice to the outpatient treatment center within five business days of receipt of the rates and charges information.
- E.** An outpatient treatment center administrator, who receives a request from the Department for a revision of a rates and charges schedule not prepared as specified in subsection (A) or for a revision of a change in the outpatient treatment center's current rates and charges information not prepared as specified in subsection (B), shall ensure that the revised rates and charges schedule or the revised information changing the current rates and charges information is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.

F. If an outpatient treatment center administrator or designee does not submit a rates and charges schedule or information about changes to the outpatient treatment center's rates and charges according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-431.01.

**Historical Note**

Section recodified from R9-11-107 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-306. Expired**

**Historical Note**

Section recodified from R9-11-108 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2).

**R9-11-307. Expired**

**Historical Note**

Section recodified from R9-11-109 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2).

**ARTICLE 4. HOSPITAL INPATIENT DISCHARGE REPORTING**

*Article 4, consisting of R9-11-401 and R9-11-402, made by final rulemaking at 9 A.A.R. 2105, effective June 3, 2003 (Supp. 03-2).*

**R9-11-401. Definitions**

In this Article, unless otherwise specified:

1. "Admitting diagnosis" means the reason an individual is admitted to a hospital.
2. "DRG" means Diagnosis Related Group, a type of prospective payment system used in billing for inpatient episodes of care.
3. "HIPPS" means the Health Insurance Prospective Payment System, a type of prospective payment system used by specific health care institutions, such as rehabilitation hospitals, for billing for services provided by the health care institutions.
4. "Inpatient discharge report" means a document that meets the requirements of A.R.S. § 36-125.05 and contains the information required in R9-11-402.
5. "Length of stay" means the total number of calendar days for a specific episode of care, from the date of admission to the date of discharge.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 2105, effective June 3, 2003 (Supp. 03-2). Former R9-11-401 recodified to R9-11-501; new R9-11-401 recodified from R9-11-301 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-402. Reporting Requirements**

- A. A hospital administrator shall ensure that the following information, in a format specified by the Department, is submitted to the Department with the inpatient discharge report required in subsection (C):
1. The name of the hospital;
  2. The hospital's Arizona facility ID and national provider identifier;

3. The name, mailing address, telephone number, and e-mail address of the individual at the hospital whom the Department may contact about the inpatient discharge report;
4. If the entity submitting the inpatient discharge report to the Department is different from the hospital:
  - a. The name of the entity submitting the inpatient discharge report to the Department; and
  - b. The name, mailing address, telephone number, and e-mail address of the individual at the entity specified in subsection (A)(4)(a) who prepared the inpatient discharge report;
5. The reporting period; and
6. The name of the electronic file containing the inpatient discharge report specified in subsection (C).

- B. A hospital administrator or designee shall on a form provided by the Department:
1. Attest that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsection (C) is accurate and complete; or
  2. If the hospital administrator or designee has personal knowledge that the information submitted according to subsection (C) is not accurate or not complete:
    - a. Identify the information that is not accurate or not complete;
    - b. Describe the circumstances that make the information not accurate or not complete;
    - c. State what actions the hospital is taking to correct the inaccurate information or make the information complete; and
    - d. Attest that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsection (C), except the information identified in subsection (B)(2)(a), is accurate and complete.
- C. A hospital administrator shall ensure that an inpatient discharge report:
1. Is prepared and named in a format specified by the Department;
  2. Uses codes and a coding format specified by the Department for data items specified in subsection (C)(3) that require codes; and
  3. Contains the following information for each inpatient discharge that occurred during the reporting period specified in subsection (A)(5):
    - a. The Arizona facility ID and national provider identifier for the hospital;
    - b. A code indicating that the information submitted about the patient is for an inpatient episode of care;
    - c. The patient's medical record number;
    - d. The patient's control number;
    - e. The patient's name;
    - f. The patient's mailing address;
    - g. If the patient is not a resident of the United States, a code indicating the country in which the patient resides;
    - h. A code indicating that the patient is homeless, if applicable;
    - i. The patient's date of birth and last four digits of the patient's Social Security number;
    - j. Codes indicating the patient's gender, race, ethnicity, and marital status;
    - k. The date and a code indicating the hour the patient was admitted to the hospital;
    - l. A code indicating the priority of visit;
    - m. A code indicating the referral source;

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- n. The date and a code indicating the hour the patient was discharged from the hospital;
  - o. A code indicating the patient's discharge status;
  - p. If the patient is a newborn, the patient's birth weight in grams;
  - q. Whether the patient has a DNR known to the hospital;
  - r. The date the bill for hospital services was created;
  - s. The total charges billed for the episode of care;
  - t. A code indicating the expected payer source;
  - u. For each unit of service billed for the episode of care, the:
    - i. Revenue code;
    - ii. Charge billed; and
    - iii. HIPPS code, if applicable;
  - v. The DRG code for the episode of care;
  - w. The code designating the version of the set of International Classification of Diseases codes used to prepare the bill for the episode of care;
  - x. The International Classification of Diseases codes for the patient's admitting, principal, and secondary diagnoses;
  - y. If applicable, the E-codes associated with the episode of care;
  - z. If applicable, the state in which an accident leading to the episode of care occurred;
  - aa. If applicable, the date of the onset of symptoms leading to the episode of care;
  - bb. If a procedure was performed during the episode of care:
    - i. The International Classification of Diseases codes for the principal procedure and any other procedures performed during the episode of care, and
    - ii. The dates the principal procedure and any other procedures were performed;
  - cc. The name, state license number, and, if applicable, national provider identifier of the patient's attending provider;
  - dd. The code for the state licensing board that issued the license for the patient's attending provider;
  - ee. The name, state license number, and, if applicable, national provider identifier of the medical practitioner who performed the patient's principal procedure, if applicable;
  - ff. The code for the state licensing board that issued the license for the medical practitioner who performed the patient's principal procedure, if applicable;
  - gg. The name, state license number, and, if applicable, national provider identifier of any other medical practitioner associated with the patient's episode of care; and
  - hh. The code for the state licensing board that issued the license for each of the individuals specified in subsection (C)(3)(gg).
- D.** A hospital administrator shall ensure that the report specified in subsection (C), the information specified in subsection (A), and the attestation statement specified in subsection (B) are submitted to the Department twice each calendar year, according to the following schedule:
1. For each inpatient discharge between January 1 and June 30, the reports, information, and attestation statement shall be submitted after June 30 and no later than August 15; and
  2. For each inpatient discharge between July 1 and December 31, the reports, information, and attestation statement shall be submitted after December 31 and no later than February 15.
- E.** A hospital administrator who receives a request from the Department for revision of a report not prepared according to subsections (A), (B), and (C) shall ensure that the revised report is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- F.** If a hospital administrator or designee does not submit the report specified in subsection (C), the information specified in subsection (A), and the attestation statement specified in subsection (B) according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-126.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 2105, effective June 3, 2003 (Supp. 03-2). Former R9-11-402 recodified to R9-11-502; new R9-11-402 recodified from R9-11-302 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**TABLE 1. Repealed****Historical Note**

Table 1 recodified from Article 3 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Table 1 repealed by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**ARTICLE 5. EMERGENCY DEPARTMENT DISCHARGE REPORTING****R9-11-501. Definitions**

In this Article, unless otherwise specified:

1. "CPT code" means a code from Current Procedural Terminology, a HCPCS coding system used primarily to identify medical services and procedures provided by medical practitioners.
2. "Emergency department discharge report" means a document that meets the requirements of A.R.S. § 36-125.05 and contains the information required in R9-11-502.
3. "HCPCS" means the Healthcare Common Procedure Coding System used by a hospital for billing for hospital services or commodities provided to an outpatient as defined in A.A.C. R9-10-201.

**Historical Note**

Section recodified from R9-11-401 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

**R9-11-502. Reporting Requirements**

- A.** A hospital administrator shall ensure that the following information, in a format specified by the Department, is submitted to the Department as part of the emergency department discharge report required in subsection (C):
1. The name of the hospital;
  2. The hospital's Arizona facility ID and national provider identifier;
  3. The name, mailing address, telephone number, and e-mail address of the individual at the hospital whom the Department may contact about the emergency department discharge report;

4. If the entity submitting the emergency department discharge report to the Department is different from the hospital:
    - a. The name of the entity submitting the emergency department discharge report to the Department; and
    - b. The name, mailing address, telephone number, and e-mail address of the individual at the entity specified in subsection (A)(4)(a) who prepared the emergency department discharge report;
  5. The reporting period; and
  6. The name of the electronic file containing the emergency department discharge report specified in subsection (C).
- B.** A hospital administrator or designee shall on a form provided by the Department:
1. Attest that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsection (C) is accurate and complete; or
  2. If the hospital administrator or designee has personal knowledge that the information submitted according to subsection (C) is not accurate or not complete:
    - a. Identify the information that is not accurate or not complete;
    - b. Describe the circumstances that make the information not accurate or not complete;
    - c. State what actions the hospital is taking to correct the inaccurate information or make the information complete; and
    - d. Attest that, to the best of the knowledge and belief of the hospital administrator or designee, the information submitted according to subsection (C), except the information identified in subsection (B)(2)(a), is accurate and complete.
- C.** A hospital administrator shall ensure that an emergency department discharge report:
1. Is prepared and named in a format specified by the Department;
  2. Uses codes and a coding format specified by the Department for data items specified in subsection (C)(3) that require codes; and
  3. Contains the following information for each emergency department discharge that occurred during the reporting period specified in subsection (A)(5):
    - a. The Arizona facility ID and national provider identifier for the hospital;
    - b. A code indicating that the information submitted about the patient is for an emergency department episode of care;
    - c. The patient's medical record number;
    - d. The patient's control number;
    - e. The patient's name;
    - f. The patient's mailing address;
    - g. If the patient is not a resident of the United States, a code indicating the country in which the patient resides;
    - h. A code indicating that the patient is homeless, if applicable;
    - i. The patient's date of birth and last four digits of the patient's Social Security number;
    - j. Codes indicating the patient's gender, race, ethnicity, and marital status;
    - k. The date and a code indicating the hour the episode of care began;
      - l. A code indicating the priority of visit;
      - m. A code indicating the referral source;
      - n. The date and a code indicating the hour the patient was discharged from the emergency department;
      - o. A code indicating the patient's discharge status;
      - p. Whether the patient has a DNR known to the hospital;
      - q. The date the patient's bill was created;
      - r. The total charges billed for the episode of care;
      - s. A code indicating the expected payer source;
      - t. For each unit of service billed for the episode of care, the:
        - i. Revenue code;
        - ii. Charge billed; and
        - iii. HCPCS code, if applicable;
      - u. The code designating the version of the set of International Classification of Diseases codes used to prepare the bill for the episode of care;
      - v. The International Classification of Diseases code designating the reason for the patient initiating the episode of care;
      - w. The International Classification of Diseases codes for the patient's principal and, if applicable, secondary diagnoses;
      - x. If applicable, the E-codes associated with the episode of care;
      - y. If applicable, the state in which an accident leading to the episode of care occurred;
      - z. If applicable, the date of the onset of symptoms leading to the episode of care;
      - aa. For each procedure performed during the episode of care:
        - i. The applicable International Classification of Diseases, HCPCS/CPT codes for the principal procedure and any other procedures performed during the episode of care; and
        - ii. The dates the principal procedure and any other procedures were performed;
      - bb. The name, state license number, and, if applicable, national provider identifier of the patient's attending provider;
      - cc. The code for the state licensing board that issued the license for the patient's attending provider;
      - dd. The name, state license number, and, if applicable, national provider identifier of the medical practitioner who performed the patient's principal procedure, if applicable;
      - ee. The code for the state licensing board that issued the license for the medical practitioner who performed the patient's principal procedure, if applicable;
      - ff. The name, state license number, and, if applicable, national provider identifier of any other medical practitioner associated with the patient's episode of care; and
      - gg. The code for the state licensing board that issued the license for each of the individuals specified in subsection (C)(3)(ff).

**D.** A hospital administrator shall ensure that the report specified in subsection (C), the information specified in subsection (A), and the attestation statement specified in subsection (B) are submitted to the Department twice each calendar year, according to the following schedule:

    1. For each emergency department discharge between January 1 and June 30, the report, information, and attestation statement shall be submitted after June 30 and no later than August 15; and

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2. For each emergency department discharge between July 1 and December 31, the report, information, and attestation statement shall be submitted after December 31 and no later than February 15.
- E.** A hospital administrator who receives a request from the Department for revision of an emergency department discharge report not prepared according to subsections (A), (B), and (C) shall ensure that the revised report is submitted to the Department:
1. Within 21 calendar days after the date on the Department's letter requesting an initial revision, and
  2. Within seven calendar days after the date on the Department's letter requesting a second revision.
- F.** If a hospital administrator or designee does not submit the report specified in subsection (C), the information specified in subsection (A), and the attestation statement specified in subsection (B) according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-126.

**Historical Note**

Section recodified from R9-11-402 at 10 A.A.R. 3835, effective August 24, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 3648, effective December 1, 2007 (Supp. 07-4).

## Statutory Authority for Rules in 9 A.A.C. 11

### **36-125.04. Financial statements; uniform accounting report; exemption**

A. Each licensed hospital shall submit to the department an annual financial statement prepared in accordance with generally accepted accounting principles. The statement shall be accompanied by a report of an audit by an independent certified public accountant of the financial statement conducted in accordance with generally accepted auditing standards. Each hospital shall submit the statement within one hundred twenty days of the end of its fiscal year unless the director grants an extension in writing in advance of that date.

B. If a hospital is part of a consolidated or combined group and is normally included in that group's financial statement, the hospital may submit a consolidated or combined statement if the group's statement identifies each of the group's separately licensed hospitals and nursing care institutions operating in this state. For each hospital or nursing care institution operating in this state and for each additional operating unit which accounts for five per cent or more of the consolidated or combined group's gross revenues, the statement shall include financial balances and information for that unit including a balance sheet, an income statement, a statement of changes in equity or fund balance and a statement of cash flows. This information shall be presented as "other financial information" in columnar format in the details of consolidation or combination. All other operating units of the group may be included in a single column labeled "other" provided that a footnote identifies each unit and the gross revenue associated with each unit. The financial information for each hospital included in a consolidated or combined financial statement shall reflect financial balances and information for only the hospital and shall not include nonhospital operations.

C. Each hospital, nursing care institution and hospice shall submit a uniform accounting report to the department annually that includes the following:

1. A balance sheet detailing the assets, liabilities and net worth.
2. A statement of income and expenses.
3. A statement of cash flows.
4. A copy of annual financial and statistical documents submitted to the United States department of health and human services in accordance with the requirements of title XVIII and title XIX of the social security act.
5. Utilization and staffing information and standard units of measure as prescribed by rules.

D. In place of the information required by subsection C, the director may permit a health care institution to file current cost reports and financial information that the institution files for other governmental reporting purposes, except that a health care institution shall file all information required by the Arizona health care cost containment system administration pursuant to title XVIII or XIX of the social security act. The department may require by rule the submission of additional information or schedules to supplement the alternative cost reports and financial information.

E. In addition to the information prescribed in subsection C, a hospital shall also include with its title XVIII cost report all pertinent data, separately stated, on the title XIX program and the state-only funded medical programs under the Arizona health care cost containment system. A hospital may request a one year waiver from the department if logs and financial systems need to be changed in order to comply with this subsection.

F. The department shall prescribe and furnish forms for the uniform accounting report submitted pursuant to subsection C.

G. All reports filed pursuant to this section are open to public inspection at the offices of the department. The department shall ensure that this public access to reports does not breach confidentiality of privileged medical information or privileged information on an individual's work performance or earnings.

H. If further investigation is considered necessary or desirable to verify the accuracy of information in reports filed pursuant to this section, the department may further examine records and accounts related to the reporting requirements of this section. The department shall bear the cost incurred in connection with this examination unless the department finds that the records examined are significantly deficient or incorrect, in which case the department may charge the cost of the investigation to the facility examined.

I. This section does not apply to a facility owned or operated by this state.

**36-125.05. Uniform patient reporting system; statistical and demographic reports; exemption**

A. The department shall prescribe and implement a uniform patient reporting system for hospital inpatient and emergency department services. The requirements imposed for this reporting system shall be substantially the same as the uniform billing requirements prescribed by the United States department of health and human services pursuant to titles XVIII and XIX of the social security act, as amended (42 United States Code sections 1395 through 1395pp), whether or not the effective date for the federal billing system is after January 31, 1984.

B. The department shall require hospitals to report inpatient statistical data designed to promote cost containment as the department determines. These data shall be derivable from the data obtained under the uniform patient reporting system prescribed by subsection A and, for all inpatient services, shall include the following:

1. The number of confinements.
2. The average length of stay.
3. The average charge per day.
4. The average charge per confinement, which is the product of the average length of stay multiplied by the average charge per day.
5. The average charge per confinement for each attending physician.

C. Each of the categories of data specified in subsection B shall be further categorized by one or more of the following methods as the department determines:

1. Discharge diagnoses.
2. Groupings of related diagnoses.
3. Groupings of diagnoses that typically have similar lengths of confinement.
4. Any other similar categories that may be determined by the department.

D. The department shall require hospital emergency departments to report outpatient service statistical data designed to promote cost containment. The department shall adopt rules establishing the procedures for reporting. These data shall be derivable from the data obtained under the uniform patient reporting system prescribed in subsection A, and shall include the following:

1. Date of service.
2. Surgical procedures.
3. Related diagnosis.
4. Charges for services.

E. The department may require hospitals and emergency departments to report other clinical and demographic data regarding patient age, sex or insurance coverage for inpatient and emergency department services.

F. The state hospital is exempt from the reporting requirements imposed by subsections B, D and E.

G. The data from the period beginning January 1 and ending June 30 of each year shall be reported on or before August 15 of that year. The data from the period beginning July 1 and ending December 31 of each year shall be reported on or before February 15 of the following year.

H. All reports filed pursuant to this section are open to public inspection at the offices of the department. The department shall ensure that this public access to reports does not breach confidentiality of privileged medical information or privileged information on an individual's work performance or earnings.

I. If further investigation is considered necessary or desirable to verify the accuracy of information in reports submitted under this section, the department may further examine records and accounts related to the reporting requirements of this section. The department shall bear the cost incurred in connection with this examination unless the department finds that the records examined are significantly deficient or incorrect, in which case the department may charge the cost of the investigation to the facility examined.

### **36-136. Powers and duties of director; compensation of personnel; rules; definitions**

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into

pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption

is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or

disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

**36-436. Filing and review of rates and rules as prerequisite to operation**

A. A new hospital or nursing care institution shall not engage in business within this state until there is filed a schedule of its rates and charges and rules that relate to those rates and charges with the director for the director's review. The schedules of rates and charges shall be in the form and contain information prescribed by the director.

B. The director shall adopt or establish reasonable guidelines for review of rates and charges for hospital or nursing care institutions. Those health care institutions which are classified by the director as hospitals pursuant to section 36-405, subsection B shall use the current edition of the statement on the financial requirements of health care institutions and services, as adopted by the American hospital association, or amended editions thereof if applicable, as a guide for establishing hospital rates and charges.

C. After a hospital or nursing care institution files the schedule required under subsection A of this section, the director shall promptly review the schedule within sixty days and publish information on gross charges based on that schedule.

**36-436.01. Rate schedules; printing and posting requirements; outpatient treatment centers; posting and filing requirements**

A. The schedule required under section 36-436 shall be printed in legible type and shall contain a listing of all services performed and commodities furnished for which a separate charge is made, together with the charges for each. The schedule shall plainly state all rules or regulations which may in any way change, affect or determine any part or the aggregate of the rates or charges or the value of the services or commodities covered by the schedule. Hospitals shall also include the number of times a separate charge was imposed for services performed or commodities furnished for each item listed during the twelve month period immediately prior to submission.

B. After review by the director a copy of the schedule shall be posted in a conspicuous place in the reception area of each hospital and any of the hospital's outpatient treatment centers or nursing care institutions using the schedule. Another copy also shall be kept in the reception area and be available for inspection by the public at all times upon request.

C. Licensed health care institutions classified as outpatient treatment centers and home health agencies shall file a copy of the schedule with the director before implementing those rates or charges and shall post a copy in a conspicuous area.

**36-436.02. Increases of rates or charges; filing**

A. A hospital or nursing care institution shall not increase any rate or charge until the proposed increase has been filed with the director and reviewed in the same manner as the schedule set forth in section 36-436.

B. A copy of any proposed reduction in any rate or charge shall be filed with the director for informational purposes prior to the effective date of such reduction.

**36-436.03. Public availability of rates and charges**

A home health agency, supervisory care home and a hospice shall furnish a copy of the institution's rates and charges to the public on request.

**36-2901.08. Hospital assessment**

A. The director shall establish, administer and collect an assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs, except for costs of the services described in section 36-2907, subsection F, that are incurred beginning January 1, 2014 and that are not covered by the proposition 204 protection account established by section 36-778 and the Arizona tobacco litigation settlement fund established by section 36-2901.02 or any other monies appropriated to cover these costs, for all of the following individuals:

1. Persons who are defined as eligible pursuant to section 36-2901.07.

2. Persons who do not meet the eligibility standards described in the state plan or the section 1115 waiver that were in effect immediately before November 27, 2000, but who meet the eligibility standards described in the state plan as effective October 1, 2001.

3. Persons who are defined as eligible pursuant to section 36-2901.01 but who do not meet the eligibility standards in either section 36-2934 or the state plan in effect as of January 1, 2013.

B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment. The assessment is subject to approval by the federal government to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.

C. The director may establish modifications or exemptions to the assessment. In determining the modifications or exemptions, the director may consider factors including the size of the hospital, the specialty services available to patients and the geographic location of the hospital.

D. Before implementing the assessment, and thereafter if the methodology is modified, the director shall present the methodology to the joint legislative budget committee for review.

E. The administration shall not collect an assessment for costs associated with service after the effective date of any reduction of the federal medical assistance percentage established by 42 United States Code section 1396d(y) or 1396d(z) that is applicable to this state to less than eighty per cent.

F. The administration shall deposit the revenues collected pursuant to this section in the hospital assessment fund established by section 36-2901.09.

G. A hospital shall not pass the cost of the assessment on to patients or third-party payors that are liable to pay for care on a patient's behalf. As part of its financial statement submissions pursuant to section 36-125.04, a hospital shall submit to the department of health services an attestation that it has not passed on the cost of the assessment to patients or third-party payors.

H. If a hospital does not comply with this section as prescribed by the director, the director may suspend or revoke the hospital's Arizona health care cost containment system provider agreement registration. If the hospital does not comply within one hundred eighty days after the director suspends or revokes the hospital's provider agreement, the director shall notify the director of the department of health services, who shall suspend or revoke the hospital's license pursuant to section 36-427.

**LAW ENFORCEMENT MERIT SYSTEM COUNCIL (F20-1202)**  
Title 13, Chapter 5, Articles 1-8, Law Enforcement Merit System Council



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 4, 2020

**SUBJECT: LAW ENFORCEMENT MERIT SYSTEM COUNCIL (F20-1202)**  
Title 13, Chapter 5, Articles 1-8, Law Enforcement Merit System Council

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### Summary

This Five Year Review Report (5YRR) from the Law Enforcement Merit System Council (LEMSC) relates to rules in Title 13, Chapter 5, Articles 1-8. LEMSC adopted these rules pursuant to A.R.S. § 41-1830.12 through 41-1830.16, which require LEMSC to make rules defining the merit principles and operating guidelines prescribed by LEMSC. The rules address the following:

- **Article 1: General Provisions;**
- **Article 2: Classification and Compensation;**
- **Article 3: Employment;**
- **Article 4: Assignments;**
- **Article 5: Employee Leave;**
- **Article 6: Grievances;**
- **Article 7: Discipline and Appeals; and**
- **Article 8: Separation from Employment; Retirement System Eligibility.**

LEMSC did not review R13-5-804 (Public Safety Personnel Retirement System Eligibility) in this 5YRR with the intention that this rule expire. LEMSC partially completed the proposed course of action from its previous 5YRR on these rules, as described in Item 10 of this 5YRR,

which the Council approved in January 2016. In the previous 5YRR, LEMSC stated that it would amend R13-5-101 through 102 and R13-5-701 through 704, R13-5-804, and add a new rule, R13-5-706.

### **Proposed Action**

The LEMSC proposes to proceed with an attempt at rulemaking to be completed by September 2021. However, it states that it may experience difficulty complying with Executive Order 2020-02's requirement to propose three rules for elimination for every one new rule requested, and that this requirement may prevent desired changes. The LEMSC further states that because its rules are procedural in nature, it would be difficult for it to remove any existing rules.

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

Yes. LEMSC cites both general and specific statutory authority for the rules under review. While LEMSC lists both A.R.S. § 41-1830.12 and 41-1830.16(A) as being "specific authority," A.R.S. § 41-1830.12 is the general authority for these rules and 41-1830.16(A) is the specific authority.

#### **2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Law Enforcement Merit System Council (LEMSC) provides an employment and classification and compensation plan for employees who hold covered positions within the Arizona Department of Public Safety (DPS), and personnel of the Arizona Peace Officer Standards and Training Board (AZPOST). The Council indicates that the rules are procedural in nature and are related to the terms and conditions of employment. The Council believes the economic impacts have been as estimated when the rules were updated in 2017 and in 2006. The Council has estimated that its rules have minimal impact on state revenues and public employment and no impact on consumers and business.

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

The Council believes that the rules reviewed do not impose costs that exceed the probable benefits.

#### **4. Has the agency received any written criticisms of the rules over the last five years?**

Yes. LEMSC received written criticisms of the rules over the last five years. It submitted a document listing the written criticisms and its responses, which is included with these materials for the Council Members' review.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. LEMSC states that many of the rules are clear, concise, and understandable. However, it lists certain rules in Item 6 of its 5YRR that need to be updated with current legal terminology, procedures, and some clarification for the reasons stated therein.

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

Yes. LEMSC states that most of the rules are consistent with other rules. However, it lists certain rules in Item 4 that need to be amended to be more consistent with state statutes for the reasons stated therein.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. LEMSC states that the rules are generally effective, but identifies certain rules in Item 3 that could be made more effective for the reasons stated therein.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. LEMSC states that the rules are enforced as written. However, it identifies an issue with enforcement of one rule, R13-5-402 (Uncovered appointments) that it says will be addressed in an upcoming rulemaking.

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

Not applicable. There is no corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules under review do not require the issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

Council staff finds that LEMSC prepared an adequate report that meets the requirements of A.R.S. § 41-1056(A). Council staff further notes that LEMSC proposes to complete a rulemaking by September 2021 to address the issues with the rules as identified in the 5YRR. Council staff recommends approval of this report.

# Law Enforcement Merit System Council

2102 West Encanto Boulevard  
Mail Drop 1290  
Phoenix, Arizona 85009



Phone: (602) 223-2286  
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[www.azdps.gov/about/LEMSC](http://www.azdps.gov/about/LEMSC)

September 25<sup>th</sup>, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sorinsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Law Enforcement Merit System Council (LEMSC), A.A.C Title 13 Public Safety, Chapter 5, Articles 1 through 8, Law Enforcement Merit System Council, Five Year Review Report

Dear Nicole Sorinsin:

Please find enclosed the Five-Year Review Report of The Law Enforcement Merit System Council for A.A.C. Title 13, Chapter 5, Law Enforcement Merit System Council which is due on September 28, 2020.

The Law Enforcement Merit System Council did not review the following rules with the intention that those rules expire under A.R.S. 41-1056(J): R13-5-804

Law Enforcement Merit System Council hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Captain Aaron Buckmister at 602-223-5018 or [abuckmister@azdps.gov](mailto:abuckmister@azdps.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Buckmister', is written over a light blue horizontal line.

Captain Aaron Buckmister, LEMSC Business Manager



# **LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

## **ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT**

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<b>TITLE</b>	<b>13 – PUBLIC SAFETY</b>
<b>CHAPTER</b>	<b>5 – LAW ENFORCEMENT MERIT SYSTEM COUNCIL</b>
<b>ARTICLES</b>	<b>1 – GENERAL PROVISIONS</b>
	<b>2 – CLASSIFICATION AND COMPENSATION</b>
	<b>3 – EMPLOYMENT</b>
	<b>4 – ASSIGNMENTS</b>
	<b>5 – EMPLOYEE LEAVE</b>
	<b>6 – GRIEVANCES</b>
	<b>7 – DISCIPLINE AND APPEALS</b>
	<b>8 – SEPARATION FROM EMPLOYMENT; RETIREMENT SYSTEM ELIGIBILITY</b>

**September 2020**

## INTRODUCTION

Arizona revised Statutes (A.R.S.) § 41-1830.12 through § 41-1830.16 requires the Arizona Law Enforcement Merit System Council (LEMSC) to make rules defining the merit principles and operating guidelines prescribed by the Council. The Council has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 13, Chapter 5, Articles 1 through 8. The rules were last revised in November 2017.

An analysis of the rules in Articles 1 through 8, has determined that, with the exceptions noted, the rules are effective, enforced as written, consistent with state and federal statutes and rules, and clear, concise, and understandable. The LEMSC has received no written criticisms of the rules in the past five years. The LEMSC plans to amend R13-5-102, 104, 301, 304, 305, 309, 311, 315, 316, 317, 402, 511, 703, and 706. R13-5-804 was not reviewed with the intention that the rule will expire under A.R.S. 41-1056(J).

The Merit System Council anticipates submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council by December 2020. This timetable is subject to change based on the Merit System Council's priorities, the length of the moratorium, and staffing.

## **ARTICLE 1. GENERAL PROVISIONS**

### **SECTION**

R13-5-101. Definitions

R13-5-102. Law Enforcement Merit System Council

R13-5-103. Personnel Administration

R13-5-104. General Information

## **ARTICLE 2. CLASSIFICATION AND COMPENSATION**

### **SECTION**

R13-5-201. Classification

R13-5-202. Compensation

R13-5-203. Pay Administration

R13-5-204. Work Hours and Work Options

## **ARTICLE 3. EMPLOYMENT**

### **SECTION**

R13-5-301. Recruitment

R13-5-302. Examination

R13-5-303. Applicant Preference Points

R13-5-304. Employment

R13-5-305. Promotion

R13-5-306. Reassignment

R13-5-307. Reinstatement

R13-5-308. Hiring Preference

R13-5-309. Selection

R13-5-310. Pre-Employment Processing

R13-5-311. Appointments

R13-5-312. Limited-Term Appointments

R13-5-313. Provisional Appointments

R13-5-314. Intermittent Appointments

R13-5-315. Employee Conduct

R13-5-316. Probation

R13-5-317. Performance Evaluations

## **ARTICLE 4. ASSIGNMENTS**

### **SECTION**

R13-5-401. Special Duty Assignments

R13-5-402. Uncovered Appointments

R13-5-403. Transfer of External Functions

**ARTICLE 5. EMPLOYEE LEAVE**

**SECTION**

- R13-5-501. Employee Leave Guidelines
- R13-5-502. Administrative Leave
- R13-5-503. Annual Leave
- R13-5-504. Civic Duty
- R13-5-505. Compensatory Leave
- R13-5-506. Donated Annual Leave
- R13-5-507. Holiday Leave
- R13-5-508. Industrial Leave
- R13-5-509. Leave Amortization
- R13-5-510. Leave Without Pay
- R13-5-511. Military Leave of Absence
- R13-5-512. Recognition Leave
- R13-5-513. Sick Leave

**ARTICLE 6. GRIEVANCES**

**SECTION**

- R13-5-601. Agency Grievance System
- R13-5-602. Council Review

**ARTICLE 7. DISCIPLINE AND APPEALS**

**SECTION**

- R13-5-701. Causes for Discipline
- R20-5-702. Disciplinary Procedures
- R20-5-703. Appeal to the Council
- R20-5-704. Rehearing of Council Decisions
- R20-5-705. Time Limits

**ARTICLE 8. SEPARATION FROM EMPLOYMENT; RETIREMENT SYSTEM**

**ELIGIBILITY**

**SECTION**

- R13-5-801. Reassignment or Retirement
- R13-5-802. Reduction-in-Force
- R13-5-803. Disability
- R13-5-804. Public Safety Personnel Retirement System Eligibility

1. **Authorization of the Rule by Existing Statutes**

Specific authority: A.R.S. § 41-1830.12(A) and § 41-1830.16(A).

2. **The objective of each rule:**

Rule	Objective
R13-5-101	To inform the public of the meaning of various language, words and phrases used in the rules. There are no definitions in this rule that are not used in the rules. A few definitions are found elsewhere in the rules when they pertain to a specific part of the rules, such as those found in R13-5-506 and R13-5-513.
R13-5-102	To outline and describe the administrative and operating procedures of the Council.
R13-5-103	To make clear that the Council has jurisdictional authority over the personnel administration requirements maintained by a human resources function.
R13-5-104	To clarify additional Council duties that pertain to the entire Chapter that were not listed in R13-5-502
R13-5-201	To provide procedures for employee classification, position allocation, assignment, and if necessary, modification
R13-5-202	To clarify additional Council duties that pertain to the entire Chapter that were not listed in R13-5-502.
R13-5-203	To authorize and allow the agency head to make special pay adjustments and to determine procedures for other pay incentives.
R13-5-204	To provide for work hours for employees of the agency.
R13-5-301	To provide guidelines for recruiting qualified new employees.
R13-5-302	To provide a consistent policy in administering all employment or promotional exams.
R13-5-303	To provide requirements for applying preference points to an applicant's qualifying score when applicable by A.R.S. § 38-492.
R13-5-304	To provide requirements for the Human Resources function of an agency which will allow the agency to administer a fair and impartial employment process.
R13-5-305	To provide requirements for the Human Resources function of an agency which will allow the agency to administer fair and impartial promotional processes and provide for promotional opportunities
R13-5-306	To provide requirements for the Human Resources function of an agency which will allow the agency to provide for movement of an employee from one classification to another of equal or lower pay
R13-5-307	To provide requirements for the Human Resources function of an agency to provide for reinstatement of an employee or former employee to a classification previously held by that employee or former employee.
R13-5-308	To provide requirements for the Human Resources function of an agency which will allow the agency to provide for fair and impartial processes for filling vacant positions
R13-5-309	To provide requirements for the Human Resources function of an agency which will allow the agency to provide fair and impartial processes for selection of qualified candidates
R13-5-310	To provide requirements for the Human Resources function of an to provide proper pre-employment processes for qualified candidates.

R13-5-311	To provide requirements for the Human Resources function of an agency which will allow an agency to administer oaths of office.
R13-5-312	To provide requirements and procedures for an agency to employ limited-term employees or employees employed for specific periods of time.
R13-5-313	To provide requirements and procedures allowing an agency to hire employees when there is no existing employment list and the agency has an immediate need.
R13-5-314	To provide requirements and procedures for an agency to hire employees that will work on an intermittent or irregular basis.
R13-5-315	To provide requirements for applying standards of conduct for employees and procedures for the agency to follow to ensure the employee performs the duties and responsibilities of their assigned classification
R13-5-316	To provide requirements and procedures to ensure that probationary categories and probationary periods are properly administered and followed.
R13-5-317	To provide requirements for an agency to adopt and administer an employee performance evaluation system.
R13-5-401	To provide requirements to allow an agency head to make special duty assignments and ensure proper payment of employees serving in that capacity.
R13-5-402	To provide procedures for an agency head to authorize temporary appointments to uncovered positions and outlines employee rights while serving in this capacity.
R13-5-403	To provide requirements for the orderly transition of state programs from one agency to an agency under the jurisdiction of the Council when transferred by Arizona Legislative mandate
R13-5-501	To provide procedures for employee leave accrual, usage and accounting.
R13-5-502	To provide procedural requirements for administrative leave with pay when authorized by an agency head.
R13-5-503	To provide requirements for computing length of service for determining annual leave accrual and administration of employee annual leave.
R13-5-504	To provide requirements and procedures for the administration of Civic Duties for employees of the agency.
R13-5-505	To provide requirements and procedures for the accrual, use of, and payment for compensatory leave.
R13-5-506	To provide requirements and procedures for the transfer of annual leave from one employee into the sick leave balance of another employee, and for the use of that sick leave by the recipient
R13-5-507	To provide requirements and procedures for agency recognition of holidays provided for by state statute and for the accrual and use of paid holiday leave
R13-5-508	To require an agency to establish policies and procedures to comply with statutes regulating industrial leave
R13-5-509	To allow an agency to provide for a leave amortization plan for retiring of employees.
R13-5-510	To provide requirements and procedures for short-term and extended leave without pay, and for the disposition of accrued leave.
R13-5-511	To provide requirements for privileges of military service provided for by statutes for employees and administration of military leave of absence by an agency
R13-5-512	To provide requirements and procedures for awarding worthy employees with recognition leave
R13-5-513	To provide specific definitions of sick leave and provide requirements and procedures for accrual and use of sick leave under the established agency leave policy in compliance with the provisions of the Family and Medical Leave Act.

R13-5-601	To provide requirements and procedures for an agency to consider and respond to employee grievances regarding classification, compensation, performance evaluation, and application of Council rules
R13-5-602	To provide requirements and procedures for the Council to review employee grievances that have been denied by the agency regarding classification, compensation, performance evaluation, and application of Council rules.
R13-5-701	To provide references where the causes for discipline for employees and covered employees can be found
R13-5-702	To provide requirements and procedures for the administration of disciplinary action by an agency head
R13-5-703	To provide requirements for the conduct of hearings on appeals from employees as a result of disciplinary action taken by the agency head. The rule outlines requirements for providing information and requirements to provide a fair hearing for the employee
R13-5-704	To provide requirements and procedures for filing requests for a rehearing of a Council decision.
R13-5-705	To provide requirements for determining and computing time limits that are specified in the rules.
R13-5-706	To provide requirements for the conduct of hearings on appeals from covered employees as a result of disciplinary action taken by the agency head. The rule outlines requirements for providing information and requirements to provide a fair hearing for the covered employee.
R13-5-801	To provide requirements and procedures for the processing of employees retiring or resigning from the agency.
R13-5-802	To provide requirements and procedures for conducting a reduction in force by an agency.
R13-5-803	To provide requirements for establishing policies and procedures for discontinuing the employment of an employee that becomes disabled and is unable to perform the essential functions of the job.

3. **Are the rules effective in achieving their objectives?**

Yes X No    

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

<b>Rule</b>	<b>Explanation</b>
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules.
R13-5-102	The rule is effective, but the Council would like to add an opportunity for voting in a new Chair, if necessary, so that there is no delay in procedure for the Council to conduct meetings to handle regular business.
R13-5-104	To make the rule more effective and current, Chair Walker indicated that there is a legal need for parties to consent to service via email that did not exist when the rules were review last time.
R13-5-301	Human Resources indicated that there are some applicants who will never qualify to work in Law Enforcement and other applicants are disqualified on technicalities where it would benefit the Department to have them reapply quickly. The caveat added to section D would assist Human resources in gaining new employees and not wasting time every 2 years on applications for individuals who should be permanently disqualified.

R13-5-309	This rule would be more effective if Human Resources notifies all candidates who are not selected of their non-selection so that they can pursue other endeavors.
R13-5-317	The rule is effective except in two cases. The case of the Limited Term Employee which is a cadet. The Academy is 7 months which makes for 2 evaluations within one month at the end of the Academy. This change would lessen the burden on the Sergeants for extra paperwork and unnecessary evaluations. The other case would be that an employer must both evaluate and serve employees with their evaluations in a timely manner.

4. **Are the rules consistent with other rules and statutes?** Yes X No    

*If not, please identify the rule(s) that is not consistent. Also, provide and explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation
Multiple	The rules are consistent with other rules and statutes with a few exceptions. There are a few rules that mut be brought in line with state statutes.
R13-5-315	This rule would be more consistent with the time frames in A.R.S. 38-1112. The officer must submit to an examination upon the approval of the agency head.
R13-5-703	This rule would be more consistent with A.R.S. 38-1106-A1 regarding time frames from 3 to 14 days, and other time frames were adjusted in subsequent subsections for a workable system.
R13-5-706	This rule also would be more consistent with A.R.S. 38-1106, with the other time frames adjusted to allow the system to function.

5. **Are the rules enforced as written?** Yes X No    

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation
R13-5-402	The rules are enforced as written. Regarding R13-5-402, there is ambiguity in the word "temporarily" found in section A, and there are no current provisions for reporting who is uncovered and for how long. Any uncovered employee no longer falls under the LEMSC rules and has no ability to appeal discipline. The definition of uncovered appointments in R13-5-101 states that the Governor's Office should have knowledge of and concur with an uncovered appointment, but there is no provision in this rule for how or when this is reported or proven to the LEMSC Council to make sure all Departments are in compliance. LEMSC will pursue a rule making change in the next year to add three sections to the rule stating that "temporarily" refers to a 12-month period and anything longer than that will be explained in the January and July reports from Human Resources to the Council regarding all uncovered appointments. Human Resources shall also provide satisfactory evidence of the Governor's knowledge and concurrence when requested.

6. **Are the rules clear, concise, and understandable?** Yes  No

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
Multiple	Many of the rules are clear, concise, and understandable; but there are several rules listed below that need to be updated with current legal terminology, procedures, and some clarification.
R13-5-304	The rule would be clear if a section was added to subsection F, indicating that a candidate would be removed from eligibility on a list if “the candidate is not eligible for rehire.”
R13-5-305	The rule would be more clear if the proposed verbiage in a new section “R” where the current section “R” would now become “S,” indicating that employees returning from FMLA on a promotional list will be promoted according to their position on the list.
R13-5-316	The term in section J, “equal position” is not up to date in the legal world. The LEMSC Chair, who is an attorney, proposed the use of “substantially equivalent” instead.
R13-5-511	The rule would have clarity if the verbiage presented stating that military personnel returning from deployment on a promotional list will be promoted according to their position on the list.
R13-5-706	An indication that there should be a 30-day waiver for a hearing is needed in section I. In section M, the rules of civil procedure are called for so that counsel will discuss motions with one another to resolve them before bringing them to the Council so that the Council is not bogged down with multiple motions that the counsel of both parties can resolve on their own.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

*If yes, please fill out the table below:*

Rule	Explanation
	See Attached

8. **Economic, small business, and consumer impact comparison:** Yes  No

The majority of the LEMSC Rules are based on Arizona Revised Statutes. They are procedural in nature and are related to the terms and conditions of employment. The rules were updated in 2017 and in 2006 before that, and the economic reports from those years would be identical to what we see for LEMSC now. The Council estimates that its rules have a minimal impact on state revenues and public employment and no impact on consumers and businesses.

9. **Has the agency received any business competitiveness analysis of the rules?** Yes  No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

Rule	Explanation
R13-5-101	A number of definitions were added and/or revised to make the definition clearer and to enhance the understandability of the rule.
R13-5-102	Subsection A was amended from § A.R.S. 41-1830.15 to 41-1830.16. Also, subsection E was amended to change the requirements for number of members present to have a quorum from two members to three members.
R13-5-701	In subsection A, the words "for employees" was added. Subsection B was added to the rule to show where covered-employees' causes for discipline could be found in A.R.S.
R13-5-702	In Section C, the A.R.S. code was changed from 38-1101 (A) and (B) to A.R.S. 38-1104. In Section D the 120-day rule was changed to 180 days, and the subsection was reworded. Section E was reworded, and subsections c, d, and e were added. The rest of the sections were updated to reflect the 120-day to 180-day change.
R13-5-703	Article title was changed by including the words "by Employees" to the end of the title. Sections A, B, D, and E had additional wording added to improve understanding of the rule. In Section L(6), "Discovery", additional timeframes were added for when the employee and agency must provide documents.
R13-5-706	This is a new rule which was added during the last rulemaking process.
R13-5-311	Subsection A was NOT amended. Current state statute for oath of office is § A.R.S. 38-231(E). Currently the rules refers to the oath of office and mistakenly references § A.R.S. 38-231(G), which is incorrect. It is unclear why this change was not made, however, we will be pursuing a change to reference the correct statute in the rulemaking process.
R13-5-704	The rule was NOT amended. The proposed course of action was to remove "sub" from "subsection" in two instances. It is unknown why the change was not made

11. **A determination that the probable benefits of the rule outweigh within this state the probably costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules reviewed do not impose probable costs that exceed the probably benefit within this state.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there a statutory authority to exceed the requirements of federal law(s)?*

There are no corresponding federal laws specific to the Law Enforcement Merit System.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

There are no rules that require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Law Enforcement Merit System Council will proceed with an attempt at rule making to be completed by September 2021. Due to EO2020-02, and the need to do away with three rules per change, and with only one rule expiring; the moratorium may prevent desired changes. Due to the fact that our rules are procedural in nature, it is very difficult to remove any existing rules.

ARIZONA LAW ENFORCEMENT MERIT SYSTEM COUNCIL  
Comments On And Proposed Changes To LEMSC Rules  
And The Council's Responses Thereto  
November 16, 2020

**Lisa Wahlin, DPS Legal Counsel, Comments and Responses:**

1. **Rule:** R13-5-101 Definitions "Human Resources" means an agency department responsible for personnel administration.

**Criticism:** Eliminate "human resources" and "state" as there really can't be any confusion as to what either of these terms mean.

**Response:** *Chair Walker stated that any proposal to eliminate a Rule based on its content being duplicative of the content of an applicable statute would likely be rejected, as this would be deemed insufficient, without more, to remove it from the Rules. Vice-Chair Mingus moved to reject the proposed change, and Member Moran seconded the motion. The motion carried unanimously.*

2. **Rule:** R13-5-102 Law Enforcement Merit System Council

E. Quorum. Three members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.

F. Minutes. The Council shall keep minutes of its proceedings and official actions. The Council's records and minutes are open to public review during normal business hours.

**Criticisms:** No need to state authority; Can eliminate sections E and F. A quorum and minutes are a requirement of AZ's open meeting law and does not need to be restated.

**Response:** *As stated in the above response, any proposal to eliminate a Rule based on its content being duplicative of the content of an applicable statute would likely be rejected, as this would be deemed insufficient, without more, to remove it from the Rules. Vice-Chair Mingus moved to reject this change, and Member Moran seconded the motion. The motion carried unanimously.*

3. **Rule:** 13-5-104 General Information- G. Compliance with federal rules and regulations. Any federal regulation or standard governing the granting of federal funds to an agency under the Law Enforcement Merit System Council takes precedence over any of these rules which conflict with the control and expenditure of federal funds.

I. Equal employment. The Council, the agency head, and agency employees shall not discriminate in any aspect of employment on the basis of race, color, religion, sex, national origin, age, disability or pregnancy.

J. Accommodation. The Council and the agency head shall make reasonable accommodations to enable a person with a disability to use agency facilities, services, and programs. A person requesting accommodation shall notify the agency or the business manager as soon as reasonably possible in order to allow the agency time to arrange the accommodation.

**Criticisms:**

- I can't think of where G would ever apply to a matter under LEMSC
- I is already required by law and would not be enforced by LEMSC; no need to repeat
- J. is already required by law and would not be enforced by LEMSC; no need to repeat

**Response:** *As stated in the above responses, any proposal to eliminate a Rule based on its content being duplicative of the content of an applicable statute would likely be rejected, as this would be deemed insufficient, without more, to remove it from the Rules. Changes were proposed to Rule 13-5-104 regarding sections G, I, and J. Member Moran moved to reject the proposed changes, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

4. **Rule:** 13-5-202 Compensation- A. Compensation plan. The Council shall adopt compensation levels for all classifications. Collectively, compensation levels adopted by the Council comprise the compensation plan of the Council. An agency shall periodically revise the compensation plan for a covered position, based on the principle that like salaries are paid for comparable duties and responsibilities and shall submit the agency's recommendations to the Council for approval.

C. Pay Levels. The Council shall specify all pay levels. The Council may also establish more than 1 pay range, hourly rate, or method of compensation for classifications and positions with unusual hours, conditions of work, or when necessary to compete with other employers.

**Criticisms:** The AG's Office and the Department have previously discussed that sections A and C are inconsistent. In A, it states that the Council shall adopt compensation levels and the agency shall periodically revise the compensation plan. However, in C it states that the Council shall specify all pay levels and establish pay ranges for classifications. This inconsistency should be remedied.

**Response:** *Proposed changes to Rule 13-5-202 were offered on the ground that section A and C were inconsistent. Chair Walker did not think that there was inconsistency. Member Salyers moved to reject the proposed change, and Member Moran seconded the motion. The motion carried unanimously.*

5. **Rule:** 13-5-203 Pay Administration- E. Overtime pay. The agency head shall adopt an overtime policy and procedure consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter. Compensatory leave is accrued and used as provided by R13-5-505.

**Criticism:** E is unnecessary and it is already required by federal law and would not be enforced by LEMSC

**Response:** *Rule 13-5-203 (E) was questioned as it was required by federal law. Member Moran moved to reject the proposal and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

6. **Rule:** 13-5-301 Recruitment- F. Retaining an application. Human Resources shall retain all applications under a records retention and disposition schedule approved by the Department of Library, Archives and Public Records.

**Criticism:** F should say "records retention and disposal" not disposition

**Response:** *A proposed change to 13-5-301 (F) was made asking that the verbiage be changed to "records retention and disposal." Vice-Chair Mingus moved to reject the change, and Member Moran seconded the motion. The motion carried unanimously.*

7. **Rule:** R13-5-315 Employee Conduct- A. Standards of conduct. An employee shall perform the duties and responsibilities of the employee's assigned classification and position. An employee shall comply with applicable laws, rules, and agency policy. An employee shall demonstrate respect, fairness, diligence, impartiality, courtesy, efficiency, and integrity in all contacts with the public and other employees.

B. Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically able to perform the essential duties of the position, the supervisor shall request the agency head's permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide whether the employee is fit for duty.

C. Political activity. An agency employee shall not violate the provisions of A.R.S. § 41-772 concerning permissible and improper political activity.

D. Conflict of interest. An agency employee shall not violate the conflict of interest provisions of A.R.S. § 38-501 through 38-504 while engaged in outside activities or employment.

E. Nepotism. An employee or candidate for employment shall not be appointed to any position in violation of A.R.S. § 38-481, nor shall an employee misuse or abuse appointment privileges.

**Criticism:** Sections A, B, C, D, & E are unnecessary as they are repeats of state or federal law, or department policy.

**Response:** *Rule 13-5-315 was proposed to be deleted on the ground sections A, B, C, D, and E reiterate provisions in state or federal law. Member Salyers noted with Council turnover and office turnover keeping any Rules which inform staff and Council of their responsibilities would be a good thing, and none of the Rules should be removed solely because they duplicate statutory provisions. Both the Chair and Vice-Chair agreed with*

*Member Salyers' observation. Member Moran moved to reject the proposal, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

8. **Rule:** R13-5-403 Transfer of an External Function- A. Transferring a function. If a state program is transferred into an agency, the losing agency shall pay a transferring employee for all accrued compensatory leave as of the date of the transfer. Effective on the date of transfer, the losing agency shall also transfer sufficient funds to the receiving agency to pay for accrued annual leave, recognition leave, and sick leave of a transferring employee.

**Criticism:** Unless there's a statute that provides this (in which case the rule isn't necessary), I don't think Section A is enforceable because what it provides does not fall within LEMSC's authority as provided in ARS §41-1830.12.

**Response:** *Rule 13-5-403 was proposed to be deleted on the ground that section A would not be enforceable considering ARS 41-1830.12. The statute was reviewed by Assistant Attorney General Michelle Burton, and she concluded that the Rule did not conflict with the statute. She recommended that the Rule not be deleted. Vice-Chair Mingus moved to reject the proposed change. Member Moran seconded the motion, and it carried unanimously.*

9. **Rule:** R13-5-703 Appeal to the Council by Employees - M. Discovery.

1. Within three business days after receiving a written request from the employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.

2. Within 20 days after receiving the investigative file, the employee shall provide all material relating to the defense of the employee to the agency head.

3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.

4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.

5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the employee shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.

6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

7. If a party fails to provide material as required, the Council may preclude its use at the hearing.

**Criticism:** Recommend that Section M be eliminated or changed so that there is not a conflict between M and ARS § 38-1106, which provides that the employer has 14 days to provide a copy of the file.

**Response:** *A change to Rule 13-5-703 M was proposed on the ground that it conflicts with ARS 38-1106. The LEMSC Rule requires investigative files to be provided to appellants within three days of a request. ARS 38-1106 provides for a 14-calendar day response time. Chair Walker moved to adopt this change for R13-5-703.M.1 to conform to the time frame set in ARS 38-1106(A)(1). Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

10. **Rule:** R13-7-706 Appeal to the Council by Covered Employees- L. Discovery.

1. Within three business days after receiving a written request from the covered employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the covered employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.

**Criticism:** Section L(1) has the same provision as Rule 703, Section M. Recommend same change.

**Response:** *Rule 13-5-706.L.1 and M had the same issue where the time frames did not conform to the time frame specified in ARS 38-1106. Captain Buckmister noted that there was a clerical error in that Counsel Wahlin stated that it was Rule 13-7-706 but meant 13-5-706. Member Salyers liked having consistency in the Rules regarding time frames. Vice-Chair Mingus moved to adopt the change regarding the time frames from three days to fourteen days to conform with state law ARS 38-1106, and Member Moran seconded the motion. The motion carried unanimously.*

11. **Rule:** R13-5-804 Public Safety Personnel Retirement System Eligibility- A. Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under A.R.S. § 38-842 (20)(a). Commissioned employees are eligible for membership in the Public Safety Personnel Retirement System.

B. Employees who were in the following non-commissioned classifications on December 1, 1972, shall be eligible for membership in the Public Safety Personnel Retirement System: 1. Communications Technician; and

## 2. Radio Mechanic.

### **Criticism:**

- The statute has been rewritten since this rule was enacted and the statutory cite is not valid. I would recommend removing the entire section A.
- Assuming we have no communications technicians or radio mechanics still working for DPS who were hired before 12/1/72, section B should also be removed.

**Response:** *A proposed Rule change to 13-5-804 was made on the ground that the rule had inaccurate statutory citation in section A and that section B was unnecessary. It was confirmed that the statutory citation was indeed incorrect, but that it was not grounds to remove the Rule completely. There were no radio mechanics that were hired before 12/1/1972, so section B was no longer useful. The actual relevant statute citation was ARS 38-842-01(A). Assistant Attorney General, Michelle Burton stated that there are no statutes referring to LEMSC in the Retirement System statutes. Chair Walker asked why she stated this, and Attorney Burton said it was mentioned to show that the statutes between LEMSC and the Retirement System did not overlap. Member Salyers moved to adopt Attorney Wahlin's recommendation to delete R13-5-804.A & B. Member Salyers wondered if this was enough information to proceed, and Chair Walker said he thought there was enough information to delete the items. LEMSC personnel did not believe there were any employees hired before 1972. Vice-Chair Mingus seconded the motion. The motion for deletion carried unanimously.*

### **Kirsten Story, DPS AG Counsel, Comments and Responses**

**Rule:** R13-5-104.D Service of Notice- D. Service of notice. The agency or the Council shall serve notice upon an employee personally or by the U.S. Postal Service. Postal service shall be made by certified mail, return receipt requested, to an employee's last known home or business address and is complete upon mailing. Service as provided for in this section is required for the following:

1. Notice of an employee's rejection from probation;
2. Notice of a charge in a disciplinary proceeding;
3. Notice of an employee's suspension, layoff, or dismissal; and
4. Other notices required by these rules.

**Criticism:** R13-5-104.D and D.4 - Service of Notice – This is fine, but we need to make sure the Council's forms don't conflict with this. R13-5-104.D.4 Other notices required by these rules – This is a little broad, and may encompass witness and exhibit disclosure, which is typically made by email to facilitate timely exchange of information in advance of hearings. Can we have a carve out for communications, disclosures and filings in the course of a hearing?

**Response:** *Assistant Attorney General Kirstin Story proposed a Rule change to 13-5-104 (D) regarding “service of notice.” Chair Walker was trying to ascertain what Attorney Story was noting. Captain Buckmister noted that there were no specific LEMSC forms for sending out notices. Member Salyers noted her commentary regarding notices via email. Chair Walker suggested proposing section D.4 to state, “Other notices required by these rules, except to the extent that the parties to the proceedings before the Council consent to service by other means such as email.” Chair Walker stated apart from the Rule change, the Business Office should create a form to send out to the parties consenting to service by email anyway. Chair Walker moved to adopt this change to 13-5-104.D.4, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-202 A. Compensation plan. The Council shall adopt compensation levels for all classifications. Collectively, compensation levels adopted by the Council comprise the compensation plan of the Council. An agency shall periodically revise the compensation plan for a covered position, based on the principle that like salaries are paid for comparable duties and responsibilities and shall submit the agency’s recommendations to the Council for approval.

**Criticism:** R13-5-202 Compensation – Do you want to clarify that the decision whether to revise and propose compensation plans is at the discretion of the agency head?

**Response:** *Chair Walker did not think that the Council should be taken out of approving pay levels. Member Salyers clarified that he thought the comment meant there should be approval from the agency head, prior to being presented to the Council. Chair Walker noted that the process for a compensation change may not be the same for all agencies subject to the Council’s jurisdiction. Chair Walker suggested that the line should read: “An agency shall periodically revise the compensation plan for a covered position, based on the principle that the salaries are paid for comparable duties and responsibilities and ‘shall submit, with the agency head’s approval, the agency’s recommendations’ to the Council for approval.” Member Salyers moved to make this change, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-315 Employee Conduct- B. Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically able to perform the essential duties of the position, the supervisor shall request the agency head’s permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide whether the employee is fit for duty.

**Criticism:** R13-5-315 Fitness for Duty – This probably needs to be updated to include the procedural rights in 38-1112 for LEOs.

**Response:** *Regarding employee conduct, R13-5-315.B was noted as not including the procedural rights listed in ARS 38-1112. The law includes details regarding notice and timing for the law enforcement officers regarding being declared fit for duty. At the end of section B, another sentence would be added that reads, “In the event that the employee at issue is a law enforcement officer, upon approval of the agency head, the*

*agency may order the officer to submit to an examination subject to the terms and procedural requirements of ARS 38-1112.” Member Salyers moved that this change should be adopted, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-602 Council Review

A. General. The Council shall only review a grievance related to classification, compensation, employee appraisal system, and application of Council rules after the employee exhausts the remedies in the agency’s grievance process. If the grievance remains unresolved, the employee may file a request for Council review within 20 days after the employee receives the agency’s notice of denial of the grievance.

B. Procedure. An employee shall submit a written request for Council review of a grievance.

1. The employee’s request shall include:

a. The specific relief sought by the employee;

b. The asserted factual basis for relief, and

c. An account of the agency’s response during the internal grievance process.

2. Upon receipt of the request, the Council shall send a copy of the request to the agency head.

C. Response. The agency may file a written response with the Council at any time before the Council reviews the grievance. The agency head shall send a copy of the response to the employee at least 10 days before the Council reviews the grievance. At the employee’s request, the 10 days may be waived.

D. Informal dispositions. The Council may informally dispose of a grievance without further review of the merits, under any of the following methods:

1. By withdrawal, if the employee withdraws the grievance in writing or on the record at any time before a decision is issued;

2. By default to the appearing party, if the employee or the agency, fails to appear at the meeting; or

3. By stipulation, if the parties agree on the record or in writing at any time before the Council issues a decision on the grievance.

E. Council review. The Council shall review an employee’s grievance in an open meeting. The Council shall allow the employee to make a statement in support of the grievance, and shall allow the agency an opportunity to respond. The Council may limit the length of the parties’ statements. In its discretion, the Council may allow the employee or the agency to present

testimonial or documentary evidence on the issue. If the Council allows a party to offer evidence, the Council shall allow the other party an opportunity to respond with argument or evidence. The Council may limit the time parties are allowed to present evidence.

F. Scheduling of Council review. An employee's grievance shall be scheduled for the next available business meeting of the Council but no sooner than 20 days after the grievance was received by the business manager. At the employee's request, the 20 days may be waived.

G. Representation by counsel. Both the agency and the employee may have counsel present during the Council's review of the grievance.

H. Decision. The Council shall state its decision in an open meeting. The Council shall sustain the agency's action on the grievance unless it finds the agency's denial is not supported by substantial evidence or is inconsistent with Council rules.

**Criticism:** R13-5-602 Council Review – During the Simpson appeal, there was substantial frustration that the employee was using the grievance process to try to force a class/comp review outside of the agency's regular processes. So, do we want to eliminate class/comp decisions as grievable actions?

**Response:** *Attorney Story highlighted the Simpson grievance from 2018. It was noted that there was a grievance case regarding the Crime Lab before, but the Simpson grievance was for the Operational Communications' Supervisor position. Chair Walker noted that there had been a concern raised in that grievance about whether the Council's processes were being used for collective bargaining. Chair Walker said he thought the comment from Attorney Story was intended to suggest class compensation grievances should not be heard by the council; but should be determined by the agency head. What the Council hears, however, are the grievances from agency employees that have been appealed to the Council once the agency's internal processes have been exhausted. The Council takes grievances as they come. If an agency head deems that all grievances must be prosecuted individually then that is up to the agency head to determine when he or she rules on grievances when they get to that level. Members Moran and Salyers agreed with the Chair. Member Salyers moved that the proposed change be rejected, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-703 Appeal to the Council by Employees

A. Appealable actions by employees. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.

B. Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal to the business manager and the agency head. The appeal must state specific facts relating directly to the charges on which the appeal is based.

C. Time for appeal. An employee shall file an appeal within 30 days after being served with the notice of disciplinary action.

D. Agency responsibility. An agency shall have the burden of going forward with the case once an appeal has been filed. An agency must prove by a preponderance of the evidence that it had just cause to discipline the employee.

E. Effect of appeal. The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council shall reverse the decision of the agency head if the Council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay. On a finding that the agency has not proven just cause to discipline the employee by a preponderance of the evidence, the Council may recommend a proposed disciplinary action in light of the facts proven.

F. Agency action after receiving a decision or recommendation. The agency head or the agency head's designee shall accept, modify or reverse the Council's decision or accept, modify or reject the Council's recommendation within fourteen days of receipt of the findings or recommendation from the Council. The decision of the agency head is final and binding. The agency head shall send a copy of the agency's final determination to the employee.

G. Amended notice of disciplinary action after employee files an appeal. If good cause exists, an agency head may file with the Council a motion to amend the notice of disciplinary action. The motion shall be filed no later than fourteen days before the hearing.

H. Notice of hearing. The Council shall notify the parties of the time and place of the hearing.

I. Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.

J. Conduct of hearings. The Council shall sit as a whole at a hearing, unless a Council member declares a conflict or is unable to attend. Only a Council member who was present at a hearing may participate in making the decision. Council members may administer oaths, issue subpoenas for the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this state.

K. Witness fees. Witnesses at a hearing, other than employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.

L. Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. An employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.

M. Discovery.

1. Within three business days after receiving a written request from the employee, the agency shall provide a complete copy of the investigative file, as well as the names

and home or work mailing addresses of all persons interviewed during the course of the investigation, to the employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.

2. Within 20 days after receiving the investigative file, the employee shall provide all material relating to the defense of the employee to the agency head.

3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.

4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.

5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the employee shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.

6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

7. If a party fails to provide material as required, the Council may preclude its use at the hearing.

N. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

O. Pleadings. The Council may strike a pleading not filed in accordance with this Section.

P. Depositions:

1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:

a. The witness does not reside within the State or is out of state,

b. The witness is too ill to attend the action before the Council, or

c. The deposition is for the purpose of discovery in preparing a case before the Co 2. The requesting party shall pay the expense of any deposition. An employee of the agency is not entitled to a witness fee for giving a deposition.

3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.

Q. Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined.

R. Minor discipline hearings. When the Council hears appeals of suspension without pay of 24 hours or less or the deduction of 24 hours or less from an employee's annual leave balance, each party shall have no more than three hours to present evidence unless the Council allows more time to assure a fair hearing.

S. Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.

T. Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

U. Settlement of disputes. If requested by the employee, the parties shall submit the terms of settlement to the Council. If the Council approves the settlement, the settlement becomes final. If no settlement is reached, or if the proposed settlement is revoked or rejected by the Council, or withdrawn by either party, or if the settlement agreement is later vacated or reversed by a court, neither the settlement discussion nor any resulting agreement shall be admissible against the employee in any hearing before the Council on the matter.

V. Decision. In arriving at a decision, the Council may consider any disciplinary action taken within the previous 10 years against the employee, if the information is introduced at the hearing. The Council's decision shall contain findings of fact and its order for disposition of the case.

**Criticism:**R13-5-703 – We need to include something to the effect that these are the sole and exclusive rules of procedure for appeals – the Council has been incorporating the Rules of Civil Procedure into the proceedings when convenient to justify its actions, often to the detriment of these rules.

**Response:** *Rule 13-5-703 had a proposed change regarding the use of the Rules of Civil Procedure in appeals to the council. The Council believed appeal hearings did utilize the Rules of Civil Procedure and did not believe this needed to be added. Vice-Chair Mingus moved to reject the proposed change and Member Moran seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-703.M Discovery

1. Within three business days after receiving a written request from the employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.

**Criticism:** R13-5-703.M. Discovery – This is a pretty quick turnaround and can be hard to meet. If 38-1106 permits ten days to respond, is there a reason we're cutting this short?

**Response:** *This submission had already been addressed and voted on in Counsel Wahlin's submission. The Council had already voted to approve the change in time frames to produce investigative files per ARS 38-1106.*

**Rule:** R13-5-703 M.3 After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.

**Criticism:** R13-5-703.M.3. This is a little vague and problematic and frankly it seems a little too onerous for an administrative proceeding, which should be less formal and burdensome than civil litigation. If we want a Zlaket-style prompt disclosure requirement, how about "the parties have a continuing duty to disclose new or additional evidence when it is discovered or revealed. Such disclosures must be made in a timely manner, no later than ten business days after the information is revealed or discovered by the disclosing party.

**Response:** *Chair Walker found no appreciable difference between what Attorney Story proposed and what was currently in the Rules. He moved to reject this proposal, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-703M.6 6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

**Criticism:** R13-5-703.M.6. This doesn't really reflect how the Council has been obtaining exhibits from the parties over the past several years: the Council actually had a form of evidence index, which it requests the parties complete and jointly submit. The index separates stipulated and non-stipulated exhibits, and so the parties have to disclose their objections and possibly hash those out before completing and submitting the joint index. In addition the Council wants all of the exhibits bates labeled according to their exhibit numbers, the order of which depends on whether the exhibit is stipulated. So, the exhibits cannot be submitted until after this exchange has completed. In light of this, a submission deadline coincident with the party disclosure deadline is relatively unworkable- the parties need time to review this disclosures, meet and confer on objections, and then prep the exhibits for submission with the index. It would be better if the deadline for the submission was five days before the hearing to allow this. Also, requiring a final witness list ten days before the hearing can be problematic as well—sometimes we change up witnesses in light of exhibit objections and stipulations, or disclosure of an opposing party's witnesses. If it's really necessary for the Council to have an exhibit list, then it should be after the party disclosure deadline as well.

**Response:** *Addressing Rule 13-5-703.M.6, requesting that the deadline for submission for exhibits and witness lists be five days before the hearing, Member Salyers and Chair Walker said that they were fine with more time for counsel to prepare their cases. Vice-Chair Mingus asked if they meant five days or five business days. Administrative Assistant Julie Reeves commented that the parties submit the material to LEMSC, which must be prepared in the Council binders and delivered to the Council with enough time for the Council members to be able to go over it before the hearing. The extent of the material depends on the case, but if the time frame were shortened to five days, then the Council members would likely see their binders for the first time when they arrived to hear the case with no preparation. Member Salyers proposed that it be made ten days for the evidence and witness lists. Chair Walker stated that the deadlines in sections four and five impact this deadline. Chair Walker proposed that in sections four and five, the agency and employees would be required to exchange their evidence and witness lists 15 days in advance of the hearing date, and then in section six the agency and employee would be required to get their materials to the LEMSC business office at least 10 days before the hearing. In sections 4, 5, and 6, the time frames listed would all be business days rather than calendar days. Member Salyers moved that these changes be made, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-703.N. N. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

**Criticism:** R13-5-703.N - This is not workable considering the disclosure deadlines—a lot of time, the disclosures lead to motion and practice (such as motions in limine).

**Response:** *Regarding 13-5-703.N, the Council wanted to make the time frames work with their changes to section M, so Chair Walker proposed to drop the 20 days in this section to 10 business days prior to the hearing, and to require seven business days for a response after the service of motion. Chair Walker explained to the Council members that a motion in limine is a motion to exclude certain evidence. Chair Walker moved to accept these changes, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-703.O. Pleadings. The Council may strike a pleading not filed in accordance with this Section.

**Criticism:** R13-5-703.O. - I'd feel better if there was an actual governing standard for when witnesses and exhibits can be precluded. Otherwise the determination seems a little arbitrary. Can we also include that arguments, evidence, or testimony may be precluded if a pleading is not compliant with this section (so that appellants cannot introduce new grounds for appeal not included in the Notice of Appeal).

**Response:** *In section O, Attorney Story asked about the effects of late submission of witness lists and evidence. Chair Walker stated that the lack of timely submission would be the reason for either of these items not being admitted. Member Salyers moved to reject this proposal, and Member Moran seconded the motion. The motion carried unanimously.*  
*Chair Walker noted that in the courts, parties are not permitted to raise issues on appeal that were not raised in the lower court, and he felt that this should also be, and is, the procedure in proceedings before the Council. Member Salyers moved to reject this proposed change, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-703.T - Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

**Criticism:** R13-5-703.T. Add: Impertinent or unreliable.

**Response:** *Under R13-5-703.T Attorney Story wanted to add the words "impertinent or unreliable" added alongside the word irrelevant. Impertinent was thought to be essentially analogous to irrelevant. Chair Walker stated that he would not admit unreliable evidence in general. The Council decided to add the word unreliable, so the text would read, "unreliable and irrelevant." Member Salyers moved to add this word and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** R13-5-706- Appeal to the Council by Covered Employees- A. Appealable actions by covered employees. A covered employee may appeal dismissal from covered service, suspension for more than 40 working hours, or involuntary demotion resulting from disciplinary action.

B. Form of appeal. To initiate an appeal, a covered employee shall submit a signed written appeal to the business manager and the agency head. The appeal must state specific facts relating directly to the charges on which the appeal is based.

C. Time for appeal. A covered employee shall file an appeal within 10 working days after the effective date of the action.

D. Agency responsibility.

1. When a covered employee is dismissed, involuntarily demoted, or suspended for more than 40 working hours, the employing agency shall notify the Business Manager in writing of this action and provide related documentation within 5 business days.

2. An agency shall have the burden of going forward with the case once an appeal has been filed.

3. An agency must prove by a preponderance of the evidence that it had just cause to discipline the covered employee.

E. Effect of appeal. The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the covered employee. The Council shall reverse the decision of the agency head if the Council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the covered employee to the same position the covered employee held before the dismissal or demotion with or without back pay. On a finding that the agency has not proven just cause to discipline the covered employee by a preponderance of the evidence, the Council may recommend a proposed disciplinary action in light of the facts proven.

F. Agency action after receiving a decision or recommendation. The agency head or the agency head's designee shall accept, modify or reverse the Council's decision or accept, modify or reject the Council's recommendation within fourteen days of receipt of the findings or recommendation from the Council. The decision of the agency head is final and binding. The agency head shall send a copy of the agency's final determination to the covered employee.

G. Notice of hearing. The Council shall notify the parties of the time and place of the hearing.

H. Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.

I. Conduct of hearings. The Council shall hear the appeal within 30 days of the receipt of the appeal. The Council shall sit as a whole at a hearing, unless a Council member declares a conflict or is unable to attend. Only a Council member who was present at a hearing may participate in making the decision. Council members may administer oaths, issue subpoenas for the attendance of witnesses and the production of books or papers, and cause the depositions of

witnesses residing within or outside the state to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this state.

J. Witness fees. Witnesses at a hearing, other than covered employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.

K. Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. A covered employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.

L. Discovery.

1. Within three business days after receiving a written request from the covered employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the covered employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.

2. Within 20 days after receiving the investigative file, the covered employee shall provide all material relating to the defense of the covered employee to the agency head.

3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.

4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the covered employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.

5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered employee shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.

6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

7. If a party fails to provide material as required, the Council may preclude its use at the hearing.

M. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

N. Pleadings. The Council may strike a pleading not filed in accordance with this Section.

O. Depositions:

1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:

a. The witness does not reside within the State or is out of state,

b. The witness is too ill to attend the action before the Council, or

c. The deposition is for the purpose of discovery in preparing a case before the Council.

2. The requesting party shall pay the expense of any deposition. A covered employee of the agency is not entitled to a witness fee for giving a deposition.

3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.

P. Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined.

Q. Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.

R. Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

**Criticism:** R13-5-706. Appeal to the Council by Covered Employees- see above comments in Rule R13-5-703 re: procedural

**Response:** *In R13-5-706, as noted in Counsel Wahlin's section, Chair Walker moved again to make the Rule comply with state law in ARS 38-1106, moving the time frame*

*from three days to fourteen days in section L, under Discovery. Member Salyers seconded the motion, and it carried unanimously.*

## **DPS Command Staff Comments and Responses**

**Rule:** R13-5-301 Recruitment- D. Reapplying. A candidate who fails any portion of the background investigation, with the exception of medical only, shall be precluded from reapplying for a period of 2 years from the date of disqualification.

**Criticism:** R13-5-301.D - We would like to change the current rule which only allows a 2-year preclusion for failure in the background process. This should be changed to allow HR to preclude applicants for a longer period of time or a shorter period of time as the specific disqualifier would dictate. This would include a permanent disqualification if deemed appropriate.

**Response:** *The Department Personnel proposed a change to Rule 13-5-301.D, which allows a 2-year preclusion for failure in the background process. The Department proposed that Human Resources be allowed to preclude applicants for a longer or shorter time, as the specific disqualifier would dictate, and it would allow a permanent disqualifier if deemed appropriate. Chair Walker asked for instances where a shorter time frame would be appropriate. Julie Reeves stated that the polygraph could be problematic for medical reasons. Captain Buckmister noted drug use and possibly theft could be problematic. It was noted that anyone who could reapply quickly because of a technicality should be able to, and if someone has severe preclusions, it would be appropriate to give permanent disqualification. The question of giving Human Resources too much power was discussed, but it was pointed out that they already handle the disqualifying of applicants. It was suggested the agency head approve the time change in the disqualification period. It was decided to add to the end of the section, "provided however that the presumptive period of disqualification can be expanded or contracted with the approval of the agency head." Chair Walker moved to adopt this change, and Member Moran seconded it. The motion carried unanimously.*

**Rule:** R13-5-317 Performance Evaluations- A. Establishing a performance evaluation program. The Council shall adopt and an agency shall administer a performance evaluation program. The program shall include a rating system that informs the agency head and the employee of the employee's relative level of performance. The evaluation program shall include training on how to achieve and maintain standard performance and how to improve performance.

B. Performance evaluation manual. The Council shall provide a manual that provides clear and concise guidelines for objectively measuring and reporting employee performance. Only the Council may authorize a revision of the manual. Each employee shall receive a copy of the manual, which includes evaluation procedures and forms.

C. Frequency of evaluation. A supervisor shall evaluate and give each permanent-status employee a written performance evaluation at least 1 time in each 12 month period. A supervisor shall evaluate a probationary employee at least 1 time in each 6 month period.

D. Effect of failure to evaluate. If an employee's supervisor fails to evaluate the employee, or fails to evaluate the employee by the end of the rating period, the employee shall be given no less than a standard evaluation for that period.

E. Grieving an evaluation. An employee who receives a less than standard rating may file a grievance with the agency head. If the grievance is denied by the agency head, the employee may grieve to the Council any overall rating that:

1. Is less than standard,
2. Would cause a reduction in pay, or
3. Would result in withholding or postponing a salary adjustment.

**Criticism:** R13-5-317: Need to change the timeframe for service of an evaluation to match the manual. Allow 31-days following the end of the rating period, or 5 days following the end of an interim evaluation.

**Response:** *This was predicated on changes to the DPS Performance Appraisal Manual. Captain Buckmister noted that this change was in relation to DPS' Performance Appraisal Manual and was not necessarily applicable to all of the agencies represented by LEMSC. Member Salyers noted DPS had come far in making sure employees were given their evaluations in a timely manner and thought the other agencies should get in line and do the same thing. Member Moran, however, moved to reject the proposed change. The motion carried 3 to 1, Member Salyers dissenting.*

**Rule:** R13-5-101 Definitions / R13-5-317 Performance Evaluations (as seen above)

**Criticism:** Clarification in the rules that "standard rating" or "below standard rating" means a cumulative rating. May involve adding this into the definition section.

**Response:** *This matter had been tabled until all agencies under LEMSC could be contacted so that LEMSC could ascertain that all agencies currently used an appraisal system that had a cumulative rating. A spreadsheet was presented to the Council detailing the systems used by the other agencies under LEMSC rules and the time frames under which each evaluates and serves their evaluations. Major Damon Cecil explained "cumulative" rating, which is the average of the weighted scores from each section of the evaluation. Member Salyers moved that the word "cumulative" be added to the process when determining if an employee is below standard. Vice-Chair Mingus seconded the motion, and the motion carried unanimously.*

**Rule:** R13-5-317.D. - Effect of failure to evaluate. If an employee's supervisor fails to evaluate the employee, or fails to evaluate the employee by the end of the rating period, the employee shall be given no less than a standard evaluation for that period.

**Criticism:** Need to determine if late service of an eval means that the employee can't get a cumulative below standard, or a below standard in any category. There may be some issue between the PAM and the rule on this.

**Response:** *This comment proposed if there was late service, the employee could not get a cumulative score that was lower than a standard rating in any category. A former Business Manager decision from Ivan Wooten was read, stating that if an evaluation was not given to an employee in a specified time period, it would be standard in each category. Chair Walker made a motion, considering Captain Buckmister's reminder that the other agencies serve their evaluations at various times. Chair Walker moved to include a provision proposing to amend R13-5-317.D, to provide that 1) failure to deliver a timely evaluation will preclude the subject employee from receiving a substandard rating in any category, and 2) evaluations must be done and given to the employee in the time frame specified in the Agency's Performance Appraisal Manual. Member Salyers seconded the motion and the motion carried unanimously.*

**Rule:** R13-5-507- Holiday Leave - A. Paid holidays. An agency shall observe the holidays authorized under A.R.S. § 1-301.

B. Eligibility. To be eligible for holiday leave, a full-time employee shall be in pay status for 10 or more hours in the work week in which the holiday occurs. A part-time employee shall be in pay status for five or more hours in the work week. The holiday hours that would be accrued cannot be used to satisfy any part of this requirement.

1. If a holiday occurs on an employee's regular work day, the employee may be absent with pay for the number of hours the employee is regularly scheduled to work, up to a maximum of eight hours, unless the employee is required to work to maintain essential State services.

2. An employee required to work on a holiday shall receive pay for the time worked, and leave hours for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.

3. If a holiday occurs on a day when an employee is scheduled to work, but the employee is unable to work because of an illness or injury, the employee may take sick leave and accrue holiday leave credits as provided under subsection (C) for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.

4. An employee not scheduled to work on a holiday shall receive leave credits up to a maximum of eight hours.

C. Accruing holiday leave. An agency may credit holiday leave to the employee's annual leave balance or establish a separate balance for holiday leave. The agency shall add accrued holiday leave to an employee's annual or holiday leave balance.

D. Using holiday leave. An employee may use accrued holiday leave under State and federal law and agency policy. The employee shall schedule the use of accrued holiday leave through the employee's supervisor.

**Criticism:** R13-5-507: Need to clarify which holidays DPS employees actually get. The statutory reference is overly broad. See LEMSC substantive policy statement 1-2018.

**Response:** *The Rules pertain to 14 agencies, and DPS has a substantive policy, which is indicated in the comment, that details exactly which holidays the Department should get off. No change was needed within the LEMSC Rules.*

**Rule:** R13-5-305 Promotion- I. Military leave. Human Resources shall allow an employee returning from military leave to take any examination that the employee could have taken if military service had not intervened. If the employee passes the examination, the business manager shall add the employee's name to the appropriate internal eligibility list based on the employee's score. and 13-5-511 Military Leave of Absence- A. Privileges of military service. An employee shall receive all rights provided by State and federal law for a military leave-of-absence under A.R.S. § 26-168 and A.R.S. § 38-610.

B. Notifying the agency. An employee expecting an assignment to military duty shall notify the immediate supervisor as soon as possible. Upon receiving orders to report, the employee shall submit a copy of the orders and a written request for military leave to the employee's supervisor. The supervisor shall process the request under the agency's policy and procedure for a military leave-of-absence.

C. Extended military leave. If an employee's orders for active duty exceed the time limit for paid military leave, the employee may request to use accrued leave or leave without pay for the remainder of the military leave.

D. Returning to position. Upon return from military leave-of-absence, an agency head shall restore an employee to the position held before the military leave-of-absence, or to a similar position within the employee's classification.

E. Promotion. Upon return from a military leave-of-absence, an employee may be promoted by the agency head if the employee's name was on a promotional list at the time of activation into military service.

**Criticism:** Should we add reasonable allowances for skipping employees on a promotional list? Admin leave, military leave, etc? If skipped, need to reinforce their right to get a promotional offer before list expires.

**Response:** *R13-5-305 and 13-5-511 were discussed as the Department asked for reasonable allowances for skipping employees on a promotional list, especially when that employee is on administrative leave or military leave. Member Salyers stated he had been in the position of being skipped over and did not want military personnel*

*skipped. The Council noted an employee can always turn down a position if it is not desired by the employee, but the employee should not be removed from a list or overlooked because of being deployed. Regarding R13-5-511 would now state "Upon return from a military leave of absence an employee who is on a promotional list at the time he or she went on military leave shall be promoted by the agency head according to their position on the list when they left for military duty." Member Salyers moved for this change, and Member Moran seconded the motion. The motion carried unanimously.*

*Regarding 13-5-305 there would be a new section "R" and the current "R" would now become "S." The new "R" would read: "An employee returning from administrative leave or family and medical leave who is on a promotional list when he or she went on leave, shall be promoted in accordance with their position on a list." Chair Walker moved for this change to be adopted, and Vice-Chair Mingus seconded the motion. The motion carried unanimously.*

**Rule:** None, Addressed in the Performance Appraisal Manual

**Criticism:** Need to clarify the impact of an Interim Rating on pay step increase and promotional eligibility.

**Response:** *This was addressed in changes made to the DPS Performance Appraisal Manual. Substantive policies were written for these issues for DPS employees, whereas these policies would not apply to all 14 LEMSC agencies, some of which may have appraisal manual policies that differ from those of DPS, and thus no change should be made to the Rules to which such other agencies must adhere.*

**Rule:** R13-5-703.N.- Appeal to the Council by Employees- N. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

R13-5-706.M.- Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

**Criticism:** R13-5-703.N and R13-5-706 M - Per the Chair, require opposing counsel to meet and confer before filing motions.

**Response:** *Regarding Rule 13-5-703(N)and (M), Chair Walker proposed the addition of language stating: "All motions must, unless they are stipulated to by the parties, be accompanied by a certification by the moving party, or the moving party's legal counsel if such a party is represented, attesting to the fact that the parties or their respective counsel have met and conferred in good faith with regard to the subject matter of the motion and, despite having done so, have been unable to resolve the issue(s) presented."*

*Chair Walker moved to adopt this change, and Member Salyers seconded the motion. The motion carried unanimously.*

**Criticism:** If a test plan calls for a certain number of applicants to make the list but there are more vacancies than the list calls for, HR can extend the list to fit the number of vacancies for qualified candidates.

**Response:** *HR explained they must state how many people will be on the list at the beginning of the test plan. If later there are more people that are needed for the list, they would have to start all of the testing over again. This criticism was not voted on by the council.*

### **DPS Technical Services Division Comments and Responses**

**Rule:** R13-5-103.B.8. Personnel Administration- B. Personnel records. Human Resources shall maintain employment records on each agency employee, including the employee's:

1. Employment application;
2. Examination scores;
3. Signed oath of office;
4. Date of initial appointment;
5. Other appointment orders;
6. Performance reports;
7. Transfers;
8. Commendations;
9. Leaves-of-absence without pay;

**Criticism:** R13-5-103 (B)(8) Personnel Administration-HR receives all the annual awards. They should be required to save a copy in each recipient's employee folder. These are never available at retirement time.

**Response:** *The Council agreed these items should be in the file and are required to be in the file. The Business Manager spoke with the Human Resources Bureau Commander about why copies are not retained in the employee's HR file. The Commander stated it was the responsibility of each supervisor and bureau to make sure the documents are submitted to HR upon the employee being given these items. HR cannot come up with what they are never given copies of, and he would attest to the Council that the bureaus are not providing these items to HR. Human Resources is not automatically aware of an*

*employee receiving an award or commendation unless they are informed of it. In short, all bureaus should make sure these documents are provided to HR. In light of the foregoing, no action was taken by the Council on this issue.*

**Rule:** R13-5-304.F. Employment- F. Removing a candidate. The business manager shall remove a candidate from an eligibility list for any of the following reasons:

1. Human Resources is unable to contact the candidate by phone or mail;
2. The Council abolishes the classification for which the list was developed; or
3. The candidate withdraws from the selection process.

**Criticism:** R13-5-304 (F) Employment- I think the candidates who are not eligible for rehire by the department should not be allowed to be on a list and/or removed from a list if missed prior to placing them on a list.

**Response:** *The Council voted to add a subsection (F)(4) that provides: "The Candidate is not eligible for rehire."*

**Rule:** R13-5-305 Promotion- B. Applying for promotion. An employee may compete for a place on an internal eligibility list by submitting an internal application form to Human Resources by the application filing deadline.

1. An employee is eligible to take a promotional examination if the employee:
  - a. Satisfactorily completes initial probation by the application filing deadline;
  - b. Meets or exceeds the minimum qualifications for the classification; and
  - c. Receives a standard or above standard performance evaluation for the latest rating period.
2. An employee who participates in developing an examination for an internal classification is not eligible to take the examination for that classification.

**Criticism:** R13-5-305 Promotion- This should include clarifying the rulings by the Council such as: On Friday, September 6, 2019, the Council rules on how an Interim Rating within the preceding 12-months will delay an employee's scheduled pay step increase. Any time spent on Interim Rating within the preceding 12 months will delay an employee's eligibility by the same amount of time. For example, if an employee was on Interim Rating for three months, their scheduled pay step increase will be delayed by three months. The effective date of an Interim Rating, for the purposes of determining pay step or promotional eligibility, will be the "RATING FROM: date. When a Standard evaluation is achieved, the new "RATING FROM" date will end the Interim period. I understand the new version of the Performance Appraisal Manual, when approved, will limit look-back period to 90-days prior.

**Response:** *When this comment was written, it was predicated on the fact that the DPS Performance Appraisal Manual had not yet been approved and was still undergoing changes. It was not approved with this verbiage. Furthermore, the Performance Appraisal Manual is a DPS manual, as opposed to the LEMSC Rules that apply 14 State Agencies. LEMSC cannot change the Rules for only DPS policies because of the other agencies involved who have their own Performance Appraisal Manuals. The DPS Appraisal Manual is under LEMSC's purview, and there are substantive policies for DPS regarding the interim rating and how it is handled that may be inconsistent with the policies of other agencies with respect to such matters. In light of this, changes will be made to the DPS Performance Appraisal Manual, but not to the LEMSC Rules.*

Rule: R13-5-309.B.- Selection- B. Interviewing. A manager who is filling a vacancy shall interview all candidates requesting a transfer, may interview up to three candidates from each certified list.

**Criticism:** R13-5-309(B) Selection- There needs to be definition of who is responsible for notifying internal and external candidates when they are not selected. Is it HR's or the interviewing supervisor responsibility? Without definition, the notification falls through the cracks. Many times employees find out from the rumor mill that another person was selected for a position and external candidates never find out at all.

**Response:** *The Council decided to amend this Rule. The current F would become G, and the new F would state: "Human Resources shall provide timely notice to all candidates not selected of their non-selection."*



Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**TITLE 13. Public Safety**

**Chapter 05. Law Enforcement Merit System Council**

Sections, Parts, Exhibits, Tables or Appendices modified

R13-5-101, R13-5-102, R13-5-402, R13-5-701 through R13-5-704, R13-5-706

REMOVE Supp. 06-2  
Pages: 1 - 22

REPLACE with Supp. 17-3  
Pages: 1 - 25

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

**PUBLISHER**  
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## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION  
September 30, 2017

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### **RULES**

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### **THE ADMINISTRATIVE CODE**

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### **ADMINISTRATIVE CODE SUPPLEMENTS**

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

### **HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### **ARTICLES AND SECTIONS**

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### **HISTORICAL NOTES AND EFFECTIVE DATES**

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### **ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### **SESSION LAW REFERENCES**

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### **EXEMPTIONS FROM THE APA**

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### **EXEMPTIONS AND PAPER COLOR**

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

Authority: A.R.S. §§ 41-1830.11 through 41-1830.15

*Editor’s Note: The former rules in this Chapter, which were repealed effective May 10, 2000, were codified under the old numbering system in the Arizona Administrative Code. The Historical Notes for the former rules therefore do not appear here. Editor’s Notes at the beginning of Articles 1 through 9, however, indicate the location of the former rules in those Articles, and the rescinded rules are on file in the Office of the Secretary of State (Supp. 00-2).*

**ARTICLE 1. GENERAL PROVISIONS**

*Editor’s Note: Former Article 1, consisting of Sections R13-5-01 through R13-5-04, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-101 through R13-5-104, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

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*Editor’s Note: Former Article 2, consisting of Sections R13-5-10 and R13-5-11, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 2, consisting of Sections R13-5-201 through R13-5-204, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

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*Editor’s Note: Former Article 3, consisting of Section R13-5-15, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-301 through R13-5-317, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

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*Editor’s Note: Former Article 4, consisting of Section R13-5-20, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 4, consisting of Sections R13-5-401 through R13-5-403, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

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*Editor’s Note: Former Article 5, consisting of Sections R13-5-25 through R13-5-28, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 5, consisting of Sections R13-5-501 through R13-5-513, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

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*Editor’s Note: Former Article 8, consisting of Sections R13-5-45 through R13-5-48, repealed by final rulemaking at 6 A.A.R.*

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1982, effective May 10, 2000; new Article 8, consisting of Sections R13-5-801 through R13-5-804, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

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**ARTICLE 9. REPEALED**

*Editor's Note: Article 9, consisting of Section R13-5-50, repealed effective June 7, 1978 (Supp. 78-3).*

**ARTICLE 1. GENERAL PROVISIONS**

*Editor's Note: Former Article 1, consisting of Sections R13-5-01 through R13-5-04, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-101 through R13-5-104, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-101. Definitions**

In this Chapter, unless otherwise specified, the following terms mean:

“Abandonment of position” means failure of an employee to report to work for a period of five consecutive working days without authorization from the employee’s supervisor or manager and without good cause.

“Abilities” means general traits or capabilities an individual possesses when beginning the performance of a task.

“Agency” means any governmental organization subject to the rules of the Law Enforcement Merit System Council.

“Agency head” means the chief executive officer or director of any agency placed under the rules of the Law Enforcement Merit System Council.

“Allocate or allocation” means the placement of a position to a classification based on the duties and responsibilities of the position.

“Annual leave” means the leave time accrued biweekly by an employee based on the number of years of state service and may include holiday leave and recognition leave.

“Appeal” means an employee’s request for Council review of a disciplinary action.

“Applicant” means a person who has applied for an opportunity to compete for a position.

“Appointment” means the placement of a candidate or employee into a classified position.

“Background investigation” means an inquiry to determine the character of a potential employee and may include verification and review of identity, education, employment history, personal references, credit rating, criminal history, and driving record.

“Break-in-service” means a period of absence from agency service of more than 240 consecutive working hours resulting from an employee’s resignation, retirement, suspension, lay-off, or leave of absence without pay.

“Business day” means the hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding observed state holidays.

“Business manager” means the individual responsible for administering the affairs of the Council.

“Candidate” means an applicant who qualifies for a place on an eligibility list.

“Certified list” means the names of qualified candidates on an eligibility list who are willing to accept an appointment.

“Civilian employee” means a person who is appointed to a classification that does not require peace officer status.

“Classification” means one or more positions requiring the same minimum qualifications, knowledge, skills, and abilities that have the same title and pay range.

“Classification date” means the effective date of an employee’s appointment to a classification.

“Classification specification” means the classification’s title or rank, classification code, typical duties and responsibilities,

essential functions, minimum qualifications, required knowledge, skills and abilities.

“Classified position” means a position that is allocated to a classification.

“Commissioned employee” means a person who is appointed to a classification that requires Arizona Peace Officer Standards and Training Board certification as a peace officer.

“Compensation” means the amount of money paid for each hour worked and paid leave taken and includes time off received for overtime and holidays worked or accrued.

“Compensatory time” means leave received for overtime worked.

“Competitor” means an applicant who has met the minimum qualifications for a classification and is competing in an employment or promotional examination.

“Contested case” has the same meaning as in A.R.S. § 41-1001 (4).

“Council” means the Arizona Law Enforcement Merit System Council.

“Covered employee” means a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and who is appointed to a position (outside of Department of Public Safety and Arizona Peace Officers Standards and Training Board) that requires such a certification in the covered service, as defined in A.R.S. § 41-741(5)(c)(e) and who have completed their original probationary period.

“Covered position” means any position within an agency that is not appointed by the Governor or by the agency head with the concurrence of the Governor and is subject to the rules of the Council.

“Covered service” means that employment status conferring rights of appeal as prescribed in A.R.S. § 41-782 and A.R.S. § 41-783 or A.R.S. § 41-1830.16, as applicable, as defined in A.R.S. § 41-741(6).

“Days” means full calendar days unless otherwise specified in the text of a rule.

“Demotion” means the disciplinary appointment of an employee to a classification with a lower pay range.

“Dismissal” means an agency-initiated removal of an employee from state service.

“Duties” means actions or tasks required under the circumstances by an employee’s position or classification.

“Eligibility list” means the names of candidates for a classification in descending order of their final scores in preparation for a selection process.

“Employee” means a person who is appointed to a position, subject to the terms and conditions of the appointment within the Department of Public Safety or the Arizona Peace Officers Standards and Training Board.

“Employing agency” means the agency in the state personnel system where the covered employee is, or in the case of dismissal, was employed as prescribed in A.R.S. § 41-1830.16(H)(3).

“Entrance rate” means the lowest rate of pay within the pay range of a classification.

“Examination” means an evaluation or test to determine if an applicant’s qualifications comply with the specifications for a classification.

“Examination plan” means a description of each phase of an examination, the weight applied to each phase of the examina-

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tion, the criteria for moving from one phase of the examination to another and any limitations as to the number of names to appear on the eligibility list.

“Exempt employee” means an employee who is not subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.

“External employment list” means an eligibility list of candidates seeking employment with an agency.

“Fair Labor Standards Act” (FLSA) means those federal statutes at Title 29 U.S.C. 201-219 and 251-262.

“Family and Medical Leave Act FMLA leave” means a leave of absence, with or without pay, taken by an employee under a policy adopted by an agency head from options authorized in the Family and Medical Leave Act. 29 U.S.C. 2611, et. seq.

“For cause” means disciplinary action or dismissal for any reason listed in A.R.S. § 41-1830.15 or this Chapter.

“Full authority peace officer” means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board as prescribed in A.R.S. § 41-1830.16(H)(4).

“Full-time employee” means an employee appointed to work 40 hours a week or 160 hours in a 28 day cycle.

“Grievance” means a work-related complaint by an employee regarding classification, compensation, performance evaluation, or violation of law or Council rules.

“Holiday leave” means the leave time accrued by working a state holiday or accrued when the holiday falls on a day the employee is not scheduled to work or is on paid sick leave. Holiday leave may be included in annual leave time.

“Human Resources” means an agency department responsible for personnel administration.

“Individual with a disability” means anyone who has a physical or mental impairment that substantially limits one or more major life activities, or who has a record of an impairment, or is regarded as having an impairment.

“Initial probation” means a probationary period required of a new employee to an agency, an employee appointed to a classification as a special limited term employee, or an employee appointed to the classification of officer who has completed the terms of a special limited term appointment.

“Intermittent appointment” means the appointment of an employee to work on an irregular basis.

“Internal list” means an eligibility list of internal candidates seeking promotional positions or reassignments.

“Just Cause” means all of the following:

The employing agency informed the employee of the possible disciplinary action resulting from the employee’s conduct through agency manuals, employee handbooks, the employer’s rules and regulations or other communications to the employee, or the conduct on which disciplinary action was based such that the employee should have reasonably known disciplinary action could occur;

The disciplinary action is reasonably related to the standards of conduct for a professional law enforcement officer, the mission of the agency, the orderly, efficient or safe operation of the agency or the employee’s fitness for duty;

The discipline is supported by a preponderance of the evidence establishing that the conduct on which the disciplinary action was based occurred; and

The discipline is not excessive and is reasonably related to the seriousness of the offense and the employee’s service record.

“Knowledge” means a body of information, usually of a factual or procedural nature, that makes for successful performance of a task.

“Limited duty” means a short-term assignment to a physically less demanding position while the employee recovers from a temporary medical condition or disability.

“Limited-term appointment” means an appointment to a position that is designated as temporary.

“Limited-term employee” means an employee in a limited-term appointment who has not achieved the status of a regular employee.

“Manifest error” means an erroneous act or failure to act in administering the provisions of Article 3 of this Chapter.

“Non-exempt employee” means an employee who is subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.

“Original probationary period” means the specified period following initial appointment to covered service as defined in A.R.S. § 41-741(10).

“Overtime” means time worked by a non-exempt employee in excess of 40 hours in a work week or in excess of 160 hours in a 28-day cycle.

“Part-time appointment” means the appointment of an employee to work a schedule of less than 40 hours per week.

“Part-time employee” means an employee appointed to work less than 40 scheduled hours per week.

“Pay range” means the difference between the lowest and highest pay rates for a classification.

“Pay status” means an employee’s right to receive compensation for time worked or leave taken, except when absent on leave-without-pay or suspension without pay.

“Permanent employee” means an employee who has successfully completed an initial probation with an agency.

“Permanent status” means the employment rights achieved after satisfactorily completing the probationary period for a classification.

“Personnel Rules” means the rules adopted by the Arizona Department of Administration, human resources division as prescribed in A.R.S. § 41-1830.16(H)(7).

“Position” means a job or function, whether occupied or vacant, that is assigned a number, classification, funding source, pay range, and location code.

“Position audit” means an examination of the duties and responsibilities of a position to determine the appropriate classification.

“Promotional Probation” means a period of 12 months established for evaluating an employee’s performance to determine if the employee should be retained in a classification.

“Promotion” means the appointment of an employee to a position in another classification with a higher maximum pay level.

“Provisional appointment” means an appointment to a position in a classification for which there is no eligibility list.

“Qualifications Appraisal Board” means a group of raters who evaluate a competitor’s qualifications based upon the competitor’s written or oral responses.

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“Qualifying pay period” means a pay period for qualifying service in which an employee is in pay status for at least one-half of the employee’s normally scheduled work week.

“Qualifying service” means part-time or full-time service as an employee of an agency, excluding any break-in-service.

“Reallocation” means a change in the classification of a position, based upon an analysis of the duties and responsibilities of the position.

“Reappointment” means appointment to a classification previously held by an employee who was reassigned to a different classification.

“Reassignment” means an appointment, at the employee’s request, to a position in a different classification with the same or a lower pay range.

“Recall” means the appointment of a former employee who was separated by a reduction in force.

“Reclassification” means the change in classification of an employee due to the employee’s movement to a position in a different classification or a reallocation of the employee’s position to a different classification.

“Recognition leave” means leave time given an employee under a formal awards program as an incentive for continued superior performance. Recognition leave is added to annual leave.

“Reduction in force” means an action taken by an agency head to involuntarily transfer, reclassify, or lay-off an employee as a result of a legislative or executive mandate; reduction of funds; or decrease in the number of authorized positions, service area, or program responsibilities.

“Regular-employee” means an employee, except a limited term-employee, who achieves permanent status.

“Reinstatement” means an appointment of a former employee to the classification or a similar classification held when the employee separated from the agency.

“Rejection of probation” means an action taken by an agency head to reclassify an employee on a promotional probation or to separate an employee on an initial probation for failure to achieve and sustain the required level of performance for the classification.

“Responsibilities” means actions or tasks for which an employee is accountable in a position or classification.

“Retirement” means a voluntary separation from an agency by an employee who is eligible for an immediate disbursement from a retirement plan.

“Separation” means the close of an employee’s term of employment with an agency.

“Skill” means an individual’s level of proficiency or competency in performing a specific task.

“Special duty assignment” means an employee’s temporary assignment of more responsibilities or duties or an assignment to a position with special work or living requirements.

“Special limited term appointment” means an appointment to the classification of cadet officer or officer trainee pending the completion of requirements for the classification of officer.

“State” means the State of Arizona.

“Standard performance” means a rating given to an employee who meets the expected level of performance needed to accomplish the objectives of a position.

“State personnel system” means all state agencies and employees of those agencies that are not exempted by this article as prescribed in A.R.S. § 41-741(17).

“Standardized scoring” means a statistical method used to ensure that the various components of a multi-phased examination receive their proper weights.

“Suspension of pay” means the disciplinary action of withholding an employee’s pay for a specified period.

“Telecommuting” means an employee performing assigned work at a location other than the employee’s regular work location.

“Time-in-grade” means time spent in a classification.

“Transfer” means the movement of an employee from the employee’s current position to another position in the same classification.

“Uncovered appointment” means an appointment to a job or function by the Governor or by an agency head with the concurrence of the Governor.

“Uncovered employee” means an employee who serves at the pleasure of the Governor.

“Veteran” means an individual who served in the armed forces of the United States and was discharged from military service under honorable conditions after more than six months of active duty and as defined in 37 U.S.C. 101 and A.R.S. § 38-492.

“Working day” means the same as business day.

“Work week” means the 40-hour time period an employee works between Saturday and Friday, including any leave time taken.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

Amended by emergency rulemaking at 10 A.A.R. 1163, effective March 4, 2004 (Supp. 04-1). Emergency expired after 180 days; the Section on file prior to the emergency has been restored (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2). Amended by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

#### R13-5-102. Law Enforcement Merit System Council

- A. Authority. The statutory authority of the Law Enforcement Merit System Council is found in A.R.S. § 41-1830.11 through § 41-1830.16.
- B. Decisions of the business manager are subject to review by the Council.
- C. Selection of officers. The Council shall select a Chair and Vice-Chair from its members at a regular meeting in November or December of even-numbered years. The Chair and Vice-Chair shall hold office for a period of two years, or until their successors are selected.
- D. Meetings. The Chair, or in the Chair’s absence the Vice-Chair, shall call a meeting of the Council when a meeting is needed. The Council shall hold meetings at a location convenient to the participants whenever possible. Except for the Council’s executive sessions, the Council’s meetings shall remain open to the public and the Chair shall give interested parties an opportunity to be heard.

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- E. Quorum. Three members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.
- F. Minutes. The Council shall keep minutes of its proceedings and official actions. The Council's records and minutes are open to public review during normal business hours.
- G. Council rules. An agency shall provide employees with a copy of the Council's rules.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

**R13-5-103. Personnel Administration**

- A. Separation of powers. The agency head shall staff and maintain a human resources function responsible for personnel administration consistent with these rules and under the jurisdiction of the Council as provided for in statute and this Chapter. The business manager shall provide oversight to Human Resources in administering this Chapter.
- B. Personnel records. Human Resources shall maintain employment records on each agency employee, including the employee's:
  1. Employment application;
  2. Examination scores;
  3. Signed oath of office;
  4. Date of initial appointment;
  5. Other appointment orders;
  6. Performance reports;
  7. Transfers;
  8. Commendations;
  9. Leaves-of-absence without pay;
  10. Disciplinary actions;
  11. Separation from the agency;
  12. Reinstatement to the agency, and
  13. Any other appropriate employment records.
- C. Confidentiality. Human Resources shall preserve the confidentiality of personnel records. Persons authorized to access personnel records are:
  1. The employee;
  2. A person authorized by the employee;
  3. A person with an official court order;
  4. A person authorized by the agency head;
  5. A person authorized by the chair of the Council; and
  6. A law enforcement agency with authorized access to such records under A.R.S. § 41-1828.01.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-104. General Information**

- A. Delegating authority. The agency head may delegate to other agency personnel the authority and duties imposed by this Chapter upon the agency head, unless otherwise prohibited by statute or rule.
- B. Reports. The agency head shall provide information requested by the Council on matters relating to this Chapter. The agency shall present the information in the format requested by the Council.
- C. Restricted information. The Council shall safeguard confidential information given to the Council by any employee or former employee. The Council shall not allow inspection of such information except under conditions prescribed by the Council.

- D. Service of notice. The agency or the Council shall serve notice upon an employee personally or by the U.S. Postal Service. Postal service shall be made by certified mail, return receipt requested, to an employee's last known home or business address, and is complete upon mailing. Service as provided for in this Section is required for the following:
  1. Notice of an employee's rejection from probation;
  2. Notice of a charge in a disciplinary proceeding;
  3. Notice of an employee's suspension, layoff, or dismissal; and
  4. Other notices required by these rules.
- E. Proof of service. The agency shall provide proof of service by affidavit.
- F. Availability of funds. Reference in these rules to employee pay is contingent upon availability of funds, as determined by the agency head.
- G. Compliance with federal rules and regulations. Any federal regulation or standard governing the granting of federal funds to an agency under the Law Enforcement Merit System Council takes precedence over any of these rules which conflict with the control and expenditure of federal funds.
- H. Validity and separation. If any provision or application of the rules in this Chapter is held invalid by a court of competent jurisdiction, the remainder of the rules in this Chapter and application of the rules to other persons or circumstances are not affected by the court decision.
- I. Equal employment. The Council, the agency head, and agency employees shall not discriminate in any aspect of employment on the basis of race, color, religion, sex, national origin, age, disability, or pregnancy.
- J. Accommodation. The Council and the agency head shall make reasonable accommodations to enable a person with a disability to use agency facilities, services, and programs. A person requesting accommodation shall notify the agency or the business manager as soon as reasonably possible in order to allow the agency time to arrange the accommodation.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 2. CLASSIFICATION AND COMPENSATION**

*Editor's Note: Former Article 2, consisting of Sections R13-5-10 and R13-5-11, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 2, consisting of Sections R13-5-201 through R13-5-204, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-201. Classification**

- A. Classification Plan. The Council shall adopt and revise the classification of positions for use by an agency. Collectively, classifications adopted by the Council comprise the classification plan of the Council. Each classification in the classification plan includes:
  1. A descriptive title;
  2. A description of the scope of duties, typical responsibilities, and essential functions;
  3. The minimum qualifications required of an applicant; and
  4. A determination of non-exempt or exempt status under the Fair Labor Standards Act.
- B. Classification specifications. The business manager shall document the date of adoption and the latest revision of each classification specification, and shall maintain the master set of all approved classification specifications. Human Resources shall also maintain a set of all approved classification specifications. Copies of a classification specification are open for

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inspection by an employee and the public and are available on the DPS web site.

- C. Allocating positions. The Council shall allocate positions to the appropriate classification in the Classification Plan. The Council shall allocate positions to the same classification when:
1. The duties and responsibilities are substantially similar;
  2. The education, experience, knowledge, skills, and abilities required are substantially similar;
  3. The examinations used in choosing qualified candidates are substantially similar; and
  4. The pay range may be applied equitably to all positions in the classification.
- D. Compensation Maintenance Review Plan: The Council shall adopt and revise guidelines for a classification and compensation maintenance review plan. An employee shall be placed in a classification in accordance with this plan.
- E. Assignment. Except in an emergency, or as otherwise provided by this Chapter, an agency shall not assign an employee to perform the duties of any classification other than the classification to which the employee's position is allocated.
- F. Modification. The Council may establish a new classification and revise or abolish an existing classification. The Council shall decide when a position in an affected classification needs to be reallocated, taking into account the factors in subsection (C). The Council shall also determine the probationary or permanent status of an employee affected by reallocation.
- G. Reviewing allocations. An employee affected by reallocation of the employee's position shall have the opportunity to be heard by the Council under R13-5-602.
- H. Changes in positions. The Council shall reallocate an existing position when a material and permanent change occurs in the duties and responsibilities of the position.
1. If an employee is in a position that is reallocated, an agency shall reclassify the employee in that position if the employee:
    - a. Has been in the position at least six months;
    - b. Has occupied the position during the change in duties; and
    - c. Meets the minimum qualifications of the new classification.
  2. A position shall not be reallocated while undergoing a classification and compensation review, except that the Council may reallocate a position that is undergoing a classification and compensation review when an agency head can show that the reallocation is necessary for the continued operation of the agency.
- I. Time in grade. The Council shall credit an employee reclassified as a result of a reallocation with time-in-grade as follows:
1. The employee is credited with time-in-grade for the time spent in the position if no significant changes are made to the duties and responsibilities of the position to qualify for the higher classification and if the employee continues to perform the duties previously performed in the position.
  2. Time-in-grade status is calculated on the basis of actual hours worked.
- J. New positions. An agency head shall establish positions in the agency as authorized by law, subject to budgetary authorization and availability of funds. An agency head shall notify the Council when a new position is established. The Council shall allocate a new position to the appropriate classification.
- K. Classification titles. An agency shall use a classification title approved by the Council in all communications regarding personnel, budget, and financial records.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.

2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-202. Compensation**

- A. Compensation plan. The Council shall adopt compensation levels for all classifications. Collectively, compensation levels adopted by the Council comprise the compensation plan of the Council. An agency shall periodically revise the compensation plan for a covered position, based on the principle that like salaries are paid for comparable duties and responsibilities, and shall submit the agency's recommendations to the Council for approval.
- B. Hearings. If an agency recommends a change in a pay range, the Council shall grant any adversely affected employee an opportunity to be heard.
- C. Pay Levels. The Council shall specify all pay levels. The Council may also establish more than one pay range, hourly rate, or method of compensation for classifications and positions with unusual hours, conditions of work, or when necessary to compete with other employers.
- D. Lack of Funds. If an agency lacks sufficient funds to pay an employee's salary, the agency shall consider an alternative method of reducing costs, including those described in R13-5-802(B). If an alternative method is not adequate or available, the agency shall assign an employee to a leave of absence without pay under the layoff procedure in R13-5-802. The agency shall recall the laid off employee when sufficient funds become available.
- E. Entrance rate. The minimum pay rate for each classification is the entry rate, unless otherwise provided in these rules. The agency shall maintain a record of each employee's employment date and entrance into a classification.
- F. Special pay adjustments. When making an appointment, promotion, reinstatement, recall, transfer, reclassification or reassignment, an agency head may authorize pay anywhere within the pay range to meet recruiting and retention needs, and to give credit for prior agency service.
- G. Rate above maximum. When a position is reallocated resulting in the reclassification of an employee to a lower classification or the pay range of a classification is reduced, the agency head may authorize a pay rate for the employee above the maximum for the classification. While an employee's pay remains above the maximum rate for the employee's classification, the employee shall not receive any pay increases except those required by law.
- H. Rate on movement to a classification with a lower pay range. An employee who accepts reassignment to a classification with a lower pay range may receive a rate above the minimum, if authorized by the agency head. The agency shall then establish a new classification date for the employee.
- I. Rate on movement to a classification with the same range. When an employee moves to another classification with the same range, the employee shall retain the employee's current rate of pay.
- J. Rate on movement to a classification with a higher pay range. When an employee moves to another classification with a higher pay range, the employee shall receive pay at the entry level of the new classification. If the employee's current pay is greater than the entry level of the new classification, the employee shall receive no less than a \$500 annual increase. In no case shall an employee's salary exceed the maximum for the new classification.
- K. Rate upon reinstatement. Upon reinstatement, a former employee shall receive the entrance rate for the employee's

classification, unless the agency head authorizes a higher rate or as directed by the Council following a disciplinary hearing.

- L. Rate upon recall. A former employee who is recalled after a layoff shall receive the same pay rate as that held before the layoff. If the Council approved a general pay adjustment or classification adjustment while the employee was on leave of absence without pay, the employee shall receive the adjustment.
- M. Automatic pay adjustment. A classification pay range adjustment applies equally to all employees within the classification and does not alter an employee's classification date for a pay adjustment.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-203. Pay Administration

- A. Base pay adjustment. An agency head may modify base pay by adding cost-of-living and other adjustment appropriated by the state Legislature. An agency head may also request that the Council revise the compensation plan to include other changes to base pay, as needed. After base pay adjustments are completed, an agency head may add special duty pay before computing an employee's pay rate.
- B. Appropriated pay adjustment. Upon approval by the Council the agency head may apply some or all the appropriated funds to the compensation plan, if the appropriation bill does not include specific allocation instructions for an employee pay raise, or if the instructions are not applicable to the agency.
- C. Special duty assignment. An agency head may supplement the base pay of an employee on a special duty assignment. Time spent on a special duty assignment counts toward an employee's length of service. An employee may receive special duty pay only for the period when the employee performs the required duties of the special duty assignment.
- D. Return from special duty assignment or uncovered appointment. When an employee returns to a regular appointment from a special duty assignment or an uncovered appointment, the agency shall return the employee's pay to the employee's base pay earned before being assigned to a special duty assignment or uncovered appointment. If general pay adjustments or classification adjustments are approved while an employee is on a special duty assignment or serving in an uncovered appointment, the employee shall receive the adjustments.
- E. Overtime pay. The agency head shall adopt an overtime policy and procedure consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter. Compensatory leave is accrued and used as provided by R13-5-505.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-204. Work Hours and Work Options

Work hours and work breaks. An agency head may establish different working hours for certain work groups and shifts in order to meet the needs of the agency. In doing this, the agency head should consider such factors as clean air directives, telecommuting, and flexible work hours. An agency head shall establish a policy for "on-duty" and "off-duty" time consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter and provide procedures for recording time worked and leave taken by an employee.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

### ARTICLE 3. EMPLOYMENT

*Editor's Note: Former Article 3, consisting of Section R13-5-15, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-301 through R13-5-317, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

#### R13-5-301. Recruitment

- A. Recruiting an external applicant. When authorized by an agency head, Human Resources shall seek qualified applicants through open recruiting and competitive employment opportunities. Human Resources shall publish and distribute job announcements that include:
  1. The classification title and pay;
  2. The minimum qualifications;
  3. The location of the assignment, if known;
  4. Special requirements, if any;
  5. Location of forms; and
  6. The application deadline.
- B. Applications. Human Resources shall establish procedures for distributing and receiving an application. Human Resources shall screen all applications and may reject any that are incomplete, illegible, or received after the deadline.
- C. Disqualifying an applicant or candidate. An agency head or the agency's Human Resources unit may disqualify any applicant or candidate based upon information in an application, statements made by the applicant's references, and a background investigation by the agency. The agency shall also disqualify any applicant who:
  1. Lacks the required qualifications for the classification;
  2. Was convicted of a disqualifying offense;
  3. Was dismissed by a previous employer for a reason that is cause for dismissal from the agency;
  4. Practiced deception or failed to give complete and accurate information; or
  5. Failed to meet selection guidelines as established by the Council.
- D. Reapplying. A candidate who fails any portion of the background investigation, with the exception of medical only, shall be precluded from reapplying for a period of two years from the date of disqualification.
- E. Notifying an applicant. After completing a qualification review, Human Resources shall notify an applicant of the agency's acceptance or rejection of the employee's application.
- F. Retaining an application. Human Resources shall retain all applications under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-302. Examinations

- A. Examination plan. Human Resources shall develop an examination plan for each selection process. The business manager shall review and approve each examination plan. An applicant for the examination shall be notified of the examination plan. Once an examination begins, changes will not be made to the plan. If an examination plan needs to be altered, Human Resources shall terminate the current examination and initiate a new examination.
- B. Examination guidelines. Human Resources shall obtain or develop a valid examination for each classification, and establish a weight and minimum qualifying requirement for each phase of the exam. The business manager shall review and

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approve each examination before the examination is administered. A competitor shall achieve the minimum requirements on each phase of an examination before progressing to the next phase. A competitor shall achieve a passing score on each phase before qualifying for a classification.

- C. Notifying an applicant. Human Resources shall notify a qualified applicant of the following information:
1. The date, time, and location of each examination;
  2. The number of phases included in the examination;
  3. Other pre-employment requirements; and
  4. How to request special accommodations for persons with a disability.
- D. Type and content of examination. Human Resources shall ensure that each examination is valid, non-discriminatory, and fairly and accurately measures an applicant's ability to perform the functions and duties listed in the classification specifications.
- E. Conducting an examination.
1. Human Resources, or a person designated by Human Resources, shall administer the examination.
  2. The business manager shall oversee all elements of, but not actively participate in, the examination process to ensure that each component is administered, scored, evaluated, and interpreted fairly and accurately.
  3. Human Resources shall permanently disqualify an applicant from taking any employment or promotional examination if it has been established that the applicant is guilty of copying, collusion, unauthorized access, or other acts of dishonesty relating to an official examination.
- F. Scoring an examination. Human Resources shall oversee the scoring of the examination.
1. Human Resources may use a rater for a qualifications appraisal board from within or outside of an agency to score an examination. Human Resources shall select an examination rater who is qualified to appraise the education, experience, and personal qualifications of a competitor.
  2. Human Resources shall provide a rater with scoring guidelines and exam answer keys to ensure consistency of scoring, evaluation, and interpretation of test results. All phases of an examination shall have predetermined and clearly defined scoring criteria.
  3. If a majority of the raters on a qualifications appraisal board give the competitor a passing score, the competitor shall receive a minimum rating of "pass" even if the competitor's average score is below the passing level. If a majority of the raters on a qualifications appraisal board gives the competitor a score below the passing level, the competitor shall be disqualified, even if the competitor's average score is above the passing level.
  4. Human Resources shall apply standardized scoring to a multi-phased examination when the number of competitors is five or more.
- G. Validating an examination result. If Human Resources finds that an examination is incorrectly scored or that a portion of an examination is defective, Human Resources shall:
1. Correct all scoring errors, or
  2. Eliminate the defective portion of an examination and revise the score of each competitor.
- H. Examination results notification. Human Resources shall mail notification of examination results to each competitor.
- I. Review of examinations. Any employee who has tested for promotion may request an examination review under R13-5-305(G).

- J. Retaining test scores. Human Resources shall retain all examination materials and test scores under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-303. Applicant Preference Points**

If an applicant receives a passing score on an examination and has qualified for placement on an employment list, Human Resources shall add the preference points authorized by A.R.S. § 38-492 to the applicant's final score, provided the applicant submits official documentation of eligibility for preference points. Preference points shall not apply to a promotional examination.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-304. Employment**

- A. Establishing an employment eligibility list. Human Resources shall develop, and the business manager shall establish, employment eligibility lists for various classifications, as needed. For each list, Human Resources shall arrange the names of competitors in descending order of the competitors' final examination scores.
- B. Establishing a list in case of ties. If two or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- C. Reviewing the employment eligibility list. Human Resources shall submit an employment eligibility list to the business manager for approval and certification.
- D. Notification to candidate. When an employment eligibility list is certified by the business manager, Human Resources shall notify a candidate of the candidate's relative ranking on the list.
- E. Duration of an eligibility list. Each new or merged list remains in effect for 18 months from its effective date. Before a list expires, the Council may cancel the list.
1. Restoring a list. If a need arises and a current list is not available, the Council may restore a list that expired or was canceled within the past six months.
  2. Merging a list. Except for the classifications described in subsection (E)(3), if three or fewer candidates remain on an existing list, Human Resources may establish a new list and merge the existing list with the new list. When the merged list is established, Human Resources shall rearrange the names in descending order of the candidates' final scores and notify each candidate of the candidate's relative ranking. Human Resources shall remove a candidate's name from the new list on the expiration date of the candidate's original list.
  3. Conducting continuous or periodic testing. If the Council determines that a classification requires continuous or periodic testing, the business manager may authorize Human Resources to conduct examinations regardless of the existence of an employment list in that classification. Human Resources shall merge the names of candidates

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tested with names on the existing employment list for that classification as described in subsection (E)(2).

4. Retesting a merged candidate. If another examination for the same classification is held before the prior list expires, a merged candidate from the prior list may take the examination. If the candidate passes the test, Human Resources shall place the candidate on the list according to the new score. The candidate shall remain on the list for its duration.
- F. Removing a candidate. The business manager shall remove a candidate from an eligibility list for any of the following reasons:
  1. Human Resources is unable to contact the candidate by phone or mail;
  2. The Council abolishes the classification for which the list was developed; or
  3. The candidate withdraws from the selection process.
- G. Correcting a manifest error. The business manager shall correct a manifest error that occurs in developing, using, or maintaining an eligibility list. The business manager shall not change the effective date of an eligibility list to correct a manifest error discovered after posting the list.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-305. Promotion**

- A. Announcing a promotional examination. Human Resources shall publish an agency-wide announcement when initiating development of an internal eligibility list. An announcement shall include the information in R13-5-301(A).
- B. Applying for promotion. An employee may compete for a place on an internal eligibility list by submitting an internal application form to Human Resources by the application filing deadline.
  1. An employee is eligible to take a promotional examination if the employee:
    - a. Satisfactorily completes initial probation by the application filing deadline;
    - b. Meets or exceeds the minimum qualifications for the classification; and
    - c. Receives a standard or above standard performance evaluation for the latest rating period.
  2. An employee who participates in developing an examination for an internal classification is not eligible to take the examination for that classification.
- C. Processing an application. Human Resources shall process an application consistent with the procedures in R13-5-301(B), (C), and (F).
- D. Business manager review. Within 10 days after a notice of rejection of an application has been mailed to the employee, an employee may request that the business manager review a rejected application. The business manager may review and overturn or concur with the decision of Human Resources. An employee may also request that the Council review the business manager's decision.
- E. Promotional examination. Human Resources shall conduct a promotional examination consistent with R13-5-302. An employee eligible to take a promotional examination shall notify the employee's supervisor of the time and date of the examination as soon as it is known. A supervisor shall authorize an employee to participate in a promotional examination while on duty.
- F. Scoring and validating an examination. Human Resources shall score and validate an examination under R13-5-302(F) and (G).
- G. Inspection of examination results. Within 10 days after the examination results are mailed, a competitor may file a written notice with the business manager requesting an opportunity to review the examination for the purpose of determining whether the competitor has a reason for challenging the competitive examination. A competitor requesting a review shall outline the specific areas the competitor believes are in error. The competitor shall be allowed to review the examination in the presence of the business manager or an employee authorized by the business manager to determine whether the competitor has a valid basis for a challenge to the examination.
  1. The business manager or the authorized employee shall oversee the competitor's examination inspection.
  2. An employee shall not copy questions or answers, nor make any alterations to the examination papers.
  3. Within 10 days of a review, a competitor may file a written notice with the business manager challenging the examination results on the basis of irregularity, bias, fraud, or scoring error and explaining the basis for any challenge. The business manager shall review the competitor's challenge to determine if the challenge is valid.
  4. If the business manager's review discloses an error, the business manager shall return the examination to Human Resources for correction.
  5. If an error affects the scores of other competitors, Human Resources shall revise all incorrect scores.
  6. If the business manager determines the error is not correctable and the defective portion of the exam is critical to the examination process, Human Resources shall re-administer that portion of the examination under guidelines provided by the business manager.
  7. Only the Council, a business manager, competitor, competitor's attorney, or an agency head may inspect a competitor's examination.
- H. Grievance of business manager's decision. An employee who is aggrieved by a decision of the business manager may grieve the decision to the Council. A grievance of the business manager's decision shall be filed with the Council office no later than 20 days after notice of the decision is given. The Council shall review the grievance as outlined in R13-5-602 (E).
- I. Military leave. Human Resources shall allow an employee returning from military leave to take any examination that the employee could have taken if military service had not intervened. If the employee passes the examination, the business manager shall add the employee's name to the appropriate internal eligibility list based on the employee's score.
- J. Establishing an internal list. Human Resources shall prepare an internal list for a promotional classification with competitor's names arranged in descending order of the competitor's final score.
- K. Establishing a list in case of a tie. If two or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- L. Approval of list. Human Resources shall submit the internal list to the business manager for approval and certification.
- M. Notifying a candidate. When the list is certified by the business manager, Human Resources shall notify a candidate of

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the exam results and the candidate's relative ranking on the list.

- N. Duration of a list. A list shall remain in force consistent with R13-5-304(E).
- O. Removing a candidate from an internal list. The business manager shall remove a candidate from an internal list if:
  1. The candidate fails to maintain required qualifications for the classification, or
  2. The candidate resigns or is terminated from agency service.
- P. Promotion to the classification of officer. The business manager shall reclassify an employee to the classification of officer upon certification by the Peace Officer Standards and Training Board.
- Q. Promotion for a commissioned classification. An agency may establish a job-interest card system for a promotion in a commissioned classification. If a candidate submits a job-interest card indicating interest in only a specified position, that candidate shall not be considered for any other position except as outlined in this subsection.
  1. An agency head shall offer a promotional position to a candidate ranking highest on the promotional eligibility list who filed a job-interest card for that position.
  2. If there are no job-interest cards for a specific position, an agency head shall offer a promotional position to the candidate ranking highest on the promotional eligibility list. If the employee highest on the promotional list declines the promotion, the agency head shall offer the position to the employee next highest on the list until all candidates on the promotion list are offered the position.
  3. For a location that has two or fewer positions, an agency head may appoint any promotional candidate residing in that location.
  4. If a candidate declines an offer of promotion, the business manager shall move that candidate's name to the bottom of the promotional eligibility list.
  5. If all candidates on a promotional eligibility list decline a promotion, an agency head shall make a second offer to all candidates on the list.
  6. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.
- R. Promotion for a civilian classification. Civilian promotions are conducted under R13-5-308 and R13-5-309.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-306. Reassignment**

- A. Reassignment application. An employee may request reassignment to a different classification with the same or a lower pay range by submitting an application to Human Resources documenting the employee's qualifications. An application for reassignment can be obtained from Human Resources.
- B. Qualification screening. Human Resources shall determine whether the employee meets the minimum qualifications of the classification. Unless the employee has previously held permanent status in a classification, Human Resources shall require the employee to pass an examination for the requested classification. Any employee required to test may request an examination review under R13-5-305(D), (F), and (H).

- C. Eligibility list. If the employee qualifies, Human Resources shall place the candidate's name on an appropriate internal eligibility list under R13-5-305 (J) and (K).

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-307. Reinstatement**

- A. Reinstatement list. An employee may apply for reinstatement within one year from the date of separation. Upon approval of the agency head, Human Resources shall place the former employee's name at the bottom of a reinstatement list for the last classification held by the employee and any previous or closely related classifications for which the employee is qualified.
- B. Duration of the list. A reinstatement list shall remain in force for a maximum of 18 months.
- C. Background investigation. All candidates for reinstatement shall pass a background investigation.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-308. Hiring Preference**

- A. Order of lists. When an agency head authorizes filling a vacant position, Human Resources shall notify the manager who is filling the vacancy of any employees requesting a transfer to the vacant position. After considering a transfer request, or if there are none, the manager may request a list of candidates for the position from available eligibility lists in the following order of preference:
  1. Reappointment list,
  2. Reassignment list,
  3. Recall list,
  4. Internal list,
  5. Reinstatement list, and
  6. Employment list.
- B. Referring candidates. Except for the classification of cadet officer, Human Resources shall contact eligible candidates in the order of preference specified in subsection (A) to be interviewed. Candidates shall advise Human Resources if they wish to be interviewed.
  1. If there is one vacant position, Human Resources shall refer the three interested candidates standing highest on each of the lists. Human Resources may refer fewer than three names if there are fewer than three candidates on the lists.
  2. For multiple vacancies, Human Resources shall refer one more candidate for each additional vacant position from the lists.
  3. If a list is not available, the business manager may refer candidates from lists of the same or higher level as the position being filled.
- C. Referring candidates for cadet officer. Human Resources shall make a job offer conditional on passing a background investigation to as many of the highest ranking candidates on the list as Human Resources deems necessary to fill existing positions.
- D. Canceling a list. If all candidates on the promotional eligibility list advise Human Resources that they are not interested in a position, Human Resources shall make a second offer to all candidates on the list. The second offer shall include a notification to each candidate that if all candidates decline the posi-

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tion, the list will be cancelled. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-309. Selection**

- A. Selecting a candidate. The manager shall follow the interview and selection policy provided by Human Resources.
- B. Interviewing. A manager who is filling a vacancy shall interview all candidates requesting a transfer, and may interview up to three candidates from each certified list.
- C. Additional names. If the manager rejects all initial candidates, the manager shall document job-related reasons for their rejection and submit the interview forms to Human Resources. If Human Resources agrees with the manager's reason for rejection, Human Resources shall refer up to 3 more names from each certified list.
- D. Selection of cadet officer. A candidate who receives a job offer for a position covered under R13-5-312(E) and is not disqualified during the background investigation shall be appointed to the classification by the agency head.
- E. Documenting the selection. Upon making a selection, the hiring manager shall complete the documentation and return all interview and selection materials to Human Resources.
- F. Record retention. Human Resources shall retain interview and selection records under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-310. Pre-employment Processing**

- A. Pre-employment screening. Before appointment to a position, a candidate shall successfully pass a background investigation and any other examination considered appropriate by the agency head.
- B. Withdrawal from selection process. If a candidate elects to withdraw from the selection process, Human Resources shall document the candidate's withdrawal.
- C. Failing to successfully complete an examination. If a candidate fails to successfully complete any of the requirements in subsection (A), Human Resources shall document the failure and disqualify the candidate.
- D. Final processing. When a candidate passes all the pre-employment requirements, Human Resources shall prepare and submit the appropriate forms to the agency head for approval.
- E. Declining position offers. Human Resources may remove from a certified list any candidate who declines an appointment offer.
- F. Requesting accommodation. If a selected candidate requests a special accommodation under state or federal law, Human Resources shall confer with appropriate personnel to determine if a reasonable accommodation is possible.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.

2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-311. Appointments**

- A. Required oath of office. An appointee shall read the oath described in A.R.S. § 38-231(G) and agree in writing to uphold the office before the agency head, or a designee authorized to administer an oath.
- B. Refusal to take oath. Any person who refuses or fails to take the oath required by this Section within the time provided shall forfeit the right to the position.
- C. Filing of oath. When the oath is signed by an appointee, Human Resources shall file the oath in the employee's personnel file.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-312. Limited-Term Appointments**

- A. Limited-term appointment. After successfully completing initial probation, an appointee to a limited-term position obtains the rights of a permanent employee, except for the opportunity to compete for retention against regular employees in a case of layoff due to a reduction-in-force.
- B. Employing a limited-term candidate. An eligible candidate is employed based upon the candidate's position on the eligibility list and the candidate's willingness to accept a limited-term appointment.
- C. Separation. The agency may separate a limited-term employee at the expiration of the appointment by notifying the employee in writing. If a provisional or an intermittent employee remains employed in the same classification, the agency shall not separate a limited-term employee except for reasons listed in A.R.S. § 41-1830.15.
- D. Effect of transfer or promotion.
  1. A limited-term employee who transfers or promotes from a limited-term position to a non-limited-term position shall obtain the rights of a permanent employee. Time spent in a limited term position is counted as service time in cases of layoff due to a reduction-in-force.
  2. An employee who transfers or promotes from a non-limited-term position to a limited-term position shall retain the rights of a permanent employee. Time spent in a limited-term position is counted as service time in case of layoff due to a reduction-in-force.
- E. Special limited term. A candidate for the classification of officer may be employed in a special limited-term position as a cadet officer or officer trainee for a maximum of three years pending completion of requirements for the classification of officer.
  1. Cadet officer. A candidate who is appointed to attend an agency's training academy shall be employed as a cadet officer. Upon successful completion of the training academy and certification as a peace officer by the Peace Officers Standards and Training Board, the candidate shall be reclassified to the classification of officer.
  2. Officer trainee. A candidate who is not appointed to a training academy shall be employed as an officer trainee if:
    - a. The candidate is between 18 and 21 years of age. If while employed as an officer trainee, the candidate reaches the age of 21 years, and has achieved a performance rating of standard or above for the prior year, the employee shall be promoted to the classification of cadet officer when an opening in the training academy is available.
    - b. The candidate is 21 years of age or older, is on the employment list for the classification of cadet offi-

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cer, and is waiting for an opening in the agency's training academy. The candidate shall remain on the cadet officer employment list and shall be appointed to the classification of cadet officer when an opening in the training academy is available.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-313. Provisional appointments**

- A. Provisional appointment. When no employment or internal list is available, an agency head may make a provisional appointment. A provisional appointment continues only until an eligibility list is certified by the business manager.
- B. Length of appointment. Within 12 months of a provisional appointment, Human Resources shall conduct an appropriate examination and establish an eligibility list for a classification with a provisional appointee.
- C. Separation. Upon separation from a provisional appointment, an employee shall have no right of appeal to the Council for review of the agency head's action.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-314. Intermittent Appointment**

- A. Intermittent position. When an agency head needs a person to work on an intermittent or irregular basis, the agency head shall request a list of candidates for intermittent appointment. An applicant who meets the minimum qualifications and indicates willingness to accept the terms of intermittent employment shall be placed on an eligibility list for selection to an intermittent position.
- B. For the purposes of this Section, an intermittent employee means an employee in an intermittent position.
- C. Establishing an intermittent employment list. The business manager shall establish an intermittent employment list, as follows:
  1. An employee who leaves an agency may be placed on an intermittent employment list for a classification the employee previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within one year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.
  2. An employee who is reassigned or promoted to another classification may be placed on an intermittent employment list for the classification previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within one year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.
  3. The business manager shall establish an intermittent employment list in the same manner as an employment eligibility list.
- D. Benefits for an intermittent employee. An employee in an intermittent position shall not receive the benefits afforded a full or part-time employee. An intermittent employee shall not acquire annual or sick leave benefits and shall not receive credit for time in the intermittent position for the purposes of pay adjustments in the classification.

- E. Eligibility for promotion. An intermittent employee shall not compete in a promotional process.
- F. Rate of pay. The agency head shall determine the rate of pay for an intermittent employee.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4).

**R13-5-315. Employee Conduct**

- A. Standards of conduct. An employee shall perform the duties and responsibilities of the employee's assigned classification and position. An employee shall comply with applicable laws, rules, and agency policy. An employee shall demonstrate respect, fairness, diligence, impartiality, courtesy, efficiency, and integrity in all contacts with the public and other employees.
- B. Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically able to perform the essential duties of the position, the supervisor shall request the agency head's permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide whether the employee is fit for duty.
- C. Political activity. An agency employee shall not violate the provisions of A.R.S. § 41-772 concerning permissible and improper political activity.
- D. Conflict of interest. An agency employee shall not violate the conflict of interest provisions of A.R.S. §§ 38-501, 38-502, 38-503, and 38-504 while engaged in outside activities or employment.
- E. Nepotism. An employee or candidate for employment shall not be appointed to any position in violation of A.R.S. § 38-481, nor shall an employee misuse or abuse appointment privileges.
- F. Attending Council meetings. With supervisory approval, an employee may attend a meeting of the Council during working hours if the employee is an interested party in a matter scheduled for consideration. The employee may have another representative assist in the presentation before the Council.
- G. Employee organization attendance at Council meetings. The agency head may authorize a recognized employee organization to send at least one representative to each Council meeting during working hours.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-316. Probation**

- A. Initial probation. An employee shall serve an initial probationary period of 12 months. Time spent in a special limited term position does not count toward the initial probation in an officer classification.
- B. Promotional probation. An employee shall serve a promotional probationary period of 12 months.
- C. Effects of reclassification on probation. The probationary status of an employee reclassified as a result of a classification and compensation maintenance review under R13-5-201(H) is as follows:

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1. A permanent status employee shall not be required to serve a new probationary period if the employee continues to perform the same duties previously performed in the reclassified position.
  2. A probationary employee shall continue to serve the probationary period.
- D.** Effect of military service on probation. If a probationer is called into active military service and returns to the agency and satisfactorily completes probation, the employee's personnel record shall show that the employee achieved permanent status on the date the employee would have completed probation if military service had not intervened.
- E.** Extension of probation. An agency head may extend an employee's probationary period by adding a period equal to the time the employee was absent from work or when the employee's performance was below standard. If the probationary period is extended, the manager shall notify the employee of the extension before the end of the probationary period.
- F.** Satisfying probation. A probationer who achieves a standard or higher performance evaluation by the end of the probationary period shall obtain permanent status in the appointed classification.
- G.** Permanent status by default. An employee shall achieve permanent status by default if the employee's manager either fails to extend or reject the probationary period prior to the last day of the employee's probation.
- H.** Rejection of a probationer. An agency head may, at any time during the probationary period, reject a probationer without cause and without the right to Council review.
- I.** Effect of rejection of initial probationer. If an employee is rejected during initial probation the employee shall be separated from the agency.
- J.** Effect of rejection of promotional probationer. If a regular employee is rejected during promotional probation or probation for a different but equal classification, the agency head shall reappoint the employee to a vacant position in the employee's former classification or an equal position for which the employee is qualified. If there is no vacancy in an appropriate classification, the agency head may temporarily assign the employee until a vacancy is available.
- K.** Notice of rejection of probation. An agency shall notify a rejected probationer as follows:
1. The employee's manager shall prepare a notice, stating the effective date of the rejection. The manager shall ensure that this date is no later than the last day of the probationary period.
  2. The employee's manager shall obtain the agency head's signature on the notice of rejection.
  3. The employee's manager shall serve the probationer with the notice, either in person or by mail, on or before the effective date of rejection.
  4. The employee's manager shall submit a copy of the rejection notice to the business manager within 20 days after the notice is served.
- L.** Review of rejection of promotional probation. Within 20 days after the employee's manager delivers or mails the notice, a rejected promotional probationer may file a written request with the Council for review of the rejection. The Council may review the procedures utilized by the agency to assure conformity with Council rules and statutes.
- M.** Withdrawal of rejection. At any time before the Council acts on a probationer's rejection, the agency head may withdraw the notice of rejection and restore the employee to the previous position or another position for which the employee is qualified.
- N.** Probation for a returning employee. If a separated employee is reinstated to a classification previously held with permanent status, the agency head may require the employee to serve a probationary period. If a separated employee is recalled or reinstated into a classification different from any classification previously held with permanent status, the employee shall serve a probationary period. If an employee is separated from an agency while serving an initial probation, the employee shall be required to serve an initial probation upon being recalled or reinstated.
- O.** Probation not required. If an employee is recalled or reappointed within two years after undergoing a reduction-in-force, the employee shall not be required to serve a probationary period if reappointed to the same classification previously held with permanent status. An employee shall not be required to serve another probationary period if the employee is:
1. Reinstated by the Council, or
  2. Reassigned or demoted by the agency head into a classification previously held by the employee.
- P.** Probation for a special limited term employee. An employee in a special limited term position pending completion of requirements for the classification of officer shall serve an initial probation throughout the duration of the special limited term appointment. An employee promoted to officer from a special limited term position shall serve a one-year initial probation in the officer classification.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-317. Performance Evaluations**

- A.** Establishing a performance evaluation program. The Council shall adopt and an agency shall administer a performance evaluation program. The program shall include a rating system that informs the agency head and the employee of the employee's relative level of performance. The evaluation program shall include training on how to achieve and maintain standard performance and how to improve performance.
- B.** Performance evaluation manual. The Council shall provide a manual that provides clear and concise guidelines for objectively measuring and reporting employee performance. Only the Council may authorize a revision of the manual. Each employee shall receive a copy of the manual, which includes evaluation procedures and forms.
- C.** Frequency of evaluation. A supervisor shall evaluate and give each permanent-status employee a written performance evaluation at least one time in each 12 month period. A supervisor shall evaluate a probationary employee at least one time in each six-month period.
- D.** Effect of failure to evaluate. If an employee's supervisor fails to evaluate the employee, or fails to evaluate the employee by the end of the rating period, the employee shall be given no less than a standard evaluation for that period.
- E.** Grieving an evaluation. An employee who receives a less than standard rating may file a grievance with the agency head. If the grievance is denied by the agency head, the employee may grieve to the Council any overall rating that:
1. Is less than standard,
  2. Would cause a reduction in pay, or
  3. Would result in withholding or postponing a salary adjustment.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 4. ASSIGNMENTS**

*Editor's Note: Former Article 4, consisting of Section R13-5-20, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 4, consisting of Sections R13-5-401 through R13-5-403, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-401. Special Duty Assignment**

- A. General. An agency head may assign an employee to a special duty assignment in the employee's current classification or a higher classification. A special duty assignment is temporary and is not a promotion.
- B. Pay and eligibility. An agency head may add special-duty pay to the employee's base pay. If the special duty assignment is for a different or higher classification, the agency head may authorize a pay rate within that classification. A special duty assignment is subject to the following conditions:
  1. The assigned employee meets the minimum requirements of the special duty classification; and
  2. The assigned employee performs the duties of the assigned classification.
- C. Review by Council. Special duty assignments shall be biennially reviewed by the Council no later than September in even numbered years.
- D. Return to regular duty. Upon completion of a special duty assignment, the agency head shall discontinue special duty pay and reassign the employee to the previously held position or to a similar position in the same classification at the employee's normal pay level.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-402. Uncovered Appointments**

- A. Authorization. An agency head may authorize an employee to temporarily accept an uncovered appointment within:
  1. The agency,
  2. Another state agency,
  3. The Governor's office,
  4. The Legislature, or
  5. Another government agency.
- B. Employee rights. An employee in an uncovered appointment shall retain all employee rights except for the right to appeal removal from the uncovered appointment.
- C. Returning to regular duty. Upon completion of an uncovered appointment, the agency head shall reassign the employee to the previously held position or to a similar position in the same classification.
- D. Leave policy for an uncovered employee accepting a covered position: An uncovered employee of a state agency or any state budget unit may transfer accrued annual and sick leave when accepting a covered position with an agency under the jurisdiction of the Council.
  1. Annual leave.
    - a. Up to 360 hours of annual leave may be transferred at the gaining agency's discretion.
    - b. Annual leave in excess of 360 hours shall be paid off by the losing agency.
    - c. An employee shall be paid for any annual leave that is not accepted by the gaining agency.
  2. Sick leave. All accrued sick leave hours shall be accepted by and transferred to the agency.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

**R13-5-403. Transfer of an External Function**

- A. Transferring a function. If a state program is transferred into an agency, the losing agency shall pay a transferring employee for all accrued compensatory leave as of the date of the transfer. Effective on the date of transfer, the losing agency shall also transfer sufficient funds to the receiving agency to pay for accrued annual leave, recognition leave, and sick leave of a transferring employee.
- B. Council action. The business manager shall determine the classification of a transferring employee and recommend that the Council adopt other classifications that need to be added or revised.
- C. Transferee status. A transferee shall retain accrued annual leave, recognition leave, sick leave, and length of state service. A transferee shall also retain the transferee's current rate of pay until the Council reviews and approves a new or existing compensation schedule.
- D. Appointing a transferee. An agency head shall determine the organizational placement of a transferred program and appoint each transferee to an appropriate position.
- E. Probation. A transferee on probation at the time of the transfer shall complete the transferee's probationary period under R13-5-316 before obtaining permanent status.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 5. EMPLOYEE LEAVE**

*Editor's Note: Former Article 5, consisting of Sections R13-5-25 through R13-5-28, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 5, consisting of Sections R13-5-501 through R13-5-513, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-501. Employee Leave Guidelines**

- A. Accrual of leave. An employee may accrue the following types of paid leave:
  1. Annual leave,
  2. Holiday leave, and
  3. Sick leave.
- B. Accruing leave. An employee shall accrue leave for a pay period if the employee is in pay status for at least one-half of the employee's normal scheduled work week.
- C. Part-time employees. A part-time employee scheduled to work 20 or more hours in a week shall accrue leave based on the percentage of full-time hours specified in the appointment. An employee scheduled to work less than 20 hours in a week shall not accrue leave.
- D. Leave request. An employee shall not use leave before it is accrued. An employee shall obtain supervisory approval before taking leave. An agency may establish a policy allowing delayed notice to the employee's supervisor in emergency situations.
- E. Time accounting record. An agency shall maintain a record of time worked, leave earned, leave taken, and accrued leave balances for an employee. A non-exempt employee shall report all time worked and all leave taken on a weekly basis. An exempt employee shall report leave taken as directed by agency policy.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-502. Administrative Leave**

An agency head may authorize administrative leave with pay:

1. During a disaster, state of emergency, or a day of mourning declared by the Governor;
2. When an employee is instructed to not report for duty, or to return home because of a hazardous condition; or
3. To temporarily relieve an employee from duty for the good of the agency or the employee.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-503. Annual Leave**

- A. Computing length of service. For determining an annual leave accrual rate, an employee’s length of service shall begin on the first day of the first qualifying pay period of employment. Only a qualifying pay period is counted before and after a break-in-service. Previous periods of service as a state employee are counted toward annual leave accrual. Periods of military leave and active military service are included in computing annual leave if the employee meets the requirements of A.R.S. § 38-610.
- B. Accruing annual leave. A full-time employee shall accrue annual leave under the following schedule:

Beginning	Completion	Biweekly accrual rate
1st year	5th year	4.62 hours
6th year	10th year	5.54 hours
11th year	20th year	6.47 hours
21st year		7.39 hours

- C. Progression of annual leave. An employee shall progress to the next higher accrual rate on the first day of the pay period following completion of the required length of service.
- D. Using annual leave. An employee may use accrued annual leave under state and federal law and agency policy. The employee shall schedule the use of accrued annual leave through the employee’s supervisor.
- E. Maximum accumulation and disposition. An employee may accumulate annual leave without limit during a year. At the end of each year, an employee’s annual leave balance shall not exceed 360 hours. It shall be the responsibility of each employee to schedule annual leave to avoid having a balance over 360 hours at the end of the year. If an employee’s annual leave balance on January 1 exceeds 360 hours, the agency head may withdraw the excess and deposit the hours as sick leave in the employee’s sick leave balance. The agency head may authorize a later date for conversion of excess annual leave if an employee’s duty assignment, receipt of recognition leave, injury, or illness prevents timely use of annual leave.
- F. Compensation for unused leave. Upon separation from agency employment, an employee is paid for any unused annual leave remaining in the employee’s account at the average rate received by the employee in the last three years of the employee’s employment or the employee’s current rate of pay, whichever is higher.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by

final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4). Amended by emergency rulemaking at 10 A.A.R. 1163, effective March 4, 2004 (Supp. 04-1).

Emergency expired after 180 days; the Section on file prior to the emergency has been restored (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-504. Civic Duty**

- A. Voting. Under conditions outlined in A.R.S. § 16-402, an employee may be absent with pay for the time required to vote.
- B. Jury duty. An employee shall report for jury duty as directed by a summons unless officially excused by the Jury Commissioner for reasons under A.R.S. § 21-202. When summoned, the employee shall notify or provide the immediate supervisor with a copy of the summons.
  1. While on jury duty, an employee is considered absent with pay.
  2. Upon receipt of a summons for jury duty, a commissioned employee shall notify the Jury Commissioner of the employee’s peace officer status.
- C. Witness. An employee subpoenaed as a witness is considered absent with pay, unless the subpoena is unrelated to agency business.
- D. Fees. An employee paid for civic duty under this Section shall forward all jury duty or witness fees to the agency.
- E. Vehicle mileage reimbursement. An employee may retain any mileage reimbursement paid by the court for the use of a privately owned vehicle. An employee shall remit to the agency any mileage reimbursement for use of a state-owned vehicle.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-505. Compensatory Leave**

- A. Compensatory leave. An agency shall establish policies and guidelines for accruing compensatory leave under the overtime provisions of the Fair Labors Standards Act.
- B. Using compensatory leave. An employee may use accrued compensatory leave under state and federal law and agency policy. The employee shall schedule the use of accrued compensatory leave through the employee’s supervisor.
- C. Payment upon separation. Upon separation from an agency, an employee shall be paid for any accrued compensatory leave remaining in the employee’s account at the average rate received by the employee in the last three years of the employee’s employment or the employee’s current rate of pay, whichever is higher.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-506. Donated Annual Leave**

- A. Definitions for purposes of this Section:
  1. “Recipient” means an employee in the same agency as a donating employee or a family member of the donating employee who is employed in another agency, department, board, or commission.
  2. “Family member” means a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

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3. "Immediate family" means a spouse, child, brother, sister, natural parent, stepparent, adoptive parent, or an individual for whom a recipient has legal guardianship.
  4. "Extended illness or injury" means a period of at least three consecutive weeks to a maximum of six consecutive months.
  5. "Seriously incapacitating" means an illness or injury that renders an employee unable to perform the employee's duties, or that confines an immediate family member to home or hospital.
- B. Donating leave.** An employee may donate accrued annual leave to a recipient who qualifies for donated leave under the personnel rules of the agency where the recipient is employed and who has exhausted all available leave balances. An employee may donate accrued annual leave by submitting a written notice to the Human Resources section of the donating agency with the information required under the agency's policies.
- C. Qualifying for donated leave.** An employee may request and use donated annual leave if the employee has a seriously incapacitating or extended illness or injury or a member of the employee's immediate family has a seriously incapacitating and extended illness or injury and the employee has exhausted all available leave balances.
1. An employee requesting donated leave shall submit a written request for donated leave under the agency's policy. An agency shall approve only those requests that qualify for donated leave under this Section.
  2. Except as provided in subsection (C)(3), an employee receiving donated leave shall not use more than six consecutive months of donated leave per illness or injury.
  3. If an employee who has a seriously incapacitating or extended illness or injury applies for long-term disability (LTD) insurance by the end of the fifth month of leave, the employee may continue to use donated leave until an LTD determination is made.
- D. Calculating donated leave.** An agency shall convert the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient. Donated hours are converted by multiplying the number of hours donated by the donating employee's hourly rate of pay and dividing the result by the recipient employee's hourly rate of pay. An agency shall add hours converted to the recipient's sick leave balance as needed.
- E. Distributing unused leave.** If a recipient separates from state service before the recipient uses all donated leave, no longer qualifies for donated leave, or otherwise no longer needs donated leave, the agency shall return unused leave to the contributor of the donated leave on a pro-rata basis, unless a contributor gives written notice to Human Resources to deposit the unused leave into an agency "donated-leave bank" for use of other employees in the future.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-507. Holiday Leave**

- A. Paid holidays.** An agency shall observe the holidays authorized under A.R.S. § 1-301.
- B. Eligibility.** To be eligible for holiday leave, a full-time employee shall be in pay status for 10 or more hours in the work week in which the holiday occurs. A part-time employee shall be in pay status for five or more hours in the work week.

The holiday hours that would be accrued cannot be used to satisfy any part of this requirement.

1. If a holiday occurs on an employee's regular work day, the employee may be absent with pay for the number of hours the employee is regularly scheduled to work, up to a maximum of eight hours, unless the employee is required to work to maintain essential state services.
  2. An employee required to work on a holiday shall receive pay for the time worked, and leave hours for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.
  3. If a holiday occurs on a day when an employee is scheduled to work, but the employee is unable to work because of an illness or injury, the employee may take sick leave and accrue holiday leave credits as provided under subsection (C) for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.
  4. An employee not scheduled to work on a holiday shall receive leave credits up to a maximum of eight hours.
- C. Accruing holiday leave.** An agency may credit holiday leave to the employee's annual leave balance or establish a separate balance for holiday leave. The agency shall add accrued holiday leave to an employee's annual or holiday leave balance.
- D. Using holiday leave.** An employee may use accrued holiday leave under state and federal law and agency policy. The employee shall schedule the use of accrued holiday leave through the employee's supervisor.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**R13-5-508. Industrial Leave**

An agency shall establish policies and procedures to comply with statutes regulating industrial leave under A.R.S. § 23-901, et seq. and A.R.S. § 23-1043.02.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-509. Leave Amortization**

An agency may provide a leave amortization plan for an employee planning to retire.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-510. Leave Without Pay**

- A. Short-term leave without pay.**
  1. An agency head shall place an employee on leave without pay when the employee is unable to report to work due to illness or non-industrial injury and the employee has no accrued or donated leave balance to cover the absence. The supervisor may require the employee to submit supporting documentation for sick leave without pay. If the absence exceeds five working days, the employee must request leave without pay as outlined in subsection (A)(2) of this Section.
  2. An employee may request a leave of absence without pay of 30 working days or less by notifying the employee's manager as soon as possible and submitting a signed memorandum. The employee shall include the reason for the request and the employee's intended departure and return-to-duty dates. The agency head may approve or deny the request and may set a date for the employee's

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return. If the leave is approved, the employee's manager shall notify the employee in writing, including any stipulation of approval. If the employee returns on schedule, the employee shall retain the position held before the leave of absence.

- B. Extended leave without pay.** An employee may request an extended leave-of-absence without pay of over 30 working days by notifying the employee's manager as soon as possible and submitting a written request under the agency's policies and procedures.
1. **Approval.** An agency head may approve an extended leave without pay. If extended leave without pay is approved, an employee shall sign a leave of absence agreement with the agency. The leave-of-absence agreement shall outline the conditions of the leave and the employee's return to work.
  2. **Cancellation.** An agency head may cancel a leave-of-absence without pay for any of the following reasons:
    - a. The employee violates any condition of the leave-of-absence agreement, including failure to return to work on schedule;
    - b. The agency head directs the employee to return to duty because of a need for the employee's services; or
    - c. The employee requests to return early from the leave-of-absence.
  3. **Return to work.** An employee shall return to duty on schedule from any approved leave of absence unless an extension is approved by the agency. When an employee returns from an extended leave without pay, the agency head shall return the employee to the same position, to another position in the same classification, or to a position in a similar classification for which the employee is qualified, provided:
    - a. The employee complied with all terms of the leave-of-absence agreement, and
    - b. The employee passes background screening by the agency head.
- C. Disposition of accrued leave.** An employee may retain annual and sick leave balances while on an extended leave-of-absence. An employee shall be paid for any unused compensatory or holiday leave balances at the beginning of an extended leave-of-absence. If an employee is granted leave without pay to accept an uncovered appointment with the Governor, the Legislature, or another state agency, the agency head shall transfer the employee's accumulated sick leave to the receiving agency. The employee's annual leave may also be transferred if the employee and both agencies agree.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-511. Military Leave of Absence**

- A. Privileges of military service.** An employee shall receive all rights provided by state and federal law for a military leave-of-absence under A.R.S. § 26-168 and A.R.S. § 38-610.
- B. Notifying the agency.** An employee expecting an assignment to military duty shall notify the immediate supervisor as soon as possible. Upon receiving orders to report, the employee shall submit a copy of the orders and a written request for military leave to the employee's supervisor. The supervisor shall process the request under the agency's policy and procedure for a military leave-of-absence.
- C. Extended military leave.** If an employee's orders for active duty exceed the time limit for paid military leave, the

employee may request to use accrued leave or leave without pay for the remainder of the military leave.

- D. Returning to position.** Upon return from military leave-of-absence, an agency head shall restore an employee to the position held before the military leave-of-absence, or to a similar position within the employee's classification.
- E. Promotion.** Upon return from a military leave-of-absence, an employee may be promoted by the agency head if the employee's name was on a promotional list at the time of activation into military service.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-512. Recognition Leave**

- A. Employee recognition.** An agency head may grant paid time off as part of recognition given to worthy employees under a formal awards program, or as an incentive for continued superior performance. The agency shall publish recognition leave guidelines for annual nominations, selections, and awards.
- B. Adding to leave balance.** An employee awarded recognition leave shall receive annual leave hours added to the employee's leave balance.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-513. Sick Leave**

- A. Definitions.** The following definitions shall apply in this Section:
1. "Family sick leave" means:
    - a. Providing personal care or attending to an employee's family member who has a serious illness, injury, or temporary disability;
    - b. A medical appointment for a family member or transporting of a family member to a medical appointment by a licensed health care provider; or
    - c. Attendance at the death or funeral of an employee's family member.
  2. "Family member" means a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.
- B. Accruing sick leave.**
1. A full-time employee shall receive 4.62 hours of sick leave biweekly.
  2. The following employees are not eligible for sick leave:
    - a. A part-time employee working less than 20 hours in a week,
    - b. An intern, and
    - c. An intermittent employee.
  3. An employee shall receive sick leave credit if the employee is in pay status for at least one-half of the employee's normally scheduled work week.
  4. Sick leave may be accrued without limit.
- C. Using sick leave.** A supervisor shall authorize sick leave if an employee is absent because of:
1. An illness that makes the employee unable to perform official duties,
  2. An appointment with a licensed health care provider, or
  3. Family sick leave.
- D. Family sick leave limits.** Family sick leave shall not exceed 40 hours in a year. An employee may use annual leave to supplement or instead of family sick leave. If an employee has used the authorized 40 hours of family sick leave and exhausted all

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compensatory and annual leave, the agency head may authorize the employee to use the employee's sick leave.

- E. Supervisory review of sick leave. A supervisor may require supporting documentation for any sick leave. If the employee fails to provide necessary documentation of the use of sick leave or violates any provision of this Section, the employee's supervisor may disapprove the sick leave and charge the absence to the employee's annual leave or leave without pay. When an employee has been on sick leave for five or more consecutive days, the supervisor may require the employee to submit evidence that the employee consulted a doctor.
- F. Returning from sick leave. An employee shall return to duty or to limited duty as soon as the employee is able to do so with permission of the employee's physician and without posing a risk to the employee or others.
- G. Medical review. If a supervisor is concerned about a returning employee's fitness for duty, the supervisor may request a medical evaluation under R13-5-315(B), or request that the employee be temporarily assigned to limited duty.
- H. Forfeiture of sick leave. An employee shall forfeit accumulated sick leave upon separation from state service, unless eligible for payment under the provisions of A.R.S. § 38-615.
- I. Restoring sick leave. If a former employee is recalled, reinstated, or rehired within two years, an agency shall restore the employee's previous sick leave balance. Sick leave for which the employee received compensation under A.R.S. § 38-615 is excluded from restoration.
- J. Sick leave credit for Arizona state service. Upon appointment to an agency, an Arizona state employee with previously accrued sick leave may have the sick leave credit added to the employee's leave balance, provided:
  1. The employee does not receive compensation for accrued sick leave upon separating from a state agency;
  2. The employee is hired within two years of separating from a state agency; and
  3. The employee was hired after December 31, 1996.
- K. Agency leave policy. An agency shall establish a sick leave policy that complies with all of the provisions of the Family and Medical Leave Act.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4). Amended by emergency rulemaking at 10 A.A.R. 1163, effective March 4, 2004 (Supp. 04-1).

Emergency expired after 180 days; the Section on file prior to the emergency has been restored (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**ARTICLE 6. GRIEVANCES**

*Editor's Note: Former Article 6, consisting of Sections R13-5-30 through R13-5-36, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 6, consisting of Sections R13-5-601 and R13-5-602, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-601. Agency Grievance System**

- A. General. The agency shall provide a system for considering and responding to an employee grievance regarding classification, compensation, performance evaluation, and application of Council rules.
- B. Denial. When an agency head denies an employee grievance regarding classification, compensation, performance evaluation, or application of Council rules, the agency head shall notify the Council.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-602. Council Review**

- A. General. The Council shall only review a grievance related to classification, compensation, employee appraisal system, and application of Council rules after the employee exhausts the remedies in the agency's grievance process. If the grievance remains unresolved, the employee may file a request for Council review within 20 days after the employee receives the agency's notice of denial of the grievance.
- B. Procedure. An employee shall submit a written request for Council review of a grievance.
  1. The employee's request shall include:
    - a. The specific relief sought by the employee;
    - b. The asserted factual basis for relief, and
    - c. An account of the agency's response during the internal grievance process.
  2. Upon receipt of the request, the Council shall send a copy of the request to the agency head.
- C. Response. The agency may file a written response with the Council at any time before the Council reviews the grievance. The agency head shall send a copy of the response to the employee at least 10 days before the Council reviews the grievance. At the employee's request, the 10 days may be waived.
- D. Informal dispositions. The Council may informally dispose of a grievance without further review of the merits, under any of the following methods:
  1. By withdrawal, if the employee withdraws the grievance in writing or on the record at any time before a decision is issued;
  2. By default to the appearing party, if the employee or the agency, fails to appear at the meeting; or
  3. By stipulation, if the parties agree on the record or in writing at any time before the Council issues a decision on the grievance.
- E. Council review. The Council shall review an employee's grievance in an open meeting. The Council shall allow the employee to make a statement in support of the grievance, and shall allow the agency an opportunity to respond. The Council may limit the length of the parties' statements. In its discretion, the Council may allow the employee or the agency to present testimonial or documentary evidence on the issue. If the Council allows a party to offer evidence, the Council shall allow the other party an opportunity to respond with argument or evidence. The Council may limit the time parties are allowed to present evidence.
- F. Scheduling of Council review. An employee's grievance shall be scheduled for the next available business meeting of the Council but no sooner than 20 days after the grievance was received by the business manager. At the employee's request, the 20 days may be waived.
- G. Representation by counsel. Both the agency and the employee may have counsel present during the Council's review of the grievance.
- H. Decision. The Council shall state its decision in an open meeting. The Council shall sustain the agency's action on the grievance unless it finds the agency's denial is not supported by substantial evidence or is inconsistent with Council rules.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 7. DISCIPLINE AND APPEALS**

*Editor's Note: Former Article 7, consisting of Sections R13-5-40 through R13-5-43, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 7, consisting of Sections R13-5-701 through R13-5-705, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-701. Causes for Discipline**

- A. The causes for discipline for employees are found in A.R.S. § 41-1830.15.
- B. The causes for discipline for covered employees are found in A.R.S. § 41-773.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

**R13-5-702. Disciplinary Procedures**

- A. Receiving a complaint. A person may file a complaint with an agency asserting that an employee engaged in activity constituting cause for discipline and requesting that the agency head take appropriate disciplinary action against the employee or covered employee.
- B. Initiating disciplinary action. An agency head may take appropriate disciplinary action against an employee for any cause listed in A.R.S. § 41-1830.15 or against a covered employee for any cause listed in A.R.S. § 41-773.
- C. Interview of an employee. In conducting an interview of an employee being investigated for possible disciplinary action, an agency shall comply with A.R.S. § 38-1104.
- D. Time limit for filing a disciplinary action. An agency shall not file a disciplinary action later than 180 days after the date the agency discovers or should have discovered that the employee engaged in alleged activity constituting cause for discipline. The disciplinary action is deemed to be filed when the notice is filed with the Council.
- E. Exceptions to the 180-day rule.
  - 1. The time limit in subsection (D) does not run:
    - a. During the time that any criminal investigation or prosecution is pending in connection with the act, omission or other allegation of misconduct; or
    - b. During the period of time in which an employee or covered employee who is involved in the investigation is incapacitated or otherwise unavailable; or
    - c. During the period prescribed in a written waiver of the limitation by the employee or covered employee; or
    - d. During emergencies or natural disasters during the time period in which the governor has declared a state of emergency within the jurisdictional boundaries of the concerned employer; or
    - e. During a multijurisdictional investigation, the time limit may be extended for a period of time reasonably necessary to facilitate the coordination of the employers involved.
  - 2. At the request of an agency, the Council may, upon a showing of good cause, extend the time for an agency to file a disciplinary action up to a maximum of 90 days beyond the original 180-day period.
  - 3. If a manager or supervisor is aware of an employee's alleged actions that constitute a criminal offense but fails to act, the time limit does not run during the period of the manager or supervisor's inaction if the supervisor or manager is disciplined for failure to act and:
    - a. The offense is a misdemeanor involving theft or moral turpitude and is discovered within 180 days after the 180-day period for taking disciplinary action, or
    - b. The offense is a felony.

- 4. The agency shall maintain documentation to support any exception to the 180-day time limit, including the dates during which the time limit does not run.
- F. Notice of disciplinary action. An agency head shall serve a written notice on the employee or covered employee within 10 days after the agency files the notice of disciplinary action with the Council. Service shall be completed in accordance with R13-5-104(D). The agency head's notice shall include:
  - 1. A statement of the nature of the disciplinary action;
  - 2. Any prior disciplinary action on which the current discipline is based;
  - 3. The effective date of the action;
  - 4. A specific statement of the causes; and
  - 5. A statement of the employee's or covered employee's right to appeal and the time limit in which the employee or covered employee must file an appeal with the Council under R13-5-703(A), (B), and (C).
- G. Amended notice of disciplinary action before appeal is filed. At any time before an employee or covered employee files an appeal, the agency head may file with the Council and serve the employee or covered employee or former employee or former covered employee with an amended or supplemental notice of disciplinary action.
- H. Effect of dismissal. An employee's or covered employee's dismissal from the agency shall entail:
  - 1. Dismissal from all positions held by the employee or covered employee,
  - 2. Removal of the employee's or covered employee's name from all employment or promotional lists, and
  - 3. Termination of the employee's or covered employee's pay on the date of dismissal.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2). Amended by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

**R13-5-703. Appeal to the Council by Employees**

- A. Appealable actions by employees. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.
- B. Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal to the business manager and the agency head. The appeal must state specific facts relating directly to the charges on which the appeal is based.
- C. Time for appeal. An employee shall file an appeal within 30 days after being served with the notice of disciplinary action.
- D. Agency responsibility. An agency shall have the burden of going forward with the case once an appeal has been filed. An agency must prove by a preponderance of the evidence that it had just cause to discipline the employee.
- E. Effect of appeal. The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council shall reverse the decision of the agency head if the Council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or with-

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out back pay. On a finding that the agency has not proven just cause to discipline the employee by a preponderance of the evidence, the Council may recommend a proposed disciplinary action in light of the facts proven.

- F.** Agency action after receiving a decision or recommendation. The agency head or the agency head's designee shall accept, modify or reverse the Council's decision or accept, modify or reject the Council's recommendation within 14 days of receipt of the findings or recommendation from the Council. The decision of the agency head is final and binding. The agency head shall send a copy of the agency's final determination to the employee.
- G.** Amended notice of disciplinary action after employee files an appeal. If good cause exists, an agency head may file with the Council a motion to amend the notice of disciplinary action. The motion shall be filed no later than 14 days before the hearing.
- H.** Notice of hearing. The Council shall notify the parties of the time and place of the hearing.
- I.** Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.
- J.** Conduct of hearings. The Council shall sit as a whole at a hearing, unless a Council member declares a conflict or is unable to attend. Only a Council member who was present at a hearing may participate in making the decision. Council members may administer oaths, issue subpoenas for the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this state.
- K.** Witness fees. Witnesses at a hearing, other than employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.
- L.** Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. An employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.
- M.** Discovery.
1. Within three business days after receiving a written request from the employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.
  2. Within 20 days after receiving the investigative file, the employee shall provide all material relating to the defense of the employee to the agency head.
  3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.
  4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.
  5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the employee shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.
  6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.
  7. If a party fails to provide material as required, the Council may preclude its use at the hearing.
- N.** Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.
- O.** Pleadings. The Council may strike a pleading not filed in accordance with this Section.
- P.** Depositions:
1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:
    - a. The witness does not reside within the State or is out of state,
    - b. The witness is too ill to attend the action before the Council, or
    - c. The deposition is for the purpose of discovery in preparing a case before the Council.
  2. The requesting party shall pay the expense of any deposition. An employee of the agency is not entitled to a witness fee for giving a deposition.
  3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.
- Q.** Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined.
- R.** Minor discipline hearings. When the Council hears appeals of suspension without pay of 24 hours or less or the deduction of 24 hours or less from an employee's annual leave balance, each party shall have no more than three hours to present evidence unless the Council allows more time to assure a fair hearing.
- S.** Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.
- T.** Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.
- U.** Settlement of disputes. If requested by the employee, the parties shall submit the terms of settlement to the Council. If the Council approves the settlement, the settlement becomes final. If no settlement is reached, or if the proposed settlement is revoked or rejected by the Council, or withdrawn by either party, or if the settlement agreement is later vacated or

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reversed by a court, neither the settlement discussion nor any resulting agreement shall be admissible against the employee in any hearing before the Council on the matter.

- V. Decision. In arriving at a decision, the Council may consider any disciplinary action taken within the previous 10 years against the employee, if the information is introduced at the hearing. The Council's decision shall contain findings of fact and its order for disposition of the case.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2). Amended by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

**R13-5-704. Rehearing of Council Decision Regarding Employees**

- A. Motion for rehearing.
1. Except as provided in subsection (C), any party in a contested case or appealable agency action may file a written motion for rehearing within 30 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in subsection (B). A respondent may file a response to the motion within 15 days after service.
  2. A party filing a post-hearing motion shall include references to the record where appropriate.
  3. The Council may require the parties to file written memoranda upon the issues raised in the motion and may permit oral argument.
  4. The Council may grant a rehearing on all or part of the issues. If a rehearing is granted, the Council shall specify the grounds for the rehearing, and the rehearing shall cover only those matters.
- B. Basis for a rehearing. The Council may grant a rehearing for any of the following causes:
1. The Council acted in an arbitrary or capricious manner or abused its discretion;
  2. Misconduct of the Council or the prevailing party;
  3. Newly discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the original hearing;
  4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action;
  5. The decision was not supported by the evidence; or
  6. The decision is contrary to law.
- C. Decisions not subject to rehearing. The Council may issue a decision as final upon making a specific finding that a decision's immediate effectiveness is necessary for the preservation of the public peace, health, or safety, or that a rehearing of the decision is impractical, unnecessary, or contrary to the public interest.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

**R13-5-705. Time Limits**

Computation of time limits. In computing any period of time prescribed or allowed by this Chapter the day of the act or event from which the designated period or time begins to run shall not be

included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-706. Appeal to the Council by Covered Employees**

- A. Appealable actions by covered employees. A covered employee may appeal dismissal from covered service, suspension for more than 40 working hours, or involuntary demotion resulting from disciplinary action.
- B. Form of appeal. To initiate an appeal, a covered employee shall submit a signed written appeal to the business manager and the agency head. The appeal must state specific facts relating directly to the charges on which the appeal is based.
- C. Time for appeal. A covered employee shall file an appeal within 10 working days after the effective date of the action.
- D. Agency responsibility.
1. When a covered employee is dismissed, involuntarily demoted, or suspended for more than 40 working hours, the employing agency shall notify the Business Manager in writing of this action and provide related documentation within 5 business days.
  2. An agency shall have the burden of going forward with the case once an appeal has been filed.
  3. An agency must prove by a preponderance of the evidence that it had just cause to discipline the covered employee.
- E. Effect of appeal. The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the covered employee. The Council shall reverse the decision of the agency head if the Council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the covered employee to the same position the covered employee held before the dismissal or demotion with or without back pay. On a finding that the agency has not proven just cause to discipline the covered employee by a preponderance of the evidence, the Council may recommend a proposed disciplinary action in light of the facts proven.
- F. Agency action after receiving a decision or recommendation. The agency head or the agency head's designee shall accept, modify or reverse the Council's decision or accept, modify or reject the Council's recommendation within 14 days of receipt of the findings or recommendation from the Council. The decision of the agency head is final and binding. The agency head shall send a copy of the agency's final determination to the covered employee.
- G. Notice of hearing. The Council shall notify the parties of the time and place of the hearing.
- H. Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.
- I. Conduct of hearings. The Council shall hear the appeal within 30 days of the receipt of the appeal. The Council shall sit as a whole at a hearing, unless a Council member declares a conflict or is unable to attend. Only a Council member who was present at a hearing may participate in making the decision. Council members may administer oaths, issue subpoenas for the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this state.

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- J.** Witness fees. Witnesses at a hearing, other than covered employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.
- K.** Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. A covered employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.
- L.** Discovery.
1. Within three business days after receiving a written request from the covered employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the covered employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.
  2. Within 20 days after receiving the investigative file, the covered employee shall provide all material relating to the defense of the covered employee to the agency head.
  3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.
  4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the covered employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.
  5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered employee shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.
  6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.
  7. If a party fails to provide material as required, the Council may preclude its use at the hearing.
- M.** Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.
- N.** Pleadings. The Council may strike a pleading not filed in accordance with this Section.
- O.** Depositions:
1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:
    - a. The witness does not reside within the State or is out of state,
      - b. The witness is too ill to attend the action before the Council, or
      - c. The deposition is for the purpose of discovery in preparing a case before the Council.
  2. The requesting party shall pay the expense of any deposition. A covered employee of the agency is not entitled to a witness fee for giving a deposition.
  3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.
- P.** Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined.
- Q.** Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.
- R.** Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2564, effective November 5, 2017 (Supp. 17-3).

**ARTICLE 8. SEPARATION FROM EMPLOYMENT; RETIREMENT SYSTEM ELIGIBILITY**

*Editor's Note: Former Article 8, consisting of Sections R13-5-45 through R13-5-48, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 8, consisting of Sections R13-5-801 through R13-5-804, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-801. Resignation or Retirement**

- A.** Notice of resignation or retirement. An employee shall resign or retire from the agency by submitting a letter addressed to the agency head and stating the effective date of the separation.
- B.** Oral resignation or retirement. If an employee resigns or retires orally rather than in writing, the employee's manager shall document the employee's stated separation date and forward the notice through the chain-of-command to the agency head.
- C.** Abandonment of position. If an employee abandons a position, it shall be deemed to be a voluntary resignation from the agency. The employee's manager shall document the employee's failure to show up for work and forward the notice through the chain-of-command to the agency head.
- D.** Refusal of resignation. An agency head may refuse to accept a resignation and may dismiss an employee under R13-5-701(B).
- E.** Withdrawal of resignation. An employee may withdraw a resignation only by submitting to the agency head a written notice of withdrawal before the employee's separation date. If a withdrawal is not submitted before the separation date, the resignation is final unless both the agency head and the employee agree to withdraw the resignation.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.

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2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-802. Reduction in Force**

- A.** General. The agency head may conduct a reduction in force when necessary because of a decrease in authorized positions, service area, funding, program responsibilities, or because of a legislative or executive mandate. If the reduction in force involves removal of a filled position, the agency shall not re-establish the position for two years, unless removal of the position was caused by fiscal constraints, legislative action, or court order.
- B.** Alternate methods. An agency head may pursue alternative methods of reducing costs without reducing the number of employees. Council approval will be required when:
1. Temporarily reducing all employees' pay, or
  2. Assigning all employees time off without pay.
- C.** Order of layoff. An employee shall be separated from an agency in the following order of preference:
1. Internship appointment,
  2. Intermittent appointment,
  3. Part-time appointment,
  4. Provisional appointment,
  5. Probationary limited-term appointment who has not established permanent status,
  6. Limited-term appointment who has completed a probationary period but has not established permanent status,
  7. Probationary appointment in a non-limited term position, and
  8. Permanent status appointment.
- D.** Laying off a probationer and special duty assignee. An employee on promotional probation or special duty shall compete for retention in the highest classification for which the probationer or assignee hold permanent status.
- E.** Laying off a limited-term employee. A limited-term employee shall compete for retention only against other limited-term employees.
- F.** Laying off a permanent status employee. If it becomes necessary to reduce the number of full-time employees holding regular appointments, an agency shall use the following method:
1. An employee with the least seniority within a classification shall be the first employee reduced from that classification.
  2. An employee who is declared surplus to a classification may displace only the least senior employee in other classifications in which the employee previously held seniority rights.
- G.** Determining seniority. Seniority within a classification shall be determined by the number of retention points of an employee. An employee with a greater number of retention points will be senior to another employee with lesser retention points within a classification.
- H.** Using retention points. Regular employees who have the least retention points shall be considered first for transfer, classification reduction, or separation.
- I.** Calculation of retention points within a classification. An employee shall receive one retention point for each month of service within the employee's classification.
- J.** Calculation of retention points in a classification for which the employee has established rights. If an employee is transferred to a classification previously held by the employee, the employee shall receive one retention point for each month of service in that classification and one retention point for each month of service in a higher or equal classification.
- K.** Eligibility for retention points. The following guidelines shall be used in determining an employee's eligibility for retention points:
1. If the employee was in pay status for at least half of the employee's working days in that month.
  2. An employee shall receive credit for agency service before a separation if the separation was less than two years.
  3. An employee shall receive credit for periods of military leave under 38 U.S.C. 4311.
  4. An employee shall receive credit for periods of uncovered appointments with the agency.
  5. An employee's prior state service in a position transferred to the agency shall be counted.
  6. An employee shall not receive credit for periods constituting a break-in-service. However, periods of time before and after such break-in-service shall be counted.
- L.** Resolution of a tie. If employees have the same number of retention points, the agency shall resolve tied scores by applying the following tie-breakers in the following order of precedence:
1. The employee with the greatest length of qualifying service with the agency,
  2. The employee with the greatest length of qualifying service with the state,
  3. The employee who placed highest on the eligibility list for the classification, or
  4. If a tie continues to exist, it shall be broken by a lottery system.
- M.** Offer of a position in a different classification. An employee who meets the qualification for a different classification but has not previously established displacement rights may be offered reassignment to a position within that classification provided that such reassignment does not displace another employee in that classification.
- N.** Notifying employees. An agency shall give written notice at least 20 days in advance to each employee being reassigned or separated. The Council may waive the 20 day notice upon proper justification for a reduced time limit. The agency's notice shall include the number of retention points assigned to the employee, the effective date of the action, the new job classification, the pay rate, the location of the position, the employee's right to request a review of the action, and the employee's recall rights, if applicable.
- O.** Employee request for review.
1. Within five days of receipt of a reassignment or separation notice, an employee may submit a written request to the agency head for a review of the procedures resulting in the employee's reassignment or separation. The employee's request shall contain information concerning any errors in the calculation of retention points and a proposed resolution. The agency head shall review the request and respond to the employee within five days after receipt of the request.
  2. An employee who wishes further review may submit a written request to the Council within 20 days after receiving the agency head's response. The Council shall investigate and respond to the employee and the agency head by submitting a final decision on the review within 30 days after receiving the employee's request.
- P.** Employee assistance. An agency shall establish a plan to assist all employees who are separated from the agency through a reduction in force.
- Q.** Reappointment list. If a permanent status employee is appointed to a lower classification as a result of a reduction in force or reallocation, Human Resources shall place the employee's name on a reappointment list for the last classification held and any previously held classification for which the employee is still qualified.

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- R.** Recall list. If an employee is laid off due to a reduction in force, Human Resources shall place the former employee's name on a recall list for the last classification held and any previously held classification for which the former employee qualifies.
- S.** Order of names. On both recall and reappointment lists, Human Resources shall arrange the names of former employees in descending order of their retention points. If candidates have the same number of retention points, Human Resources shall resolve tied scores by applying the following tie-breakers in the following order of precedence:
1. The employee with the greatest length of qualifying service with the agency,
  2. The employee with the greatest length of qualifying service with the state,
  3. The employee who placed highest on the eligibility list for the classification, or
  4. If a tie continues to exist, it shall be broken by a lottery system.
- T.** Duration of list. A former employee's name shall remain on a recall list for up to three years from the date of separation. The name of a reappointment candidate shall remain on the reappointment list until promoted or the employee separates from the agency.
- U.** Background screening. A candidate on a recall list shall be subject to a background screening process.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-803. Disability**

An agency head shall establish policies and procedures for discontinuing the employment of an employee who becomes disabled and is unable to perform the essential functions of the job. Such policies and procedures shall comply with the applicable state and federal laws.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-804. Public Safety Personnel Retirement System Eligibility**

- A.** Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under A.R.S. § 38-842(20)(a) Commissioned employees are eligible for membership in the Public Safety Personnel Retirement System.
- B.** Employees who were in the following non-commissioned classifications on December 1, 1972, shall be eligible for membership in the Public Safety Personnel Retirement System:
1. Communications Technician, and
  2. Radio Mechanic.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 1756, effective July 2, 2006 (Supp. 06-2).

**ARTICLE 9. REPEALED**

*Editor's Note: Article 9, consisting of Section R13-5-50, repealed effective June 7, 1978 (Supp. 78-3).*

41-1830.12. Law enforcement merit system council; duties; authority; rules; business manager; definitions

A. The law enforcement merit system council shall:

1. Select a chairman and vice-chairman.
2. Hold meetings that are necessary to perform its duties on the call of the chairman.
3. Adopt rules pursuant to recognized merit principles of public employment it deems necessary for establishing the following for department of public safety and Arizona peace officer standards and training board personnel:
  - (a) A classification and compensation plan for all covered positions and for establishing standards and qualifications for all classified positions from a list of necessary employees that is prepared by the director of the employing agency.
  - (b) A plan for fair and impartial selection, appointment, probation, promotion, retention and separation or removal from service by resignation, retirement, reduction in force or dismissal of all classified employees.
  - (c) A performance appraisal system for evaluating the work performance of employees of the agencies.
  - (d) Procedures for the conduct of hearings of employee grievances that are brought before the council relating to classification, compensation and the employee appraisal system.
  - (e) Procedures for the conduct of hearings on appeals from an order of the director of the employing agency in connection with suspension, demotion, reduction in pay, loss of accrued leave time or dismissal of a classified employee.
  - (f) For hours of employment, annual and sick leave and special leaves of absence, with or without pay or with reduced pay.
4. Pursuant to recognized merit principles, hear and review appeals from any order of the director of the employing agency in connection with suspension, demotion, reduction in pay, loss of accrued leave time or dismissal of a classified employee. The council's determination is subject to review by the director and appeal as provided in section 41-1830.13.

B. The council may meet with the state personnel board to discuss matters of mutual concern.

C. The rules under subsection A, paragraph 3, subdivision (f) of this section shall provide for the transfer of accumulated annual leave from one employee to another employee in the same agency and for the transfer of accumulated annual leave from one employee to another employee of another agency, department, board or commission if the employees are members of the same family. The transfers may occur if the employee to whom the leave is transferred has a seriously incapacitating and extended illness or injury or a member of the employee's immediate family has a seriously incapacitating and extended illness or injury and the employee has exhausted all available leave balances. Transferred annual leave shall be increased or reduced proportionally by the difference in the salaries of the employees as determined by council rule. For the purposes of this subsection, "family" means spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law.

D. In hearing and reviewing an appeal from any order of the director of the employing agency, the council:

1. Shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

2. May recommend modification of a disciplinary action if the director of the employing agency has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.
  3. Shall reverse the decision of the director of the employing agency if the council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay.
- E. On a finding that the director of the employing agency has not proven just cause to discipline the employee by a preponderance of the evidence, the council may recommend a proposed disciplinary action in light of the facts proven.
- F. Within forty-five days after the conclusion of the hearing, the council shall enter its decision or recommendation and at the same time shall send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation.
- G. The council shall select and the director of the department of public safety shall appoint a business manager who is a certified peace officer and an employee of the department of public safety but who is not a member of the council. The business manager shall perform and discharge all of the powers and duties that are vested in the council, except that adoption of rules, creation and adjustment of classifications and grades, compensation and hearing appeals for dismissal, demotion, reduction in pay, suspensions or other punitive action remain the duty of the council. Any power or duty that the council may lawfully delegate to the business manager is conclusively presumed to have been delegated to the business manager unless it is shown that the council by an affirmative vote recorded in its minutes has specifically reserved the power or duty to itself. At the request of the council, the business manager may make inquiries regarding or investigate infractions of council rules within the department of public safety. The business manager shall report the result of the inquiry or investigation to the council for appropriate action. The business manager may delegate the business manager's powers and duties to the business manager's subordinates unless by council rule or express provision of law the business manager is specifically required to act personally.
- H. For the purposes of this section and section 41-1830.13:
1. "Director of the employing agency" means the director of the department of public safety with respect to employees of the department and the executive director of the Arizona peace officer standards and training board with respect to employees of the board.
  2. "Just cause" has the same meaning prescribed in title 38, chapter 8, article 1.

41-1830.16. Law enforcement merit system council duties; authority; appeals of covered full authority peace officers employed by agencies in the state personnel system; definitions

A. The law enforcement merit system council shall adopt rules the council deems necessary for the administration of hearings and the review of appeals as prescribed in this section.

B. A covered employee in the state personnel system who is a full authority peace officer as certified by the Arizona peace officer standards and training board, is appointed to a position that requires such a certification in the covered service and who has completed the employee's original probationary period of service as provided by the personnel rules may appeal to the law enforcement merit system council the covered employee's dismissal from covered service, suspension for more than forty working hours or involuntary demotion resulting from disciplinary action. The covered employee shall file the appeal no later than ten working days after the effective date of the action. The covered employee shall be furnished with specified charges in writing when the action is taken. The appeal shall be in writing and must state specific facts relating directly to the charges on which the appeal is based. Notwithstanding section 41-1092.05, subsection D, the law enforcement merit system council shall hear the appeal within thirty days after the council's receipt. The law enforcement merit system council shall provide the employing agency with a copy of the appeal not less than twenty days in advance of the hearing.

C. In hearing and reviewing an appeal, the council:

1. Shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.
2. May recommend modification of a disciplinary action if the state agency head has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.
3. Shall reverse the decision of the state agency head if the council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay.

D. On a finding that the state agency head has not proven just cause to discipline the employee by a preponderance of the evidence, the council may recommend a proposed disciplinary action in light of the facts proven.

E. Within forty-five days after the conclusion of the hearing, the council shall enter its decision or recommendation and shall at the same time send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation. The state agency head or the agency head's designee shall accept, modify or reverse the council's decision or accept, modify or reject the council's recommendation within fourteen days of receipt of the findings or recommendation from the law enforcement merit system council. The state agency head or the agency head's designee shall accept the council's recommendation unless the recommendation is arbitrary or without reasonable justification. If the state agency head or the agency head's designee does not accept the council's recommendation, the state agency head or the agency head's designee shall state the reasons for rejecting the recommendation. The decision of the agency head or agency head's designee is final and binding. The agency head shall send a copy of the agency's final determination to the covered employee pursuant to this section.

F. Any party may appeal the decision of the law enforcement merit system council or the final decision of the agency pursuant to title 12, chapter 7, article 6 to the superior court in the covered employee's county of residence.

G. An appeal shall be available to the court of appeals from the order of the superior court pursuant to title 12, chapter 7, article 6 as in other civil cases.

H. For the purposes of this section:

1. "Covered employee" has the same meaning prescribed in section 41-741.
2. "Covered service" has the same meaning prescribed in section 41-741.
3. "Employing agency" means the agency in the state personnel system where the covered employee is or, in the case of dismissal, was employed.
4. "Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona peace officer standards and training board.
5. "Just cause" has the same meaning prescribed in title 38, chapter 8, article 1.
6. "Original probationary period" has the same meaning prescribed in section 41-741.
7. "Personnel rules" means the rules adopted by the department of administration, human resources division.
8. "State agency head" means the chief executive officer of the employing agency.
9. "State personnel system" has the same meaning prescribed in section 41-741.

**DEPARTMENT OF GAMING**

Title 19, Chapter 2, Arizona Racing Commission, Articles 1-6



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT: DEPARTMENT OF GAMING**  
Title 19, Chapter 2, Arizona Racing Commission, Articles 1-6

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### Summary

This Five-Year Review Report (5YRR) from the Department of Gaming (Department) relates to all rules in Title 19, Chapter 2, Articles 1-6 related to the Racing Commission (Commission). The Commission's rules govern racing meetings in order to protect and promote the safety and welfare of animals participating in racing meetings and to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering in the State. The Commission is responsible for issuing racing dates, adopting rules, and reviewing recommendations made by the Division concerning racing permits. The Department is also responsible for the financial administration of the Arizona Boxing and Mixed Martial Arts Commission. Article 6 outlines rules regarding the ticket manifest, collection, and accounting of revenues.

The Department indicates that it has not reviewed Article 3 related to Greyhound Racing with the intention that the rules expire under A.R.S. § 41-1056(J). Pursuant to A.R.S. § 5-110(h), live greyhound racing was banned in the state of Arizona as of 2016. As such, the Department indicates the rules in Article 3 are no longer applicable.

The Department indicates it did not complete its prior proposed course of action but is currently undertaking a rulemaking to address areas outlined in the previous 5YRR and subsequent changes identified by Department staff.

### **Proposed Action**

As indicated above, the Department is currently undertaking a rulemaking to redraft Title 19, Chapter 2, Articles 1, 2, 4, and 5 to increase clarity, and remove antiquated processes. The Department also intends to expire Title 19, Chapter 2, Article 3 relating to greyhound racing. Additionally, the Department intends to add new rules as required by Laws 2019, Ch. 197 pertaining to the due process rights of licensees who have been ejected and excluded from a racetrack enclosure.

However, the Department indicates there is new federal legislation pending that may preempt large parts of state oversight of racing. A copy of the pending federal legislation is included in the final materials for the Council's reference. The Department indicates it is carefully watching developments to keep the rules compliant if the bill is enacted (See S. 4547; H.R. 1754), but does not intend to file its Notices of Docket Opening for proposed amendments to Title 19, Chapter 2, Articles 1, 2, 4 and 5 until the the outcome of the pending federal legislation in the United States House of Representatives and the United States Senate.

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

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

As outlined above, within the Department, the Commission issues racing dates, rules for racing, and reviews recommendations made by the Department concerning racing permits. Since the previous 2015 report, there has been a minor change in the economic impact of the rule. In 2018, the Racing Commission allowed an increased handling fee for wagers, which provides a lottery style, mutuel payout for at least 20 cents. This new format was estimated to bring in more than \$5,000 per day in additional revenue.

However, the Department has determined the economic impact of the rules has not differed significantly from what was determined in the 2015 report. Further economic impact will be analyzed in a future Notice of Proposed Rulemaking.

The stakeholders include: the Department, the Commission, racing organizers, individuals participating in racing wagering, and the general public.

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

The Department has determined that the rules impose the least burden necessary to achieve the regulatory objective. The cost of the rules are outweighed by the public health, safety, and proper conduct of racing and wagering in Arizona. The Department plans to update the rules to correct outdated processes and streamline the racing industry.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rule in the past five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are mostly clear, concise, and understandable.

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

As noted above, the rules in Article 3 related to greyhound racing are currently inconsistent with A.R.S. § 5-110(h), which banned live greyhound racing in Arizona in 2016.. As such, the Department indicates the rules in Article 3 are no longer applicable. The Department did not review the rules in Article 3 with the intention that they expire pursuant to A.R.S. § 41-1056(J).

Additionally, the Department indicates the rules are inconsistent with Laws 2019, Ch. 197 pertaining to the due process rights of licensees who have been ejected and excluded from a racetrack enclosure and related rules must be added.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are mostly effective in meeting their respective objectives, but are limited only to some aspects of horseracing. Additionally, the Department indicates that Laws 2019, Ch. 197 requires the commission to adopt rules relating to the ejection of licensees from a racetrack enclosure.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Department indicates that the rules, other than those in Article 3 related to greyhound racing, are enforced as written consistently and fairly..

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

The Department indicates the rules are not currently more stringent than corresponding federal law. The Department indicates the rules comply with the Interstate Horseracing Act, 15 U.S. Code Chapter 57. However, as noted, the Department indicates there is new federal legislation pending that may preempt large parts of state oversight of racing. *See* S. 4547; H.R. 1754.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules at issue were adopted prior to July 29, 2010.

**11. Conclusion**

The Department indicates that the rules are mostly clear, concise, understandable, consistent, effective, and enforced. However, the Department indicates that the rules in Article 3 are no longer applicable as greyhound racing was banned in Arizona and are therefore inconsistent with current statute and not enforced. Additionally, the Department indicates rules must be added to comply with Laws 2019, Ch. 197 pertaining to the due process rights of licensees who have been ejected and excluded from a racetrack enclosure. Ultimately, the Department proposes to redraft Title 19, Chapter 2, Articles 1, 2, 4, and 5 to increase clarity, and remove antiquated processes.

However, given pending federal legislation that may preempt large parts of state oversight of racing at the state level, the Department does not intend to file a Notices of Docket Opening for proposed amendments to Title 19, Chapter 2, Articles 1, 2, 4 and 5 until the the outcome of the pending federal legislation is known. The Department indicates that, depending on the outcome of the federal racing bills currently active, the agency may reinstate rulemaking mid-to-late next year (July 2021). Council staff recommends approval of this report.



September 30, 2020

Nicole Sornsin  
GRRC Chair  
Governor's Regulatory Review Council  
100 N. Fifteenth Ave, Suite 305  
Phoenix, AZ 85007

Re: Re: Five-Year-Review Report for A.A.C. Title 19, Chapter 2, Articles 1-6

Dear Chairwoman Sornsin:

Pursuant to A.R.S. § 41-1056, enclosed please find the five-year-review report for the rules in A.A.C. Title 19, Chapter 2, Articles 1-6 governing the Arizona Racing Commission (the "Commission"), as requested in your correspondence dated June 30, 2020.

The Department did omit Title 19, Chapter 2, Article 3 with the intention that the rules expire under A.R.S. § 41-1056(J). Pursuant to A.R.S. § 5-110(h), live dog racing is banned in the state of Arizona. All rules in Title 19, Chapter 2, Articles 1-6 are now reviewed. Further, the Department certifies that the agency is in compliance with A.R.S. § 41-1091 and has filed all substantive policy statements with the Secretary of State.

For any questions about the 5-year review report, please don't hesitate to contact our Assistant Director using the information below.

Name: Aiden Fleming  
Address: Arizona Department of Gaming  
1110 W. Washington, Suite 450  
Phoenix, AZ 85007  
Telephone: (602) 255-3879  
Fax: (602) 255-3883  
E-mail: [afleming@azgaming.gov](mailto:afleming@azgaming.gov)

Please let me know if you require any other information. Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Rudy Casillas".

Rudy Casillas  
Racing Division Director

## Five-Year-Review Report

### Title 19: Alcohol, Dog and Horse Racing, Lottery & Gaming Chapter 2: Arizona Racing Commission

SEPTEMBER 2020

#### I. INTRODUCTION

Arizona Revised Statutes (A.R.S.) § 5-104 is the general authorizing statute that requires the Arizona Racing Commission to adopt rules to govern racing meetings in order to protect and promote the safety and welfare of animals participating in racing meetings and to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering in the State. The Commission is responsible for issuing racing dates, adopting rules, and reviewing recommendations made by the Division concerning racing permits. The Divisions primary responsibilities are:

- regulating and supervising all commercial horse racing, commercial greyhound racing and county fair horse racing meetings including providing staff to operate race meetings; conducting investigations, issuing licenses, conducting human and equine drug testing, overseeing wagering, conducting hearings on investigation referrals and collecting revenues for the State;
- ensuring all participants and permittees involved in commercial horse racing and county fair horse racing operate and perform in compliance with applicable Arizona statutes, rules and regulations;
- investigating all possible violations of racing laws and rules;
- performing background investigations for each license applicant;
- having stewards present on permittee grounds each day to represent Racing in all matters pertaining to enforcement and interpretation of rules;
- reviewing all rulings issued by Stewards and conducting Racing Director's hearings on appeals of Stewards' referrals;
- contracting with independent laboratories to conduct analysis on horse urine and blood samples;
- regulating all off track betting including issuing licenses and monitoring compliance for both operational and technical requirements;
- collecting revenues for the State and distributing awards to program participants;

- providing grants to non-profit organizations to promote the adoption of retired racehorses and greyhounds in Arizona;

Arizona Administrative Code (A.A.C.) Title 19, Chapter 2, Articles 1-5 outline the conduct for all horseracing, greyhound racing and pari-mutuel wagering in the State.

The following statutes authorize the Department and the Commission to make rules for specific purposes:

- A.R.S § 5-104.01 requires an annual financial audit be conducted in accordance with auditing standards established by the auditor general of each permittee that the Department licenses. A.A.C. R19-2-104(R) establishes rules for financial audits for horse racing permittees and R19-2-305(Q) & (R) for greyhound racing permittees.
- A.R.S § 5-107 outlines the requirements for applications for permits to conduct racing meetings. It stipulates requirements for the application and gives the responsibility to the Commission to make rules regarding the application procedure. Accordingly, R19-2-103 and R19-2-303 outline the statutory requirements and documentation needed to file a complete permit application to the Commission, including specific review timeframes for permit issuance for horse and greyhound racing.
- A.R.S § 5-111 outlines the requirements to conduct pari-mutuel wagering in the State. Further the Commission is required to adopt rules governing wagering on races under this system. As such, rules adopted through A.A.C. Title 19, Chapter 2, Article 5 establish standards, guidelines, and procedures for conducting pari-mutuel wagering in Arizona.
- A.R.S § 5-113 outlines the disposition of revenues to various funds including the Arizona Breeders' Award Fund. The Commission is charged with establishing rules to protect the integrity of the racing industry and promote, improve and advance the quality of racehorse and greyhound breeding within the State. R19-2-116 was established to provide incentive to owners and breeders to breed their mares in Arizona to enhance the quality of racing Thoroughbreds and Quarter horses. Cash bonuses are awarded to the breeder if the foals earn winnings in Arizona. R19-2-319 rule defines eligibility standards to receive financial incentives for breeding greyhounds in Arizona. The objective of the rule is to provide an incentive to owners/breeders to breed their dogs in Arizona to enhance the quality of racing Greyhounds in the state. However, as noted in our analysis below, funding for these awards is minimal for horses and non-existent for greyhounds and are therefore recommending revisions and repeals to these sections.

Lastly, the Department is responsible for the financial administration of the Arizona Boxing and Mixed Martial Arts Commission. A.R.S § 5-104.02 requires the Department to collect a four percent tax levy on boxing and mixed martial arts events conducted in the State. In order to ensure the State is receiving the correct taxes from each event the Department shall verify all gross receipts and may conduct financial audits. A.A.C. Title 19, Chapter 2, Article 6 outlines rules regarding the ticket manifest, collection, and accounting of revenues.

## II. INFORMATION IDENTICAL FOR ALL RULES

### 1. Statutory Authority.

General authority: [A.R.S. § 5-104](#); [A.R.S. § 5-101.01](#) establishing the Division of Racing. [A.R.S. § 5-110\(h\)](#) eliminating greyhound racing after December 31, 2016.

### 2. Objectives (see below)

**3. Effectiveness**

The Rules are mostly effective in meeting their respective objectives, but are limited only to some aspects of horseracing. Additionally, [laws 2019, Ch. 197](#) requires the commission to adopt rules relating to the ejection of licensees from a racetrack enclosure. The Commission needs to overhaul requirements in correcting outdated and antiquated processes and rules to streamline the racing industry.

**4. Consistency.**

With the changes, the Rules are consistent with A.R.S. Title 5, Article 1, Chapter 1.

**5. Enforcement.**

The rules in A.A.C. Title 19, Chapter 2, Articles 1-6 are enforced consistently and fairly.

**6. Clarity, Conciseness and Understandability.**

Except as noted, the Rules are clear and concise.

**7. Written Criticisms.**

The Department has not received any written criticism of the rules in the past 5 years.

**8. Economic, Small Business and Consumer Impact Comparison.**

There has been one economic impact change since the 2015 report. The addition of the Cactus Pick 6 wagering option was adopted by the Commission in 2018. The rule allows for an increased wagering handle, which provides a lottery style, large mutuel payout for a small (.20 cents) minimum wager. The permittee benefits from a large handle that provides for additional takeout through this unique format. In FY2017, the average daily handle for the Pick 6 was under \$1000 per day. This new “unique Pick 6” was estimated to bring in more than \$5000 per day in additional revenue and much more on days with substantial carryovers. Thus far, it has been a very popular betting option, resulting in a payout to one ticket holder of \$349,609 in March of 2019.

The Department believes the economic impact of the rules is otherwise unchanged since the last rulemaking. The economic impact will be analyzed in the Notice of Proposed Rulemaking that will be filed with the Arizona Secretary of State.

**9. Analysis Submitted Comparing Rule’s Impact.**

Analysis was not submitted.

**10. Completion of Previous Five-Year Review.**

The Commission is currently undertaking rulemaking to expand to areas outlined in the previous five year review report and subsequent changes identified by staff.

**11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory objective.**

The rules impose the least burden on stakeholders necessary to achieve the rules objectives.

**12. Determination that Rules are not more Stringent than Corresponding Federal Law.**

Rule comply with the Interstate Horseracing Act, [15 U.S. Code Chapter 57](#). However, there is new federal legislation pending that may preempt large parts of state oversight of racing. The Division is carefully watching developments to keep the rules compliant if the bill is enacted ([S. 4547](#); [H.R. 1754](#)).

**13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit.**  
The rules were adopted before July 29, 2010.

**14. Proposed Action.**

In view of the following facts, the Commission finds that the existence of Rules in Title 19, Chapter 2, Articles 1-5 largely untenable:

- Pending federal legislation may alter Commission oversight of horseracing;
- Live greyhound racing no longer exists as of 2016, [A.R.S. 5-110\(h\)](#) banned dog racing after December 31, 2016. Laws 2016, Ch. 246 related Article 3 rules should be repealed.
- Additional rules are required by [laws 2019, Ch. 197](#) pertaining to the due process rights of licensees who have been ejected and excluded from a racetrack enclosure.

The Division proposes to redraft Title 19, Chapter 2, Articles 1, 2, 4, and 5 to increase clarity, and remove antiquated processes. The Division intends to omit Title 19, Chapter 2, Article 3 relating to greyhound racing. Notices of Rulemaking Docket Opening shall be filed for Title 19, Chapter 2, Articles 1, 2, 4 and 5 to accomplish these goals following the outcome of pending federal legislation in the United States House of Representatives and the United States Senate.

### III. INFORMATION FOR INDIVIDUAL RULES ARTICLE 1. HORSE RACING

#### 2. Objective

**R19-2-101. Power and Authority**

The objective of this rule is to inform the public of the statutory authority of the Department and the Commission and define the levels of regulatory authority within the agency as they pertain to horse racing.

**R19-2-102. Definitions**

The objective of the rule is to define the terms used in Article 1, Horseracing.

**R19-2-103. Permit Applications**

The rule outlines statutory requirements and documentation needed to file a complete permit application to the Commission, including specific review timeframes for permit issuance.

**R19-2-104. Permittee Responsibilities**

The rule lists the statutory and regulatory requirements a permittee is responsible to meet in order to maintain a permit to operate a race meet.

**R19-2-105. Charity Races**

The rule informs the permittee of specific information that must be provided for Commission approval of a charity race or charity race day.

**R19-2-106. Licensing**

The rule provides requirements for obtaining a racing license.

**R19-2-107. Stable Names**

The rule provides criteria for registration under a stable name rather than an owner's given name.

**R19-2-108. Leases**

The rule provides specific information to be contained within a lease agreement to ensure the registered owner is not held responsible for any financial obligation or receives any winnings during the term of the lease.

**R19-2-109. Jockeys**

The rule informs jockeys and apprentice jockeys of the responsibilities and requirements of holding a license.

**R19-2-110. Jockey Agents**

The rule lists the duties, responsibilities and restrictions of a jockey agent.

**R19-2-112. Prohibited Acts**

The rule lists specific prohibitions while on the permittee premises or under authority of their license.

**R19-2-113. Entries and Subscriptions**

The objective of the rule is to provide an equal opportunity for each horse to run and to insure racing office personnel uphold the integrity of the system.

**R19-2-114. Penalties and Allowances**

The rule establishes guidelines for assigning weight penalties and weight allowances to horses as a means of equalizing the racing field.

**R19-2-115. Claiming Races-Eligibility for Claim**

The rule defines who is eligible to claim horses at the race meet. The objective is to prevent people who are not associated with racing from claiming horses and removing claimed horses from the grounds, thus reducing the pool of horses available to race.

**R19-2-115.01. Claiming Races-Duration of Race Meet**

Repealed effective November 30, 2013.

**R19-2-115.02. Claiming Races-Steward Claim Authorization**

Repealed effective November 30, 2013.

**R19-2-115.03. Claiming Races-Claiming Restrictions**

Repealed effective November 30, 2013.

**R19-2-115.04. Claiming Races-Delivery of a Claimed Horse**

Repealed effective November 30, 2013.

**R19-2-115.05. Claiming Races – Irrevocability of Claim**

Repealed effective November 30, 2013.

**R19-2-115.06. Claiming Races-Claimed Horse Racing and Ownership Restrictions**

Repealed effective November 30, 2013.

**R19-2-115.07. Claiming Races – Claiming Price and Determination of Winner of Claim**

Repealed effective November 30, 2013.

**R19-2-115.08. Claiming Races-Responsibility for Determining the Sex of a Horse**

Repealed effective November 30, 2013

**R19-2-115.09. Claiming Races-Claiming Procedures**

Repealed effective November 30, 2013

**R19-2-115.10. Claiming Races-Disciplinary Actions**

Repealed effective November 30, 2013

**R19-2-116. Arizona Bred Eligibility and Breeder's Award Payments**

The objective is to provide incentive to owners and breeders to breed their mares in Arizona to enhance the quality of racing Thoroughbreds and Quarter horses. Cash bonuses are awarded to the breeder if the foals earn winnings in Arizona.

**R19-2-117. Objections**

The rule defines eligibility for lodging an objection, the procedure, and the time limit.

**R19-2-118. Scale of Weights for Age**

The rule provides the maximum amount of weight a horse can carry based on age to protect the horse by preventing assignment of excessive weight.

**R19-2-119. Rules of the Race and Winnings**

To inform the licensees and track personnel of rules of the race, address pre-race activity, running the race, official order of finish, post-race activity, and winnings.

**R19-2-120. Veterinary Practices, Animal Medication, and Animal Testing**

Outlines the accepted veterinary practices and prohibited practices including unacceptable drugs and medications and the process of animal drug testing.

**R19-2-121. Officials**

The rule designates which race officials are state employees and which are track employees and to uphold the integrity of racing by setting standards of conduct and imposing restrictions on behavior.

**R19-2-122. Transfers**

The objective of the rule is to eliminate the opportunity to rapidly transfer ownership in order to gain advantage of the entry box, claim box, or both and protect the owner from having the horse sold without consent.

**R19-2-123. Procedure Before the Department**

The rule informs licensees of the procedures, financial requirements, and timeframes to file an appeal of a stewards' ruling to the Director.

**R19-2-124. Procedure Before the Commission**

The rule informs licensees of the procedures, financial requirements, and timeframes to file an appeal of a stewards' ruling to the Director and outlines the appeals process when a person is aggrieved by a Director's decision.

**R19-2-125. Arizona Stallion Awards**

The objective of the rule is to provide incentive to owners/breeders to stand their studs in Arizona to promote and enhance racing Thoroughbreds and Quarter Horses in the State. Cash bonuses are awarded to the breeder of the foal earns winnings in Arizona.

**R19-2-126. Race Horse Adoption Grants**

The rule provides financial incentive to non-profit organizations to adopt retired racehorses and to monitor the safety of the adopted horses.

**ARTICLE 2. RACING REGULATION FUND**

**2. Objective.**

**R19-2-201 Racing Regulation Fund**

The rule outlines the sources of revenues for the Racing Regulation Fund to be administered by the Department.

**R19-2-202 Licensing Fees**

The rule stipulates the annual licensing fees for all racing licenses and outlines expiration dates.

**R19-2-203 Regulatory Assessment for Animal Medication Testing, Research, Safety, and Welfare**

Repealed November 16, 2012.

**R19-2-204 Regulatory Assessment for Dark Day Simulcasting**

The rule establishes the fees and process for collecting a Dark Day Simulcasting assessment from each racetrack permittee.

**R19-2-205 Regulator Wagering Assessment of Pari-mutuel Pools**

The rule outlines the Racing Wagering Assessment fee schedule and process for collecting. This assessment is the primary funding source for the Department to regulate the commercial racing and pari-mutuel wagering industries.

**ARTICLE 4. ADVANCED DEPOSIT WAGERING, TELETRACKING, AND SIMULCASTING**

**R19-2-401 Definitions**

The rule defines the terms used in Article 4 as they pertain to advanced deposit wagering, teletracking and simulcasting.

**R19-2-402. ADWP Licensing Requirements**

The rule stipulates the licensing requirements for advanced deposit wagering providers (ADWP).

**R19-2-403. ADW Permit Applications**

The rule outlines requirements and documentation needed to file a permit application to conduct Advance Deposit Wagering (ADW) with the Department and stipulates rules that ADW permittees must follow.

**R19-2-404. Application for ADWP Permit; Plan of Operations**

The rule states the timeline an advanced deposit wagering provider's (ADWP) permit is valid for and requires the ADWP to submit an operation plan to the Department.

**R19-2-405. Contracts and Agreements**

The rule stipulates what contracts and agreements are required to be submitted to the Department related to the advanced deposit wagering operation.

**R19-2-406. Plan of Operation Approval and Amendments**

The rule requires an advanced deposit wagering provider to conduct operations according to provisions of an approved operating plan and outlines requirements for making changes to the plan of operation.

**R19-2-407. ADWP Permit Renewal**

The rule outlines requirements for advanced deposit wagering providers to renew their permit.

**R19-2-408. ADWP Licensing**

The rule stipulates the individuals that are required to be licensed by the Department to conduct advanced deposit wagering.

**R19-2-409. ADW-Racetrack Permittee Contracts**

The rule outlines the requirements for an advanced deposit wagering provider to contract with one or more Arizona racetrack permittee for the purpose of conducting advanced deposit wagering.

**R19-2-410. ADW Accounts**

The rule stipulates the requirements for advanced deposit wagering providers (ADWP) for individuals to open an account with them prior to accepting wagers from that individual. Requirements include verification of the individual to ensure the person is at least 21 years old. Further, the rule outlines information the ADWP is required to provide to individuals that open accounts with them.

**R19-2-411. Advance Deposit Wagering**

The rule states that all rules governing pari-mutuel wagering also govern advanced deposit wagering and stipulates the fee an advanced deposit wagering provided (ADWP) shall pay to the Department.

**R19-2-412. Teletrack Wagering**

The rule outlines the requirements advanced deposit wagering providers must follow for the purposes of teletrack wagering.

**R19-2-413. General Provisions Regarding Teletrack Facilities**

The rule stipulates general requirements for teletrack facilities including back up plans, security measures, reporting delays to the public, publishing race results, and the period for teletrack permittees to conduct wagering. Further, teletrack wagering permittees are required to report to the Department any violation or suspected violation of law that occurs on or about the premises of the facility.

**R19-2-414. Application for Original Teletrack Wagering Permit; Plan of Operation; Renewals of Teletrack Wagering Permit**

The rule outlines the requirements to obtain and submit an application to the Department for a teletrack wagering permit including the submission of a plan of operation and a copy of all service contracts and other agreements. Additionally the rule stipulates the process for amending an operation plan and the application renewal process.

**R19-2-415. Approval of Additional Wagering Facilities; Plan of Operation; Renewal or Approval of Additional Wagering Facilities**

The rule outlines the requirements for teletrack wagering permittees for submitting an operation plan to the Commission for additional teletrack wagering facilities.

**R19-2-416. Suspension of Teletrack Permit**

The rule establishes the grounds for suspension of a teletrack wagering permit.

**R19-2-417. Licensing of Employees at Teletrack Facilities**

The rule requires that employees, managers and owners of a teletrack wagering facility be licensed by the Department prior to participating in teletrack wagering.

**R19-2-418. Directives**

The rule authorizes the Director to make decisions of matters concerning teletrack wagering facility operations within the scope of the Director's authority.

**R19-2-419. Simulcast Wagering**

The rule outlines the requirements for a racetrack permittee to conduct simulcasting and the process for the Department to approve simulcast requests. Further, the rule stipulates the duties of both the sending track permittee and the receiving track permittee in regards to simulcasting.

**R19-2-420. Interstate Common Pool Wagering**

The rule outlines the general provisions for conducting interstate common pool wagering and requires contracts of racetrack permittees participating in interstate common pools be submitted to the Department. Further, the rule establishes requirements for participation in common pools for both the sending track permittee and the receiving track permittee.

**ARTICLE 5. PARI-MUTUEL WAGERING**

**R19-2-501. General**

The rule requires permittees to conduct pari-mutuel wagering in accordance with applicable laws and rules and do so on a system that is approved by the Department.

**R19-2-502. Records**

The rule requires the permittee to maintain all wagering records for the Departments review.

**R19-2-503. Pari-mutuel Tickets**

The rule states that pari-mutuel tickets are evidence of a contribution to the pari-mutuel pool and evidence of the obligation of the permittee to pay the ticketholder a portion of the pool as determined by the valid ticket. Outlines requirements of a ticket to be deemed valid.

**R19-2-504. Pari-mutuel Ticket Sales**

The rule requires pari-mutuel tickets to be sold only by a permittee during specific times and at an authorized location. It also outlines the payment process for winning pari-mutuel wagers.

**R19-2-505. Advance Performance Wagering**

The rule requires that no permittee shall allow wagering more than one day prior to the scheduled post time of the first contest unless authorization is obtained by the Department.

**R19-2-506. Claims for Payment from Pari-mutuel Pool**

The rule outlines requirements for permittees for cases where a permittee has withheld or refused to cash a pari-mutuel wager and stipulates claims be forwarded to the Department within 48 hours.

**R19-2-507. Payment for Errors**

The rule outlines the requirements, process and procedures if an error occurs in the payment amounts for pari-mutuel wagers, which are cashed or are entitled to be cashed as a result of such error.

**R19-2-508. Betting Explanation**

The rule requires an explanation summary of pari-mutuel wagering and each type of betting pool to be published in the program for every wagering performance.

**R19-2-509. Display of Betting Information**

The rule requires approximate odds for win pool betting to be posted on display devices within view of the wagering public and update at intervals of not more than 90 seconds and probable payoff for other pools to be displayed as determined by the Department.

**R19-2-510. Cancelled Contests**

The rule stipulates that cancelled contests or ones declared “no contest” shall be granted refunds on valid wagers.

**R19-2-511. Refunds**

The rule outlines pools where refunds of the entire pool shall be made upon presentation and surrender of the affected pari-mutuel ticket.

**R19-2-512. Coupled Entries and Mutuel Fields**

The rule outlines the process and procedures for contestants coupled in wagering as a coupled entry or a mutuel field and stipulates price calculations, refunds, and distributions of pools.

**R19-2-513. Pools Dependent upon Betting Interests**

The rule authorizes that when pools are opened for wagering the types of bets that the permittee may allow or prohibit.

**R19-2-514. Prior Approval Required for Betting Pools**

The rule allows the permittee to apply to the Department to offer new forms of wagering or suspend any previously approved forms of wagering.

**R19-2-515. Closing of Wagering in a Contest**

The rule authorizes a Department representative to close wagering for each contest on a system maintained by the permittee and approved by the Department.

**R19-2-516. Complaints Pertaining to Pari-mutuel Operations**

The rule requires that the permittee issue complaint reports to the Department within 48 hours on all patron complaints regarding pari-mutuel wagering.

**R19-2-517. Licensed Employees**

The rule requires licensees to report any know irregularities or wrongdoings involving pari-mutuel wagering to the Department.

**R19-2-518. State Mutuel Supervisor**

The objective is to have State supervision to monitor all wagering at race meetings and wagering facilities and the rule requires the permittee to grant the Department unrestricted access to its facilities, equipment and records pertaining to pari-mutuel wagering.

**R19-2-519. Mutuel Manager**

The rule objective is for the permittee to provide a mutuel manager who is responsible for the accuracy of all payoff prices posted and in the event of an error or a problem make reports to the Department.

**R19-2-520. Stored Value Instruments**

Allows a racetrack permittee to offer pari-mutuel cash vouchers at wagering locations as incentives or promotional prizes. Further, a permittee shall not, without approval from the Department, use any form or stored value instrument other than pari-mutuel cash vouchers. The rule outlines requirements and procedures for stored value instruments.

**R19-521. Simulcast Wagering**  
Repealed.

**R19-522. Interstate Common Pool Wagering**  
Repealed

**R19-2-523. Calculation of Payoffs and Distribution of Pools**  
The objective of this rule is to outline in detail the price calculation procedure and distributions of pools for all pari-mutuel wagering pools and requires that pools shall be separately and independently calculated and distributed.

**ARTICLE 6. STATE BOXING ADMINISTRATION**

**R19-2-601. Definitions**  
The rule defines the terms used in Article 6 as they pertain to boxing events.

**R19-2-602. Notice to the Department**  
The rule requires the Boxing Commission to provide notice of events approved to the Racing Division.

**R19-2-603. Ticket Manifest, Collection, Accounting**  
The rule provides accounting procedures for funds received from boxing and mixed martial arts events.

**R19-2-604. Annual Bond, Event Bond, Claims**  
The rule makes provision for filing annual and event bonds by boxing promoters.

**R19-2-605. License Fees**  
The rule provides that license fees and accompanying information received by the Boxing and Mixed Martial Arts Commission be forwarded to the Racing Division.

**R19-2-606. Fines**  
The rule provides that fines and accompanying information imposed and received by the Boxing and Mixed Martial Arts Commission be forwarded to the Racing Division.





**Arizona Department of Gaming**

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**Analysis:  
Horseracing Integrity and Safety Act of 2020**

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**Arizona Dept. of gaming Presenter**

Aiden Fleming, Assistant Director

# Introduced Legislation

## S.4547

- **Sponsor:** Sen. Mitch McConnell, Senate Majority Leader
- **Co-Sponsors:** Sen. Martha McSally et al.. Bill has bipartisan support.
- **Short Description:** Address the integrity and safety of horseracing by requiring uniform safety and performance standards, including a horseracing anti-doping and medication control program and a racetrack safety program to be developed and enforced by an independent Horseracing Integrity and Safety Authority.
- **Mirror Legislation:** H.R.1754

# Key Terms

- **EQUINE CONSTITUENCIES.**—The term “equine constituencies” means, collectively, owners, breeders, trainers, racetracks, veterinarians, *State racing commissions*, and jockeys who are engaged in the care, training, or racing of covered horses.
- **EQUINE INDUSTRY REPRESENTATIVE.**—The term “equine industry representative” means an organization regularly and significantly engaged in the equine industry, including organizations that represent the interests of, and whose membership consists of, owners, breeders, trainers, racetracks, veterinarians, *State racing commissions*, and jockeys.

# Structure

## Horse Racing Integrity & Safety Authority Board (NGO)

### 9 Member Board "The Authority"

- Chairman shall not be part of the equine constituencies;
- 4 Members shall be part of the equine industry;
- 5 Members shall be independent of the racing industry.

### Anti-Doping & Medication Control Standing Committee

**Chairman:** Independent

**Members:**

**Purpose:** shall provide advice and guidance to the Board on the development and maintenance of the horseracing anti-doping and medication control program.

### Racetrack Safety Standing Committee

**Chairman:** Independent

**Members:**

**Purpose:** provide advice and guidance to the Board on the development and maintenance of the racetrack safety program.

### Nominating Standing Committee

**Composition:** comprised of seven independent members selected from business, sports, and academia.

All members and directors shall be subject to conflict of interest provisions further outlined.

# Baseline Rule Adoption

- The Authority shall adopt the baseline rules from the following:
  - International Federation of Horseracing Authorities (prohibited substances);
  - The Association of Racing Commissioners (penalty & multiple medication violation rules);
  - The World Anti-Doping Agency International Standard for Laboratories.

Note: Absent are any state regulatory thresholds and the ARCI model rules included in the baseline rules.

# Additional Rule Adoption

Standing Committee

The Standing Committee shall advise the Authority of rule changes within their purview before a rule can be adopted by the Authority.

The Authority

The Authority shall review and approve the rules proposed by the standing committee and file them with the Federal Trade Commission (FTC).

Federal Trade Commission

The FTC shall review and file the rules, if in concert with the IHA, and as a government body, provide the public the opportunity for comment.

# Enforcement

- The Authority must seek an enforcement relationship with the United States Anti-Doping Agency (USADA). USADA may decline. If they do, they must seek a similar contractual relationship with another similarly recognized party.
- USADA would negotiate its budget and scope with the Authority.
- USADA/other contracted party would serve as the independent anti-doping and medication control enforcement organization.

# Anti-Doping & Medication Control Standing Committee

- The Committee shall with the enforcement agency:
  - “Develop lists of permitted and prohibited medications, methods, and substances for recommendation to, and approval by, the Authority.”
  - “Prohibit the administration of any prohibited or otherwise permitted substance to a covered horse within 48 hours of its next racing start, effective as of the program effective date.”
- State Racing Commission may petition for an exemption for the administration of furosemide within the first three years of the effective date of the law.
- The Authority shall convene a study group to determine the impacts of furosemide on horses administered 48 hours prior to a race. The report shall be delivered three years after the effective date of the law.

# Racetrack Safety Standing Committee

- The Committee shall develop uniform procedures for:
  - “A set of training and racing safety standards and protocols;”
  - Racing surface quality maintenance system;
  - “The undertaking of investigations at racetrack and non-racetrack facilities related to safety violations;”
  - Programs for injury and fatality and data analysis;
  - Uniform set of track safety standards;
  - Programs relating to safety research, education, and aftercare.

# Nominating Standing Committee

- Initial Panel: committee members shall be set by the incorporating documents of the Authority. The Authority is not a government entity.
- The chair shall be selected among the seven members.
- The members shall be selected thereafter by rules established by the authority after the initial incorporation to fill vacancies.

# Funding Structure

## Initial Funding

- The Authority shall seek out loans to underwrite their operations.
- The Authority may use future state payments to pay loans.

## Ongoing Funding

- State Commissions shall receive estimates of their costs to fund the regulatory oversight of the Authority 90 days after its establishment.
- Factors to determine the amount of regulatory costs shall be: the authorities projected costs, the state's number of race days and other sources of authority revenue.

# Funding Structure: State Participation

## Annual Payment

- If a state agrees to remit fees annually, they must notify the Authority within 60 days.
- To cancel, the State must notify the Authority one year before they intend to do so.

Note: there is no current estimate of cost to the State.

## Monthly Payment

- If the state declines to remit fees on an annual basis, it shall be charged monthly based on races started the previous month multiplied by the allocated fees.
- Additional fees and required registration shall be assessed directly to “trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a State racing commission and the agents, assigns, and employees...”

# State Cooperation

## State Contracts with the Authority

- The State may contract with the Authority to act on their behalf in carrying out their rules, guidance and policies to ensure compliance.

## State Does not Contract with the Authority

- The State may choose not to contract with the Authority. Funding of the Authority shall still be remitted by the State.

# Potential Commission Impact & Takeaways

## Budgetary Impact

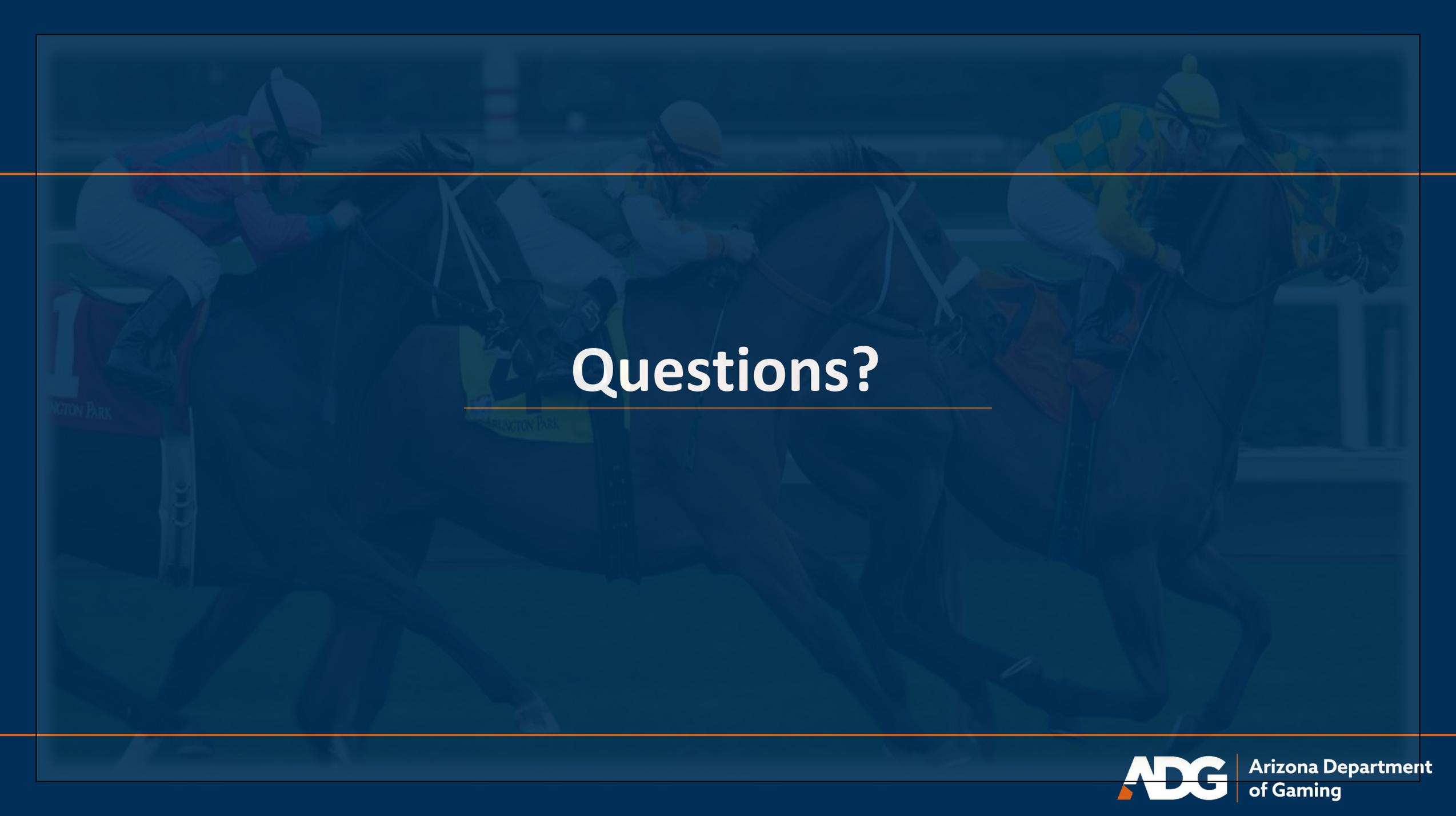
- States, licensees & permittees may see an increased cost of regulation from the Federal Authority.
- State will need to determine if they will contract with Authority for local oversight or handover regulatory functions completely.
- Arizona may be particularly impacted harshly by the calculation considered for a remit of payment to the Authority as it is based on the number of live race days.

## Authority Impact

- Numerous Arizona state statutes, rules and policies relating to the regulation of horse racing will need to comply with adopted Authority rules.
- Arizona Racing Commission & Division authority will be significantly reduced.
- Additional legislative and legal reviews of H.R.1754 and S4547 are ongoing in other State jurisdictions.

# Latest Action

- **Latest Senate Action:** 09/09/2020, Read twice and referred to the Committee on Commerce, Science, and Transportation. Has not yet received a vote on the floor.
- **Latest House Action:** 9/30/2020, passed a vote on the floor with 260 cosponsors and transmitted to the Senate.
- Similar legislation has failed the past five years in the House. Legislation appears to be moving quickly.



Questions?

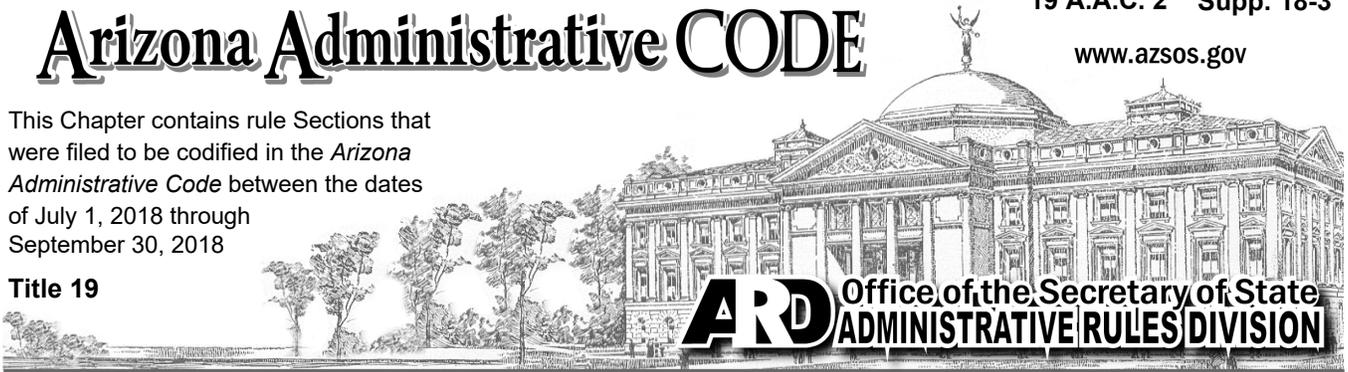
# Arizona Administrative CODE

19 A.A.C. 2 Supp. 18-3

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2018 through September 30, 2018

## Title 19



## TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

### CHAPTER 2. ARIZONA RACING COMMISSION

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

[R19-2-523.](#) [Calculation of Payoffs and Distribution of Pools. ..](#)  
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#### Questions about these rules? Contact:

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Website: [www.azgaming.gov](http://www.azgaming.gov)

#### The release of this Chapter in Supp. 18-3 replaces Supp. 18-1, 25 pages 122

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.*



Administrative Rules Division  
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 2. ARIZONA RACING COMMISSION**

(Authority: A.R.S. § 5-101 et seq.)

*Editor's Note: A.R.S. § 41-1005 was amended. The reference to the A.R.S. § 41-1005(A)(18) exemption in this Chapter has changed to A.R.S. § 41-1005(A)(16) (Supp. 14-4).*

*Editor's Note: The Office of the Secretary of State prints all Code Chapters on white paper (Supp. 03-4).*

*Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for review and approval; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Commission was not required to hold public hearings on these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

*19 A.A.C. 2, consisting of R19-2-101 through R19-2-124, R19-2-301 through R19-2-331, and R19-2-501 through R19-2-523, recodified from 4 A.A.C. 27, consisting of R4-27-101 through R4-27-124, R4-27-301 through R4-27-331, and R4-27-501 through R4-27-523, pursuant to R1-1-102 (Supp. 95-1).*

*Title 4, Chapter 27 consisting of Sections R4-27-101 through R4-27-124, R4-27-301 through R4-27-323 adopted effective August 5, 1983. R19-2-101 through R19-2-124 recodified from R4-27-101 through R4-27-124 (Supp. 95-1).*

*Former Title 4, Chapter 27 consisting of Sections R4-27-101 through R4-27-111, R4-27-201 through R4-27-211, R4-27-301 through R4-27-312 repealed effective August 5, 1983. R19-2-101 through R19-2-111, R19-2-201 through R19-2-211, R19-2-301 through R19-2-312 recodified from R4-27-101 through R4-27-111, R4-27-201 through R4-27-211, R4-27-301 through R4-27-312 (Supp. 95-1).*

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Article 4, consisting of Sections R4-27-401 through R4-27-410, repealed effective December 14, 1994 (Supp. 94-4).

Article 4, consisting of Sections R4-27-401 through R4-27-410, adopted effective April 3, 1984 (Supp. 84-2). R19-2-401 through R19-2-410 recodified from R4-27-401 through R4-27-410 (Supp. 95-1).

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Article 5, consisting of Sections R4-27-501 through R4-27-523, adopted effective October 21, 1993, under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption

from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is being printed on blue paper. R-19-2-501 through R19-2-523 recodified from R4-27-501 through R4-27-523 (Supp. 95-1).

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## ARTICLE 1. HORSE RACING

**R19-2-101. Power and Authority**

- A. All powers of the Department and Commission not specifically defined in this Chapter are reserved to the Department and Commission under the law creating the Department and Commission and specifying its powers and duties.
- B. The jurisdiction of the Department and Commission over matters covered by A.R.S. Title 5, Chapter 1 and this Chapter is continuous throughout the year.
- C. A.R.S. Title 5, Chapter 1, this Chapter, and the orders of the Department and Commission take precedence over the conditions of a race or the conditions of a race meet.
- D. The Director may sustain, reverse, or modify any penalty or decision imposed by the stewards.
- E. The Commission may sustain, reverse, or modify any penalty or decision imposed by the Director.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Editor spelling correction to subsection (C) (Supp. 88-4). R19-2-101 recodified from R4-27-101 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-102. Definitions**

The definitions in A.R.S. § 5-101 apply to this Chapter. Additionally, unless the context requires otherwise, in this Article:

1. "Added money" means money a permittee adds to the nominating and starting fees in a race.
2. "Age" means the age of a horse as computed from the first day of January in the year in which the horse is foaled.
3. "Allowance race" means an overnight race for which a horse's eligibility and weight to be carried are determined according to specified conditions that include age, sex, earnings, and number of wins.
4. "Also eligible" means a horse, properly entered for a race, which is not drawn for inclusion in the race but becomes eligible according to preference or lot if an entry is scratched before the scratch-time deadline.
5. "Authorized agent" means a person appointed under R19-2-106(G).
6. "Breakage" means net pool minus payout.
7. "Breeder" means the owner or lessee of a horse's dam at the time the horse is foaled.
8. "Breeding place" means the place of birth of a horse.
9. "Business day" means a day on which live racing is conducted or a day on which entries are taken.
10. "Carryover" means non-distributed pool monies that are retained and added to a corresponding pool in accordance with this Chapter.
11. "Claiming race" means a horse race in which each owner declares in advance the price at which the owner's horse will be offered for sale after the race.
12. "Complaint" means a written allegation of a violation of A.R.S. Title 5, Chapter 1, or this Chapter.
13. "Contest" means a competitive racing event on which pari-mutuel wagering is conducted.
14. "Declaration" means the act of withdrawing an entered horse from a race.
15. "Entrance fee" means a fee set by a permittee that must be paid to make a horse eligible for a stakes race.
16. "Entry" means, according to its context, either:
  - a. A horse eligible and entered in a race, or
  - b. Two or more horses that are entered in a race as a single wagering unit and are:

- i. Owned, in whole or in part, by the same owner; or
  - ii. Trained by a trainer who owns an interest in another horse in the race.
17. "Equipment" means whips, blinkers, tongue straps, muzzles, hoods, nose bands, shadow rolls, martingales, breast plates, bandages, boots, plates (shoes), and all other paraphernalia that is or might be used on or attached to a horse while racing.
  18. "Field" means:
    - a. The entire group of horses in a race; or
    - b. Two or more starting horses running as a single wagering unit when there are more starting horses in a race than positions of the tote.
  19. "Foreign substance" means any drug, medicine, metabolite, or other substance that does not exist naturally in an untreated horse and that may have a pharmacological effect on the racing performance of a horse or may affect sampling or testing procedures. Foreign substances include but are not limited to stimulants, depressants, local anesthetics, narcotics, and analgesics.
  20. "Foul" means any action by a horse or jockey that interferes with another horse or jockey in the running of a race.
  21. "Grounds" means the entire area used by a permittee to conduct a race meet including, but not limited to, the track, grandstand, stables, concession areas, and parking facilities.
  22. "Handicap" means a race in which the weight to be carried by each entered horse is adjusted to equalize each horse's chance of winning.
  23. "Horse" means a filly, mare, colt, horse, gelding, and ridgling except when referring to sex, "horse" means a male that is five years or older and retains all reproductive organs.
  24. "Hurdle race" means a race over a track in which jumps or hurdles are used.
  25. "Immediate," for the purpose of suspension or revocation of a license issued under this Chapter, means the first date that the suspension or revocation does not negatively impact another licensee, as determined by the Department.
  26. "Inactive person" means an individual who has never been licensed or whose license has expired, been revoked, or been suspended for more than 30 days.
  27. "Inquiry" means an investigation of possible interference in a contest conducted by the stewards before the stewards declare the result of the contest official.
  28. "In-today horse" means a horse that is entered and has drawn a position to run on one race day and also is entered for the next race day.
  29. "Lawfully issued prescription" means a prescription-only drug, as defined at A.R.S. § 13-3401, obtained directly from or under a valid prescription order written by a licensed physician acting in the course of professional practice.
  30. "Lessee" or "lessor" means a person who leases a horse for racing purposes.
  31. "Maiden" means a horse that at the time of starting has never won a race on the flat in any country on a recognized track or that was disqualified after finishing first.
  32. "Match race" means a race between two or more horses, each of which is the property of different owners, on terms agreed to by the owners and approved by the Department.

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33. "Minus pool" means there is not enough money, after deductions of state tax and statutory commissions, to pay the legally prescribed minimum on each winning wager.
34. "Net pool" means the sum of all wagers on a race minus refundable wagers and statutory commissions.
35. "Net take" means the amount of a track's commission minus allowed deductions.
36. "Nominating fee" means a fee set by a permittee that must be paid to make a horse eligible for a stakes or handicap race.
37. "Nomination" means naming a horse or its foal in utero to compete in a specific race or series of races, eligibility for which may require paying a fee at the time of naming.
38. "Nominator" means the person in whose name a horse is nominated for a stakes or handicap race.
39. "Official laboratory" means the facility with which the Department contracts under A.R.S. § 5-105(A).
40. "Official race program" means a published listing of all contests and contestants for a specific performance.
41. "Off time" means the moment at which, on signal of the starter, the horses break and run.
42. "Overnight race" means a race for which entries close 96 or fewer hours before the time set for the first race of the day on which the race is to be run.
43. "Overpayment" means the amount by which purses paid exceed the amount due horsemen based on the net take and breakage.
44. "Owner" means any person possessing all or part of the legal title to a horse.
45. "Payout" means the amount of money payable to winning wagers.
46. "Performance" means a schedule of races run consecutively as one program.
47. "Place" means a horse finishes in one of the first three positions in a race.
48. "Pool" means the sum of all wagers on a race.
49. "Post position" means the position assigned to a horse for the start of a race.
50. "Post time" means the time set for horses in a race to arrive at the starting point.
51. "Preferred list" means a record of a horse with a prior right to starting usually because the horse was previously entered in a race that did not fill with the required minimum number of horses.
52. "Program trainer" means a licensed trainer identified in the official race program as the trainer of a horse that is actually under the control of and trained by another individual who may or may not hold a trainer's license in any jurisdiction and who is not identified in the official race program as the trainer of the horse.
53. "Prohibited substance" means any substance regulated by A.R.S. Title 13, Chapter 34.
54. "Purse" means the total dollar amount for which a race is contested.
55. "Purse race" means a race for money or other prize to which owners of horses engaged in the race do not contribute an entry fee.
56. "Quarter race" means a race on the flat of 1,000 yards or less.
57. "Race" means a contest among horses for purse, stakes, premium, or wager for money, that is run in the presence of racing officials of the track and a Department representative.
58. "Race meet" means the period for which a permit to conduct racing is granted to a permittee by the Commission.
59. "Race on the flat" means a race over a track on which no jumps or other obstacles are placed.
60. "Racing Regulation Fund" means the fund established under A.R.S. § 5-113.01 and administered by the Department to receive funding for regulation of racing from various pari-mutuel racing industry sources.
61. "Racing secretary" means the official who drafts conditions of races.
62. "Recognized track" means a track where pari-mutuel wagering is authorized by law or that is recognized by the American Quarter Horse Association.
63. "Restricted area" means an enclosed portion of a permittee grounds to which access is limited to licensees whose occupation or participation requires access.
64. "Result" means the part of the official order of finish used to determine the pari-mutuel payout of pools for each contest.
65. "Ridgling" means a male horse that has one or both testicles absent from the scrotum.
66. "Ruled off" means the act of:
  - a. Barring a licensee from the grounds of a permittee and denying the licensee all racing privileges; or
  - b. Preventing a horse from being entered because the stewards have determined that preventing the horse from racing is in the best interest of the health, safety, and welfare of licensees and the state.
67. "Scratch" means to withdraw an entered horse from a race after overnight entries have been closed.
68. "Scratch time" means the time set by the permittee for withdrawing entered horses from the races of a particular day.
69. "Stakes race" means a race for which the owner of an entered horse is required to pay a fee to which the track may add money or other prize to make up the total purse and for which nominations close more than 72 hours before the time for the first race of the day on which the stakes race is to be run.
70. "Starter race" means an allowance or handicap race restricted to horses that have previously started for a specified claiming price or less and for which the racing secretary may establish other conditions.
71. "Starting fee" means the amount of money, specified by the conditions of the race and set by the permittee, which must be paid by a horse's owner for the horse to start in a race.
72. "Starting horse" means a horse that leaves the paddock for the post, excluding:
  - a. A horse subsequently excused by the stewards, or
  - b. A horse for which the starting gate stall doors do not open in front of the horse at the time the starter dispatches the field.
73. "Steward" means an official of a race meet responsible for enforcing A.R.S. Title 5, Chapter 1 and this Chapter.
74. "Subscription" means the fee paid by the owner to nominate a horse for a stakes race.
75. "Supplemental fee" means a fee set by a permittee that must be paid by a horse's owner at a time prescribed by the permittee to make the horse eligible for a stakes race after the time for nominations is closed.
76. "Suspended" means that a privilege granted by the officials of a race meet or by the Commission or Department has been temporarily withdrawn.
77. "Sustaining fees" mean fees that must be paid periodically, as prescribed by the conditions of a race, to keep a horse eligible for the race.
78. "TCO2" means total carbon dioxide.

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79. "Tote or totalisator" means the machines from which pari-mutuel tickets are sold and the board on which the approximate odds for a race are posted.
80. "Track" means the course over which a race takes place.
81. "Trainer" means a person employed by an owner or lessee to condition a horse for racing.
82. "Underpayment" means the amount by which the amount due horsemen, based on the net take and breakage, exceeds the amount of purses paid.
83. "Walkover" means a race in which there are not two or more horses of separate interest sent to post.
84. "Weight" means the standard weight described in R19-2-118.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended paragraph (15), added new paragraphs (26) and (45) and renumbering accordingly effective June 6, 1986 (Supp. 86-3). Amended by adding paragraphs (19) and (32) and renumbering accordingly effective November 30, 1988 (Supp. 88-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-102 recodified from R4-27-102 (Supp. 95-1). Amended by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-103. Permit Applications**

- A. A person or persons, associations, or corporations desiring to hold or conduct a horse racing meeting within the state of Arizona shall file with the Commission its permit application that contains the information required in A.R.S. § 5-107 in paper copy and in an electronic medium. All electronic media submissions shall be compatible with the Department's computer system and software. If any addendum to the permit application cannot be submitted in an electronic medium, the applicant shall submit the addendum in a paper copy.
- B. The Department shall not issue a permit until the applicant has furnished evidence of compliance with A.R.S. § 23-901 et seq. (Workers' Compensation).
- C. Permit applicants shall submit to the Commission the names of the proposed track officials at least 60 days prior to the beginning of their meet, along with a short biographical sketch of each official not previously licensed in the same capacity by the Department.
- D. A permit application shall specify the number of races to be run on a daily basis.
- E. Racing shall be conducted only on those days granted by permit.
- F. Permit Application Time-frames.
  1. Administrative completeness review time-frame.
    - a. Within 728 days after receiving an application package, the Department shall determine whether the application package contains the information required by subsections (A), (B), (C), and (D).
    - b. If the application package is incomplete, the Department shall issue a written notice that specifies what information is required and return the application. If the application package is complete, the Department shall provide a written notice of administrative completeness.
    - c. The Department shall deem an application package withdrawn if the applicant fails to file a complete application package within 180 days of being notified that the application package is incomplete.
  2. Substantive review time-frame. Within 30 days after receipt of a complete application package, the Commission,

with the recommendation of the Department, shall determine whether the applicant meets all substantive requirements and issue a written notice granting or denying the permit.

3. Overall time-frame. For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames for issuing a permit.
  - a. Administrative completeness review time-frame: 728 days;
  - b. Substantive review time-frame: 30 days;
  - c. Overall time-frame: 758 days.
4. Renewal and temporary permit time-frames. The administrative completeness review time-frame is 30 days, the substantive review time-frame is 30 days, and the overall time-frame is 60 days, excluding time for mailing. The renewal or temporary permit is considered administratively complete unless the Department issues a written notice of deficiencies to the applicant. Temporary permits are valid until a full permit is awarded or until the Commission revokes the temporary permit.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-103 recodified from R4-27-103 (Supp. 95-1). Amended effective January 6, 1998 (Supp. 98-1). Amended by final rulemaking at 11 A.A.R. 5534, effective February 4, 2006 (Supp. 05-4).

**R19-2-104. Permittee Responsibilities**

- A. A permittee shall maintain the grounds in a neat, clean, and safe condition. If a steward determines that a permittee is not in compliance with this Section, the steward shall require that the permittee immediately bring the grounds into compliance.
- B. The permittee shall prevent any person, corporation, firm, or association not licensed by the Department from performing any act at its track which requires a license under A.R.S. Title 5, Chapter 1, or this Article.
- C. Each permittee department head shall see that the permittee department head's employees are licensed and furnish a list of the employees upon request.
- D. A permittee shall take all steps necessary to deny the privileges of a license to anyone whose license has been revoked or suspended and to keep such a person off the grounds of the permittee and to prevent a person who has been ruled off from entering the grounds of the permittee.
- E. A permittee or its employees shall not obstruct a representative of the Department performing the representative's duties.
- F. A permittee shall not knowingly allow on its grounds any betting or other operations in contravention of any law of the state of Arizona or of the United States.
- G. The permittee shall immediately report all observed violations of any racing regulation or statute to the Department and shall cooperate with the Department and with state, federal, and local authorities in investigations of alleged violations.
- H. A permittee shall provide the following services at the track:
  1. A horse ambulance, approved by the Department, for the removal of crippled animals from the track.
  2. A physician or emergency paramedic certified under A.R.S. § 36-2205 on duty during racing hours.
  3. An ambulance, available during morning works and racing hours.
  4. First aid quarters, available during morning works and racing hours.
  5. A detention paddock (test barn) where all winners and other horses selected by the stewards are taken and kept under the supervision of the Department veterinarian

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- until saliva, urine, blood, and other samples have been obtained.
6. An adequate security force whose duties include:
    - a. Maintaining order.
    - b. Excluding from the grounds all handbooks, touts, and operators of gambling devices.
    - c. Excluding from the grounds all persons ruled off by the stewards or the Department.
    - d. Excluding from the grounds all persons not eligible for a license under A.R.S. § 5-108.
    - e. Immediately reporting to the stewards any licensee who, while on the premises of the permittee, creates a disturbance, is intoxicated, interferes with any racing operation, or acts in an abusive or threatening manner to any racing official or other person.
  7. A security guard stationed at the stable area entrance whose duties include:
    - a. Denying entrance to all persons not holding a license or credentials issued by the Department or a Departmental pass issued by the permittee.
    - b. Allowing any person seeking employment within the stable area to have access to that area for a period of one day, provided that:
      - i. The person is given a numbered card.
      - ii. A list of recipients of the numbered cards is provided to the track office of the Department upon request.
      - iii. The numbered card is retrieved by the security guard when the person leaves the stable area.
      - iv. The track office of the Department is notified of the retrieval.
  8. A furnished office, including utilities and necessary office equipment, for the exclusive use of Department employees and officials.
  9. A uniformed security official approved by the Department, on duty in the Department test barn during its regular business hours. The official shall provide security and monitor the collection procedure and sealing of samples taken from the horses.
  10. A copy of all tip sheets offered for sale in the parking area or elsewhere on the grounds of the permittee, furnished daily to the stewards not later than three hours before first post.
- I.** A person shall not sell tip sheets, pamphlets, or other printed matter purporting to predict the outcome of a race other than official programs, the Daily Racing Form, and newspapers in the betting area.
  - J.** Wagering shall be conducted upon the grounds of a permittee only under the pari-mutuel method as provided by statute and this Article and by the use of such mechanical or other equipment as the Department may require. Bookmaking or betting other than by the pari-mutuel method is prohibited.
  - K.** A permittee shall not allow the official racing of horses on any track under its control except as provided by subsection (P) below unless:
    1. The conditions of the race have been written by the racing secretary at the meeting.
    2. The entries have been made in accordance with the requirements set forth in R19-2-113.
    3. The race programmed as a part of a regular racing card conducted under the pari-mutuel system.
  - L.** On a daily basis, and as soon as the entries have been closed and compiled and the declarations have been made, the permittee posts a list of the entries and declarations in a conspicuous place.
  - M.** A permittee shall print on a daily racing program a list of all officials and directors of the permittee and of track and racing officials, together with such pertinent rules as the Department may designate.
  - N.** A permittee shall not allow an official to act until the official's appointment has been approved by the Department; provided that, in the case of sickness or inability to act, the provisions of R19-2-121(A)(5) apply.
  - O.** The permittee shall provide a photo finish and videotape device, approved by the Department, for the purpose of recording all races. The photographs and videotapes may be used to aid the stewards in determining the finishes of races. Permittees shall retain for three months all official race photographs and videotapes. The Department may require that specific photographs and videotapes be retained for a longer period of time or be transmitted to the Department for subsequent administrative or judicial proceedings.
  - P.** Notwithstanding subsection (K), wagering may be conducted, by permission of the Department, on electronically televised simulcasts provided:
    1. The simulcasts originate from a racing facility outside the state of Arizona.
    2. The race is televised on the grounds of the permittee.
    3. The televised race is included with the posted races for that racing day.
    4. The televised race complies with the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).
    5. Monies wagered are computed in the total daily handle.
    6. An out-of-state facility, receiving a simulcast originating from a racing facility within the state of Arizona, operates under the approval and regulation of an official agency of that state.
  - Q.** Any automatic timing device installed by the permittee shall have the approval of the Department.
  - R.** Each commercial horse racing permittee shall furnish the Department with annual financial statements audited and certified by a firm approved by the auditor general.
    1. The firm shall conduct the audit in accordance with audit standards prescribed by the auditor general.
    2. The firm shall prepare the financial statements in accordance with generally accepted accounting practices.
    3. The firm shall use the following accounting practices:
      - a. Overpayments shall be treated as an asset to the extent that they are recoverable. Overpayments are reported as an asset titled "Purse Overpayments," immediately following current assets. If the permittee and the accountant determine that all or part of any overpayment is not recoverable, the dollar amount expensed and the basis of the determination shall be disclosed in the notes to the financial statements.
      - b. Underpayments shall be reflected as an account payable.
      - c. Wagering income shall be reported net of sales taxes.
      - d. Amounts which a permittee is seeking to recover through litigation shall not be reported as assets.
    4. The firm shall submit the following information with the financial statements in a form prescribed by the Department:
      - a. An analysis of the composition of and changes in accounts payable which include underpayments and asset accounts which include overpayments,
      - b. A summary of current year purse expense and over- or underpayment,
      - c. The total amount of salaries and bonuses expense,

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- d. Legal and accounting expense attributable to racing-related matters,
  - e. An explanation of the types of revenues and expenses classified in accounts titled "other," and
  - f. Other financial information requested by the Commission or Department.
5. Financial statements of permittees granted original permits prior to July 1, 1982, shall be on a fiscal year basis. Financial statements of permittees granted original permits after July 1, 1982, may be on a fiscal or calendar year basis at the discretion of the Director.
  6. The firm shall submit financial statements within 120 calendar days of the end of the fiscal or calendar year.
  7. The firm shall report overpayments and underpayments to the Department in a form prescribed by the Department within 10 working days after the end of each condition book period.
- S. Each permittee shall comply with the provisions of Article 2 of this Chapter.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended subsection (H) paragraph (9) effective August 2, 1985 (Supp. 85-4). Amended subsection (R) effective June 6, 1986 (Supp. 86-3). Amended effective March 20, 1990 (Supp. 90-1). Amended effective August 6, 1991 (Supp. 91-3). R19-2-104 recodified from R4-27-104 (Supp. 95-1). Amended effective January 6, 1998 (Supp. 98-1). Amended by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3).

**R19-2-105. Charity Races**

A. A permittee shall provide the Commission with:

1. The name of any nonprofit organization or corporation selected by the permittee as a charity entitled to benefit from a charity racing day or race.
2. A list of the names and addresses of all directors, officers, and shareholders holding 10% or more of the total number of outstanding voting shares of the charitable corporation.
3. A brief description of the purposes and activities to be benefited by monies received from the charity racing day or race.
4. A copy of an Internal Revenue Service letter of determination qualifying the particular charity as an exempt organization or corporation for federal income tax purposes.

B. No permittee shall charge any expenses incurred by operation of racing against the pari-mutuel handle of a charity racing day or race except those prorated expenses incurred on the day of that particular charity racing day or race.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-105 recodified from R4-27-105 (Supp. 95-1).

**R19-2-106. Licensing**

A. A person that participates in any capacity in a race meet, including a person who performs services in connection with the conduct of the race meet, shall obtain a license from the Department, except:

1. A person that performs services during a county fair meet and is identified by a steward as a volunteer; or
2. A person that owns less than 10 percent of outstanding shares of stock, regardless of classification or type, of a permittee or licensee.

B. License application.

1. To apply for a license, a person shall complete the license application prescribed by the Department, which requires the following information, and submit the completed application to a steward:
    - a. Name, including all aliases or other names ever used;
    - b. Mailing and local addresses;
    - c. Telephone number;
    - d. Date of birth;
    - e. Physical description;
    - f. Social Security or alien status number;
    - g. Documentation, as specified under A.R.S. § 41-1080(A), of lawful presence in the U.S.;
    - h. Complete criminal history information including any racing-related sanctions; and
    - i. License category for which application is made.
  2. The Department may issue written instructions regarding preparation and execution of the license application. The instructions may be a part of or separate from the application, or both.
  3. When an applicant submits a license application, the applicant shall also submit the fee established by the Department under R19-2-202(C). The Department shall ensure that a schedule of license and fingerprint processing fees is displayed prominently at each track and on its web site.
  4. An applicant who is at least 18 years old shall submit two full sets of fingerprints to the Department. The applicant shall ensure that the fingerprints are taken by the Department, a law enforcement agency, or other authority acceptable to the Department and in a format acceptable to the Arizona Department of Public Safety and the Federal Bureau of Investigation.
  5. An applicant for a trainer license who has not been licensed as a trainer in any jurisdiction during the last 10 years shall demonstrate knowledge and skill in protecting and promoting the safety and welfare of animals participating in race meets by passing an examination, which may include written, oral, and skill demonstration parts, prescribed by the Department. An applicant who fails to pass the examination shall wait at least 90 days before retaking the examination.
- C. The Department shall presume that an applicant or licensee knows the law governing racing in Arizona. An applicant or licensee shall follow A.R.S. Title 5, Chapter 1 and this Chapter.
- D. License procedure.
1. Under delegation from the Director, on receipt of a license application, a steward shall grant or deny a temporary license and transmit the license application to the Director.
  2. In considering each application for a license, a steward may require the applicant, as well as individuals attesting to the applicant's abilities, to appear before the steward and show that the applicant is qualified to receive the license requested. The steward shall grant a temporary license only if the steward determines that the applicant meets all the requirements in A.R.S. Title 5, Chapter 1, and this Chapter.
  3. Licensing time-frames.
    - a. Administrative completeness review time-frame.
      - i. Within 85 days after receiving a license application, the Department shall determine whether the license application contains the information required under subsection (B).

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- ii. If the license application is incomplete, the Department shall issue a written notice that specifies what information is required and return the license application. If the license application is complete, the Department shall provide a written notice of administrative completeness.
  - iii. The Department shall deem a license application withdrawn if the applicant fails to file a complete license application within 15 days of the date on the notice that the license application is incomplete.
  - b. Substantive review time-frame. Within five days after determining that a license application is administratively complete, the Department shall determine whether the applicant meets all substantive requirements and the Director, or designee, shall issue a written notice granting or denying a license.
  - c. Overall time-frame. For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames for issuing a license:
    - i. Administrative completeness review time-frame: 85 days.
    - ii. Substantive review time-frame: five days.
    - iii. Overall time-frame: 90 days.
  - 4. Temporary license. All licenses are temporary for 90 days under A.R.S. § 5-108(F). Unless the Director denies a license to an applicant, a temporary license automatically becomes the license after 90 days.
  - 5. The Department shall perform a background investigation of an applicant who is at least 18 years old, including fingerprint processing through the Department of Public Safety and the FBI, and reviewing records of a national database containing license information and rulings, information systems, courts, law enforcement agencies, and the Department within the time-frame prescribed under subsection (D)(3)(a).
- E. Denials.**
- 1. The Department shall base a decision to deny a license on an assessment of whether the applicant:
    - a. Has been or is intoxicated at the time of application or has a history as a user of a narcotic drug, as defined at A.R.S. § 36-2501(A)(8), within the grounds of the permittee, or
    - b. Fails to disclose the true ownership or interest in any horse.
  - 2. When a license is denied, the Director shall report the reason for the denial in writing to the applicant and a national database listing license information and rulings.
- F. General requirements and restrictions.**
- 1. A licensee who is employed in more than one license category or who changes from one category to another shall be licensed in each category.
  - 2. A licensee who is an official at more than one type of track (horse, harness, or greyhound) shall be licensed at each type of track. The requirement in this subsection does not apply to a pari-mutuel manager who may use the same license at any type of track.
  - 3. The Director or designee shall not license a person who is younger than 16 years old in any capacity other than as an owner, and shall not license a person who is younger than 18 years old as an official, trainer, or assistant trainer. A person who is younger than 18 years old is not eligible to be licensed as an owner unless the person's parent or guardian signs the owner's license application and assumes full financial responsibility for the owner.
- 4. When present in the barn area of a horse track, paddock area, or any other restricted area, a person shall wear in full view a photo identification badge issued by the Department or a pass issued by the permittee.
- G. Authorized agents.**
- 1. A person may hold a license only as an authorized agent or be licensed as an authorized agent and in another category.
  - 2. The principal shall sign a license application on behalf of an authorized agent and clearly identify the powers of the agent, including whether the agent is empowered to collect money from the permittee. The principal shall have the license application either notarized or signed in the presence of a Department employee and a copy filed with the horsemen's bookkeeper and the Department. If there is a separate power of attorney, the principal shall file a copy of the instrument with the bookkeeper and the Department.
  - 3. To change an agent's powers or revoke an agent's authority, the principal shall describe the changed powers or revoked authority in writing that is either notarized or signed in the presence of a Department employee and filed with the Department and the horsemen's bookkeeper.
- Historical Note**
- Adopted effective August 5, 1983 (Supp. 83-4). Amended subsections (G) and (I) effective January 25, 1985 (Supp. 85-1). Amended subsections (F) and (G) effective December 5, 1985 (Supp. 85-6). Amended subsections (F) and (G) effective February 19, 1987 (Supp. 87-1). Amended subsections (A) and (B) effective October 23, 1987 (Supp. 87-4). Amended subsections (E), (F) and (G) effective November 30, 1988 (Supp. 88-4). Amended effective March 20, 1990 (Supp. 90-1). Amended effective January 13, 1995 (Supp. 95-1). R19-2-106 recodified from R4-27-106 (Supp. 95-1). Amended effective January 6, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 717, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 4483, effective December 4, 2004 (Supp. 04-4). Amended by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).
- R19-2-107. Stable Names**
- A.** A licensed owner who wishes to race under a stable name shall register the stable name with the Department and pay the fee listed in R19-2-106.
- 1. Only an owner may register or secure a license under a stable name.
  - 2. A name other than the legal name of an owner is a stable name.
- B.** When registering a stable name, a licensed owner shall identify any individual or business entity operating under the stable name.
- 1. An individual operating under a stable name shall possess and be able to produce the individual's owner's license upon request by a racing official.
  - 2. An individual operating under a stable name shall sign the authorized agent's application.
  - 3. A business entity operating under a stable name shall:
    - a. Register to do business according to the laws of the state of Arizona;

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- b. Submit a list that identifies each stockholder who owns more than 10% of the existing shares, or each partner in a partnership;
  - c. Notify the Department immediately of any change in ownership; and
  - d. Use the name under which the business entity does business in Arizona as its stable name.
- C.** If consistent with other laws, a licensed owner may change a stable name by registering the new stable name and paying the applicable fee in R19-2-106.
- D.** To abandon a registered stable name, a licensed owner shall provide written notice to the Department.
- E.** A licensed owner shall select a stable name that is distinguishable from other registered stable names.
- F.** Upon registration, the Department shall determine whether a prospective stable name will be:
- 1. Misleading to the public, or
  - 2. Unbecoming to the sport.
- G.** The Department shall not register a stable name that is misleading to the public or unbecoming to the sport.
- H.** A licensed owner shall register a separate name for each of the owner's stables.
- I.** A licensed owner operating under a stable name shall pay all entry fees for and penalties against the stable.
- J.** At the time of entry, a licensed owner shall ensure that the applicable stable name is furnished for the official program.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). R19-2-107 recodified from R4-27-107 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4919, effective December 6, 2003 (Supp. 03-4).

**R19-2-108. Leases**

- A.** The lessee of a horse shall file a copy of the leasing arrangement with the Department. The leasing arrangement shall include:
- 1. The name of the horse,
  - 2. The name and address of the owner-lessor,
  - 3. The name and address of the lessee,
  - 4. The stable name, if any, of each party,
  - 5. The terms of the lease.
- B.** No corporation having more than 10 stockholders who are the registered or beneficial owners of stock or membership in the corporation shall lease any horse owned or controlled by it to any person or partnership for racing purposes.
- C.** No owner's license shall be granted to a lessee of any corporation referred to in subsection (B) of these rules.
- D.** A corporation which leases horses for racing purposes in this state, its stockholders, and its members shall file with the Department, upon request, a report containing such information as the Department may specify.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). R19-2-108 recodified from R4-27-108 (Supp. 95-1).

**R19-2-109. Jockeys and Apprentice Jockeys**

- A.** In this Chapter, unless the context requires otherwise:
- 1. A jockey shall pass a physical examination by a physician designated by a permittee. A physical examination is valid for 12 months. A steward may require that a jockey take an additional physical examination if the steward reasonably believes a jockey's physical condition may endanger himself, his mount, or others. A steward may refuse to allow a jockey to ride until the jockey success-

fully passes another physical examination. A steward or a steward's designee may require that a jockey provide blood or urine samples for analysis upon request under A.R.S. § 5-104(C).

- 2. Unless excused by the stewards, a jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race in which the jockey is scheduled to ride and, unless excused by the stewards, shall remain in the jockey room between races until all engagements for the day have been fulfilled.
  - 3. A jockey shall wear standard jockey attire in official races.
  - 4. Only a jockey, an attendant, and a racing official are permitted in the jockey room.
  - 5. A jockey is entitled to a mount fee as established by agreement between the jockey and the owner or trainer when the jockey is weighed out by the clerk of scales except when:
    - a. The jockey refuses to ride a mount without proper cause; and
    - b. A steward replaces the jockey with a substitute jockey, unless the jockey is being replaced because of an injury received after weighing out and before the start of a race.
  - 6. An owner or trainer may replace a jockey named at the draw by lot or by a steward without payment of a mount fee by notifying a steward or the steward's designee by 9:00 a.m. MST the entry day following the draw.
  - 7. An owner or trainer shall pay a mount fee to a replaced jockey that is equal to the fee paid to the jockey who rides the race unless:
    - a. The owner or trainer replaces the jockey by notifying a steward or the steward's designee no later than 9:00 a.m. MST on the next business day after the jockey is replaced. If this notice is made, the owner shall pay a losing fee to each jockey the owner replaced in a race. The Director may establish an earlier deadline for jockey changes in consultation with a permittee, steward, jockey, owner, and trainer, or their representatives at the race meet. The Director shall not establish a deadline for jockey changes later than noon of a race day at any race meet with an average daily handle of \$100,000.00 or less; or
    - b. The replaced jockey or jockey's agent waives the fee.
- B. Equipment.**
- 1. A steward shall ensure that a bridle used in a race does not exceed two pounds in weight.
  - 2. If a jockey uses a whip in a race, the jockey shall ensure that the whip is at least 1/4 inch in diameter and not more than one pound in weight or 30 inches in length including the popper.
  - 3. When a jockey races without a whip, notice that the jockey is racing without a whip shall be made in the official race program or announced to the general public through effective, usual, and customary means intended and expected to reach the majority of the racing public.
  - 4. A jockey, apprentice jockey, exercise rider, pony person, and any other person shall wear a properly fastened helmet at all times when mounted on a racing surface.
  - 5. A jockey, apprentice jockey, and exercise rider shall wear an industry-approved safety vest at all times when mounted on a racing surface.
- C. Weight; weighing.**
- 1. An owner shall deposit a losing mount fee with a permittee before a jockey is weighed out for a race. If an owner

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- fails to comply with this subsection, a steward may declare the owner's horse out of the race.
2. A jockey shall weigh out and weigh in for a race without a whip or bridle.
  3. A jockey's weight is measured against the jockey's assigned weight as published in the official race program.
  4. A jockey shall not ride in a race if the jockey weighs out more than one pound less than the jockey's assigned weight published in the official race program.
  5. A jockey shall report the jockey's weight to the clerk of scales one hour before the time set for the first scheduled race of the race day.
    - a. A jockey shall not ride in a race if more than two pounds overweight without the consent of the owner or trainer of the horse the jockey is to ride.
    - b. A jockey shall not ride in a race if more than seven pounds overweight without the consent of a steward.
    - c. A steward shall not disqualify a horse because of any overweight the horse carries.
    - d. A permittee shall notify the public of any weight different from that published in the official race program through effective, usual, and customary mechanisms intended and expected to reach the majority of the wagering public.
  6. Immediately after pulling up, a jockey shall ride to the place of weighing in, dismount after obtaining permission from the official in charge, and wait to be weighed by the clerk of the scales.
  7. A jockey shall not intentionally touch any person or thing other than the jockey's own equipment before weighing in.
    - a. A jockey shall unsaddle the jockey's own horse, unless the jockey obtains permission from an official in charge.
    - b. An attendant shall touch a horse only by the horse's bridle unless the attendant obtains permission from an official in charge.
    - c. A person shall not touch the equipment of a jockey who has returned to the winner's circle to dismount until the jockey has been weighed in unless the person obtains permission from an official in charge.
  8. A jockey who is not able to ride to the place of weighing in because of an accident or illness that disables either the jockey or the horse shall walk or be assisted to the scales.
- D. Apprentice jockey.**
1. Licenses.
    - a. An applicant for an apprentice jockey license shall submit to the Department a certified copy of the applicant's birth certificate or other satisfactory evidence of date of birth.
    - b. A steward shall issue an apprentice jockey license if an applicant:
      - i. Is more than 16 years old and, if less than age 18 years old, a parent or guardian signs the license application assuming full financial responsibility for the applicant;
      - ii. Is approved by a starter for working a horse out of the gate;
      - iii. Successfully demonstrates to a steward the ability to gallop or exercise a horse; and
      - iv. Has the necessary tack and apparel.
  2. Expiration of license; weight allowance.
    - a. An apprentice jockey license expires when the apprentice jockey can no longer claim the weight allowances under subsection (D)(2)(b). When an apprentice jockey license expires, the apprentice jockey shall surrender the license to the Department. If an apprentice jockey license expires during the term of the current licensing cycle, the Department shall issue a jockey license at no additional cost.
  - b. An apprentice jockey who has not been licensed previously in any country may claim a weight allowance as follows in all overnight races except handicaps and stakes:
    - i. Five pounds for one year from the date of the apprentice jockey's fifth winner; or
    - ii. If the apprentice jockey has not ridden at least 40 winners within one year from the date of the apprentice jockey's fifth winner, five pounds for three years from the date of the apprentice jockey's first winner or until the apprentice jockey has ridden a total of 40 winners, whichever comes first.
  - c. The calculation of the time for which an apprentice jockey may claim a weight allowance shall not include time:
    - i. In the armed forces, or
    - ii. The apprentice jockey is physically incapacitated from performing as a jockey.
  - d. An apprentice jockey may ride quarter horses under the following conditions:
    - i. The apprentice jockey does not claim an apprentice jockey weight allowance in the race; and
    - ii. The Department does not consider a winner in the race for the purpose of computing the expiration of the right of the apprentice jockey to claim a weight allowance.
- E. Prohibited acts.**
1. A jockey shall not fail or refuse to fulfill an engagement for a race unless:
    - a. The race or race card is canceled, or
    - b. A steward excuses the jockey.
  2. A jockey shall not own, either in whole or in part, a horse registered for racing at a track where the jockey is riding.
  3. A jockey shall not engage in any pari-mutuel wagering transaction except through the owner of and on the horse that the jockey rides.
  4. A jockey attendant, jockey valet, or any licensee employed inside a jockey room shall not place a wager for themselves or another person while they are acting under the authority of their license.
  5. A jockey shall not ride against a horse trained by the jockey's spouse except as part of an entry.
  6. A jockey shall not whip a horse:
    - a. On the head, flanks, or any part of the horse's body other than the shoulders or hind quarters;
    - b. During the post parade except when necessary to control the horse;
    - c. Excessively or brutally causing welts or breaks in the skin;
    - d. When the horse clearly is out of the race or has obtained its maximum placing; or
    - e. Persistently even though the horse is showing no response to the whip.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-109 recodified from R4-27-109 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 812, effective February 24, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 717, effective April 3, 2004 (Supp. 04-1).

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Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-110. Jockey Agents**

- A. When applying for a jockey agent license, an applicant shall be accompanied by a jockey that the applicant will represent as jockey agent.
- B. A person who has not previously been licensed as a jockey agent in any jurisdiction shall demonstrate the knowledge to be licensed as a jockey agent by passing an examination prescribed by the Department. An applicant who fails to pass the examination shall wait 60 days before retaking the examination.
- C. A jockey agent shall not contract riding engagements for more than three jockeys at the same time.
- D. The Department shall charge only one fee for a jockey agent's license no matter how many jockeys the jockey agent represents.
- E. A jockey agent shall not change a rider unless the stewards grant permission.
- F. A jockey agent shall not work in any other capacity at the track where the jockey agent is licensed without permission of the stewards and without being licensed in the other capacity.
- G. A jockey agent may enter a horse in a race if the jockey agent has the permission of the horse's trainer.
- H. Riding engagements shall be made only by a jockey or the jockey's jockey agent.
- I. A jockey agent shall not communicate with a jockey the jockey agent represents during racing hours. A jockey agent shall notify a jockey the jockey agent represents of riding engagements made during racing hours through the stewards or a designated official.
- J. A jockey may act as the jockey's own agent. If a jockey chooses to act as the jockey's own agent, the jockey shall:
  1. Notify the stewards of that intention,
  2. Comply with provisions of this Chapter governing jockey agents,
  3. Not obtain a jockey agent's license, and
  4. Be present at the time entries are drawn unless other arrangements have been made with the stewards.
- K. When a jockey or the jockey's jockey agent wishes to terminate the agent agreement, the jockey and jockey agent shall appear together before the stewards to advise the stewards that the agent agreement has been terminated.
- L. A jockey agent or jockey acting as the jockey's own agent shall honor a call given to an owner or trainer for a mount in a race. If the Department determines that a jockey agent or jockey violated this subsection, the Department shall fine the jockey agent or jockey, suspend the license of the jockey agent or jockey, or both.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-110 recodified from R4-27-110 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-111. Trainers**

- A. A trainer shall know and follow the provisions of A.R.S. Title 5, Chapter 1 and this Chapter governing racing in the state of Arizona.
- B. A trainer and the trainer's employees shall comply with the decisions of the stewards on all questions to which the stewards' authority extends, subject to the right of appeal to the Department under R19-2-123.

- C. A trainer is responsible for the condition of horses under the trainer's care and shall protect the horses from acts of other parties.
- D. A trainer shall ensure that each person employed by the trainer at a licensed track is licensed by the Department and that the owner of each horse that is to be entered by the trainer in a race is licensed by the Department at least one hour before the scheduled post time of the race in which the horse is entered.
  1. A trainer shall refuse to act on behalf of any participant at a licensed track if the trainer has reasonable cause to believe that the participant is not licensed by the Department.
  2. A trainer shall not start a horse in a race if the trainer has reason to believe that an owner of the horse is not licensed by the Department. A trainer may enter a horse for an unlicensed owner in a race. If there are no horses on the also-eligible list for the race and the owner of the horse entered by the trainer is not licensed at least one hour before post time of the first race of the day, the trainer shall have the horse scratched. If there are horses on the also-eligible list, a trainer who entered a horse of an owner who remains unlicensed at the designated scratch time for the race shall have the horse scratched.
  3. A trainer shall report to the stewards the existence of the circumstances described in subsections (D)(1) and (2).
  4. A trainer shall present the trainer's horse in the paddock at least 17 minutes before post time or at another time specified by the stewards before the race in which the horse is entered.
- E. A trainer shall file all registration papers with the racing secretary within 48 hours of the trainer's arrival on the grounds of the permittee.
- F. If track colors are not in use, a trainer shall ensure that each of the trainer's horses has a set of colors registered in the office of the racing secretary and possessed by the jockey room custodian before the horses are entered in a race.
- G. A trainer shall pick up all registration papers and colors at the close of the race meet.
- H. A trainer shall notify the stewards before the transfer of a horse to or from another trainer during a race meet. The trainer shall not make a transfer until the transfer is approved by the stewards.
- I. A trainer shall not shoe a horse that is not under the trainer's care except by permission of the stewards.
- J. When a trainer is absent from the grounds where the trainer's horse is racing, the trainer shall provide a substitute licensed trainer to be responsible for the horse. If there is a violation of subsection (C) or R19-2-120(O)(1), the stewards shall take appropriate action against the responsible party. No provision of this Chapter relieves an absent trainer of responsibility or limits the absent trainer's responsibility under subsection (C). Both the absent and substitute trainers shall sign a "Trainers' Responsibility Form" provided by the Department, which shall be submitted to and approved by a steward.
- K. A trainer shall not have an ownership interest in a horse unless the trainer trains the horse and the horse is located at the track where the trainer trains. For purposes of this subsection, a reversionary interest created by an agreement transferring control of a horse is not an ownership interest.
- L. A trainer may employ an assistant trainer with the approval of the stewards. An assistant trainer shall comply with all requirements for a trainer prescribed by this Section.
- M. A trainer shall not train a horse for the benefit, credit, reputation, or satisfaction of an inactive person at a location under the jurisdiction of the Department.
  1. A trainer shall not:

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- a. Assume the responsibilities of an inactive person at a location under the jurisdiction of the Department,
  - b. Complete a race entry form for or on behalf of an inactive person or an owner for whom the inactive person works,
  - c. Pay or advance an entry fee for or on behalf of an inactive person or an owner for whom the inactive person works, or
  - d. Pay or provide consideration in any form to an inactive person or a person associated with the inactive person; and
2. If a trainer fails to comply fully with this subsection, the trainer shall not:
    - a. Be paid a salary directly or indirectly by or on behalf of the inactive person, and
    - b. Receive consideration in any form however denominated.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).

Amended subsection (D) paragraph (2) effective February 7, 1984 (Supp. 84-1). Amended effective March 20, 1990 (Supp. 90-1). R19-2-111 recodified from R4-27-111 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 717, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-112. Prohibited Acts**

In addition to other prohibitions described in A.R.S. Title 5, Chapter 1 and this Chapter:

1. A licensee shall not enter, or cause or permit to be entered, or start a horse that the licensee knows or has reason to believe should be disqualified or may be ineligible to race.
2. A veterinarian or plater, licensed to practice on a track under the jurisdiction of the Department, shall not own, lease, or train a horse racing at the track on which the veterinarian or plater practices.
3. A licensee shall not enter a stall, shed row, tack room, or feed shed assigned to another licensee without prior approval from the licensee to whom the area is assigned. The Department shall discipline a licensee determined to have violated this subsection, including voiding the transfer of a horse to which the licensee has made a successful claim.
4. A licensee shall not subject or permit an animal under the licensee's control, custody, or supervision to be subjected to any form of cruelty, mistreatment, neglect, or abuse and shall not abandon, injure, maim, kill, administer a noxious substance to, or deprive the animal of necessary care, sustenance, or shelter.
5. A licensee shall not participate in an unauthorized race on a track while a race meet is in progress on the track.
6. A licensee shall not offer or receive money or other consideration for declaring an entry out of a purse or stakes race.
7. A licensee shall not possess, within the grounds of a permittee, an electrical, mechanical, or other device, except a whip, which may be used to affect the speed or racing condition of a horse. Possession includes, but is not limited to, having the device:
  - a. On the licensee's person;
  - b. In living or sleeping quarters;
  - c. In an assigned stall, tack room, or other area; and
  - d. In a motor vehicle or trailer.
8. A person holding a license listed in A.R.S. § 5-104(C) shall not apply, inject, inhale, ingest, be under the influence of, possess, or use a narcotic, dangerous drug, or controlled or prohibited substance regulated under A.R.S. Title 13, Chapter 34 while on permittee grounds unless, on the request of a steward, the licensee can produce evidence that the licensee has a lawfully issued prescription for possession or use of the narcotic, dangerous drug, or controlled or prohibited substance.
9. A jockey, apprentice jockey, exercise rider, or pony rider shall not consume any quantity of an alcoholic beverage on a race day before completing riding commitments for the day.
10. A licensee or employee of a permittee shall not accept, either directly or indirectly, a bribe, gift, or gratuity in any form that is intended to or might influence the results of a race or the conduct of a race meet.
11. A licensee, while on the premises of a permittee, shall not create a disturbance, be intoxicated, interfere with a racing operation, or act in an abusive or threatening manner to a racing official or other person.
12. A licensee shall not engage in conduct that is prohibited by the Department or detrimental to the best interests of horse racing including, but not limited to, soliciting, aiding, or abetting another person to participate in conduct prohibited by the Department or detrimental to the best interests of horse racing.
13. A licensee shall immediately submit to blood, urine, breath, or other tests ordered by the stewards if the stewards have reason to believe the licensee is under the influence of or in possession of a prohibited substance or has consumed alcohol in violation of subsection (8), (10) or (11).
  - a. A licensee ordered by a steward to submit to a test under this subsection shall provide a sample in the presence of the steward or the steward's designee and submit the sample to the steward or the steward's designee in a container furnished by the Department;
  - b. The steward or steward's designee shall immediately seal the sample container in the presence of the licensee being tested;
  - c. The steward or steward's designee shall mark the sample container with the following items: sample identification number; time, date, and location at which the sample was given; and signature of Department personnel sealing the container;
  - d. The steward or steward's designee shall submit the sample to the official laboratory for analysis;
  - e. If analysis of the sample provided under this subsection indicates the presence of a prohibited substance or alcohol, the licensee who provided the sample shall be subject to disciplinary action authorized under A.R.S. § 5-108.05(A);
  - f. The Department shall ensure that results and information obtained as a result of analysis of the sample provided under this subsection are accessible only to members of the Commission, the Director or designees, and the tested licensee until any disciplinary action or administrative proceeding is complete; and
  - g. Compliance with this subsection by the steward or steward's designee constitutes prima facie evidence that the chain of custody of the test sample is secure. The presiding officer or administrative law judge in an administrative proceeding of the Department or

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Commission shall admit the results of the tests as evidence.

14. A licensee shall promptly pay any financial obligation incurred in connection with racing in this state. If failure or refusal to pay a financial obligation incurred in connection with racing in this state results in the financial obligation being reduced to a judgment against a licensee, the Department shall take disciplinary action against the licensee as authorized under A.R.S. § 5-108.05.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended paragraphs (10) and (11) effective June 6, 1986 (Supp. 86-3). Amended paragraphs (10) and (11) effective August 3, 1987 (Supp. 87-3). Amended effective November 30, 1988 (Supp. 88-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-112 recodified from R4-27-112 (Supp. 95-1). Amended effective January 12, 1996 (Supp. 96-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-113. Entries and Subscriptions****A. Entry.**

1. An owner, trainer, or authorized agent shall not register a horse for racing under this Chapter unless the horse is registered by the Jockey Club, American Quarter Horse Association, Arabian Horse Club Registry of America, Inc., Appaloosa Horse Club Inc., American Paint Horse Association, American Donkey and Mule Society, or American Mule Association.
2. An owner, trainer, or authorized agent shall list each person with an ownership interest in a horse on the back of the horse's registration papers.
3. An owner, trainer, or authorized agent may enter a horse in person, by telephone or telegram, or in writing.
4. An owner, trainer, or authorized agent shall declare at the time of entry whether the jockey will carry a whip.
5. A person shall not enter a horse in a race unless the horse is eligible in all aspects at the time of entry, except with permission of the stewards.
6. The stewards shall assume a horse entered for a purse is a starting horse unless the stewards declare the horse out of the race.
7. A person nominating a horse in a stakes race shall write the person's full name, mailing address, and telephone number on the nomination form.
8. A person shall not enter a horse in more than one race in one day.
9. An owner shall not transfer a horse to a new trainer after entry.
10. An owner shall not enter a horse unless the horse's performance records for the preceding calendar year:
  - a. Are printed in the Daily Racing Form Monthly Chart Book, or
  - b. The owner provides the horse's performance records to the racing secretary before entry.
11. An owner, trainer, or authorized agent shall sign and certify a horse's performance record and shall provide the following information for the horse's last four races to ensure that all of the horse's races are in the record:
  - a. Where and when the horse raced;
  - b. The distance, weight carried, and amount earned; and
  - c. The finishing position and time of the race.
12. If a race overfills, the racing secretary shall ensure that the second half of an entry has no starting preference over a single entry except in stakes, handicap, and qualifying races.
13. An owner entering two or more horses in a race shall indicate the owner's preference for the horse that is to start if the race overfills. The owner shall make the claim of preference by noting the preference on the entry blank. An owner who fails to make a claim of preference loses the preference.
14. The racing secretary shall ensure that a horse excluded because a race overfills receives no consideration.
15. Two or more horses entered in a race may be uncoupled for wagering purposes if approved by the stewards, and:
  - a. All horses are owned, in whole or in part, by the same person; or
  - b. All horses are trained by a trainer who owns an interest in one of the horses.
16. In a race in which spouses who are both licensed trainers have entered horses, the trainers are not required to list an overfill preference unless there is common ownership of the horses entered.
17. The racing secretary shall decide whether to use an also-eligible list for any race meet:
  - a. The racing secretary shall determine the number of also-eligibles if the number of entries in a race exceeds the capacity of the starting gate;
  - b. If the number of entries in a race exceeds the number of horses permitted to start, the racing secretary shall determine the starters in a drawing supervised by a steward and witnessed by those making entries. If any of the starters declare out, the racing secretary shall draw from the also-eligible list the number of horses needed to fill the vacancies in the race;
  - c. The racing secretary shall assign horses, other than quarter horses, that gain a position in a race from the also-eligible list, to the outside post positions in the order in which they are drawn from the list. The racing secretary shall assign a quarter horse to the stall of a horse that is declared out;
  - d. If a horse on the also-eligible list does not start because of insufficient declarations, the racing secretary shall place the horse on the preferred list unless the owner has declined to accept an opportunity to start the horse;
  - e. If a race in which a horse is entered overfills, the racing secretary shall not consider an in-today horse for the race unless the conditions for the race read "Arizona Breds Preferred," or the race is a stakes or handicap race.
  - f. The racing secretary shall not consider a horse on the also-eligible list as an in-today horse until it has been given a position in a race or an opportunity to run.
  - g. At tracks where entries are taken two or more days before the date of a race, an owner, trainer, or authorized agent may enter a horse for the next race date if the horse has been placed on the also-eligible list for the first race date. If the horse is drawn into a race from its position on the also-eligible list, the racing secretary shall declare the horse an in-today horse and withdraw the horse from the race on the next race day in favor of a horse on the also-eligible list for that race.
18. After a horse is entered in a race, a person shall withdraw the horse only with permission of the stewards.
19. The racing secretary shall post a copy of the preferred list each afternoon. The stewards shall recognize a claim of

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error in the preferred list only if the claim of error is made by 10:00 a.m. of the day after the preferred list is posted.

20. If an owner, trainer, or authorized agent does not declare a horse from the also-eligible list by the prescribed time, the racing secretary shall consider the owner or trainer willing to start the horse if another horse is scratched from the race. The racing secretary shall not place a horse on the preferred list if the owner or trainer does not accept the opportunity to start the horse.
  21. A person shall not alter an entry after the closing of entries. The racing secretary may correct an error in an entry at any time.
  22. If the name of a horse is changed, the racing secretary shall publish the new name and the former name in the official entries for the horse's first three starts after the name change. If the name of an Arizona-bred horse is changed, the racing secretary shall report the name change to the Department in writing within 30 days, listing both the new and former names.
- B. Conditions for entry.**
1. A person shall not enter a horse in a race unless the horse's certificate of foal registration, certificate of foreign registration, or racing permit is on file in the office of the racing secretary or permission is granted by the stewards. Foal certificates that are registered with the racing secretary and are in transit between the office of the racing secretary and the American Quarter Horse Association because of a transfer of ownership are considered to be in the possession of the racing secretary.
  2. A horse that has reached its 14th birthday is ineligible to race in Arizona.
  3. The stewards shall not permit a horse to run in a purse or stakes race unless the horse is entered in and eligible for the race.
  4. The stewards may require a person in whose name a horse is entered to produce proof that the horse entered is not the property, either in whole or in part, of a person who is disqualified, or to produce proof of the extent of the person's interest in the horse. If the person fails to produce satisfactory proof, the stewards shall declare the horse out of the race if the stewards determine that declaring the horse is necessary to protect the public peace, safety, or welfare.
  5. A person shall not enter a horse if the horse is on the stewards', paddock judge's, starter's, or veterinarian's list, or if the horse has been ruled off.
  6. The racing secretary shall consider the performance record of a horse racing on the county fair circuit to determine the horse's eligibility at a commercial meet. A county fair racing secretary shall place a county fair win on the back of the horse's foal certificate.
  7. The owner, trainer, or authorized agent shall ensure that a horse that has not started during the 45 days before a commercial meet has one official workout before starting at the commercial meet.
  8. The racing secretary shall not allow a first-time starter to race until the horse has gate approval and at least two timed workouts, one of which is out of the gate and within 30 days before the race in which the horse is entered.
  9. The racing secretary shall not allow a horse, other than a first-time starter, that has not started for one year or more to race unless the horse:
    - a. Completes at least two timed workouts within 60 days before the race in which the horse is entered; and
    - b. One of the timed workouts is performed in the presence of the track veterinarian at a distance determined by the track veterinarian.
10. The racing secretary shall not allow a quarter horse to be entered for the first time in a race around a turn unless the horse has at least one timed workout around the turn.
  11. The Department shall waive workout requirements for a county fair meet not run at a commercial track except the owner or trainer of a horse that has not started for one year or more shall complete a workout schedule with and determined by the state veterinarian before entry in the country fair meet.
- C. Starts.**
1. A person shall not start a horse in a race unless the horse is fully identified and tattooed, or otherwise authorized by the stewards. The Department shall hold a person, including the breeder, owner, trainer, and identifier, responsible for the accuracy of information the person provides regarding the identity of a horse.
  2. An owner, trainer, or authorized agent shall not start a horse in a race until all stakes, forfeits, entry fees, and arrears due on the horse have been paid.
  3. An owner, trainer, or authorized agent shall not start a horse in a race unless all persons having an ownership interest in the horse or an interest in the winnings of the horse have registered with the racing secretary.
  4. The racing secretary shall display the post-position numbers of the horses in a race after overnight entries are closed and post positions are drawn. If a horse with an assigned post-position number does not start or run the track, the stewards may require an explanation from the owner, trainer, or jockey.
- D. Fees.**
1. Entrance to a purse race is free unless otherwise stipulated in the conditions of the race. If the conditions require an entrance fee, the fee is due at the time of entry.
  2. The licensee entering a horse shall pay the nominating, sustaining, and starting fees. Except as provided in subsection (D)(4), the permittee shall not refund any fees paid to enter a horse in a race even if the horse dies, is withdrawn, or there is a mistake in the horse's entry if the horse was eligible at the time of entry.
  3. If the conditions of a purse race require that an entrance fee be paid, the permittee shall not refund the entrance fee if the purse race is run even if a horse fails to start or dies except as provided in the conditions of the race.
  4. The permittee shall distribute the entrance money, starting, and subscription fees as provided in the conditions of the race. If a race is not run, the permittee shall refund all stakes or entrance money.
  5. The death of a nominator or subscriber does not void an entry, subscription, or right of entry.
  6. A licensee shall not transfer a horse to an owner or trainer to avoid disqualification. As provided in A.R.S. § 5-108.05, the Department may fine or suspend the licensee making or receiving a transfer to avoid disqualification.
- E. Closing.**
1. The racing secretary shall close entries for a purse race at the time advertised in the condition book specifying the terms of the race and shall not accept an entry after that time. If a race fails to fill, additional time for entries may be granted by the stewards.
  2. Unless contrary notice is provided by the permittee, nominations for stakes that close during or on the eve of a race meet close at the office of the racing secretary at the published time.

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3. The racing secretary shall not accept entries or declarations for stakes after the designated closing time.
  4. The racing secretary shall not accept an entry after a race has been drawn even if the number of horses on the also-eligible list is insufficient to provide a full field.
  5. The racing secretary shall consider a horse to be a scratch if the horse is withdrawn from a race after the overnight entries are closed. The scratched horse loses all of the horse's accrued preferences up to the date of the scratch unless the horse is excused by the stewards.
- F. Declarations.**
1. An owner, trainer, or authorized agent shall declare a horse from a stakes, handicap, or qualifying race in writing no later than one hour before post time of for the race.
  2. The racing secretary shall not give preference to a horse that is declared from the also-eligible list of a race. The horse may retain the position previously held on the preferred list if a full field is left in the race at scratch time.
- Historical Note**
- Adopted effective August 5, 1983 (Supp. 83-4). Amended effective March 20, 1990 (Supp. 90-1). Age reference to "16th birthday" in subsection (B)(2) corrected to read "6th birthday" (Supp. 93-1). R19-2-113 recodified from R4-27-113 (Supp. 95-1). Amended effective April 7, 1995 (Supp. 95-2). Amended effective March 7, 1996 (Supp. 96-1). Amended by final rulemaking at 10 A.A.R. 717, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-114. Penalties and Allowances**

- A.** After consideration of the reports, records, and statistics published by the Daily Racing Form and other racing statistical publications, the stewards shall determine eligibility, penalties, and allowances. The owner and trainer of a horse shall ensure that the horse is eligible and carries the correct weight.
- B.** Penalties and allowances are not cumulative unless the racing secretary declares penalties and allowances to be cumulative by the conditions of the race. Penalties and allowances take effect at the time a race starts except that in an overnight event, a horse shall have only the allowance to which it was entitled at the time of entry.
- C.** Penalties are obligatory. Allowances are optional in whole or in part. In an overnight event, if an allowance is claimed, a horse's owner or trainer shall claim the allowance at the time of entry.
- D.** The stewards shall not disqualify a horse if the failure of the horse's owner or trainer to claim a weight allowance results from an omission made by the racing secretary on the overnight listing of races. If an owner or trainer claims a weight allowance to which a horse is not entitled, the stewards shall disqualify the horse only if the incorrect weight is carried in the race. The Department shall subject a person who claims a weight allowance to which the person's horse is not entitled to discipline authorized under A.R.S. § 5-108.05.
- E.** The stewards shall ensure that a horse does not receive a weight allowance or is not relieved from a weight penalty as a result of having lost one or more races. This Section does not prohibit a maiden allowance or an allowance to a horse that has not won a race within a specified period or a race of a specified value.
- F.** The stewards shall ensure that a horse:
  1. Does not incur a weight penalty for placing in a race from which the horse is disqualified;
  2. Incurs a weight penalty if the horse places as a result of the disqualification of another horse; and

3. Is not disqualified for failing to take a weight penalty in a race if the penalty results from the horse placing in a previous race after the race to which the weight penalty would be applicable is run.
- G.** The stewards shall ensure that when a race is in dispute, both the horse that finished first and any horse claiming to have finished first incur the weight penalty that attaches to the winner of the race until the matter is decided.
- H.** The stewards shall consider a horse that starts for a claiming price in optional or combination races to have started in a claiming race.
- I.** When the conditions of a race indicate the race is to be run under "scale weights" or "weights for age," the stewards shall ensure that the race is run under the scale approved by the Department.
- J.** The stewards shall ensure that in races of intermediate length, all horses carry weights for the shorter distances.
- K.** In all races except handicap races and races in which conditions expressly provide otherwise:
  1. Two-year-old fillies are allowed three pounds,
  2. Fillies and mares that are three years old and older are allowed five pounds from January 1 through August 31 and three pounds from September 1 through December 31; and
  3. The provisions of subsections (K)(1) and (2) do not apply to quarter horse fillies and mares.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-114 recodified from R4-27-114 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 717, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115. Claiming Races**

- A.** Eligibility for claiming. In a claiming race, any horse is subject to being claimed for the horse's entered price by any licensed owner of a horse duly registered for racing at the track, the owner's licensed authorized agent, or the holder of a claiming authorization issued by the stewards.
- B.** Duration of race meets. For the purpose of claiming:
  1. A commercial race meet includes county fair race meets that may be run at the commercial track before, during, or after the commercial race meet; and
  2. A county fair race meet includes both spring and fall of the county fair circuit.
- C.** Steward claiming authorization.
  1. The following persons may apply to the stewards for claiming authorization:
    - a. A licensed owner whose last horse was lost by claim, death, or career-ending injury during a commercial or county fair race meet;
    - b. An individual licensed in partnership or other form of multiple ownership who wants to claim a horse in sole ownership;
    - c. A currently licensed individual who wants to join in a multiple ownership venture;
    - d. A licensed owner whose horse is not participating at an Arizona track during the current Arizona licensing cycle; and
    - e. An individual who submits an application for an owner's license under R19-2-106 and intends to obtain a first horse through claiming. If the stewards determine the individual is qualified for an owner's license except for the requirement of horse ownership, the stewards may authorize the individual to

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- claim a horse. The Department shall issue an owner's license to the individual if the individual is successful in claiming a horse.
2. To apply for claiming authorization, an individual shall submit to the stewards a written:
    - a. Application, using a form available from the Department; and
    - b. Acknowledgment that a successfully claimed horse will be entrusted to the care and custody of a licensed trainer only.
  3. Claiming authorization obtained under this subsection is valid for six months or until the authorized individual successfully claims a horse, whichever occurs first.
- D. Claiming restrictions.**
1. An authorized agent, even if representing more than one owner, shall not submit more than one claim in any race.
  2. An authorized agent shall not claim a horse for the authorized agent in the capacity as authorized agent.
  3. When a stable consists of horses owned by more than one person, the stable owners shall ensure that no more than one claim is submitted in a race by or on behalf of the stable owners.
  4. The stewards may, at their discretion, require a person making a claim for a horse to provide a written affidavit that the claim is made for the person's own account or as an authorized agent and not for any other person.
  5. A person shall not:
    - a. Enter into or offer to enter into an agreement to claim or not to claim a horse in a claiming race,
    - b. Attempt to prevent another person from claiming a horse in a claiming race, and
    - c. Attempt to prevent anyone from running a horse in a claiming race.
  6. The owner of one horse and the trainer of a second horse running in the same claiming race shall not make or offer to make an agreement not to claim each other's horses.
  7. A person shall not enter or allow to be entered in a claiming race a horse against which there is a lien unless written consent from the lien holder is first filed with the clerk of the track or the racing secretary.
  8. A person shall not assert an ownership interest in a horse after the horse has run in a claiming race in the name of another person who, at the time of the race, had peaceable and undisputed possession of the horse.
  9. A person shall not claim or cause to be claimed, directly or indirectly, for the person's account, a horse in which the person has an ownership interest.
  10. An owner shall not claim a horse in the care and custody of the owner's trainer.
- E. Delivery of a claimed horse.**
1. The owner of a claimed horse shall ensure that the horse is delivered to the claimant after the claiming race is run. The claimant shall present to the owner the written claiming authorization obtained from the stewards under subsection (C).
  2. The owner of a claimed horse sent to the detention area for post-race testing shall deliver the horse to the claimant at the detention area. The owner of a claimed horse not sent for post-race testing shall deliver the horse to the claimant as instructed by the stewards.
  3. If the stewards do not send a claimed horse for post-race testing, the claimant may require post-race testing if physical delivery of the claimed horse has not occurred and the claimant pays for the testing. The trainer of a claimed horse sent for post-race testing shall maintain care and custody of the horse. If a post-race test of a claimed horse is positive for a prohibited substance, the claim may be voided at the direction of the stewards.
4. The owner of a claimed horse shall not refuse to deliver the horse to the claimant.
- F. Irrevocability of a claim.** A claimed horse shall race for the account of the horse's original owner but title to the horse shall transfer to the claimant when the horse becomes a starting horse. After title to the horse transfers to the claimant, the claimant becomes the owner of the horse regardless of whether it is alive or dead, sound or unsound, or injured before, during, or after the claiming race.
- G. Ownership restrictions.**
1. If a horse is claimed, the claimant:
    - a. Shall not sell or transfer the horse to anyone, wholly or in part, except in another claiming race, for 30 days from the day of claim; and
    - b. Shall not return the horse to the same stable or under control or management of the horse's former owner or trainer for 30 days from the day of claim unless the horse is reclaimed in another claiming race.
    - c. Shall ensure that the claimed horse does not race outside of Arizona until the race meet at which the horse was claimed is closed or for 60 days from the day of claim, whichever is less, except:
      - i. To fulfill a stakes engagement that transferred automatically to the claimant, or
      - ii. If the horse was claimed for a price that causes the horse to be ineligible to be reentered at the track where claimed.
  2. The stewards shall ensure that a horse claimed in another state and entered to race in Arizona is subject to the claiming restrictions in the state where the claim was made. Restrictions preventing the horse from racing in Arizona are applicable only until the close of the race meet at which the horse was claimed or for 60 days, whichever is less, except:
    - a. To fulfill a stakes engagement that transferred automatically to the claimant, or
    - b. If the horse was claimed for a price that causes the horse to be ineligible to be reentered at the track where claimed.
  3. In this subsection, the day following the claim is the first day.
- H. Claiming price.** The permittee shall ensure that the claiming price of each horse in a claiming race is published in the official race program. A person who wishes to claim a particular horse shall submit a claim for the amount published.
- I. Determining the winner of a claim.** If more than one claim is filed for the same horse, the stewards shall ensure that the successful claimant is chosen in a drawing that is conducted under the supervision and direction of the stewards.
- J. Responsibility for determining sex and age of horse.** The claimant shall determine the sex and age of a horse before submitting a claim for the horse and shall not rely on any designation of the horse's sex and age that appears in the official race program or any other racing publication.
- K. Claiming procedures.**
1. To make a valid claim, a person who has a claiming authorization obtained under subsection (C) shall:
    - a. Deposit with the horsemen's bookkeeper an amount equal to the claiming price;
    - b. Complete a written claim using a form furnished by the permittee and approved by the Department;
    - c. Identify the horse to be claimed by the spelling of the horse's name on the horse's certificate of registration or as spelled in the official race program;

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- d. Write the following information on the outside of an envelope provided by the permittee with the claim form:
    - i. Number of the race on which the claim is made; and
    - ii. Day, month, and year of the claiming race;
  - e. Seal the completed claim form in the completed envelope and ensure there are no identifying markers on the outside of the envelope except as described in subsection (K)(d); and
  - f. Deposit the completed claim form and envelope in the claim box at least 10 minutes before post time of the race on which the claim is made.
2. The stewards, or the stewards' designee, shall open the claim envelopes for a claiming race when the horses for the race enter the track on the way from paddock to post.
  3. The stewards shall ascertain from the horsemen's bookkeeper whether an amount equal to the claiming price is on deposit.
  4. After a claim form is deposited in the claim box as described in subsection (K)(1)(f), the claim is irrevocable by the claimant. The stewards shall ensure that a claim form deposited in the claim box is not withdrawn from the claim box except by the stewards at the time designated by the stewards.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended subsection (A) effective December 5, 1985 (Supp. 85-6). Amended effective March 20, 1990 (Supp. 90-1). Former Section R4-27-115 renumbered to R4-27-115, R4-27-115.02 through R4-27-115.07, and R4-27-115.09; new Section R4-27-115 renumbered from R4-27-115(A)(1) through (5) and (B) and amended effective September 8, 1992 (Supp. 92-3). R19-2-115 recodified from R4-27-115 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.01. Repealed****Historical Note**

Adopted effective September 8, 1992 (Supp. 92-3). R19-2-115.01 recodified from R4-27-115.01 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.02. Repealed****Historical Note**

Section R4-27-115.02 renumbered from R4-27-115(A)(6)(a), (b), and (d), (C)(3), (4), (6)(c)(i) and (ii), (10)(a) and (12) and amended effective September 8, 1992 (Supp. 92-3). R19-2-115.02 recodified from R4-27-115.02 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.03. Repealed****Historical Note**

Section R4-27-115.03 renumbered from R4-27-115(C)(1), (7) and (8), (F)(1), (2), and (3), (G)(1) and (2), (L), (M), and (N) and amended effective September 8, 1992 (Supp. 92-3). R19-2-115.03 recodified from R4-27-115.03 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.04. Repealed****Historical Note**

Section R4-27-115.04 renumbered from R4-27-115(H), (H)(1), (2), (3) and (4), and (I) and amended effective September 8, 1992 (Supp. 92-3). R19-2-115.04 recodified from R4-2-115.04 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.05. Repealed****Historical Note**

Section R4-27-115.05 renumbered from R4-27-115(C)(10) and (11) and (E) and amended effective September 8, 1992 (Supp. 92-3). R19-2-115.05 recodified from R4-27-115.05 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.06. Repealed****Historical Note**

Section R4-27-115.06 renumbered from R4-27-115(J)(1), (2), (3), and (4) and (K) and amended effective September 8, 1992 (Supp. 92-3). Amended effective December 17, 1993 (Supp. 93-4). R19-2-115.06 recodified from R4-27-115.06 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 717, effective April 3, 2004 (Supp. 04-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.07. Repealed****Historical Note**

Section R4-27-115.07 renumbered from R4-27-115(C)(9) and (D) and amended effective September 8, 1992 (Supp. 92-3). R19-2-115.07 recodified from R4-27-115.07 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.08. Repealed****Historical Note**

Section R4-27-115.08 adopted effective September 8, 1992 (Supp. 92-3). R19-2-115.08 recodified from R4-27-115.08 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.09. Repealed****Historical Note**

Section R4-27-115.09 renumbered from R4-27-115(C), (C)(2), (5), and (6) and amended effective September 8, 1992 (Supp. 92-3). R19-2-115.09 recodified from R4-27-115.09 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-115.10. Repealed****Historical Note**

Section R4-27-115.10 adopted effective September 8, 1992 (Supp. 92-3). R19-2-115.10 recodified from R4-27-115.10 (Supp. 95-1). Repealed by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-116. Arizona Bred Eligibility and Breeders' Award Payments**

- A. A breeder shall file a notarized certificate affirming eligibility under A.R.S. § 5-113(F), with the Department. The certificate shall include name, color, and sex of the foal; name of the sire; name of the dam; date and location of foaling; The Jockey Club registration number or American Quarter Horse Association number; name, address, and telephone number of the

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breeder; a statement that the animal is eligible pursuant to A.R.S. § 5-113(F), and that the person shown as the breeder was the owner of the dam at the time of foaling; and such other information as may be required by the Department to determine eligibility and shall be signed by the breeder. The breeder shall submit a copy of The Jockey Club registration papers with certificates for thoroughbreds.

1. Certification is deemed to occur upon the Department's receipt of the completed certificate.
  2. The horse shall be certified by the Department at the time of the win to be eligible for an award.
- B.** A permittee shall recognize any horse for which there is an Arizona Bred Certificate on file with the Department or an association contractor as an Arizona bred horse.
- C.** For races that offer a guaranteed purse value of \$50,000 or less, the Department shall make an award based on the total amount earned by the winner, including nominating, sustaining, and starting fees. For races that offer a guaranteed purse value of more than \$50,000, the Department shall not include nominating, sustaining, or starting fees when calculating an award.
- D.** The Department shall calculate and pay breeders' awards to eligible breeders.
1. Definitions
    - a. "Quarterly Breeders' Award" means an amount of money based on the quarterly breeders' award payment factor determined by the Department each fiscal year by October 30.
    - b. "Substitute Breeders' Award" means an amount of money based on a substitute payment factor because of the lack of sufficient money to pay conventional Quarterly Breeders' Awards.
    - c. "Supplemental Breeders' Award" means an amount of money that corrects a shortfall between conventional Quarterly Breeders' Awards and Substitute Breeders' Awards.
    - d. "End-of-year Bonus Award" means an amount of money that may be paid to breeders from available monies that remain in the breeders' award fund after payment of Quarterly Breeders' Awards, Substitute Breeders' Awards and Supplemental Breeders' Awards.
  2. The Department shall pay awards at the end of each fiscal year quarter, provided that the total amount of the awards payments does not exceed the total amount of money available in the fund less the amount required to be set aside for contingent liabilities in subsection (D)(8).
  3. Quarterly Breeders' Awards. Before October 30 of each year, the Department shall determine a quarterly breeders' award payment factor that will be applied during the entire fiscal year. The payment factor determined by the Department is not subject to appeal.
    - a. The Department shall evaluate anticipated revenues for the breeders' award fund and anticipated purses for eligible Arizona-bred animals and set the payment factor at a level that permits recipients of quarterly breeders' awards to receive awards throughout the fiscal year based on the same payment factor.
    - b. The Department shall notify representatives of each breeders' association of the quarterly breeders' award payment factor in writing before October 30 of each year.
    - c. The Department shall calculate quarterly breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the quarterly breeders' award payment factor established for the fiscal year.
  4. Substitute Breeders' Awards. The Department shall make substitute breeders' awards if there are sufficient monies in the fund to allow for an award but not enough monies to provide for full payments of quarterly breeders' awards based on the quarterly breeders' award payment factor.
    - a. The Department shall determine the substitute payment factor by dividing the total amount of monies in the Arizona breeders' award fund at the end of the quarter less the amount required to be set aside for contingent liabilities in subsection (D)(8) by the total amount of purses won by eligible Arizona-bred animals during that quarter.
    - b. The Department shall calculate substitute breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the substitute payment factor for that quarter.
  5. End-of-year bonus pool. After payment of all quarterly breeders' awards and any substitute breeders' awards has been calculated, the Department shall determine the amount of monies remaining in the fund. The end-of-year-bonus pool is the amount of monies remaining in the Arizona breeders' award fund after the payment of all quarterly breeders' awards for the fiscal year less the amount required to be set aside for contingent liabilities in subsection (D)(8).
  6. Supplemental Breeders Awards. The Department shall first pay any monies in the end-of-year bonus pool in the form of supplemental breeders awards to recipients of substitute breeders' awards.
    - a. The Department shall pay supplemental breeders' awards in an amount equal to the difference between the substitute breeders' award and the quarterly breeders' award the breeder would have received if there had been enough in the fund to pay an award based on the quarterly award payment factor.
    - b. In the event the end-of-year bonus pool cannot pay supplemental breeders' awards to make up for the shortfall to all substitute breeders' award recipients, the Department shall pay supplemental breeders' awards to all breeders eligible to receive a supplemental breeders' award on a pro-rata basis.
    - c. A breeder is eligible to receive a supplemental breeders' award from the end-of-year bonus pool only if the breeder received a substitute breeders' award during that fiscal year.
    - d. The Department shall not make supplemental breeders' awards if all eligible breeders received quarterly breeders' awards during the fiscal year.
  7. End-of-year Bonus Awards. The Department shall pay end-of-year bonus awards if monies remain in the end-of-year bonus pool following any supplemental payments.
    - a. The Department shall determine an end-of-year bonus payment factor by dividing the monies in the end-of-year bonus pool by the total amount of purses won by an eligible animal during the fiscal year.
    - b. The Department shall calculate end-of-year bonus awards by multiplying the amount of each purse won by an eligible animal by the bonus payment factor.

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8. Contingent liabilities. The Department shall retain \$10,000 in the Breeders' Award fund for contingent liabilities.
9. The Department shall not make quarterly breeders' awards, substitute breeders' awards, supplemental breeders' awards or end-of-year bonus breeders' awards if the total amount available for distribution is less than \$10,000. In the event the Department does not pay an award because less than \$10,000 is available for distribution, the Department shall carry forward the amount in the fund for payment of awards when the Department next calculates awards.
10. Appeal of Director's Rulings
  - a. The Director shall make the final decision concerning a breeders' award.
  - b. The Department shall give written notice of the decision to an applicant by mailing it to the address of record filed with the Department.
  - c. After service of the Director's decision, an aggrieved party may obtain a hearing under A.R.S. §§ 41-1092.03 through 41-1092.11.
  - d. The aggrieved party shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R19-2-116(D)(10)(b).
  - e. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.
- E. The permittees shall submit to the Department an Arizona Breeders' Award Report in the form prescribed by the Department. The report shall include name of the animal, name of the breeder, date of win, win purse amount, type of race, name of track, and such other information as may be required by the Department to calculate awards.
- F. The Arizona Thoroughbred Breeder's Association, Arizona Quarter Racing Association, Arizona Greyhound Breeder's Association, and such other associations as may represent breeders in this state may assist the Department in periodic reviews of eligibility lists and may provide such other assistance in administering the fund as may be required by the Department.
- G. At least every other three years the Commission shall select a committee, consisting of representatives of each breeders' association and the Department, which shall review this rule and submit written recommendations to the Commission.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended subsection (A) effective December 5, 1985 (Supp. 85-6). Amended subsection (A) and added subsections (D) through (G) effective August 13, 1986 (Supp. 86-4). Amended subsection (D) effective February 19, 1987 (Supp. 87-1). Amended effective March 20, 1990 (Supp. 90-1). R19-2-116 recodified from R4-27-116 (Supp. 95-1). Amended effective January 10, 1997 (Supp. 97-1). Amended effective June 3, 1997 (Supp. 97-2).

**R19-2-117. Objections**

- A. Every objection shall be made by an owner or by such owner's authorized agent, a trainer, or the jockey of some other horse engaged in the same race, or by the officials of the course. Such objection shall be made to the stewards, who may require that the objection be made in writing with a copy thereof sent immediately to the Director.
  1. Any objection to a horse, pertaining to any matter occurring in a race, except as otherwise provided, shall be made before the official numbers of the horse's place in the race are posted on the odds board.

2. Any objection to a horse that has run in a race on the grounds that it was not trained by a licensed trainer, or ridden by a licensed jockey, or that the names of all those having ownership in it or an interest in its winnings have not been registered with the secretary shall be made not later than the day after that upon which the race was run.
3. Any objection on the grounds of fraudulent or intentional misstatement or omission in the entry under which a horse has run, or on the grounds that the horse which ran was not the horse it was represented to be in the entry or at the time of the race, or was not of the age it was represented to be shall be received within three days after the race.
  - B. Every objection, unless otherwise provided, shall be made within 72 hours after the race is run and shall be determined by the stewards.
  - C. Pending the determination of an objection, any money or prize which the horse objected to may have won, or may win in the race, shall be withheld until the objection is determined, and any sum payable to the owner of the horse objected to shall be paid to the horsemen's book keeper and held for the person who may be determined to be entitled to it.
  - D. Pending the disposition by the stewards, Department, or Commission of any question, both the horse which finished first and any horse which has claimed to be the winner of the race shall be liable to all the penalties attaching to the winner of that race until the matter is decided.
  - E. If an objection to a horse which has won or been placed in a race is declared valid, that horse may be disqualified in the place in which he finished and replaced at the discretion of the stewards.
  - F. The stewards shall have the power at any time, whether or not an objection has been made, to order an examination by such person or persons as they deem fit as to the age of any horse entered for a race, or which has run a race and shall withhold any money the horse may have won until such examination is made. If the horse is declared of wrong age, the expense of such examination shall be paid by the owner.
  - G. No person shall lodge an unsubstantiated objection with the stewards.
  - H. The stewards may require a cash deposit of \$200 to cover costs and expenses in determining an objection. The deposit posted herein may be forfeited if the objection should prove to be without foundation.
  - I. Every objection which is not decided by the stewards during the meeting shall be filed in writing with the Director.
  - J. Permission of the stewards shall be necessary before an objection may be withdrawn.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). Section number corrected (Supp. 93-1). R19-2-117 recodified from R4-27-117 (Supp. 95-1).

**R19-2-118. Scale of Weights for Age**

Generally:

1. For thoroughbreds in races exclusively for 3-year-olds and up, the weight is 118 to 124 pounds; for 2-year-olds, the weight is 117 to 120 pounds.
2. For quarter horses in races exclusively for 3-year-olds or 4-year-olds, the weight is 126 pounds; and in races exclusively for 2-year-olds, it is 120 to 122 pounds.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). Section number corrected (Supp. 93-1). R19-2-118 recodified

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from R4-27-118 (Supp. 95-1).

**R19-2-119. Running the Race and Winnings****A. Generally.**

1. The permittee shall conspicuously post all track rules and file a copy of the rules with the Department.
2. The permittee shall ensure that post times are based on the number of races run daily and that all races are off at regular intervals. The permittee shall set the intervals with the approval of the stewards.
3. The permittee shall pay purse monies earned by a horse to only the horse's registered owner or the owner's authorized agents.
4. In a stakes race that is a walkover, unless otherwise specified in the conditions of the race, the entry that appears for the race may walk over the track and be declared the winner. The permittee shall pay the walkover the entire stakes and the winning percentage of the purse.

**B. Pre-race activity.**

1. The paddock judge shall ensure that the number on the saddle cloth of a horse corresponds with the horse's number on the official race program.
2. When a horse arrives in the paddock, the trainer shall remove all blankets and bandages except bandages the horse will wear during the race.
3. The stewards shall scratch a horse that arrives late in the paddock and is not ready to step onto the track with other horses entered in the same race.
4. Each horse shall parade and carry the horse's weight from the paddock to the starting post.
5. If a horse is led to the post with permission of the paddock judge, the horse shall carry the horse's weight and pass the stewards' stand on the way to the post.
6. After the horses are ordered to the starting post and until the stewards direct the track gates to be reopened, the stewards shall exclude all persons except licensees designated by the stewards from the track.
7. After the horses enter the track, no more than 12 minutes shall elapse during the parade of the horses to the post, except with the approval of the stewards.
8. After passing the stand once, the horses may break formation, canter, warm up, or move in any other manner until the horses are within 100 yards of the post.

**C. Races.**

1. The Department shall ensure that all races are started by a starting gate approved by the Department.
  - a. A race may be started without a stall gate or a gate with the doors open may be used if necessary and with the permission of the stewards.
  - b. If a race is started without a stall gate, the official starter shall ensure there is no start until, and no recall after, a starter's assistant drops the starter's flag in response to the order of the official starter.
2. If there is an unavoidable delay in starting a race, the starter shall instruct the riders to dismount and lead their horses.
3. A horse may be excused by the stewards and, if excused, shall not be considered to have started in the race if the horse is:
  - a. Deemed unfit to start during the post parade, or
  - b. Injured by an accident in the gate.
4. A horse that misbehaves in the gate and causes an undue delay in the start of a race may be excused by the starter after consultation with the stewards. The horse shall not be considered to have started in the race, but shall be penalized by being put on the schooling list. As specified in R19-2-113(B)(1)(5), a horse on the starter's schooling

list is not eligible for entry in races until the starter, with the approval of the stewards, removes the horse from the schooling list.

5. A race shall not be run if conditions do not allow the horses to be plainly seen from the stand by the judges and stewards.
  6. Every horse in a race is entitled to racing room. A horse or jockey shall not deliberately pocket another horse. In a straightaway race, each horse shall maintain the position in the lane in which the horse starts as nearly as possible.
  7. If a horse is ridden or drifts out of its lane in a manner that interferes with or impedes another horse, a foul is committed. The stewards may disqualify the horse committing the foul if the outcome of the race is affected by the foul. The stewards may place the horse committing the foul behind the horse fouled. The provisions of this subsection apply to fouls caused by the horse or the jockey and fouls caused intentionally or unintentionally.
    - a. If part of an entry is disqualified, the stewards shall decide whether the disqualification extends to all of the entry. If the disqualification does not extend to all of the entry, the stewards shall specify the part of the entry to which the disqualification extends.
    - b. The stewards shall not penalize a jockey if the stewards rule that the foul under subsection (C)(7) was caused by the horse, despite obvious efforts of the jockey to maintain the horse in its lane position.
    - c. If the stewards rule that the foul under subsection (C)(7) was caused by the jockey failing to attempt to prevent the foul or willfully riding the horse out of its lane, the jockey shall be subject to imposition of penalties by the stewards.
    - d. In a race run around a turn, a horse that is in the clear may be taken to any part of the track. If the stewards determine that weaving back and forth in front of another horse is interference or intimidation, the jockey shall be penalized.
  8. A jockey shall not cause the jockey's horse to shorten stride with a view to making a complaint. If the stewards decide that an intentional foul was committed in the riding of a race or that a jockey was instructed or induced to ride in a manner that caused a foul, the stewards shall suspend all persons the stewards determine, following a hearing, are guilty of complicity in the foul.
  9. When a horse is disqualified by the stewards under A.R.S. Title 5, Chapter 1 and this Chapter, the stewards shall disqualify and replace every horse in the race that belongs wholly or in part to the same owner or is under the management of the same trainer, if the stewards find there is good cause to disqualify and replace the other horses.
  10. A horse shall be ridden across the finish line carrying the horse's assigned weight to participate in the purse distribution of a race unless the nomination blank for the race states otherwise.
  11. A whip shall not be carried on a 2-year-old in a race on the straightaway before March 1. After April 30, following satisfactory performance out of the gate with a whip and with approval of the starter, a whip may be carried in a race under this subsection.
  12. An owner, trainer, handler, or jockey shall not attempt to prevent a horse from running the horse's best and winning.
- D. Dead heats.**
1. When a race results in a dead heat, the heat shall not be run off.

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2. If a race results in a dead heat, all prizes to which the horses finishing in the dead heat would have been entitled shall be divided equally between them.
  3. When a dead heat is run for second place and an objection is made and sustained to the winner of the race, the horses that ran the dead heat shall be deemed to have run a dead heat for first place.
  4. If the dividing owners cannot agree which owner is to have a cup or other prize that cannot be divided, the question shall be determined by a drawing conducted by the permittee.
  5. Each horse that runs a dead heat for a race or place shall be deemed a winner of that race or place and shall be liable as the winner for any penalty or disability incurred.
- E. Winnings or wins.**
1. To calculate the total winnings of a horse, include all prizes and wins:
    - a. Until the time for the start of a race regardless of the country in which the prize or win occurred;
    - b. Until the time of entry for a county fair race meet that does not have an also-eligible list; and
    - c. This subsection does not apply to a maiden race at a county fair race meet.
  2. Winnings include prizes earned by walking over or receiving forfeit.
  3. Winnings do not include second and third place money or the value of any non-monetary prize.
  4. Winnings during a year shall be computed from January 1 of the year.
  5. If the conditions of a race refer to a winner of a certain sum, the condition means a winner of that sum in a single race unless the conditions specify otherwise.
  6. In estimating the net value of a race to the winner, all sums contributed by the winner's owner or nominator shall be deducted from the amount won.
  7. Winners or losers of steeplechases, hurdle races, thoroughbred races, or mixed quarter horse races shall be considered winners or losers on the flat, and winners or losers on the flat shall be considered winners or losers of steeplechases, hurdle races, thoroughbred races, or mixed quarter horse races.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). Section number corrected (Supp. 93-1). R19-2-119 recodified from R4-27-119 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-120. Veterinary Practices, Animal Medication, and Animal Testing**

- A. Veterinary practices.**
1. The state veterinarian and stewards have authority over a veterinarian licensed by the Department and practicing at a location under the Department's jurisdiction. The state veterinarian shall inform the stewards or Department of a licensed veterinarian who violates A.R.S. Title 5, Chapter 1 or this Chapter.
  2. Treatment restrictions.
    - a. The Department shall authorize only a veterinarian licensed under A.R.S. Title 32, Chapter 21 and by the Department to administer a prescription or controlled medication, drug, or other substance, including a medication, drug, or other substance administered by injection, to a horse at a location under the Department's jurisdiction.
- b. Subsection (A)(2)(a) does not apply to administration of the following substances if the substances are administered in levels that do not interfere with post-race testing:
    - i. A non-injectable nutritional supplement or other substance approved by the state veterinarian;
    - ii. A non-injectable substance on direction or by prescription of a licensed veterinarian; or
    - iii. A non-injectable, non-prescription, substance.
  - c. A licensee shall not possess a hypodermic needle, syringe, or other injectable device at a location under the Department's jurisdiction unless the hypodermic needle, syringe, or other injectable device has been approved by the Department. At a location under the Department's jurisdiction, a veterinarian shall use only one-time use, disposable, hypodermic needles and shall dispose of used needles in a manner approved by the Department.
  - d. A licensee who has a medical condition that makes it necessary for the licensee to have a hypodermic needle, syringe, or other injectable device at a location under the Department's jurisdiction shall make a written request for permission to the stewards or Department before bringing the device to a location under the Department's jurisdiction. The licensee shall attach to the written request for permission a letter from a licensed physician explaining why it is necessary for the licensee to possess the device and shall comply with all conditions and restriction established by the stewards or Department.
  - e. A private veterinarian employed by a horse owner shall not have contact with an entered horse on race day before the race in which the horse is entered except to administer furosemide according to standards established in this Section or if the contact is approved by the state veterinarian.
  - f. The trainer or owner of an entered horse shall ensure that the horse is present at a location under the Department's jurisdiction at least five hours before post time of a race in which the horse is entered.
  - g. Notwithstanding the provisions of this Section, any veterinarian may treat a horse if an emergency involving the life or health of the horse exists.
3. Veterinarians' records.
    - a. A veterinarian who treats a horse or performs another professional service at a location under the Department's jurisdiction or who treats a horse that is actively participating in a race meet even if the treatment is provided at a location not under the Department's jurisdiction, shall ensure that a treatment record is maintained on all horses for which the veterinarian prescribes, administers, or dispenses medication or performs other professional services. The veterinarian shall ensure that the treatment record includes at least the following information:
      - i. Name of horse treated;
      - ii. Name of medication, drug, or substance administered or prescribed and description of any other professional service performed;
      - iii. Date and time of treatment;
      - iv. Name of the horse's trainer;
      - v. Other information requested by the state veterinarian; and
      - vi. The treating veterinarian's signature.

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- b. The veterinarian shall ensure that treatment records are current at all times and make the treatment records available to the stewards or Department within 24 hours after a request is made. The veterinarian shall retain the treatment records for at least one year after the date of treatment.
  - c. The veterinarian shall retain a copy of all bills or statements provided to the owner or trainer of a treated horse for at least one year after the date of treatment and make the copies available to the Department within 48 hours after a request is made.
- B. Prohibited practices.**
1. A licensee shall not possess or use a medication, drug, or substance at a location under the Department's jurisdiction if:
    - a. There is no recognized analytical method to detect and confirm that the medication, drug, or substance has been administered to a horse;
    - b. Use of the medication, drug, or substance may:
      - i. Endanger the health and welfare of the horse to which it is administered,
      - ii. Endanger the safety of the rider of the horse to which it is administered, or
      - iii. Adversely affect the integrity of racing; or
    - c. The medication, drug, or substance has not been approved by the U.S. Food and Drug Administration for human or animal use and the Department has not approved use of the medication, drug, or substance.
  2. A licensee shall not possess or use a blood doping agent, including but not limited to the following, at a location under the Department's jurisdiction:
    - a. Erythropoietin,
    - b. Darbepoetin,
    - c. Oxyglobin®,
    - d. Hemopure®,
    - e. ITPP, or
    - f. AICAR.
  3. A veterinarian who uses extracorporeal shock wave or radial pulse wave therapy on a horse at a location under the Department's jurisdiction shall ensure that all of the following conditions are met:
    - a. The veterinarian is licensed under A.R.S. Title 32, Chapter 21 and by the Department;
    - b. The veterinarian informs the Department of the plan to use an extracorporeal shock wave or radial pulse wave therapy machine before the machine is used at a location under the Department's jurisdiction;
    - c. An extracorporeal shock wave or radial pulse wave therapy treatment is reported to the state veterinarian on a form prescribed by the Department no later than 24 hours after the time of treatment; and
    - d. A horse treated with extracorporeal shock wave therapy or radial pulse wave therapy does not race for at least 10 days following treatment.
  4. A licensee shall not use a nasogastric tube that is longer than six inches to administer a medication, drug, or other substance to a horse within 24 hours before post time of a race in which the horse is entered without permission of the state veterinarian.
  5. A licensee shall not participate in chemical or surgical desensitizing of the nerves of a horse intended to be entered in a race at a location under the Department's jurisdiction.
    - a. The racing secretary shall not accept registration papers for a desensitized horse,
      - b. A licensee shall not enter a desensitized horse in a race at a location under the Department's jurisdiction, and
      - c. A licensee shall not race a horse that is desensitized at the time the horse arrives at the receiving barn or saddling paddock.
- C. Drug classification and penalties.**
1. If the stewards determine that a licensee has violated this Section, the stewards shall consult the Uniform Classification Guidelines of Foreign Substances and Recommended Penalties and the model rule, both of which are established by the Association of Racing Commissioners International (ARCI). After determining the classification level of the violation, the stewards shall impose a penalty on the licensee.
  2. The stewards shall investigate an alleged violation of this Section and determine a penalty on a case-by-case basis. The stewards shall consider at least the following factors when determining the penalty to impose:
    - a. The disciplinary record of the licensee involving a medication, drug, or substance;
    - b. The potential of the medication, drug, or substance to influence a horse's racing performance;
    - c. The legal availability of the medication, drug, or substance;
    - d. Whether there is reason to believe the responsible licensee knew of the administration of the medication, drug, or substance or intentionally administered the medication, drug, or substance;
    - e. The steps taken by the trainer to safeguard the horse to which the medication, drug, or substance was administered;
    - f. The probability of environmental contamination or inadvertent exposure due to human drug use;
    - g. The purse of the race in which the affected horse was entered;
    - h. Whether the medication, drug, or substance found was one for which the horse was receiving a treatment as disclosed to the Department;
    - i. Whether there was a suspicious betting pattern in the race in which the affected horse was entered; and
    - j. Whether the licensed trainer was acting under the advice of a licensed veterinarian.
  3. In making a penalty decision under this subsection, the stewards shall distinguish between a medication, drug, or substance that is routinely used to treat a horse and a medication, drug, or substance for which there is no reason that the medication, drug, or substance should be found in any concentration in a test sample taken from a horse on race day.
  4. If a licensed veterinarian administers or prescribes a medication, drug, or substance that is not listed in materials identified in subsection (C)(1), the licensed veterinarian shall timely forward the identity of the medication, drug, or substance to the ARCI Drug Testing Standards and Practices Committee or the Racing Medication and Testing Consortium for classification.
  5. The Department shall classify a medication, drug, or substance or a metabolite of the medication, drug, or substance found in a pre- or post-race sample that is not classified in the materials identified in subsection (C)(1) as ARCI Class 1 and impose a penalty commensurate with the Class 1 classification on the trainer or owner of the horse from which the sample was taken unless the trainer or owner provides information from the ARCI Drug Testing Standards and Practices Committee or the

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- Racing Medication and Testing Consortium that a different classification is applicable.
6. The Department shall provide written notice of a hearing to a licensee alleged to be involved in a violation of this Section. The Department shall provide an opportunity for the licensee to attend the hearing and written notice of the Department's order.
  7. In addition to a penalty issued by the stewards or the Department, the Department shall refer a veterinarian found to be involved in the administration of a medication, drug, or substance carrying a category "A" penalty, as specified in the materials identified in subsection (C)(1), to the Veterinary Medical Examining Board for consideration of further disciplinary action.
  8. If the stewards or Department believe a licensee may have committed an act that violates state criminal law, the Department shall make a referral to an appropriate law enforcement agency. Administrative action taken by the stewards or Department does not prohibit criminal prosecution. Criminal prosecution does not prohibit administrative action by the stewards or Department.
  9. If the license of a trainer is suspended, the suspended trainer shall not benefit financially during the period of suspension by transferring the custody, care, and control of a horse to another person. The Department shall approve all transfers of the custody, care, and control of a horse from one person to another.
- D. Prohibited medications.**
1. If the official laboratory finds a prohibited medication, drug, or other substance in a sample from a horse, the Department shall view this as prima facie evidence that the prohibited medication, drug, or other substance was administered to the horse. If a prohibited medication, drug, or other substance is found in a sample from a horse after the horse has raced, the Department shall conclude that the prohibited medication, drug, or substance was present in the horse's body while the horse participated in the race.
  2. The following medications, drugs, and substances are prohibited:
    - a. A medication or drug for which no acceptable threshold concentration has been established,
    - b. A therapeutic medication in excess of the established threshold concentration,
    - c. A substance present in a horse in excess of the concentration at which the substance could occur naturally, and
    - d. A substance foreign to a horse present at a concentration that could interfere with testing procedures.
  3. Except as otherwise provided in this Chapter, a licensee shall not administer or cause to be administered to a horse a prohibited medication, drug, or other substance during the 24 hours before post time for a race in which the horse is entered.
- E. Medical labeling.**
1. Except as provided in subsection (E)(2), a licensee at a location under the Department's jurisdiction shall not have in the licensee's personal property, including a vehicle, or under the licensee's care, custody, or control, a medication, drug, or other substance that is prohibited in a horse on a race day unless the medication, drug, or other substance is prescribed and labeled as specified in subsection (E)(3).
  2. Subsection (E)(1) does not apply to a veterinarian licensed under A.R.S. Title 32, Chapter 21 and this Chapter.
3. A licensed veterinarian shall ensure that a prescription is issued for a medication, drug, or other substance that is used or kept at a location under the Department's jurisdiction if federal or state law requires a prescription for the medication, drug, or other substance. The licensed veterinarian shall ensure that the medication, drug, or other substance has a securely attached prescription label containing the following information:
    - a. Name of the medication, drug, or other substance;
    - b. Name, address, and telephone number of the veterinarian prescribing or dispensing the medication, drug, or other substance;
    - c. Name of the horse for which the medication, drug, or other substance is prescribed;
    - d. Dose, dosage, duration of treatment, and expiration date of the prescribed medication, drug, or other substance; and
    - e. Name of the licensee to whom the medication, drug, or other substance is dispensed.
- F. Non-steroidal anti-inflammatory drugs (NSAIDs).**
1. A licensee who determines it is necessary to administer a NSAID to a horse, shall ensure that only the following NSAIDs are used:
    - a. Phenylbutazone,
    - b. Flunixin, or
    - c. Ketoprofen.
  2. A licensee who administers one of the NSAIDs listed in subsection (F)(1) to a horse shall ensure that:
    - a. The administration occurs at least 24 hours before the post time for a race in which the horse is entered; and
    - b. The serum or plasma threshold concentration of the NSAID does not exceed the following, which is consistent with administration of a single intravenous injection:
      - i. Phenylbutazone – 5 micrograms per milliliter;
      - ii. Flunixin – 20 nanograms per milliliter; and
      - iii. Ketoprofen – 10 nanograms per milliliter.
  3. A licensee shall ensure that administration of more than one of the NSAIDs listed in subsection (F)(1) to a horse is discontinued at least 48 hours before the post time for a race in which the horse is entered.
  4. A licensee shall not administer a NSAID to a horse within 24 hours before post time for a race in which the horse is entered.
  5. The Department shall subject a horse to which a NSAID has been administered to post-race blood or urine sampling supervised by the state veterinarian. The Department shall ensure that the samples are tested to determine the quantitative NSAID level and whether other medications, drugs, or substances are present. The Department shall take disciplinary action against the horse's trainer if the test results show:
    - a. The presence of more than one of the NSAIDs listed in subsection (F)(1) unless the second NSAID is Phenylbutazone in a concentration of less than .5 micrograms per milliliter of serum or plasma or Flunixin in a concentration of less than 5 nanograms per milliliter of serum or plasma; or
    - b. A NSAID not listed in subsection (F)(1).
- G. Furosemide.**
1. Unless the state veterinarian instructs otherwise, a licensee shall administer furosemide intravenously to an entered horse only after the state veterinarian places the horse on the Furosemide List.

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2. The following procedure applies to place a horse on or take a horse off the Furosemide List:
    - a. If the horse's trainer and veterinarian determine that it is in the horse's best interest to race with furosemide, the trainer and veterinarian shall notify the state veterinarian or designee, using a form prescribed by the Department, and request that the horse be placed on the Furosemide List;
    - b. The horse's trainer and veterinarian shall ensure that the state veterinarian or designee receives the notice required under subsection (G)(2)(a) no later than the time for entering the horse in a race;
    - c. After a horse is placed on the Furosemide List, the horse shall remain on the list until the horse's trainer and veterinarian submit a written request for removal to the state veterinarian, using a form prescribed by the Department. The horse's trainer and veterinarian shall ensure that the required request for removal is submitted no later than the time for entering the horse in a race;
    - d. After a horse is removed from the Furosemide List, the state veterinarian shall not allow the horse to be placed on the Furosemide List for 60 days unless the state veterinarian determines that failure to put the horse on the Furosemide List is detrimental to the welfare of the horse;
    - e. If a horse is removed from the Furosemide List a second time in 365 days, the state veterinarian shall not allow the horse to be placed on the Furosemide List for 90 days; and
    - f. The state veterinarian shall ensure that the provisions in subsections (G)(2)(d) and (e) are not applied to a horse that was mandated by the conditions of entry to race without furosemide in the horse's previous race. The horse may be placed on the Furosemide List, at the election of the horse's trainer or veterinarian, by following the procedures in subsections (G)(2)(a) and (b).
  3. On request by the Department, a veterinarian who administers furosemide to a horse shall surrender the syringe used in the administration for testing.
  4. A veterinarian shall administer furosemide to a horse only at a location under the Department's jurisdiction.
  5. If a location under the Department's jurisdiction is used for administration of furosemide, the trainer or veterinarian of a horse to which furosemide is to be administered shall ensure that the following conditions are met:
    - a. The horse is on the Furosemide List;
    - b. The horse is brought to the detention barn at least four hours before post time of a race in which the horse is entered;
    - c. The furosemide is administered no fewer than four hours before post time of a race in which the horse is entered;
    - d. The dose of furosemide administered is between 150 mg. and 500 mg.;
    - e. The dose of furosemide is administered by a single, intravenous injection; and
    - f. After the furosemide is administered, the horse remains in the detention barn in the care, custody, and control of the horse's trainer and under Department supervision until called to the saddling paddock.
  6. After furosemide is administered, the trainer or veterinarian of the treated horse shall deliver the following information to the state veterinarian, at least three hours before post time for a race in which the horse is entered, under oath and on a form prescribed by the Department:
    - a. Name of the horse to which furosemide was administered,
    - b. Name of the track at which the horse is entered to race,
    - c. Date and time the furosemide was administered,
    - d. Dosage of furosemide administered,
    - e. Side of the horse in which the furosemide was administered, and
    - f. Printed name and signature of the veterinarian who administered the furosemide.
  7. The state veterinarian shall ensure that a post-race urine, serum, or plasma sample from a horse is tested to determine the concentration of furosemide in the horse. If a horse was scheduled to race with furosemide, the post-race testing shall show:
    - a. A specific gravity of urine of 1.010 or greater, or
    - b. A concentration of no more than 100 nanograms of furosemide per milliliter of serum or plasma.
- H. Bleeder list.**
1. The state veterinarian or designee shall maintain a Bleeder List of all horses, regardless of age, for which the state veterinarian or designee observes external evidence of exercise-induced pulmonary hemorrhage from one or both nostrils during or after a race or workout.
  2. A horse placed on the Bleeder List shall be ineligible to race for the following periods:
    - a. First incident – 10 days;
    - b. Second incident within a 365-day period – 60 days;
    - c. Third incident within a 365-day period – 180 days; and
    - d. Fourth incident within a 365-day period – lifetime bar from racing.
  3. For the purpose of counting the number of days a horse is ineligible to run, the day the veterinarian witnessed the horse bleed externally is the first day of the required recovery period.
  4. The state veterinarian or designee shall not place a horse on the Bleeder List if furosemide is voluntarily administered to the horse under subsection (G) without an external bleeding incident.
  5. The Department shall authorize only the state veterinarian to remove a horse from the Bleeder List. To remove a horse from the Bleeder List, the state veterinarian shall certify the recommendation for removal in writing to the stewards.
  6. The state veterinarian or designee shall place a horse on the Bleeder List if the horse has been placed on a Bleeder List in another jurisdiction.
- I. Anti-ulcer medications.** A veterinarian who determines it is necessary to administer an anti-ulcer medication to a horse shall administer one of the following anti-ulcer medications, at the stated dosage, no less than 24 hours before post time for a race in which the horse is entered:
1. Cimetidine (Tagamet®) – 8 to 20 mg/kg PO BID-TID;
  2. Omeprazole (Gastrogard®) – 2.2 Grams PO SID; or
  3. Ranitidine (Zantac®) – 8 mg/kg PO BID.
- J. Environmental contaminants and substances of human use.**
1. The Department shall take disciplinary action against a trainer responsible for a horse that has more than 100 nanograms of caffeine in a milliliter of serum or plasma at the time of a pre- or post-race test.
  2. If a preponderance of the evidence presented during a hearing shows that a positive test conducted on a horse results from environmental contamination or inadvertent

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exposure to human use of a medication, drug, or other substance, the Department shall consider the evidence as a mitigating factor in determining the disciplinary action to take against the affected trainer.

**K. Androgenic-anabolic steroids (AAS).**

1. The Department shall take disciplinary action against a trainer responsible for a horse if a urine test conducted on the horse shows:
  - a. The presence of an AAS other than those listed in subsection (K)(2), or
  - b. A concentration of an AAS listed in subsection (K)(2) greater than the threshold concentration listed in subsection (K)(2).
2. The Department shall permit the presence of the following AAS at a concentration at or less than the indicated threshold in the urine of a horse:
  - a. 16 $\beta$ -hydroxystanozolol (metabolite of stanozolol (Winstrol) in all horses regardless of sex - 1 ng/ml in urine or 100 pg/ml in serum or plasma;
  - b. Boldenone (Equipoise® is the undecylenate ester of boldenone) in:
    - i. Male horses other than geldings – 15 ng/ml in urine or 100 pg/ml in serum or plasma; and
    - ii. Geldings and female horses – 100 pg/ml in serum or plasma;
  - c. Nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester) in:
    - i. Geldings, fillies, and mares – 1 ng/ml in urine or 100 pg/ml in serum or plasma; and
    - ii. Intact males -- 500 pg/ml in serum or plasma; and
  - d. Testosterone in:
    - i. Geldings – 20 ng/ml in urine;
    - ii. Fillies and mares – 55 ng/ml in urine or 100 pg/ml in serum or plasma; and
    - iii. Intact males – 2,000 pg/ml in serum or plasma.
3. The state veterinarian shall ensure that a urine sample is identified with the sex of the horse from which the urine sample was obtained before the urine sample is forwarded to the official laboratory for testing.
4. The state veterinarian shall place a horse to which an AAS has been administered to assist in recovery from illness or injury on the Veterinarian's List to allow concentration of the AAS or metabolite in the horse's urine to be monitored. The state veterinarian may remove the horse from the Veterinarian's List when the concentration of the AAS or metabolite in urine is less than the threshold indicated in subsection (K)(2).

**L. TCO2 testing and procedures**

1. A steward or Department veterinarian may order that a blood sample be collected from a horse before or after a race to determine the TCO2 concentration in the serum or plasma of the horse. If it is determined that testing for TCO2 concentration is necessary, the state veterinarian shall ensure that the following procedure is used:
  - a. The state veterinarian shall ensure that at least two tubes of blood are obtained from the horse for TCO2 testing;
  - b. If the owner or trainer of a horse to be tested for TCO2 concentration wishes to have split sample testing performed, the owner or trainer shall request the split sample testing before the sample is collected;
  - c. The owner or trainer of a horse to be tested for TCO2 concentration who requests split sample test-

ing shall pay all costs related to obtaining, handling, shipping and analyzing the split;

- d. If the official laboratory determines that the concentration of TCO2 in the blood of a horse exceeds 37 millimoles per liter, the official laboratory shall inform the Department immediately of the positive finding; and
  - e. If the Department, in its discretion, determines the split sample cannot be tested within five days after the sample is collected, the determination of TCO2 concentration made by the official laboratory is final.
2. The stewards shall declare a horse ineligible to race if the owner, trainer, or other person responsible for the horse refuses or fails to permit a blood sample to be collected from the horse.
  3. If the result obtained by the official laboratory shows that a horse has a concentration of TCO2 greater than 37 millimoles per liter and the owner or trainer of the horse certifies in writing to the stewards within 24 hours after receiving notice of the test result that the concentration is normal for the horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the permittee shall make guarded quarantine available for the horse for a period up to 72 hours as determined by the stewards.
    - a. The owner or trainer of the horse shall pay all expenses associated with maintaining the quarantine;
    - b. During quarantine, the state veterinarian shall ensure that the horse's TCO2 concentration is re-tested;
    - c. The stewards shall not allow the horse to race during the quarantine period but may allow the horse to be exercised and trained at times and in a manner that allows monitoring of the horse by the Department;
    - d. The stewards shall ensure that the horse is fed only hay, oats, and water during the quarantine period; and
    - e. If the state veterinarian is satisfied that the horse's TCO2 concentration, as registered in the original test, is physiologically normal for the horse, the stewards shall:
      - i. Permit the horse to race; or
      - ii. Require that the quarantine procedure in this subsection be repeated to verify that the horse's TCO2 concentration is physiologically normal.

**M. Blood- and gene-doping agents.**

1. The Department may subject a horse at a location under the Department's jurisdiction or under the care or control of a licensee to testing for blood- and gene-doping agents.
2. The state veterinarian is authorized to:
  - a. Take a urine, blood, or hair sample from a horse to test for blood- and gene-doping agents;
  - b. Select a horse for testing at random or with probable cause; and
  - c. Conduct the sampling at any time without advance notice.
3. The Department shall take disciplinary action against a licensee responsible for a horse if the results of a test conducted on a sample obtained under subsection (M)(2) shows the presence of:
  - a. Blood-doping agents including, but not limited to, Erythropoietin (EPO), Darbepoetin, Oxyglobin, Hemopure, Aransep, or any substance that abnormally enhances oxygenation of body tissues; or

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- b. Gene-doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia.
  - 4. Subsection (M)(3) does not apply to a therapeutic medication that has been approved by the U.S. Food and Drug Administration for use in a horse.
  - 5. A licensee at a location under the Department's jurisdiction shall cooperate with a veterinarian acting under subsection (M)(2) by:
    - a. Assisting to locate and identify a horse selected for testing,
    - b. Providing a stall or other safe location at which samples can be collected, and
    - c. Assisting the veterinarian to procure a sample properly.
  - 6. A veterinarian who obtains a sample under subsection (M)(2) shall split the sample as described in subsection (N).
- N. Testing.**
- 1. Reporting to the test barn.
    - a. The trainer of an official winning horse, or a designee of the trainer, shall take the horse to the test barn immediately after the race to have blood and urine samples taken.
    - b. The Department or stewards shall order random or extra testing of any horse at a location under the Department's jurisdiction if the Department or stewards determine that the testing is in the best interest of racing. The trainer of a horse ordered to testing, or a designee of the trainer, shall take the horse directly, or at a time designated by the stewards or state veterinarian, to the test barn to have blood and urine samples taken.
    - c. A track security guard shall monitor access to the test-barn area during and immediately after each race. A person who wishes to enter the test-barn area shall:
      - i. Be at least 18 years old,
      - ii. Be currently licensed by the Department,
      - iii. Display an identification badge issued by the Department, and
      - iv. Have a reason to be in the test-barn area that the track security guard determines is legitimate.
  - 2. Sample collection.
    - a. The state veterinarian or designee shall take blood and urine samples from a horse.
    - b. The state veterinarian shall ensure that blood samples are taken at a consistent time, preferably within one hour after a race.
    - c. The state veterinarian shall determine the minimum sample required for testing by the official laboratory:
      - i. If the sample obtained is less than the minimum required, the state veterinarian shall send the entire sample to the official laboratory;
      - ii. If the sample obtained is more than the minimum required but less than twice the minimum required, the state veterinarian shall secure the portion of the sample that is greater than the minimum required as a split sample; and
      - iii. If the sample obtained is more than twice the minimum required, the state veterinarian shall secure a portion of the sample equal to the minimum required as a split sample.
  - 3. Storage and shipment of split samples.
    - a. The state veterinarian shall secure a split sample obtained under subsection (N)(2)(c) and make the split sample available for testing.
    - b. To secure a split sample, the state veterinarian shall:
      - i. Maintain the split sample in the test barn in the same manner as the portion of the sample from which it is split;
      - ii. Transfer the split sample to a freezer at a secure location approved by the Department when the portion of the sample from which it is split is packaged and shipped to the official laboratory;
      - iii. Ensure that the split-sample freezer is closed and locked except when depositing or removing a split sample, conducting inventory of split samples, or checking the condition of split samples;
      - iv. Maintain a log that specifies the following information for each time the split-sample freezer is opened: name of each person present; purpose of opening the freezer; identification of the split sample deposited or removed; date and time the freezer is opened; time the freezer is closed; and verification that both locks were secure before and after opening the freezer; and
      - v. Document in the log and report immediately to the Department any evidence that the split-sample freezer malfunctioned or split samples are not frozen.
    - c. If the official laboratory determines that a sample submitted under this subsection tests positive for a foreign substance, the trainer or owner of the horse from which the sample was obtained may, within 72 hours, deliver a written request to the stewards that the sample split from the sample for which the positive result was obtained be sent for testing by a Department-approved laboratory selected by the trainer or owner. The trainer or owner who requests that a split sample be tested shall:
      - i. Witness the split sample being removed from the split-sample freezer, packed for shipping, and transferred to the carrier charged with delivery of the package;
      - ii. Be allowed to inspect the package containing the split sample to verify that the package has not been tampered with before transfer to the carrier charged with delivery of the package and is correctly addressed to the Department-approved laboratory selected by the trainer or owner;
      - iii. Sign a form provided by the Department verifying that the rights described under subsections (N)(3)(c)(i) and (ii) have been provided; and
      - iv. Pay for shipping and testing the split sample.
    - d. A trainer or owner who fails to appear at the time and place designated by the state veterinarian to witness a split sample being removed from the split-sample freezer, packed for shipping, and transferred to a delivery carrier waives the right to split-sample testing.
    - e. The state veterinarian shall ensure that a split sample is packed and shipped for testing to a Department-approved laboratory within 72 hours after a written request for split-sample testing is delivered to the stewards under subsection (N)(3)(c).
    - f. When preparing a split sample for shipment, the state veterinarian shall ensure that:

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- i. The split sample is removed from the split-sample freezer and packed for shipping in the presence of the trainer or owner of the horse from which the sample was obtained;
  - ii. The split sample is packed for shipping in a safe and secure manner;
  - iii. The exterior of the package containing the split sample is secured in a manner designed to prevent tampering; and
  - iv. The package containing the split sample is transported to the location where custody is transferred to the carrier charged with delivering the package to the Department-approved laboratory selected by the trainer or owner.
  - g. During the process of retrieving, packing, and shipping a split sample, the state veterinarian shall prepare a chain-of-custody verification form containing the following information:
    - i. Date and time the split sample is removed from the split-sample freezer,
    - ii. Number of the split sample,
    - iii. Address of the Department-approved laboratory selected by the trainer or owner of the horse from which the split sample was obtained,
    - iv. Name of the carrier charged with delivering the package,
    - v. Address at which custody of the package is transferred to the carrier charged with delivering the package, and
    - vi. Date and time that custody of the package is transferred from the Department to the carrier charged with delivering the package.
  - h. The state veterinarian shall ensure that both the state veterinarian and the trainer or owner of the horse from which the split sample was obtained sign the chain-of-custody verification form indicating that:
    - i. The correct split sample was removed from the split-sample freezer,
    - ii. The split sample was packed in accordance with subsection (N)(3)(f)(ii),
    - iii. The package containing the split sample was correctly addressed to the Department-approved laboratory selected by the trainer or owner, and
    - iv. There is no evidence of tampering on the package containing the split sample.
  - i. The state veterinarian shall keep the original of the chain-of-custody verification form and provide a copy to the trainer or owner of the horse from which the split sample was obtained.
4. Frozen samples. As specified in the Department's contract with the official laboratory, the Department has authority to require the official laboratory to retain and preserve by freezing the left-over portion of a sample submitted for testing.
  5. Laboratory minimum standards. The official laboratory and any Department-approved laboratory that conducts primary or split-sample testing shall meet the following minimum standards:
    - a. General adherence to the requirements for competence of testing and calibration specified by the International Organization for Standardization;
    - b. Have or have access to liquid chromatograph and mass spectrometer instruments for screening and confirmation purposes; and
    - c. Be able to detect medications, drugs, and other substances at the specific concentration or regulatory threshold established.
- O. Trainer responsibilities.**
1. The trainer of a horse at a location under the Department's jurisdiction shall:
    - a. Ensure that if the horse entered in an official workout, the horse is in physical condition for the workout;
    - b. Ensure that if the horse is entered in a race, the horse is in physical condition to perform creditably at the distance entered;
    - c. Prevent administration to the horse of a prohibited medication, drug, or other foreign substance;
    - d. Prevent administration to the horse of a permitted medication, drug, or other foreign substance in excess of the maximum allowable concentration;
    - e. Maintain knowledge of the medications, drugs, or other substances administered to the horse;
    - f. Report immediately to the stewards and state veterinarian knowledge of or reason to believe a prohibited medication, drug, or other foreign substance has been administered or a permitted medication, drug, or other foreign substance has been administered in excess of the maximum allowable concentration;
    - g. Maintain an assigned stable area in a clean, neat, and sanitary condition at all times;
    - h. Use the services of only a veterinarian licensed by the Department while at a location under the Department's jurisdiction;
    - i. Ensure the proper identity, custody, care, health, and safety of the horse;
    - j. Ensure that the horse has a valid health certificate and a negative Equine Infectious Anemia test certificate on file with the racing secretary;
    - k. Report no later than the time of entry to the horse identifier and racing secretary if the horse is gelded;
    - l. Report immediately to the state veterinarian when the horse has a reportable disease or unusual incidence of a communicable illness;
    - m. Report immediately to the stewards and state veterinarian when the horse has a serious injury or dies;
    - n. Comply with the provisions in subsection (R) governing postmortem examination;
    - o. Ensure that an entered horse is present at the horse's assigned stall for the pre-race inspection prescribed under subsection (P);
    - p. Ensure that the horse has proper bandages, equipment, and shoes;
    - q. Be present in the paddock at least 17 minutes before post time of a race for which the horse is entered or another time designated by the stewards;
    - r. Supervise saddling the horse in the paddock unless excused by the stewards;
    - s. Attend, or ensure that the owner or a licensed employee of the owner attend, collection of a blood or urine sample from the horse; and
    - t. Report no later than the time of entry to the state veterinarian and racing secretary that a mare is in foal.
  2. If the official laboratory reports that a horse tests positive for a prohibited medication, drug, or other foreign substance or for a permitted medication, drug, or other substance in excess of the maximum allowable concentration, the Department shall view the positive test as prima facie evidence that the trainer of the horse violated subsection (O)(1).

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3. A trainer whose horse has been claimed shall comply with all provisions of subsection (O)(1) until after the race in which the horse was claimed.
- P. Physical inspection of horses.**
1. A horse entered in a race at a location under the Department's jurisdiction is subject to inspection by a veterinarian before the race.
  2. A pre-race inspection of an entered horse shall be conducted by the track veterinarian.
  3. The trainer of an entered horse or a representative of the trainer shall present the horse for pre-race inspection as required by the track veterinarian. The trainer shall ensure that when the horse is presented for pre-race inspection:
    - a. All bandages are removed,
    - b. The horses' legs are clean,
    - c. The horse has not been placed in ice before the inspection, and
    - d. No device or substance that might impede veterinary clinical assessment is applied to the horse.
  4. The track veterinarian shall ensure that a pre-race inspection of an entered horse includes the following:
    - a. Proper identification of the horse inspected;
    - b. Observation of the horse in motion;
    - c. Manual palpation and passive flexion of both forelimbs;
    - d. Visual inspection of the entire horse and assessment of overall condition;
    - e. Observation of the horse in the paddock and saddling area, during the parade to post, and at the starting gate; and
    - f. Any other inspection the state veterinarian deems necessary.
  5. The track veterinarian shall maintain and regularly update a health and racing soundness record of each horse inspected.
  6. The trainer or owner of a horse at a location under the Department's jurisdiction shall allow the state or track veterinarian to have access to the horse regardless of whether the horse is entered in a race.
  7. If the state or track veterinarian determines that a horse is unfit for competition or is unable to determine the horse's racing soundness, the state veterinarian shall recommend to the stewards that the horse be scratched from a race in which the horse is entered.
  8. If a horse is scratched from a race based on the recommendation of the state or track veterinarian, the veterinarian shall ensure that the horse is placed on the Veterinarian's List described in subsection (Q).
- Q. Veterinarian's List.**
1. The track veterinarian shall maintain the Veterinarian's List of all horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.
  2. The trainer of a horse on the Veterinarian's List shall not enter the horse in a race unless approved the track and Department veterinarians.
  3. The trainer of a horse on the Veterinarian's List shall not enter the horse in a race until the horse has been on the Veterinarian's List at least 72 hours.
  4. The track veterinarian shall ensure that a horse is removed from the Veterinarian's List only when the track veterinarian determines the condition that caused the horse to be placed on the Veterinarian's List is resolved and the horse has been returned to racing soundness.
5. The trainer or owner of a horse on the Veterinarian's List shall comply with all provisions of this Chapter including testing.
- R. Postmortem Examination.**
1. The trainer or owner of a horse that dies or is euthanized at a location under the Department's jurisdiction shall submit the horse for a postmortem examination if requested by the Department.
  2. If required under subsection (R)(1) to submit a horse to the Department for postmortem examination, the trainer or owner of the horse shall ensure that all shoes and equipment are left on the horse's legs.
  3. If an analysis of blood, urine, bodily fluids, or other biologic specimens collected during a postmortem examination shows the presence of a prohibited medication, drug, or other substance or a permitted medication, drug, or other substance in excess of the maximum allowable concentration in the horse's body, the Department shall take disciplinary action allowed under A.R.S. Title 5, Chapter 1 and this Chapter against the trainer or owner of the horse.
  4. In proceeding with a postmortem examination of a horse, the Department shall coordinate with the horse's owner to determine and address any insurance requirements.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended by adding subsection (O) effective November 23, 1983 (Supp. 83-6). Amended by adding subsection (P) effective January 24, 1985 (Supp. 85-1). Amended by adding subsections (Q) and (R) effective September 24, 1986 (Supp. 86-5). Amended by adding subsections (S), (T), (U) and (V) effective February 19, 1987 (Supp. 87-1). Amended by adding subsections (W) and (X) effective October 14, 1988 (Supp. 88-4). Repealed effective March 20, 1990 (Supp. 90-1). R19-2-120 recodified from R4-27-120 (Supp. 95-1). New Section made by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-121. Officials****A. Generally.**

1. In this Article, the term track official means the following persons employed by the permittee and approved and licensed by the Department: Director of Racing, one steward, pari-mutuel manager, patrol judges, clerk of the scales, starter, timer, placing judge, paddock judge, track veterinarian, track superintendent, racing secretary, assistant racing secretary, handicapper, horsemen's bookkeeper, jockey room custodian, and chief of security.
2. The term Department official means the following persons appointed by the Department: two stewards, state pari-mutuel supervisor, state veterinarian, identifier, and investigator. Other track officials may be appointed by the Department for a county fair race meet.
3. A person may serve in more than one position as a track or Department official if the person can do so without detriment to any of the other positions and the person has the consent and approval of the Department except that neither the racing secretary nor the permittee director of racing may serve as a steward.
4. A ruling by the stewards is controlling if made by a majority of the stewards participating in making the ruling.
5. Vacancies.
  - a. When a vacancy occurs among officials other than stewards, the stewards shall fill the vacancy before

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post time of the first race of the day or immediately if the vacancy occurs after post time of the first race. An appointment made by the stewards is effective only for the day on which the appointment is made unless the permittee fails to fill the vacancy on the following day and notifies the stewards of its action not less than one hour before post time of the first race of the following day. A permittee shall promptly report the appointment of an official to the Department.

- b. As required under subsection (E)(1), three stewards shall view the running of a race. If a vacancy occurs among the stewards, the stewards present shall appoint one or two persons to serve as temporary stewards. The stewards making an appointment under this subsection shall report the appointment in writing to the Department.
  - c. In case of emergency, the stewards may appoint a substitute official to fill a vacancy for only as long as the emergency exists.
6. The Department shall not license or appoint minors as officials.
  7. A person with a financial interest in the result of a race, such as an ownership interest in any entered horse or a wager, shall not act as an official at the race meet in which the race occurs.
- B. Prohibited acts.**
1. An official or an official's assistant shall not purchase pari-mutuel tickets on races.
  2. An official or an official's assistant shall not consume alcoholic beverages while on duty.
  3. An official shall not accept, directly or indirectly, a bribe, gift, or other form of gratuity that is intended to or might influence the results of a race or the conduct of a race meet.
  4. An official or employee of a permittee shall not write or solicit horse insurance at a race meet.
  5. An official or employee of a permittee at a race meet shall not buy or sell a contract upon a jockey or apprentice jockey for another official or employee of a permittee or for another individual, either directly or indirectly.
- C. An official or employee or a permittee shall report all observed violations of this Chapter to the stewards.**
- D. Complaints.**
1. A person with a grievance or complaint against a track official, an employee of the permittee, or a licensee shall submit the grievance or complaint in writing to the stewards within five days of the alleged act or omission giving rise to the grievance or complaint. The stewards shall consider the matter, take appropriate action, and make a full written report of the stewards' action to the Department.
  2. A person with a grievance or complaint against an official or employee of the Department shall report the grievance or complaint in writing to the Director or designee within five days of the alleged act or omission giving rise to the grievance or complaint.
  3. The Department shall take disciplinary action allowed under A.R.S. Title 5, Chapter 1 against an official or employee of the Department who fails to comply with this Chapter.
- E. Stewards.**
1. Two stewards appointed by the Director, and one steward appointed by the permittee and licensed by the Department, shall supervise each race meet.
    - a. The stewards shall be in attendance at the office of the racing secretary or on the grounds of the permittee on any day in which entries are being taken or racing is being conducted and represent the Department in all matters pertaining to the enforcement and interpretation of this Chapter.
    - b. The stewards shall advise the Director of all hearings and rulings made.
    - c. If a steward is unable to perform the steward's duties for more than one day, the steward shall immediately notify the Director so an alternate steward may be named to act in the steward's place.
  2. The stewards shall enforce A.R.S. Title 5, Chapter 1 and this Chapter.
  3. The stewards shall interpret A.R.S. Title 5, Chapter 1 and this Chapter and decide all questions not specifically covered by A.R.S. Title 5, Chapter 1 and this Chapter. In all interpretations and decisions, an order of the stewards supersede an order of the permittee.
    - a. The stewards shall have control over and free access to all stands, weighing rooms, enclosures, and all other places within the grounds of the permittee.
    - b. The stewards shall investigate and render a decision promptly on each objection properly made to them under R19-2-117. Even if all stewards agree on a ruling, only a majority need to sign the ruling.
    - c. The stewards shall supervise all entries and declarations. The stewards may refuse entries or the transfer of entries for violation of A.R.S. Title 5, Chapter 1 or this Chapter.
    - d. The stewards shall regulate and control the conduct of officials and other persons attending or participating in a race meet.
    - e. When necessary to maintain safety and health conditions and protect public confidence in the sport of racing, the stewards shall:
      - i. Authorize a person to enter in or on and examine the buildings, stables, rooms, motor vehicles, trailers, or other places within the grounds of a permittee;
      - ii. Inspect and examine the person, personal property, and effects of any person within the grounds of a permittee; and
      - iii. Seize any items prohibited under R19-2-112(7) or (8) or any other illegal article.
    - f. Under subsection (E)(6), the stewards may impose a civil penalty in an amount not to exceed \$2,500 on any person subject to the stewards' control for violation of A.R.S. Title 5, Chapter 1 or this Chapter. After a hearing, the stewards may suspend a person violating A.R.S. Title 5, Chapter 1 or this Chapter for up to six months and may rule off a licensee violating A.R.S. Title 5, Chapter 1 or this Chapter. The stewards may impose both a civil penalty and suspension for the same violation. The stewards may refer any ruling made by the stewards to the Director, recommending further action, including license revocation.
    - g. If a laboratory report or other evidence shows the administration or presence of a foreign substance, the stewards shall immediately investigate the matter and may disqualify the horse, suspend the trainer or other person involved, refer the matter to the Director, and impose a fine.
    - h. Every person or entry expelled or ruled off by any recognized turf authority for fraudulent or improper

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- practice or conduct is ruled off all permittee locations in the state.
- i. Unless specifically ordered otherwise, if the stewards suspend one license held by an individual, all licenses held by the individual are suspended for the term of the suspension.
  - j. When a person is suspended, the stewards shall rule off every horse wholly or partly owned by the person for as long as the person's suspension continues. The suspended person shall not, whether acting as agent or otherwise, subscribe for, enter, or run a horse in any race, in either the person's name or that of another person. The stewards shall disqualify a horse if the horse is wholly or partly owned by the suspended person or under the suspended person's care, management, training, or supervision, or the suspended person has an interest in the horse's winnings. At the time it is discovered, the stewards shall void an entry from a suspended person or of a horse that stands ruled off. The suspended person shall forfeit the entry or subscription money and return the money or prize won.
4. The stewards may excuse a horse that has left the paddock for the post if the stewards consider the horse to be disabled or unfit to run. In claiming races, if there is a claim entered on an excused horse, the claim is invalid.
  5. The stewards shall determine the finish of a race by the relative position of the noses of each horse. At the end of a race, the stewards shall immediately notify the pari-mutuel department of the numbers of the first four horses.
    - a. The stewards shall promptly display the numbers of the first four horses in each race in the order that they finished. If the stewards differ as to the order in which the horses finished, the conclusion of the majority of the stewards shall prevail.
    - b. The stewards may review a photo-finish picture provided by the permittee to aid the stewards in determining the finish of a race.
      - i. If the photo-finish picture furnished by the permittee is not adequate or usable, the stewards shall make the final decision.
      - ii. If the stewards consider it advisable to review the photo-finish picture, the stewards may post the placements that the stewards determine are unquestionable without waiting for a picture. After reviewing the picture, the stewards shall make the other placements. The stewards shall not declare the race official until the stewards have determined which horses finished first, second, third, and fourth.
    - c. The stewards shall correct an error before the display of the official sign or recall the official sign if it is displayed through error.
  6. The stewards shall adhere to the following procedure when the stewards have reason to believe that a person has violated A.R.S. Title 5, Chapter 1 or this Chapter:
    - a. The stewards shall summon the person to a hearing with all the stewards present;
    - b. The stewards shall give 24-hours' written notice of the hearing to the person, using a form supplied by the Department. The stewards shall time and date the notice, and the person notified shall sign the notice and return the notice to the stewards. The stewards shall retain the original notice and include the notice as part of the case file. The stewards shall give a copy of the notice to the person summoned;
    - c. Except as provided in subsection (E)(6)(g), the stewards shall not impose a penalty without a hearing;
    - d. If a summoned person fails to appear at a scheduled hearing, the person waives the right to a hearing before the stewards;
    - e. The stewards shall permit the summoned person to present witnesses on the person's behalf;
    - f. The stewards shall take appropriate action, including suspension, civil penalty, or both, if there is substantial evidence to find a violation of A.R.S. Title 5, Chapter 1 or this Chapter. The stewards shall promptly forward the written decision or ruling to the Director and to the summoned person;
    - g. The stewards may summarily declare a horse scratched and may suspend a license pending a stewards' hearing if the stewards make a specific finding that the action is in the best interest of the public health, safety, and welfare;
    - h. The stewards shall recover and forward to the Department any license the stewards suspend;
    - i. The stewards shall act by majority vote on all matters within the stewards' jurisdiction;
    - j. The stewards have the power to modify, change, or remit any ruling imposed by the stewards; and
    - k. A licensee shall promptly pay to the Department any civil penalty imposed by the stewards for deposit with the state treasurer.
  7. During a term of suspension of an owner, trainer, or other person at a location under the jurisdiction of the Department, the stewards and permittee shall ensure that a ruling against the owner, trainer, or other person is enforced.
- F. Racing secretary.**
1. The racing secretary shall report to the stewards all violations of A.R.S. Title 5, Chapter 1 and this Chapter or of the regulations of the permittee that come to the racing secretary's attention.
  2. The racing secretary shall keep a complete record of all races.
  3. The racing secretary or authorized representative shall inspect all documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of stable names. The racing secretary may demand production of the documents to verify their validity and authenticity and to ensure that A.R.S. Title 5, Chapter 1 and this Chapter has been followed.
  4. The racing secretary shall write the conditions of all races and publish the conditions sufficiently before closing time for entries to allow the conditions to be read by all owners and trainers. The racing secretary shall not alter the conditions of the races after closing time.
    - a. The racing secretary shall not write race conditions that conflict with A.R.S. Title 5, Chapter 1 or this Chapter.
    - b. The racing secretary shall include in the race conditions or post a list of eligible horses before the time of entry for every graded quarter-horse race. The racing secretary shall not add a horse to this list after entering has begun without the consent of those who have entered eligible horses.
  5. The racing secretary shall act as the official handicapper in all races.
    - a. The racing secretary shall assign weight to all horses entered in a handicap race.
    - b. The racing secretary shall post the weights assigned in a handicap race before 10:30 a.m. on the day set for publication.

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6. The racing secretary shall determine the character and condition of substitute and extra races and submit the substitute and extra races to the stewards for approval.
    - a. If a stakes or overnight handicap race does not fill, the unfilled race may be replaced by another overnight race carrying a guaranteed purse consistent with the daily average purse.
    - b. If a race is canceled, the racing secretary may split any race programmed for the same day that previously was closed.
    - c. The racing secretary shall give preference to races printed in the condition book over substitute and extra races.
  7. The racing secretary or designee shall conduct the drawing of horses in all races and immediately post an overnight listing of the horses in each race.
  8. The office of the racing secretary shall keep the preferred list of all horses.
  9. The racing secretary shall not allow a horse to start in a race unless the horse is entered in the name of the legal owner and the owner's name appears on the back of the horse's registration papers or on a legal lease or bill of sale attached to the horse's registration papers.
- G. Assistant racing secretary.** The assistant racing secretary shall, under the racing secretary's supervision, assist the racing secretary to perform the racing secretary's duties.
- H. Starter.**
1. The starter has:
    - a. Complete jurisdiction over the starting of any field of horses,
    - b. Authority to give orders necessary to ensure a fair start, and
    - c. Authority to recommend to the stewards that a person be fined or suspended for violating the starter's orders.
  2. The starter may place a horse on a schooling list. The racing secretary shall not accept an entry on a horse until the horse is removed from the schooling list by the starter.
  3. The starter may recommend to the stewards that a horse be ruled off if the horse is unmanageable at the starting gate or refuses to break properly, after a reasonable schooling period.
- I. Starter's assistant.**
1. The starter's assistant may help horses into the starting gate.
  2. The starter's assistant may handle or otherwise restrain unruly or fractious horses before the start.
- J. Clerk of the scales.**
1. The clerk of the scales include shall:
    - a. Weigh all jockeys out and in;
    - b. Post promptly the names of jockeys who are overweight at weigh out;
    - c. Notify a trainer that the trainer's jockey is overweight;
    - d. Report all late scratches, changes in riders, overweight jockeys, and corrected weights for posting on a bulletin board located in a place conspicuous to the wagering public; and
    - e. Record winning records of apprentice jockeys and attest to the date and track on the jockey's apprentice certificate.
  2. A jockey shall not pass the scale more than seven pounds overweight without consent of the stewards.
  3. A jockey shall not be more than one pound short at weigh in.
4. The clerk of the scales shall report to the stewards any violation of weight requirements or any attempt to alter specified weights.
- K. Paddock judge.** The paddock judge shall:
1. Check all contestants for each race,
  2. Keep a record of all equipment carried by all horses in each race under the paddock judge's jurisdiction,
  3. Not allow a change of equipment unless the change is approved by the stewards;
  4. Ensure that only the owner or trainer of a horse or an employee of the owner or trainer touch a horse in the paddock without permission of the paddock judge; and
  5. Report any irregularities to the stewards.
- L. Patrol judge.**
1. The patrol judge shall:
    - a. View the portion of the track allotted to the patrol judge, and
    - b. Report to the stewards any irregular incident occurring during a race.
  2. The stewards may require a patrol judge to submit a written report on each race.
  3. The number of patrol judges in use at a track may vary with the size of the track and need to ensure clean racing.
- M. Timers.** Timers shall:
1. Accurately record the time of each race,
  2. Accurately record the fractional times of each race if required, and
  3. Use an electrical timing device approved by the Department in all races restricted to quarter horses.
- N. Jockey room custodian.** The jockey room custodian shall:
1. Maintain the jockey room in proper order as a restricted area;
  2. Ensure that jockeys conduct themselves in accordance with A.R.S. Title 5, Chapter 1 and this Chapter;
  3. Ensure that jockeys are on time for races;
  4. Supervise the valets employed to assist the jockeys;
  5. Assist the clerk of scales to ensure jockeys have proper equipment and carry the correct weight; and
  6. Report immediately to the stewards any horse's colors not in the jockey room custodian's possession for the day's racing.
- O. Horsemen's bookkeeper.**
1. The horsemen's bookkeeper shall receive all stakes, forfeits, entrance monies, fees (including jockey fees), and purchase money in claiming races.
  2. The horsemen's bookkeeper shall pay all money on deposit to the persons entitled to it within 14 days after the close of a race meet.
  3. The horsemen's bookkeeper shall be bonded in an amount determined by the Director.
  4. The horsemen's bookkeeper shall segregate and hold as trust funds all fees paid in added money events, early closing events, stakes, and futurities until the event is contested. The horsemen's bookkeeper shall submit proof of segregation by bank letter or bank statement to the Department through the bank's authorized representative.
  5. The horsemen's bookkeeper shall not pay purse money earned by a horse to anyone except the horse's registered owner or the owner's authorized agent. The Department shall authorize the release of purse monies only after the results of laboratory analysis are obtained.
  6. If the stewards notify the horsemen's bookkeeper that there is an objection or a post-race sample tests positive for a foreign substance, the horsemen's bookkeeper shall hold the purse monies until the Department authorizes release of the purse monies.

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- P. Veterinarians.**
1. The Department shall approve two official veterinarians who are licensed to practice veterinary medicine by the state of Arizona. Each permittee shall employ one of the official veterinarians, who is called the track veterinarian. The Department shall employ the other official veterinarian, who is called the state veterinarian.
  2. The state veterinarian shall be in charge of all sample collection.
  3. An official veterinarian shall inspect each horse in the receiving barn or paddock and shall recommend to the stewards that a horse be scratched if the veterinarian finds the horse is unsafe to race or physically unfit to produce a satisfactory result in a race.
  4. The track veterinarian shall examine all horses before a race.
  5. Either the state veterinarian or track veterinarian shall place a horse deemed to be unsafe, unsound, or unfit on a suspension list approved by the stewards.
  6. A veterinarian licensed by the Department shall keep a written record of the veterinarian's practice on the grounds of a permittee relating to horses participating in racing.
    - a. The veterinarian shall include the following in the record:
      - i. The name of the horse treated,
      - ii. The nature of the horse's ailment,
      - iii. The type of treatment prescribed and performed for the horse, and
      - iv. The date and time of the treatment;
    - b. The veterinarian shall keep the record for practice engaged in at all licensed tracks;
    - c. The veterinarian shall produce the record without delay on request of the stewards or the Department;
    - d. A veterinarian engaged in private practice at a location under the jurisdiction of the Department shall be licensed by the Arizona State Board of Veterinarian Medical Examiners and the Department;
    - e. A veterinarian who administers to or prescribes for horses on the premises of a permittee shall be licensed by the Department except, as specified in R19-2-120(A)(2)(g), in case of emergency; and
    - f. When recommended by the state veterinarian, the Department shall evaluate new and experimental medications and drugs and determine whether the medications and drugs may be used on the grounds of a permittee.
  7. If an official veterinarian determines that an injured horse should be destroyed, the official veterinarian shall destroy the horse quickly, humanely, and out of sight of the public unless any delay will prolong suffering by the horse.

- Q. Horse identifier.**
1. The horse identifier or designee shall examine all horses registered for racing at tracks under the jurisdiction of the Department.
  2. The horse identifier shall ensure that all horses starting at any track in Arizona are tattooed unless otherwise authorized by the stewards.
  3. The horse identifier may make photographs or permanent identification records for horses referred to in subsection (Q)(1). The horse identifier shall include the tattoo number, markings, cowlicks, dimples, and other characteristics on the horse's identification record.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended subsections (A) and (D) effective November

30, 1988 (Supp. 88-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-121 recodified from R4-27-121 (Supp. 95-1). Amended effective September 14, 1995 (Supp. 95-3). Amended effective January 12, 1996 (Supp. 96-1). Amended effective August 7, 1996 (Supp. 96-3). Spelling correction made in subsection (1) "permittee" changed to "permittee" to reflect rules on file with the Office of the Secretary of State (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 5534, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-122. Transfers**

- A.** Any change in the ownership or lease of a horse registered with the racing secretary must be effected by a bill of sale or lease agreement.
1. A copy of the bill of sale or lease agreement shall be filed in the track office of the Department and with the racing secretary.
  2. The stewards shall be advised of any change in the ownership or trainer transfer of a horse registered with the racing secretary.
  3. A horse shall not be transferred to a new trainer after entry.
  4. More than one owner may be indicated on the program by the use of the name of one owner and the phrase "et al."
- B.** If a horse is sold with all its engagements or any part of them, the seller shall not strike it from such engagements.
1. In all private sales, the written acknowledgment of both parties that the horse was sold with all, or part of, its engagements is necessary to entitle the seller or buyer to the benefit of this rule. If certain engagements are specified, only those engagements so specified shall be sold with the horse.
  2. In all public auctions, the advertised conditions of the sale are sufficient evidence of sale with all engagements. If certain engagements are specified, only those engagements so specified shall be sold with the horse.
  3. If a horse is transferred with its engagements, that horse shall not be eligible to start in any stakes race unless, at the time of the running of the stakes or prior thereto, the transfer of the horse and its engagements is exhibited upon demand to the racing secretary.
  4. No transfer of a horse or an engagement shall be made for the purpose of avoiding disqualification.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-122 recodified from R4-27-122 (Supp. 95-1).

**R19-2-123. Procedure before the Department**

- A.** Appeal of stewards' rulings and referrals.
1. A person aggrieved by a ruling of the stewards may appeal to the Director. An appeal shall be filed in writing to the office of the Director within three days after receipt of the steward's ruling.
  2. An appeal shall be signed by the person making the appeal or by the person's attorney and shall contain the grounds for appeal and the reasons for believing the person is entitled to a hearing.
  3. The stewards may refer any ruling to the Director, recommending further action, including revocation of a license suspended by the stewards. On receipt of a referral, the Director shall review the record and may affirm, reverse, or modify the stewards' ruling or conduct other proceedings the Director deems appropriate.

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4. If the Director decides that hearing or other proceeding is appropriate, the Director shall fix a time and place for a hearing. The Director shall give written notice of the hearing to the appellant at least 30 days before the date set for the hearing unless the 30 days' notice is waived in writing by the appellant.
- B. Appeal of stewards' inquiry and objection rulings.**
1. Failure of the stewards to convene a hearing within 10 days after an objection is made shall be deemed a denial that may be appealed by filing a written appeal to the office of the Director within 10 days after the date the objection is denied.
  2. A person making an appeal or the person's attorney shall sign the appeal and ensure that it contains the grounds for appeal and reasons for believing the person is entitled to a hearing.
  3. After an appeal is filed under subsection (B)(2), the Director shall fix a time and place for hearing or refer the matter to a hearing officer. The Director shall give written notice of the hearing to the appellant at least 30 days before the date set for the hearing unless the 30 days' notice is waived in writing by the appellant.
  4. Nothing contained in this Section shall affect distribution of pari-mutuel pools.
  5. The Department shall retain purse money affected by an appeal until an order regarding the appeal is issued by the Director.
- C. License denial, suspension, or revocation.**
1. The Director may deny a license without prior notice to a license applicant. However, if the applicant files an appeal with the Director within 30 days after receipt of the denial notice, the Director shall fix a time and place for a hearing on the matter and give written notice of the hearing to the applicant at least 30 days before the date set for the hearing, unless the 30 days' notice is waived in writing by the applicant.
  2. The Director may revoke or, independently of the stewards, suspend a license only after notice and opportunity for hearing. The Director shall give written notice of the hearing at least 30 days before the date set for hearing unless the 30 days' notice is waived in writing by the licensee.
  3. Unless specifically ordered otherwise, if the Director suspends one license held by an individual, all licenses held by the individual are suspended for the term of the suspension.
- D. Director's hearings.**
1. A party appearing before the Director or the Director's designee shall be afforded an opportunity to a hearing and to respond and present evidence and argument on all issues.
  2. An individual appearing before the Director or the Director's designee has the right to appear in person or by counsel. A corporation appearing before the Director shall appear only through counsel. A party may submit the party's case in writing. If a party fails to appear for a hearing, the Director may act on the evidence without further notice to the party. The Director may reopen a proceeding if a party to the proceeding submits a written petition to the Director within 15 days after the proceeding.
- E. Hearing officer.** If the Director assigns a matter to a hearing officer, the hearing officer shall submit to the Director within 15 days after conclusion of the hearing a written decision that includes proposed findings of fact, conclusions of law, and order. The Director may accept, reject, or modify the decision of the hearing officer. Unless modified, the decision of the hearing officer becomes the decision of the Director 45 days after the hearing officer submits the decision to the Director.
- F. Depositions.**
1. If a party desires to take the oral deposition of a witness residing outside the state or otherwise unavailable as a witness, the party shall file with the Director a petition for permission to take the deposition of the witness. The party shall specify in the deposition petition the name and address of the witness and the nature and substance of the testimony expected to be given by the witness. The Director shall grant permission to take the deposition if the Director is able to determine from the deposition petition that the witness resides outside the state or is otherwise unavailable and the witness's testimony is relevant and material.
  2. The Director may, at the Director's discretion, designate the time and place at which the deposition may be taken. The party that takes a deposition is responsible for all expenses involved in taking the deposition.
  3. A party taking a deposition under this subsection shall return and file the deposition with the Director within 30 days after permission for taking the deposition is granted.
- G. Service.**
1. The Department shall make service of a decision, order, or other process in person or by mail. The Department shall make service by mail by enclosing a copy of the material to be served in a sealed envelope and depositing the envelope in the United States mail, postage prepaid, addressed to the party served at the address shown by the records of the Department.
  2. The Department shall calculate time periods prescribed or allowed by this Chapter, order of the Department, or applicable statute as provided in the Arizona Rules of Civil Procedure.
  3. Service on an attorney who has appeared on behalf of a party constitutes service on the party. A person required to serve papers on the Director or Commission shall file the papers in the office of the Department and serve a copy on the Attorney General.
  4. Proof of service may be made by the affidavit or oral testimony of the person making service.
- H. Rehearing, review, or appeal.**
1. Except as provided in subsection (H)(7), a party aggrieved by a final administrative decision rendered by the Director, may file with the Director within 30 days after service of the final administrative decision, a written motion for rehearing or review. A party filing a motion for rehearing or review of the decision shall specify in the motion the particular grounds on which the motion is made.
  2. A motion for rehearing or review may be amended at any time before it is ruled on by the Director. A response may be filed within 10 days after service of the motion or amended motion by any other party. The Director may require the filing of written briefs on the issues raised in the motion and may provide for oral argument.
  3. The Department may grant a rehearing or review of a decision for any of the following causes materially affecting a party's rights:
    - a. Irregularity in the administrative proceedings, or an order or abuse of discretion that deprived a party of a fair hearing;
    - b. Misconduct of the hearing officer, Director, or the prevailing party;

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- c. Accident or surprise that could not have been prevented by ordinary prudence;
  - d. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  - e. Excessive or insufficient penalty;
  - f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; and
  - g. The findings of fact or decision is not justified by the evidence or is contrary to law.
4. The Director may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons listed in subsection (H)(3). The Director shall specify with particularity the grounds for an order modifying a decision or granting a rehearing. A rehearing shall cover only the matters specified.
  5. Not later than 10 days after the date of a decision, after giving the parties notice and an opportunity to be heard, the Director may, on the Director's initiative, order a rehearing or review for any reason for which the Director might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard, the Director may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the Director shall ensure that the order granting a rehearing or review specifies the grounds for the order.
  6. When a motion for rehearing or review is based on affidavits, the party making the motion shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Director for an additional 20 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
  7. If the Director makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, safety, and welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Director shall issue the decision as a final decision without an opportunity for a rehearing or review.
  8. If the provisions of this Section are in conflict with the provisions of a statute providing for rehearing of decisions of the Director, the statutory provisions shall govern.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-123 recodified from R4-27-123 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-124. Procedure before the Commission**

- A. Appeal of Director's rulings.
  1. A person aggrieved by a ruling of the Director may appeal to the Commission. An appeal shall be filed in writing to the office of the Commission within 30 days after service of the Director's ruling.
  2. The appeal shall be signed by the person making the appeal or by the person's attorney and contain the grounds for appeal and the reasons for believing the person is entitled to a hearing.
  3. When an appeal is filed, the Commission shall review the record and may affirm, reverse, or modify the Director's ruling or conduct other proceedings the Commission deems appropriate.
- B. Permit denial, suspension, or revocation.
  1. As required under A.R.S. § 5-108.01(A), the Commission shall hold a hearing on an application for an original or renewal permit. The Commission shall provide 30 days' notice of the hearing.
  2. The Commission shall revoke or suspend a permit only after notice and opportunity for hearing. The Commission shall give notice of the hearing in writing at least 30 days before the date set for hearing, unless the 30 days' notice is waived in writing by the permittee.
  3. Unless specifically ordered otherwise, if the Commission suspends one license held by an individual, all licenses held by the individual are suspended for the term of the suspension.
  4. A party appearing before the Commission shall be afforded an opportunity for a hearing and to respond and present evidence and argument on all issues.
  5. An individual appearing before the Commission has the right to appear in person or by counsel. A corporation appearing before the Commission shall appear through counsel. A party may submit the party's case in writing. If a party fails to appear for a hearing, the Commission may act on the evidence without further notice to the party. The Commission may reopen a proceeding if a party to the proceeding submits a written petition to the Commission within 15 days after the proceeding.
- C. Hearing officer. If the Commission assigns a matter to a hearing officer, the hearing officer shall submit to the Commission within 15 days after conclusion of the hearing a written decision that includes proposed findings of fact, conclusions of law, and order. The Commission may accept, reject, or modify the decision of the hearing officer. Unless modified, the decision of the hearing officer becomes the decision of the Commission 45 days after the hearing officer submits the decision to the Commission.
- D. Depositions.
  1. If a party desires to take the oral deposition of a witness residing outside the state or otherwise unavailable as a witness, the party shall file with the Commission a petition for permission to take the deposition of the witness. The party shall specify in the deposition petition the name and address of the witness and the nature and substance of the testimony expected to be given by the witness. The Commission shall grant permission to take the deposition if the Commission is able to determine from the petition that the witness resides outside the state or is otherwise unavailable and the witness's testimony is relevant and material.
  2. The Commission may, at the Commission's discretion, designate the time and place at which the deposition may be taken. The party that takes a deposition is responsible for all expenses involved in taking the deposition.
  3. A party taking a deposition under this subsection shall return and file the deposition with the Commission within 30 days after permission for taking the deposition is granted.
- E. Service.
  1. The Commission shall make service of a decision, order, or other process in person or by mail. The Commission shall make service by mail by enclosing a copy of the material to be served in a sealed envelope and depositing the envelope in the United States mail, postage prepaid, addressed to the party served, at the address shown by the records of the Department. The Commission shall mail a

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notice of a hearing before the Commission by certified mail to the last known address of the party shown by the records of the Department.

2. Proof of service may be made by the affidavit or oral testimony of the person making the service.
  3. The Commission shall calculate time periods prescribed or allowed by this Chapter, order of the Department, or applicable statute as provided in the Rules of Civil Procedure.
  4. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. A person required to serve papers upon the Commission, shall file an original and five copies in the office of the Department and serve a copy on the Attorney General.
- F. Rehearing or review.**
1. Except as provided in subsection (F)(7), a party aggrieved by a final administrative decision rendered by the Commission may file with the Commission within 30 days after service of the final administrative decision, a written motion for rehearing or review of the decision. A party filing a motion for rehearing or review of a decision shall specify the particular grounds on which the motion is made.
  2. A motion for rehearing or review may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of the motion or amended motion by any other party. The Commission may require the filing of written briefs on the issues raised in the motion and may provide for oral argument.
  3. The Commission may grant a rehearing or review of a decision for any of the following causes materially affecting a party's rights:
    - a. Irregularity in the administrative proceedings, or an order or abuse of discretion that deprived a party of a fair hearing;
    - b. Misconduct of the hearing officer, Commission, or the prevailing party;
    - c. Accident or surprise that could not have been prevented by ordinary prudence;
    - d. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
    - e. Excessive or insufficient penalty;
    - f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; and
    - g. The findings of fact or decision is not justified by the evidence or is contrary to law.
  4. The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons listed in subsection (F)(3). The Commission shall specify with particularity the grounds for an order modifying a decision or granting a rehearing. A rehearing shall cover only the matters specified.
  5. Not later than 10 days after the date of a decision, after giving the parties notice and an opportunity to be heard, the Commission may, on its own initiative, order a rehearing or review for any reason for which the Commission may have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the Commission shall ensure

that the order granting a rehearing or review specifies the grounds for the order.

6. When a motion for rehearing or review is based upon affidavits, the party making the motion shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Commission for an additional 20 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
7. If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, safety, and welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for a rehearing or review.
8. To the extent that the provisions of this Section are in conflict with the provisions of any statute providing for rehearing of decisions of the Commission, the statutory provisions shall govern.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-124 recodified from R4-27-124 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-125. Arizona Stallion Awards**

- A. Definitions**
1. "Arizona stallion" means an uncastrated, adult male horse that stands the entire breeding season in Arizona.
  2. "Breeding year" means the period beginning January 1 and ending July 31.
  3. "Fiscal year" means the period beginning July 1 and ending June 30.
  4. "Owner" means the person who possesses the stallion at the time of the person's certification application for the fiscal year, according to the records of the Department.
- B. Owner and lessee eligibility.** For an owner or the lessee of an Arizona stallion to be eligible for an award of funds for a fiscal year:
1. The owner or lessee shall:
    - a. Apply for stallion certification by the due date set by the breeders association for complying with the requirement in subsection (D);
    - b. Submit the breeder report required in subsection (E); and,
    - c. Comply with subsection (F) if applicable.
  2. In the event of death or the retirement of a stallion, the owner or lessee remains eligible for awards if the requirements in subsection (D) are followed.
  3. The stallion shall be certified at the time its eligible Arizona-bred offspring earn purse money in races listed in subsection (H).
- C. Qualifications for Arizona stallion certification.** To qualify for Arizona stallion certification for the fiscal year, an owner or lessee shall:
1. Permanently domicile the stallion in Arizona from January 1 through July 31. During this time, the owner or lessee may move the stallion outside of Arizona for racing or for medical treatment;
  2. Register the stallion with the Arizona breed registry that corresponds to the stallion's national breed registry; and

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3. Notify the appropriate Arizona breed registry within 10 days of the stallion entering or leaving Arizona during the breeding year.
- D. Application procedure for stallion certification**
1. By the due date set by the appropriate Arizona breeders association, and approved by the Commission in accordance with subsection (D)(2)(b), an owner or lessee may apply for Arizona stallion certification for the fiscal year. The owner or lessee shall:
    - a. File an official application form with the Arizona breeders' association for each stallion owned or leased; and
    - b. Pay a certification fee for each stallion when the application form is filed.
  2. The Arizona breeders association shall:
    - a. Forward a legible copy of the completed application to the Department;
    - b. Set an application due date and reasonable certification fee, if these actions are authorized by the Commission in a contract permitted under A.R.S. § 5-114(D).
  3. The Commission shall review and approve or reject each contract for stallion certification.
- E. Breeding report**
1. A quarter horse stallion owner or lessee shall submit a legible copy of the annual "Stallion Breeding Report" to the breeders association monitoring quarter horse stallions by November 30 of the current breeding year.
  2. Except as provided in subsection (F), a thoroughbred stallion owner or lessee shall submit a legible copy of the annual "Report of Mares Bred" to the breeders association monitoring thoroughbred stallions by August 1 of the current breeding year.
- F. Thoroughbred stallion bred to quarter horse mares**
1. If a thoroughbred stallion is being bred to quarter horse mares, an owner or lessee shall send the application, fees, and breeding report required in subsections (D) and (E)(1) to the breeders association monitoring quarter horse stallions.
  2. If a thoroughbred stallion is being bred to thoroughbred and quarter horse mares, an owner or lessee shall send the application, fees, and breeding reports required in subsections (D) and (E) to both of the Arizona breeders associations.
- G. Disqualification and Reinstatement**
1. If a stallion owner or lessee fails to comply with applicable requirements in subsections (B), (C), (D), (E), and (F) the Department shall disqualify the owner or lessee from receiving an award of fund monies during the affected fiscal year.
  2. To reinstate eligibility for subsequent years, the owner or lessee shall pay the certification fee prescribed in subsection (D)(1)(b) and comply with applicable requirements in subsections (B), (C), (D), (E), and (F).
- H. Award races. Except for maiden claiming and maiden allowance races at Arizona racetracks, the following are eligible races:**
1. Quarter horses:
    - a. All races with a purse value of \$10,000 or more;
    - b. All allowance races;
    - c. At the Turf Paradise meet, all claiming races with a claiming price of \$3,500 or more; and
    - d. At other Arizona racetracks, all claiming races with a claiming price of \$2,500 or more.
  2. Thoroughbreds:
    - a. The Prescott Futurity, the Prescott Derby, and all races with a purse value of \$15,000 or more;
    - b. The Inaugural, the Mile High, and all allowance races;
    - c. At the Turf Paradise meet, all claiming races with a claiming price of \$6,000 or more; and
    - d. At other Arizona racetracks, all claiming races with a claiming price of \$3,500 or more.
- I. Fund distribution procedures**
1. The Arizona breeders associations shall submit to the Department, at least annually, a written report that contains the following information:
    - a. The names of certified Arizona stallions for the fiscal year;
    - b. The names of certified Arizona-bred offspring of the Arizona stallions. Arizona-bred horses may be certified by following the procedures prescribed in R19-2-116(A) and (B);
    - c. The first, second, and third place finishes of each certified Arizona-bred horse, sired by a certified Arizona stallion, in each eligible race; and,
    - d. The earnings in each race of each Arizona-bred horse sired by a certified Arizona stallion.
  2. The Department shall:
    - a. Hold 10% of the monies accumulated prior to the 1996-97 fiscal year for contingent liabilities;
    - b. Calculate a payment factor at the end of each fiscal year by dividing the total monies available, under subsections (I)(2)(d), (e), (f), or (g), by the total dollar value of purses, not to exceed \$30,000 per horse per race, won in eligible races during the fiscal year;
    - c. Multiply the payment factor by the total purse amount won in eligible races during the fiscal year;
    - d. Distribute to eligible owners or lessees 40% of the amount accumulated in the fund prior to the 1996-97 fiscal year and the amount earned by the fund during the 1996-97 fiscal year;
    - e. Distribute to eligible owners or lessees 25% of the amount accumulated in the fund prior to the 1996-97 fiscal year and the amount earned by the fund during the 1997-98 fiscal year;
    - f. Distribute to eligible owners or lessees 25% of the amount accumulated in the fund prior to the 1996-97 fiscal year and the amount earned by the fund during the 1998-99 fiscal year; and,
    - g. Distribute to eligible owners or lessees the amount earned by the fund during the fiscal year for the years after the 1998-99 fiscal year.
  3. The owner or lessee shall designate, on a form provided by the Department, the single payee to whom Arizona stallion award checks shall be issued when there is more than one owner of a stallion.
- J. Appeal of Director's rulings**
1. The Director shall make the final decision concerning a stallion award.
  2. The Department shall give written notice of the decision to an applicant by mailing it to the address of record filed with the Department.
  3. After service of the Director's decision, an aggrieved party may obtain a hearing under A.R.S. §§ 1092.03 through 41-1092.11.
  4. The aggrieved party shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R19-2-125(J)(2).
  5. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

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**Historical Note**

Adopted effective November 7, 1996 (Supp. 96-4).

**R19-2-126. Race Horse Adoption Grants**

- A.** The Commission shall provide financial grants to nonprofit enterprises to promote the adoption of retired race horses. The Commission shall distribute all of the retired race horse adoption surcharge funds generated from A.R.S. § 5-104(G) to nonprofit enterprises.
- B.** Procedures.
1. A nonprofit enterprise that wishes to receive a financial grant shall submit a Department-generated application form to the Commission. In 2005, the Commission shall set the date by which applications are to be received. After 2005, the Commission shall accept applications until March 1 of each year. The nonprofit enterprise shall provide the following information:
    - a. A written description of the nonprofit enterprise,
    - b. Proof of nonprofit status,
    - c. The proposed use of the grant,
    - d. A description of the nonprofit enterprise's procedures to acclimate the horses as required by subsection (C)(6),
    - e. A description of the nonprofit enterprise's adoption procedures as required by subsection (C)(7),
    - f. A copy of the application form and adoption agreement required by subsections (C)(7)(a) and (c), and
    - g. A copy of the transfer of registration or bill of sale required by subsection (C)(8).
  2. If the Commission finds that the adoption program of a nonprofit enterprise is in the best interest of the racing industry and this state, the Commission shall decide whether to make a grant to the nonprofit enterprise, the amount of the grant, and the date of disbursement of the grant.
  3. A recipient of a grant shall report annually to the Commission on a form provided by the Department to gather the following information:
    - a. The number of horses the nonprofit enterprise received;
    - b. The number of horses adopted;
    - c. The number of horses returned by an adoptee and reason for each return;
    - d. The actual use of the grant;
    - e. A list of people who adopted the horses, or a copy of the contract between the nonprofit enterprise and each adoptee; and
    - f. The most recent Articles of Incorporation filing with the Arizona Corporation Commission.
- C.** Minimum qualifications.
1. The enterprise shall be nonprofit.
  2. The enterprise shall not:
    - a. Allow a horse to be used for racing, wagering, or slaughter; or
    - b. Place a horse with a humane society or research facility;
  3. The enterprise shall not euthanize an adoptable horse unless, as determined by a licensed veterinarian, it is medically necessary for humane reasons.
  4. The enterprise shall be affiliated with a racetrack that conducts horse racing. Affiliation is satisfied when the general manager or other executive from the racetrack submits to the Commission a written recommendation on behalf of the enterprise.
  5. The enterprise shall require that a licensed veterinarian perform a complete check-up on each horse before releasing the horse to an adoptee. The enterprise shall ensure

that each horse receives all medical care necessary to maintain its good health.

6. The enterprise shall employ procedures for acclimating a horse that include:
  - a. Exposure to the public,
  - b. Exposure to a new diet, and
  - c. Training for off-track life.
7. The enterprise shall employ procedures for adopting-out horses that include:
  - a. An application process for prospective adoptees;
  - b. A visual check of each prospective adoptee's farm with written documentation of the visit;
  - c. A written adoption agreement between the enterprise and adoptee;
  - d. At a minimum, follow-ups conducted by phone or visit after seven and 30 days with written documentation; and
  - e. Procedures for the return of a horse.
8. Before assuming care of a horse, the enterprise shall obtain a transfer of registration or bill of sale for the horse.
9. The enterprise shall make available a person to complete and submit all filing requirements and to answer questions from a prospective or current adoptee.
10. The enterprise shall keep a file on each horse that includes:
  - a. The transfer of registration or bill of sale;
  - b. The vaccination record, health record, and all veterinarian reports;
  - c. The adoptee's application form;
  - d. The written adoption agreement between the enterprise and adoptee; and
  - e. The written documentation of pre-adoption check and follow-ups.
11. The enterprise shall state in the adoption agreement the rules and responsibilities required of the adoptee.
12. The enterprise shall make the records required in subsection (C)(11) available for inspection by a representative of the Department.
13. The enterprise shall allow the Department to inspect the facilities, farm, or location of the adopted horses.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1566, effective June 4, 2005 (Supp. 05-2).

**ARTICLE 2. RACING REGULATION FUND****R19-2-201. Racing Regulation Fund**

The Racing Regulation Fund, established by A.R.S. § 5-113.01, and administered by the Department of Racing, shall collect funding for regulation of racing from the pari-mutuel racing industry from the sources listed below. The Department shall review assessments from each source at least twice a year for the purposes of meeting its budget.

1. Annual license fees established by the Department and set forth in R19-2-202, except for those fees deposited to the Greyhound Adoption Fund pursuant to A.R.S. § 5-113(H).
2. A regulatory assessment based on the number of dark days on which wagering is conducted in excess of live racing days for each racetrack permittee issued a racing permit. The assessment shall be in an amount established by the Department and set forth in R19-2-204.
3. A regulatory assessment from all racetracks that have been issued a commercial racing permit to be paid from the amount deducted by the permittee from pari-mutuel pools. The assessment amount may be deducted from

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pari-mutuel pools in addition to the amounts the permittee is authorized to deduct in A.R.S. § 5-111(C). The assessment shall be based on amounts wagered on live and simulcast races from in-state and out-of-state wagering handled by the permittee in an amount established by the Department, and as set forth in R19-2-205. A permittee shall not reduce the amounts payable to the Department under this subsection for hardship tax credits under A.R.S. § 5-111(I) or for capital improvement credits under A.R.S. §§ 5-111.02 and 5-111.03.

4. License fees collected pursuant to A.R.S. § 5-230(A).
5. The overpayment of a regulatory assessment by a permittee shall be credited to and may be deducted from any regulatory assessment payment due from the permittee in the current fiscal or the following fiscal year.

**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 3260, effective November 16, 2012 (Supp. 12-4).

**R19-2-202. Licensing Fees**

- A. When an applicant submits a license application pursuant to R19-2-106 or R19-2-306, the applicant shall also submit the fee listed in subsections (C) and (D). The Department shall ensure that a schedule of license and fingerprint processing fees is displayed prominently at each licensing location.
- B. A license shall be for a period of no less than one year except as stated in subsection (B)(1)(a).
  1. Horse racing licenses expire each year on June 30 except that:
    - a. Apprentice jockey licenses expire as provided in R19-2-109(D)(2); and
    - b. All licenses issued prior to July 1, 2013, will expire on June 30, 2014.
  2. Greyhound licenses expire each year on January 31 except that all licenses issued prior to February 1, 2013, will expire on January 31, 2014.
  3. Pari-mutuel licenses expire each year on January 31 except that all licenses issued prior to February 1, 2013, will expire on January 31, 2014.
- C. Annual License Fees
  1. Group 1 (assistant starter/valet, coolout, exercise rider, groom, leadout, occupational, OTB [owner, manager], outrider, pari-mutuel [including OTB], pony person, security) - \$15.
  2. Group 2 (authorized agent-partial, greyhound hauler, jockey agent, vendor employee) - \$50.
  3. Group 3 (county fair manager, county fair treasurer, official) - \$100.
  4. Group 4 (assistant trainer, commercial track key people: owner [10% or more], general manager, assistant general manager, chief financial officer; owner, RBO [kennel, racing or breeding], stable name, temporary claim to owner, trainer) - \$150.
  5. Group 5 (apprentice jockey, authorized agent – full, combination RBO [racing/breeding combination], farrier/plater, jockey, owner/trainer, veterinarian) - \$200.
  6. Group 6 – fees above \$200
    - a. Tote companies - \$1,250;
    - b. All other vendors (video, photo finish, concessionaires, security) - \$500.
- D. Annual Permittee Fees.
  1. Commercial racing permit (40 or fewer days of live racing or no live racing) - \$1,000;

2. Commercial racing permit (more than 40 days of live racing) - \$2,500;
3. County fair permit - \$250.

**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1752, effective July 1, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 68, effective January 1, 2013 (Supp. 12-4).

**R19-2-203. Repealed****Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Repealed by exempt rulemaking at 18 A.A.R. 3260, effective November 16, 2012 (Supp. 12-4).

**R19-2-204. Regulatory Assessment for Dark Day Simulcasting**

- A. The Department shall collect an annual regulatory assessment from each racetrack permittee conducting horse or greyhound racing in Arizona and which qualifies under A.R.S. § 5-112 for dark day simulcasting.
- B. Each permittee shall pay an amount established by the Department based on the number of dark days on which wagering is conducted in excess of the number of live days approved in the racing permit issued the permittee.
  1. The Department shall at the start of the year on or before July 1 assess each permittee \$25 per dark day based upon the total number of dark days approved in the permittee's racing permit. The calculation will be determined by the number of dark days approved by the Arizona Racing Commission in excess of the number of live days approved each year during the period of the permit.
  2. The permittee shall transmit the total dark day assessment to the Racing Regulation Fund no later than July 15 of each year.

**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3).

**R19-2-205. Regulatory Wagering Assessment of Pari-mutuel Pools**

- A. The Department shall establish and collect a regulatory wagering assessment payable from the amounts deducted from pari-mutuel pools by the permittee, in addition to the amounts the permittee is authorized to deduct in A.R.S. § 5-111(C) from amounts wagered on all live and simulcast races from in-state and out-of-state wagering authorized by the Department to the permittee. A permittee shall not reduce the amounts payable to the Department under this subsection for hardship tax credit under A.R.S. § 5-111(I) or for capital improvement credits under A.R.S. §§ 5-111.02 and 5-111.03.
- B. The regulatory wagering assessment for each racing meeting on all in-state and/or out-of-state, on-track, off-track, live, import and/or export wagers and/or wager types (the "RWA") shall be 0.75 percent from May 1 to September 30 of each year and, the RWA shall be 0.85 percent beginning October 1 of each year through April 30 of the next year.
- C. Each permittee shall transmit its assessment daily, unless otherwise approved by the Department, to the Racing Regulation Fund beginning July 1, 2011. A report detailing the assessment shall be transmitted to the Director at the time the assessment is transmitted.
- D. The Department may audit the permittee's pari-mutuel accounts periodically under the authority of A.R.S. § 5-

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104.01. The permittee shall cooperate fully with the Department during these audits.

**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1316, effective July 1, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 68, effective January 1, 2013 (Supp. 12-4).

Amended by exempt rulemaking at 19 A.A.R. 1767, effective July 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 725, effective March 1, 2014 (Supp. 14-1). Amended by exempt rulemaking under Laws 2014, Ch. 9, § 3, at 21 A.A.R. 640, effective April 20, 2015 (Supp. 15-2). Amended by exempt rulemaking under A.R.S. § 1005(16), at 23 A.A.R. 837, effective March 20, 2017 (Supp. 17-1).

**ARTICLE 3. GREYHOUND RACING****R19-2-301. Power and Authority**

- A. All powers of the Department and Commission not specifically defined in these rules are reserved to the Department and Commission under the law creating the Department and Commission and specifying its powers and duties.
- B. The jurisdiction of the Department and Commission over matters covered by the statutes and the rules is continuous throughout the year.
- C. The statutes of the state of Arizona and the rules and the orders of the Department and Commission take precedence over the conditions of a race or of a racing meeting.
- D. The Director may sustain, reverse, or modify any penalty or decision imposed by the stewards.
- E. The Commission may sustain, reverse, or modify any penalty or decision imposed by the Director.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). R19-2-301 recodified from R4-27-301 (Supp. 95-1).

**R19-2-302. Definitions**

The definitions in A.R.S. § 5-101 apply to this Chapter. Additionally, in this Article, unless the context otherwise requires:

1. "Added money" means the money a permittee adds to the nominating and starting fees in a race.
2. "Adequate feed" means the quantity of foodstuffs that a greyhound of a specific age and weight requires daily to maintain a reasonable level of nutrition.
3. "Age" means the age of a greyhound computed from the day the greyhound is whelped.
4. "Authorized agent" means a person appointed under R19-2-306(G).
5. "Breeder" means the owner or lessee of a greyhound's dam at the time the greyhound is whelped.
6. "Breeding farm" means a facility at which greyhounds are bred and raised.
7. "Breeding place" means the place at which a greyhound is whelped.
8. "Business day" means a day on which live racing is conducted or a day on which entries are taken.
9. "Complaint" means a written allegation of a violation of this A.R.S. Title 5, Chapter 1 or this Chapter.
10. "Contest" means a competitive racing event on which pari-mutuel wagering is conducted.
11. "Declaration" means the act of withdrawing an entered greyhound from a race.
12. "Entrance fee" means a fee set by a permittee that must be paid to make a greyhound eligible for a stakes race.
13. "Entry" means a greyhound eligible and entered in a race.
14. "Equipment" means muzzles and number blankets.
15. "Exercise areas" means fenced locations where greyhounds are released to exercise for a short period of time before being returned to the greyhounds' kennel housing crates or run housing.
16. "Field" means the entire group of greyhounds in a race.
17. "Foreign substance" means any drug, medicine, metabolite, or other substance that does not exist naturally in an untreated greyhound's body and that may have a pharmacological effect on the racing performance of a greyhound or may affect sampling or testing procedures. Foreign substances include but are not limited to, stimulants, depressants, local anesthetics, narcotics, and analgesics.
18. "Grounds" means the entire area used by a permittee to conduct race meets including, but not limited to, the track, grandstand, kennels, concession areas, and parking facilities.
19. "Immediate," for the purpose of suspension or revocation of a license issued under this Chapter, means the first date that the suspension or revocation does not negatively impact another licensee, as determined by the Department.
20. "Inquiry" means an investigation of potential interference in a contest conducted by the stewards before the stewards declare the result of the contest official.
21. "Kennel housing" means a facility where greyhounds are housed indoors.
22. "Kennel owner" means a person who has a contract or agreement with a permittee to provide dogs to the permittee's facility.
23. "Lawfully issued prescription" means a prescription-only drug, as defined at A.R.S. § 13-3401, obtained directly from or under a valid prescription order written by a licensed physician acting in the course of professional practice.
24. "Lessee" or "lessor" means a person who leases a greyhound for racing or breeding purposes.
25. "Lure" means a mechanical device consisting of a stationary rail installed around a track and a reasonable decoy that is electrically driven around the track at a uniform distance ahead of racing greyhounds.
26. "Maiden" means a greyhound that at the time of starting has never won a race in any country on a recognized track or that was disqualified after finishing first.
27. "Manager/Agent," for purposes of R19-2-327, means a person managing a racing kennel, breeding farm, or other operation.
28. "Match race" means a race between two or more greyhounds, each of which is the property of a different owner, on terms agreed to by the owners and approved by the Department.
29. "Matinée" means a schedule of races conducted on a track in daylight hours.
30. "Minus pool" means there is not enough money, after deductions of state tax and statutory commissions, to pay the legally prescribed minimum on each winning wager.
31. "Net pool" means the sum of all wagers on a race minus refundable wagers and statutory commissions.
32. "Night performance" means a schedule of races conducted on a track during night hours.
33. "Nominating fee" means a fee set by a permittee that must be paid to make a greyhound eligible for a stakes race.
34. "Nomination" means naming a greyhound or the greyhound's pup to compete in a specific race or series of

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- races, eligibility for which may require paying a fee at the time of naming.
35. "Nominator" means the person in whose name a greyhound is nominated for a stakes or handicap race.
  36. "Off time" means the moment at which, on signal of the starter, the greyhounds break and run.
  37. "Official race program" means a published listing of all contests and contestants for a specific performance.
  38. "Other operation" means a facility where greyhounds are trained or kept.
  39. "Overnight race" means a race for which entries close 96 or fewer hours before the time set for the first race of the day on which the race is to be run.
  40. "Owner" means any person possessing all or part of the legal title to a greyhound, or any person possessing all or part of the legal interest in a racing kennel, breeding farm, or other operation.
  41. "Payout" means the amount of money payable to winning wagers.
  42. "Performance" means a schedule of races run consecutively as one program.
  43. "Place" means a greyhound finishes in one of the first three positions in a race.
  44. "Post position" means the position assigned to a greyhound for the start of a race.
  45. "Post time" means the time set for greyhounds in a race to arrive at the starting point.
  46. "Prohibited substance" means any substance regulated by A.R.S. Title 13, Chapter 34.
  47. "Purse" means the total dollar amount for which a race is contested.
  48. "Purse race" means a race for money or other prize to which owners of greyhounds engaged in the race do not contribute an entry fee.
  49. "Race" means a contest among greyhounds for purse, stakes, premium, or wager for money that is run in the presence of racing officials of the track and a Department representative.
  50. "Race meet" means the period for which a permit to conduct racing is granted to a permittee by the Commission.
  51. "Race on the flat" means a race over a track on which no jumps or other obstacles are placed.
  52. "Racing Regulation Fund" means the fund established under A.R.S. § 5-113.01 and administered by the Department to receive funding for regulation of racing from various pari-mutuel racing industry sources.
  53. "Racing kennel" means a kennel located off-track and operated under contract, or agreement with a permittee to provide greyhounds to the permittee's facility.
  54. "Recognized track" means a track where pari-mutuel wagering is authorized by law.
  55. "Restricted area" means an enclosed portion of a racing facility to which access is limited to licensees whose occupation or participation requires access.
  56. "Result" means the part of the official order of finish used to determine the pari-mutuel payout of pools for each contest.
  57. "Ruled off" means the act of:
    - a. Barring a licensee from the grounds of a permittee and denying the licensee all racing privileges; or
    - b. Preventing a greyhound from being entered because the stewards have determined that preventing the greyhound from racing is in the best interest of the health, safety, and welfare of licensees and the state.
  58. "Run housing" means a fenced area where greyhound puppies and non-racing greyhounds live and are permitted to move about freely.
  59. "Scratch" means to withdraw an entered greyhound from a race after post positions in that race have been drawn and the time for making substitutions or replacements in the race has passed.
  60. "Scratch time" means the time set by the permittee for withdrawing entered greyhounds from the races of a particular day.
  61. "Stakes race" means a race for which the owner of an entered greyhound is required to pay a fee to which the track may add money or other prize to make up the total purse and for which nominations close more than 72 hours before the time for the first race of the day on which the stakes race is to be run.
  62. "Starting fee" means the amount of money, specified by the conditions of the race and set by the permittee, which must be paid by a greyhound's owner for the greyhound to start in a race.
  63. "Starting greyhound" means a greyhound that leaves the paddock for the post, excluding:
    - a. A greyhound subsequently excused by the stewards, or
    - b. A greyhound for which the starting box door does not open in front of the greyhound at the time the starter dispatches the field.
  64. "Subscription" means the fee paid by the owner to nominate a greyhound for a stakes race.
  65. "Supplemental fee" means a fee set by a permittee that must be paid by a greyhound's owner at a time prescribed by the permittee to make the greyhound eligible for a stakes race.
  66. "Suspended" means that a privilege granted by the officials of a race meet or by the Commission or Department has been temporarily withdrawn.
  67. "Sustaining fee" means a fee that must be paid periodically, as prescribed by the conditions of a race, to keep a greyhound eligible for the race.
  68. "Tote or totalisator" means the machines from which pari-mutuel tickets are sold and the board on which the approximate odds for a race are posted.
  69. "Track" means the course over which races take place.
  70. "Trainer" means a person employed by an owner or lessee to condition greyhounds for racing.
  71. "Turn-out pens" means the enclosed or fenced areas where racing greyhounds are briefly released from their kennel housing crates for the purpose of urinating and defecating.
  72. "Walkover" means a race in which there are not two or more greyhounds of separate interest sent to post.
  73. "Weighing in" means the act of recording the weight of a greyhound taken after a race is completed, in accordance with this Article.
  74. "Weighing out" means the act of recording the weight of a greyhound before post time or time of a race in which the greyhound is entered.
  75. "Whelped" means the birth of a greyhound.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective November 30, 1988 (Supp. 88-4).  
 Amended effective March 20, 1990 (Supp. 90-1).  
 Amended effective February 28, 1995; R19-2-302 recodified from R4-27-302 (Supp. 95-1). Amended by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R.

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3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-303. Permit Applications**

- A. A person or persons, associations, or corporations desiring to hold or conduct a greyhound racing meeting within the state of Arizona shall file with the Commission its permit application that contains the information required in A.R.S. § 5-107 in paper copy and in an electronic medium. All electronic media submissions shall be compatible with the Department's computer system and software. If any addendum to the permit application cannot be submitted in an electronic medium, the applicant shall submit the addendum in a paper copy.
- B. The Department shall not issue a permit until the applicant has furnished evidence of compliance with A.R.S. § 23-901 et seq. (Workers' Compensation).
- C. Permit applicants shall submit to the Commission the names of the proposed track officials at least 60 days prior to the beginning of their meet, along with a short biographical sketch of each official not previously licensed in the same capacity by the Department.
- D. A permit application shall specify the number of races to be run on a daily basis.
- E. Racing shall be conducted only on those days granted by permit.
- F. Permit Application Time-frames.
  - 1. Administrative completeness review time-frame.
    - a. Within 728 days after receiving an application package, the Department shall determine whether the application package contains the information required by subsections (A), (B), (C), and (D).
    - b. If the application package is incomplete, the Department shall issue a written notice that specifies what information is required and return the application. If the application package is complete, the Department shall provide a written notice of administrative completeness.
    - c. The Department shall deem an application package withdrawn if the applicant fails to file a complete application package within 180 days of being notified that the application package is incomplete.
  - 2. Substantive review time-frame. Within 30 days after receipt of a complete application package, the Commission, with the recommendation of the Department, shall determine whether the applicant meets all substantive requirements and issue a written notice granting or denying a permit.
  - 3. Overall time-frame. For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames for issuing a license:
    - a. Administrative completeness review time-frame: 728 days.
    - b. Substantive review time-frame: 30 days.
    - c. Overall time-frame: 758 days.
  - 4. Renewal and temporary permit time-frames. The administrative completeness review time-frame is 30 days, the substantive review time-frame is 30 days, and the overall time-frame is 60 days, excluding time for mailing. The renewal or temporary permit is considered administratively complete unless the Department issues a written notice of deficiencies to the applicant. Temporary permits are valid until a full permit is awarded or until the Commission revokes the temporary permit.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-303 recodified from R4-27-303 (Supp. 95-1). Amended

effective January 6, 1998 (Supp. 98-1). Amended by final rulemaking at 11 A.A.R. 5534, effective February 4, 2006 (Supp. 05-4).

**R19-2-304. Permittee Responsibilities**

- A. A permittee shall maintain the grounds in a neat, clean, and safe condition. If a steward determines that compliance does not exist, the steward shall require that the permittee immediately bring the grounds into compliance.
- B. A permittee shall not allow a person, corporation, firm, or association not licensed by the Department to do or perform any act at the permittee's track that requires a license under A.R.S. Title 5, Chapter 1, or these rules.
- C. A permittee shall ensure that employees of the permittee are licensed and shall furnish the Department a list of the employees upon request.
- D. A permittee shall take all steps necessary to deny access to the permittee grounds by a person who has been ruled off or whose license has been revoked or suspended.
- E. A permittee or any of its employees shall not obstruct in any way a representative of the Department acting in the performance of official duties.
- F. A permittee shall not knowingly allow on its grounds any betting or other operation in contravention of any law of Arizona or the United States.
- G. A permittee who knows of a violation of any racing rule or statute shall immediately report the violation to the Department and shall cooperate with the Department and state, federal, and local authorities in investigation of the violation.
- H. A permittee shall provide the following services at the track:
  - 1. An adequate security force that shall:
    - a. Maintain order;
    - b. Exclude from the grounds all handbooks, touts, and operators of gambling devices;
    - c. Exclude from the grounds all persons ruled off by the stewards or the Department;
    - d. Exclude from the grounds all persons not eligible for a license, pursuant to A.R.S. § 5-108, and all other undesirables; and
    - e. Report immediately to the stewards any licensee who, while on the premises of the permittee, creates a disturbance, is intoxicated, interferes with any racing operation, or acts in an abusive or threatening manner to any racing official or other person.
  - 2. A security guard stationed at the kennel area entrance that shall:
    - a. Deny entrance to all persons not holding a license or credentials issued by the Department or a Department pass issued by the permittee; and
    - b. Allow any person seeking employment with the permittee to have access to the kennel area for a period of one day, if:
      - i. The person is given a numbered card or temporary badge,
      - ii. A list of recipients of the numbered cards or temporary badges is provided to the track office of the Department upon request, and
      - iii. The numbered card or badge is retrieved by the security guard when the person leaves the restricted area.
  - 3. During a race meeting, a permittee shall provide 24-hour security at the entrance to the kennel compound. The permittee shall establish a system to monitor those who enter and leave the compound ensuring that only licensed personnel, authorized visitors, and those whose duties clearly require entry to the area are permitted access. A public safety officer or Department employee in the per-

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- formance of official duties shall be granted access to the kennel compound. An unlicensed visitor shall be accompanied by a licensee or security personnel and shall obtain a temporary badge before entering the kennel compound. The licensee requesting the admittance of a visitor is responsible for the conduct of the visitor and shall ensure that the visitor complies with all Department rules.
4. A furnished office, including utilities and necessary office equipment, for exclusive use of Department employees and officials.
  5. A uniformed security official approved by the Department shall be on duty in the test area during its regular business hours to:
    - a. Provide security, and
    - b. Monitor the collection procedure and sealing of samples taken from the greyhounds.
  6. Adequate space and facilities so that the testing personnel may perform inspections, tests, and other collection procedures.
  7. First aid quarters available during racing hours.
- I.** A permittee shall ensure that wagering conducted upon the grounds of the permittee is done only under the pari-mutuel method as provided by statute and these rules and by the use of mechanical or other equipment as required by the Department. A permittee shall ensure that there is no bookmaking or betting other than by the pari-mutuel method.
- J.** A permittee shall not allow the official racing of greyhounds on any track under its control unless:
1. All track rules are posted conspicuously and a copy of the track rules is filed with the Department,
  2. The conditions of the race are written by the racing secretary at the meeting,
  3. The entries are made in accordance with the requirements in R19-2-316, and
  4. The race is programmed as a part of a regular racing card conducted under the pari-mutuel system.
- K.** A simulcast originating from a racing facility within the state of Arizona may be permitted provided the out-of-state facility receiving the signal operates under the approval and regulation of an official agency of that state.
- L.** Each day as soon as the entries have been closed and compiled and the declarations have been made, a permittee shall post a list of the entries in a conspicuous place.
- M.** A permittee shall print a racing program each day that contains a list of permittee, track and racing officials, and permittee directors, along with pertinent rules designated by the Department.
- N.** A permittee may not allow an official to act until the official's appointment has been approved by the Department; provided, however, that in the case of sickness or inability to act, the provisions of R19-2-309(A)(5) apply.
- O.** A permittee shall provide a photo finish and videotape device approved by the Department to record all official races. The photographs and videotapes may be used to aid the stewards in determining the finishes of races. A permittee shall retain for three months all official race photographs and videotapes. The Department may require that specific photographs and videotapes be retained for a longer period or transmitted to the Department for use in administrative or judicial proceedings.
- P.** The Department shall approve any automatic timing device installed by a permittee.
- Q.** All permittees shall provide annual financial statements audited and certified by a firm approved by the auditor general.
1. The audit shall comply with audit standards prescribed by the auditor general.
  2. The financial statements shall be prepared in accordance with generally accepted accounting practices.
- R.** The following information shall accompany the financial statements on a form provided by the Department:
1. The total amount of salaries and bonuses expense,
  2. Legal and accounting expenses attributable to racing-related matters,
  3. An explanation of the types of revenues and expenses classified in accounts titled "other,"
  4. Additional information requested by the Commission or the Department, and
  5. Financial statements submitted within 120 calendar days of the end of the calendar year.
- S.** Each permittee shall comply with the provisions of Article 2 of this Chapter.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended subsection (Q) effective June 6, 1986 (Supp. 86-3). Amended effective March 20, 1990 (Supp. 90-1). Amended effective August 6, 1991 (Supp. 91-3). R19-2-304 recodified from R4-37-304 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2). Amended by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3).

**R19-2-305. Charity Races**

- A.** A permittee shall provide the Commission with:
1. The name of any nonprofit organization or corporation selected by the permittee as a charity entitled to benefit from a charity racing day or race.
  2. A list of the names and addresses of all directors, officers, and shareholders holding 10% or more of the total number of outstanding voting shares of the charitable corporation.
  3. A brief description of the purposes and activities to be benefited by monies received from the charity racing day or race.
  4. A copy of an Internal Revenue Service letter of determination qualifying the particular charity as an exempt organization or corporation for federal income tax purposes.
- B.** No permittee shall charge any expenses incurred by operation of racing against the pari-mutuel handle of a charity racing day or race except those prorated expenses incurred on the day of that particular charity racing day or race.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). R19-2-305 recodified from R4-27-305 (Supp. 95-1).

**R19-2-306. Licensing**

- A.** A person that participates in any capacity in a race meet, including a person who performs services in connection with the conduct of the race meet, shall obtain a license from the Department, except:
1. A person that performs services during a county fair meet and is identified by a steward as a volunteer; or
  2. A person that owns less than 10 percent of outstanding shares of stock, regardless of classification or type, of a permittee or licensee.
- B.** License application.
1. To apply for a license, a person shall complete the license application prescribed by the Department, which requires the following information, and submit the completed application to a steward:

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- a. Name, including all aliases or other names ever used;
  - b. Mailing and local addresses;
  - c. Telephone number;
  - d. Date of birth;
  - e. Physical description;
  - f. Social Security or alien status number;
  - g. Documentation, as specified under A.R.S. § 41-1080(A), of lawful presence in the U.S.;
  - h. Complete criminal history information including any racing-related sanctions; and
  - i. License category for which application is made.
2. The Department may issue written instructions regarding preparation and execution of the license application. The instructions may be a part of or separate from the application, or both.
  3. When an applicant submits a license application, the applicant shall also submit the fee established by the Department under R19-2-202(C). The Department shall ensure that a schedule of license and fingerprint processing fees is displayed prominently at each track and on its web site.
  4. An applicant who is at least 18 years old shall submit two full sets of fingerprints to the Department. The applicant shall ensure that the fingerprints are taken by the Department, a law enforcement agency, or other authority acceptable to the Department and in a format acceptable to the Arizona Department of Public Safety and the Federal Bureau of Investigation.
  5. An applicant for a trainer license shall demonstrate knowledge and skill in protecting and promoting the safety and welfare of animals participating in race meets by passing an examination, which may include written, oral, and skill demonstration parts, prescribed by the Department. An applicant who fails to pass the examination shall wait at least 90 days before retaking the examination.
- C.** The Department shall presume that an applicant or licensee knows the law governing racing in Arizona. An applicant or licensee shall follow A.R.S. Title 5, Chapter 1 and this Chapter.
- D.** License procedure.
1. Under delegation from the Director, on receipt of a license application, a steward shall grant or deny a temporary license and transmit the license application to the Director.
  2. In considering each application for a license, a steward may require the applicant, as well as the applicant's endorsers, to appear before the steward and show that the applicant is qualified in every respect to receive the license requested. The steward shall grant a license only if the applicant meets all the requirements in A.R.S. Title 5, Chapter 1, and this Chapter.
  3. Licensing time-frames.
    - a. Administrative completeness review time-frame.
      - i. Within 85 days after receiving a license application, the Department shall determine whether the license application contains the information required under subsection (B).
      - ii. If the license application is incomplete, the Department shall issue a written notice that specifies what information is required and return the license application. If the license application is complete, the Department shall provide a written notice of administrative completeness.
    - iii. The Department shall deem a license application withdrawn if the applicant fails to file a complete license application within 15 days of the date on the notice that the license application is incomplete.
  - b. Substantive review time-frame. Within five days after determining that a license application is administratively complete, the Department shall determine whether the applicant meets all substantive requirements and the Director, or designee, shall issue a written notice granting or denying a license.
  - c. Overall time-frame. For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames for issuing a license:
    - i. Administrative completeness review time-frame: 85 days.
    - ii. Substantive review time-frame: five days.
    - iii. Overall time-frame: 90 days.
4. Temporary license. All licenses are temporary for 90 days under A.R.S. § 5-108(F). Unless the Director denies a license to an applicant, a temporary license automatically becomes the license after 90 days.
5. The Department shall perform a background investigation of an applicant who is at least 18 years old, including fingerprint processing through the Department of Public Safety and the FBI, and reviewing records of a national database containing license information and rulings, information systems, courts, law enforcement agencies, and the Department within the time-frame prescribed in subsection (D)(3)(a).
- E.** Denials.
1. The Department shall base a decision to deny a license on an assessment of whether the applicant:
    - a. Has been or is intoxicated at the time of application or has a history as a user of a narcotic drug as defined at A.R.S. § 36-2501(A)(8) within the grounds of the permittee, or
    - b. Fails to disclose the true ownership or interest in any greyhound.
  2. When a license is denied, the Director shall report the reason for the denial in writing to the applicant and a national database listing license information and rulings.
- F.** General requirements and restrictions.
1. A licensee who is employed in more than one license category or who changes from one category to another shall be licensed in each category.
  2. A licensee who is an official at more than one type of track (horse, harness, or greyhound) shall be licensed at each type of track.
  3. The Director or designee shall not license a person who is younger than 16 years old in any capacity other than as an owner, and shall not license a person who is younger than 18 years old as an official, trainer, or assistant trainer. A person who is younger than 18 years old is not eligible to be licensed as an owner unless the person's parent or guardian signs the owner's license application and assumes full financial responsibility for the owner.
  4. When present in the kennel area of a greyhound track, paddock area, or any other restricted area, a person shall wear in full view a photo identification badge issued by the Department or pass issued by the permittee.
- G.** Authorized agents.
1. A person may hold a license only as an authorized agent or be licensed as an authorized agent and in another category.

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2. The principal shall sign a license application on behalf of an authorized agent and clearly identify the powers of the agent, including whether the agent is empowered to collect money from the permittee. The principal shall have the license application either notarized or signed in the presence of a Department employee and a copy filed with the track bookkeeper. If there is a separate power of attorney, the principal shall file a copy of the instrument with the bookkeeper and the Department.
3. To change an agent's powers or revoke an agent's authority, the principal shall describe the changed powers or revoked authority in writing that is either notarized or signed in the presence of a Department official, and filed with the Department and the track bookkeeper.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended subsections (G) and (I) effective January 25, 1985 (Supp. 85-1). Amended subsections (F) and (G) effective December 5, 1985 (Supp. 85-6). Amended subsections (F) and (G) effective February 19, 1987 (Supp. 87-1). Amended subsections (A) and (B) effective October 23, 1987 (Supp. 87-4). Amended subsections (E), (F) and (G) effective November 30, 1988 (Supp. 88-4). Amended effective March 20, 1990 (Supp. 90-1). Amended effective January 13, 1995 (Supp. 95-1). R19-2-306 recodified from R4-27-306 (Supp. 95-1). Amended effective January 6, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 4483, effective December 4, 2004 (Supp. 04-4). Amended by exempt rulemaking at 17 A.A.R. 1484, effective July 20, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-307. Kennel Names**

- A. A licensed owner who wishes to race under a kennel name shall register the kennel name with the Department and pay the fee listed in R19-2-202(C).
  1. Only an owner may register or secure a license under a kennel name.
  2. A name other than the legal name of the owner is a kennel name.
- B. When registering a kennel name, a licensed owner shall identify all individuals or entities operating under the kennel name.
  1. An individual operating under a kennel name shall possess and produce the individual's owner's license on request by a racing official.
  2. An individual operating under a kennel name shall sign the application for an authorized agent.
  3. A business entity operating under a kennel name shall:
    - a. Register to do business according to the laws of Arizona;
    - b. Submit a list that identifies each stockholder who owns more than 10% of the existing shares or each partner in a partnership;
    - c. Notify the Department immediately of any change in ownership;
    - d. Use the name under which the business entity does business in Arizona as the business entity's kennel name.
- C. If consistent with other laws, a licensed owner may change a kennel name by registering the new kennel name and paying the fee listed in R19-2-202(C).
- D. To abandon a registered kennel name, a licensed owner shall provide written notice to the Department.
- E. A licensed owner shall select a kennel name that is distinguishable from other kennel names.

- F. When application is made to register a kennel name, the Department shall determine whether the prospective kennel name will be:
  1. Misleading to the public, or
  2. Unbecoming to the sport.
- G. The Department shall not register a kennel name that is misleading to the public or unbecoming to the sport.
- H. A licensed owner shall register a separate name for each of the owner's kennels.
- I. The Department shall register only one kennel under a particular kennel name.
- J. A licensed owner operating under a kennel name shall pay all entry fees for and penalties against the kennel.
- K. At the time of entry, a licensed owner shall ensure that the applicable kennel name is furnished for the official race program.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-307 recodified from R4-27-307 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-308. Owners, Kennel Owners, and Trainers**

- A. An owner, kennel owner, and trainer shall comply with the rules in this Article.
- B. The decisions of the stewards on all questions to which the stewards' authority extends, are final, subject to the right of appeal to the Department pursuant to R19-2-322.
- C. When a trainer or assistant trainer is absent from the kennel or grounds where the trainer's greyhounds are racing, the trainer or assistant trainer shall provide a substitute licensed trainer or assistant trainer responsible for the greyhounds. Both the absent and substitute trainer shall sign a "Trainers' Responsibility Form" approved by the stewards.
- D. An owner, kennel owner, trainer, assistant trainer, race track employee, or other licensee shall not accept, directly or indirectly, any bribe, gift, or gratuity in any form with the intent to influence the result of any race.
- E. The trainer of an entered greyhound shall bring the greyhound to the weighing-in room at the appointed time unless the stewards grant additional time for extenuating circumstances. If the greyhound is not brought to the weighing-in room at the appointed time, the stewards shall scratch the greyhound and the trainer may be fined for failing to do so.
- F. A trainer shall report any greyhound, under the trainer's care or supervision, that is off racing form or is in poor physical condition to the racing secretary, who shall immediately notify the stewards. A reported greyhound shall not enter or start until approved by the track veterinarian and schooled to the satisfaction of the stewards. A trainer who violates this rule is subject to a civil penalty or suspension or to ruling off.
- G. An owner, kennel owner, or trainer shall ensure that no medicine, antiseptic, fluid, or other matter containing any color that may cause the marring of identification marks is used on any part of a greyhound.
- H. An owner, kennel owner, trainer, or other licensee with an interest in any greyhound at a meeting licensed by the Commission, who places a wager with or through any handbook, shall be:
  1. Ejected from the grounds of the permittee;
  2. Refused admission to the grounds of all other licensed permittees in the state of Arizona; and
  3. Denied entry of any greyhound by all permittees in Arizona.

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- I.** A trainer shall not have an ownership interest in a greyhound located at the track at which the trainer trains unless the trainer trains the greyhound. For purposes of this rule, a reversionary interest in a greyhound, pursuant to a lease or other agreement that transfers control of the greyhound, is not an ownership interest.
- J.** The kennel owner or trainer shall ensure that each greyhound owner is licensed before the greyhound runs in a race.
- Historical Note**
- Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective November 30, 1988 (Supp. 88-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-308 recodified from R4-27-308 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).
- R19-2-309. Officials**
- A. Generally.**
1. In this Article, the term track official means the following persons employed by a permittee and approved and licensed by the Department: Director of Racing, one steward, pari-mutuel manager, clerk of scales, starter, timer, paddock judge, track veterinarian, track superintendent, racing secretary, assistant racing secretary, chart writer, kennel master, and operator of the mechanical lure.
  2. In this Article, the term Department official means the following persons appointed by and representing the Department: two stewards, state pari-mutuel supervisor, state veterinarian, and an investigator.
  3. A person may serve in more than one position as a track or Department official if the person can do so without detriment to any of the other positions and the person has the consent and approval of the Department except that neither the racing secretary nor the permittee director of racing may serve as a steward.
  4. A ruling by the stewards is controlling if made by a majority of the stewards.
  5. Vacancies.
    - a. When a vacancy occurs among officials other than stewards, the stewards shall fill the vacancy before post time of the first race of the day or when the vacancy occurs. An appointment made by the stewards is effective only for the day it is made unless the permittee fails to fill the vacancy on the following day and notifies the stewards of its action not less than one hour before post time of the first race of the following day. A permittee shall promptly report the appointment of an official to the Department.
    - b. If a vacancy occurs among the stewards, the stewards present shall appoint one or two persons to serve as temporary stewards. The stewards making an appointment under this subsection shall report the appointment in writing to the Department.
    - c. In case of emergency, the stewards may appoint a substitute official to fill a vacancy for only as long as the emergency exists.
  6. The Department shall not appoint or license minors as officials.
  7. A person with an interest in the result of a race because of an ownership interest in an entered greyhound or a wager shall not act as an official at the race meet.
- B. Prohibited acts.**
1. An official or the official's assistant shall not purchase pari-mutuel tickets on races.
  2. An official or the official's assistant shall not consume alcoholic beverages while on duty.
  3. A licensee or an employee of a permittee shall not accept, directly or indirectly, a bribe, gift, or gratuity in any form that is intended to or might influence the results of any race or the conduct of any race meet.
  4. An official or employee of a permittee shall not write or solicit dog insurance at a race meet.
- C.** An official or employee of a permittee shall report all observed violations of this Chapter to the stewards.
- D. Complaints.**
1. A person with a grievance or complaint against a track official, an employee of the permittee, or a licensee shall submit the grievance or complaint to the stewards in writing within five days of the alleged act or behavior omission giving rise to the grievance or complaint. The stewards shall consider the matter, take whatever action is deemed to be appropriate, and make a full written report of their action to the Department.
  2. A person with a grievance or complaint against an official or employee of the Department shall submit the complaint or grievance to the Director or designee in writing within five days of the alleged act or omission giving rise to the complaint or grievance.
  3. The Department shall take disciplinary action allowed under A.R.S. Title 5, Chapter 1 and this Chapter against an official or employee of the Department who fails to comply with this Chapter.
- E. Stewards.**
1. Two stewards appointed by the Director and one steward appointed by the permittee and licensed by the Department shall supervise each race meet.
    - a. The stewards shall be in attendance at the office of the racing secretary or on the grounds of the permittee on any day that entries are taken or racing is conducted and represent the Department in all matters pertaining to the enforcement and interpretation of A.R.S. Title 5, Chapter 1 and this Chapter.
    - b. The stewards shall advise the Director of all rulings made and hearings held.
    - c. If a steward is unable to perform the steward's duties for more than one day, the steward shall immediately notify the Director so an alternate steward may be named to act in the steward's place.
  2. The stewards shall enforce A.R.S. Title 5, Chapter 1 and this Chapter.
  3. The stewards shall interpret A.R.S. Title 5, Chapter 1 and this Chapter and decide all questions not specifically covered by A.R.S. Title 5, Chapter 1 and this Chapter. In all interpretations and decisions, an order of the stewards supersedes an order of the permittee.
    - a. The stewards shall have control over and free access to all stands, enclosures, and all other places within the grounds of the permittee.
    - b. The stewards shall investigate and render a decision promptly on each objection properly made to them under R19-2-320. Even if all stewards agree on a ruling, only a majority of the stewards need to sign the ruling.
    - c. The stewards shall supervise all entries and declarations. The stewards may refuse entries or the transfer of entries for violation of A.R.S. Title 5, Chapter 1 and this Chapter.
    - d. The stewards shall regulate and control the conduct of officials and other persons attending or participating in any manner in a race meet.

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- e. When necessary to maintain safety and health conditions and protect public confidence in the sport of racing, the stewards shall:
    - i. Authorize a person to enter in or on and examine the buildings, kennels, rooms, motor vehicles, trailers, or other places within the grounds of a permittee;
    - ii. Inspect and examine the person, personal property, and effects of any person within the grounds of a permittee; and
    - iii. Seize any items prohibited under R19-2-311(6) and (7) or any other illegal article.
  - f. Under subsection (E)(6), the stewards may impose a civil penalty in an amount not to exceed \$1,000 on any person subject to the stewards' control for violation of A.R.S. Title 5, Chapter 1 or this Chapter. After a hearing, the stewards may suspend a person violating A.R.S. Title 5, Chapter 1 or this Chapter for up to 60 days and may rule off a licensee violating A.R.S. Title 5, Chapter 1 or this Chapter. The stewards may impose both a civil penalty and suspension for the same violation. The stewards may refer any ruling made by the stewards to the Director, recommending further action, including license revocation.
  - g. Unless specifically ordered otherwise, if the stewards suspend one license held by an individual, all licenses held by the individual are suspended.
  - h. If a laboratory report or other evidence shows the administration or presence of a foreign substance, the stewards shall immediately investigate the matter and may disqualify the affected greyhound, suspend the trainer or other person involved, refer the matter to the Director, and impose a fine.
  - i. A person or greyhound expelled or ruled off by a recognized racing authority for corrupt, fraudulent, or improper practice or conduct is ruled off wherever this Chapter has force.
  - j. When a person is suspended, the stewards shall rule off every greyhound wholly or partly owned by the person for as long as the suspension continues. The suspended person shall not, whether acting as agent or otherwise, subscribe for, enter, or run a greyhound in any race, in either the person's name or that of another person. The stewards shall disqualify a greyhound if the suspended person is wholly or partly the owner, the greyhound is under the suspended person's care, management, training, or supervision, or if the suspended person has any interest in the winnings of the greyhound. At the time it is discovered, the stewards shall void an entry from a suspended person or for a greyhound that stands ruled off. The suspended person shall forfeit the entry or subscription money and return the money or prize won.
4. The stewards may excuse a greyhound that has left the paddock for the post if the stewards consider the greyhound to be disabled or unfit to run.
  5. The stewards shall determine the finish of a race by the relative position of the muzzles or noses of each greyhound. At the end of a race, the stewards shall immediately notify the permittee pari-mutuel department of the numbers of the first four greyhounds.
    - a. The stewards shall promptly display the numbers of the first four greyhounds in each race in order that they finished. If the stewards differ as to the order in which the greyhounds finished, the conclusion of the majority of the stewards shall prevail.
  6. The stewards may review the photo-finish picture provided by the permittee to aid the stewards in determining the finish of a race.
    - a. The stewards shall summon the person to a hearing with all the stewards present;
    - b. The stewards shall give 24-hours' written notice of the hearing to the person using a form supplied by the Department. The stewards shall time and date the notice, and the person notified shall sign the notice and return it to the stewards. The stewards shall retain the original notice and include the notice as part of the case file. The steward shall give a copy of the notice to the person summoned;
    - c. Except as provided in subsection (E)(6)(g), the stewards shall not impose a penalty without a hearing;
    - d. If a summoned person fails to appear at a scheduled hearing, the person waives the right to a hearing before the stewards;
    - e. The stewards shall permit the summoned person to present witnesses on the person's behalf;
    - f. The stewards shall take appropriate action, including suspension, civil penalty, or both if there is substantial evidence to find a violation of A.R.S. Title 5, Chapter 1 or this Chapter. The stewards shall promptly forward the written decision or ruling to the Director and to the summoned person;
    - g. The stewards may summarily declare a greyhound scratched and may suspend a license pending a stewards' hearing if the stewards make a specific finding that the action is in the best interest of the public health, safety, and welfare;
    - h. The stewards shall recover and forward to the Department any license the stewards suspend;
    - i. The stewards shall act by majority vote on all matters within the stewards' jurisdiction;
    - j. The stewards have the power to modify, change, or remit any ruling imposed by the stewards; and
    - k. A licensee shall promptly pay to the Department any civil penalty imposed by the stewards for deposit with the state treasurer.
  7. During a term of suspension of an owner, trainer, or other person at a location under the jurisdiction of the Department, the stewards and permittee shall ensure that a ruling against the owner, trainer, or other person is enforced.
- F. Racing secretary.**

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1. The racing secretary shall report to the stewards all violations of A.R.S. Title 5, Chapter 1 and this Chapter or of the regulations of the permittee that come to the racing secretary's attention.
  2. The racing secretary shall keep a complete record of all races.
  3. The racing secretary or designee shall inspect all documents dealing with owners and trainers, partner agreements, appointments of authorized agents, and adoption of kennel names. The racing secretary may demand production of documents to verify their validity and authenticity and to ensure that A.R.S. Chapter 5, Article 1 and this Chapter has been followed.
  4. The racing secretary shall write the conditions of all races and publish the conditions sufficiently before closing time for entries to allow the conditions to be read by all owners and trainers. The racing secretary shall not alter the conditions of the races after closing time. The racing secretary shall not write race conditions that conflict with A.R.S. Title 5, Chapter 1 or this Chapter.
  5. The racing secretary shall act as the official handicapper in all races.
  6. The racing secretary shall determine the character and condition of substitute and extra races and shall submit the substitute and extra races to the stewards for approval.
    - a. A substitute or extra race shall not carry a lower guaranteed purse than the race the substitute or extra race replaces; and
    - b. If a race is canceled, the racing secretary may split any race programmed for the same day that previously was closed.
  7. The racing secretary or designee shall conduct the drawing of greyhounds for all races and immediately post an overnight listing of the greyhounds in each race.
  8. The racing secretary shall not allow a greyhound to start in a race unless the greyhound is entered in the name of the greyhound's legal owner and the owner's name appears on the greyhound's registration papers or on a legal lease or bill of sale attached to the greyhound's registration papers.
- G.** Assistant racing secretary. The duty of the assistant racing secretary shall, under the racing secretary's supervision, assist the racing secretary to perform the racing secretary's duties.
- H.** Starter.
1. The starter has:
    - a. Complete jurisdiction over the start of any field of greyhounds,
    - b. Authority to give orders necessary to ensure a fair start, and
    - c. Authority to recommend to the stewards that a person be fined or suspended for violating the starter's orders.
  2. The starter shall ensure that a greyhound starts from a starting box approved by the Department. The starter shall ensure there is no start until, and no recall after, the doors of the starting box have opened. The starter shall report any cause of delay to the stewards.
  3. A false start due to faulty action of the starting box, break in the machinery, or other cause, is void. The greyhounds may be started again as soon as practicable or the race may be canceled at the discretion of the stewards.
- I.** Clerk of the scales.
1. The clerk of the scales shall:
    - a. Weigh all greyhounds in and out with the greyhound's muzzle, collar, and lead strap;
    - b. Post the scale sheet of weights promptly after weighing;
    - c. Prevent any greyhound from passing the scales or running with an overweight or an underweight of more than two pounds. The clerk of scales shall promptly notify the paddock judge, who shall report to the stewards, any infraction of this Chapter regarding weight or weighing; and
    - d. Report all late scratches and weights on a bulletin board located in a place conspicuous to the wagering public.
  2. As each greyhound is weighed in, the clerk of scales shall attach an identification tag to the greyhound's collar indicating the number of the race in which the greyhound is entered and the greyhound's post position. The clerk of the scales shall remove the identification tag when the greyhound is weighed out and blanketed.
  3. The clerk of the scales shall report to the stewards any violations of this Chapter regarding weight requirements or any attempt to alter specified weights.
  4. The clerk of scales shall keep a list of all greyhounds known as "weight losers" and notify the presiding steward of the greyhound's weight loss before each race.
- J.** Paddock judge and kennel master.
1. Identification of greyhounds.
    - a. The paddock judge shall check all greyhounds for each race.
    - b. The paddock judge shall ensure that a greyhound does not start in a schooling or purse race unless the greyhound is fully identified and checked against the card index system of identification maintained by the permittee. The paddock judge shall complete an identification card for each greyhound before the greyhound is entered for a schooling or purse race.
    - c. A permittee shall keep and maintain a card index system for identification of each greyhound that races at a race meet. The permittee shall ensure that the cards in the index system of identification contain the names of the owner and trainer and the breeding, weight, color, sex, and characteristic markings, tattoos, scars, and other identification features peculiar to the greyhound.
  2. Under supervision of the paddock judge, the kennel master shall unlock the kennels immediately before weigh-in time and determine whether the kennels are in perfect repair and nothing has been deposited in the kennels for the greyhounds to consume. The kennel master shall ensure that the kennels are sprayed, disinfected, and kept in proper sanitary condition. The kennel master or assistant shall receive the greyhounds from their trainers, one at a time, ensure that the greyhounds are placed in their kennels, and remain on guard from that time until the greyhounds are removed for the last race.
  3. The paddock judge shall ensure that only a greyhound's licensed owner, trainer, or assistant trainer present the greyhound to the clerk of the scales for weigh in before a race.
  4. After the greyhounds are placed in the lockout kennels, only the kennel master, track official, person approved by the Department, or a designated representative of the Department is allowed in or near the lockout kennels.
  5. Before post time, the paddock judge shall carefully compare the identification card with the greyhound while the greyhound is in the paddock.
  6. Before the greyhound leaves the paddock for the starting box, the paddock judge shall ensure that the greyhound is

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equipped with a regulation muzzle and blanket. The paddock judge shall approve the muzzles and blankets and carefully examine the muzzles and blankets in the paddock before the greyhound leaves for the post.

7. The paddock judge shall keep on hand, ready for use, extra muzzles of all sizes, lead straps, and collars.
8. The paddock judge shall report all practices and irregularities in violation of A.R.S. Title 5, Chapter 1 or this Chapter to the stewards.

**K. Timer.**

1. The timer or a steward shall accurately record the official time of each race, which begins when the doors of the starting box open.
2. A permittee shall install an automatic timing device approved by the Department. The timer shall use the time shown on the timing device as the official time of a race if the timer is satisfied that the timing device is functioning properly. If the timing device is not functioning properly, the timer shall use the time shown on the stopwatch the timer operates. The track announcer shall announce the time to the public if the stopwatch time is used as the official time of the race.

**L. Chart writer.**

1. The chart writer shall compile the information necessary for an official race program printed for each racing day. The official race program shall list the names of the greyhounds scheduled to run in each of the races for that day. The names of the greyhounds shall appear in the order of post position designated by numerals placed at the left and in line with the names of the greyhounds. The numerals shall also be prominently displayed on each greyhound.
2. The chart writer shall ensure that all past performances of a greyhound shown in the official race program appear in dated, chronological, order of the greyhound's races or official schoolings, with the last performance appearing on the first line. The chart writer shall also ensure that the official race program contains the name, color, sex, date of whelping, breeding, established racing weight, number of starts in official races, number of times finishing first, second, and third, names of the owner and trainer, distance of the race, the track record, and any other information that will enable the public to judge the greyhound's ability properly.
3. When the name of a greyhound is changed, the chart writer shall ensure that both the new name and the former name are published in the official entries and official race program for the greyhound's next three starts.

**M. Veterinarians.**

1. The Department shall approve two official veterinarians who are licensed to practice veterinary medicine in the state of Arizona. Each permittee shall employ one official veterinarian, who is known as the track veterinarian. The Department shall employ the other official veterinarian, who is called the state veterinarian.
2. The state veterinarian shall be in charge of all sample collection.
3. The track veterinarian shall be present during all official races and schooling races. The track veterinarian shall observe each greyhound as the greyhound enters the lock-out kennel, examine the greyhound when it enters the paddock before the race, and recommend to the stewards that a greyhound be scratched when the veterinarian deems the greyhound unsafe to race or physically unfit to produce a satisfactory effort in a race.

4. The track veterinarian shall place a greyhound deemed unsafe, unsound, or unfit on a suspension list and post the suspension list in a conspicuous place available to all owners, trainers, and officials.
5. After a greyhound is placed on a suspension list, the greyhound shall not race until the greyhound is removed from the suspension list by the track veterinarian with the approval of the state veterinarian.
6. At a time chosen by the Department, the state veterinarian shall inspect the condition of every kennel at the track of a permittee and file a report with the Department regarding the inspection. The state veterinarian shall include in the report the general physical condition of the dogs, sanitary conditions of the kennels, segregation of bitches in season, segregation of sick dogs, the types of medicine found in use, and other matters or conditions the state veterinarian deems worthy of note.
7. The entry of a greyhound on the state veterinarian's suspension list is accepted only after final approval by both the track and state veterinarians and after a minimum of three days from the date the greyhound was placed on the veterinarians' list.
8. A veterinarian licensed by the Department shall keep a written record of the veterinarian's practice on the grounds of a permittee relating to greyhounds participating in racing.
  - a. The veterinarian shall include the following in the record:
    - i. The name of the greyhound treated,
    - ii. The nature of the greyhound's ailment,
    - iii. The type of treatment prescribed and performed for the greyhound, and
    - iv. The date and time of the treatment.
  - b. The veterinarian shall keep the record for practice engaged in at all licensed tracks.
  - c. The veterinarian shall produce the record without delay on request of the stewards or the Department.
  - d. A veterinarian engaged in private practice at a location under the jurisdiction of the Department shall be licensed by both the Arizona State Board of Veterinarian Medical Examiners and the Department.
  - e. Except in case of an emergency, a veterinarian who administers to or prescribes for a greyhound on the premises of a permittee shall be licensed by the Department.
  - f. The Department shall evaluate all new and experimental medications and drugs and determine whether the medications and drugs may be used on the grounds of a permittee.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4). Amended subsections (A) and (E) effective November 30, 1988 (Supp. 88-4). Amended effective March 20, 1990 (Supp. 90-1). R19-2-309 recodified from R4-27-309 (Supp. 95-1). Amended effective August 7, 1996 (Supp. 96-3). Amended by final rulemaking at 11 A.A.R. 5534, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-310. Lead-outs**

- A. Owners, trainers, or attendants shall not be allowed to lead their greyhounds from the paddock to the starting box except in schooling races. The greyhounds shall be led from the paddock to the starting box by lead-outs provided by each permittee and licensed by the Department.

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1. Lead-outs shall be assigned to post position by the paddock judge or his or her designee by lot before the first race of each race program; a record thereof shall be maintained.
  2. Lead-outs shall be required to present a neat appearance and conduct themselves in an orderly manner and must be attired in clean uniforms provided by the permittee.
  3. The lead-out shall handle the greyhound in a humane manner, put the greyhound in its proper box before the race, and then retire to an assigned place.
- B.** Lead-outs are prohibited from holding any conversation with the public either in the paddock, en route to the starting post, or while returning to the paddock.
- C.** No lead-out shall be permitted to have any interest in the greyhounds racing for said permittee.
- D.** Lead-outs are prohibited from wagering on the result of any greyhound racing at the track to which they are assigned.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).

Amended effective March 20, 1990 (Supp. 90-1). R19-2-310 recodified from R4-27-310 (Supp. 95-1).

**R19-2-311. Prohibited Acts**

In addition to other prohibitions described in A.R.S. Title 5, Chapter 1 and this Chapter:

1. A licensee shall not enter, or cause or permit to be entered, or start a greyhound that the licensee knows or has reason to believe should be disqualified or may be ineligible for to race.
2. A veterinarian licensed to practice on a track under the jurisdiction of the Department shall not own, lease, or train a greyhound racing at the track on which the veterinarian practices.
3. A licensee shall not subject or permit an animal under the licensee's control, custody, or supervision to be subjected to any form of cruelty, mistreatment, neglect, or abuse and shall not abandon, injure, maim, kill, administer a noxious substance to, or deprive the animal of necessary care, sustenance, or shelter.
4. A person shall not participate in any unauthorized race on a track while a race meet is in progress on the track.
5. A person shall not offer or receive any money or other consideration for declaring any entry out of a purse or stakes race.
6. A person shall not possess, within the grounds of a permittee, an electrical, mechanical, or other device, other than ordinary equipment, that may be used to affect the speed or racing condition of a greyhound. Possession includes, but is not limited to, having the device or equipment:
  - a. On the person;
  - b. In living or sleeping quarters;
  - c. In an assigned kennel, feed room, or other area; and
  - d. In a motor vehicle or trailer.
7. A person other than a physician or veterinarian licensed by the Department shall not possess, within the grounds of a permittee, a foreign or prohibited substance, injectable vial, hypodermic needle, syringe, or any other instrument that may be used for injection, without written permission of the stewards. Possession includes, but is not limited to, having the substance or instrument:
  - a. On the person;
  - b. In living or sleeping quarters;
  - c. In an assigned kennel, feed room, or other area; and
  - d. In a motor vehicle or trailer.
8. A person holding a license listed in A.R.S. § 5-104 shall not apply, inject, inhale, ingest, be under the influence of, possess, or use a narcotic, dangerous drug, or controlled or prohibited substance regulated under A.R.S. Title 13, Chapter 34 while on permittee grounds, unless, on the request of a steward, the licensee can produce evidence that the licensee has a lawfully issued prescription for possession or use of the narcotic, dangerous drug, or controlled or prohibited substance.
9. A licensee or employee of a permittee shall not accept, either directly or indirectly, a bribe, gift, or gratuity in any form that is intended to or might influence the results of any race or the conduct of a race meet.
10. A licensee shall not engage in conduct prohibited by the Department and shall not engage in conduct that is detrimental to the best interests of greyhound racing including, but not limited to, soliciting, aiding, or abetting another person to participate in conduct prohibited by the Department or detrimental to the best interests of greyhound racing.
11. A licensee, while on the grounds of a permittee, shall not create a disturbance, be intoxicated, interfere with a racing operation, or act in an abusive or threatening manner to a racing official or other person.
12. Only a veterinarian licensed by the Department shall administer to or prescribe for a greyhound on the grounds of a permittee.
  - a. A veterinarian who prescribes or administers a drug or treatment to a greyhound at a track shall report the drug or treatment prescribed or administered to the Department in the manner required by the Department.
  - b. Notwithstanding the provisions of this Section, any veterinarian may treat a greyhound if an emergency involving a threat to the life or health of the greyhound exists.
13. Notwithstanding the provisions of subsection (18)(a), a person shall not administer or cause to be administered, internally or externally, a foreign substance to a greyhound entered in a race for at least 24 hours before the scheduled post time for the first race of the day on which the greyhound is to run.
14. The Racing Commission has established permissible levels of the following foreign substances, as defined by R19-2-302(17), for the urine of a greyhound:
  - a. Procaine: six micrograms per milliliter, and
  - b. Barbiturates: one microgram per milliliter.
15. A person shall not race a greyhound that is desensitized by the application of cold, chemical, or mechanical freezing devices at the time of arrival at the paddock.
16. The stewards shall discipline a licensee, as provided under A.R.S. Title 5, Chapter 1 and this Chapter, who is found guilty of using live rabbits, cats, or fowl in the training of racing greyhounds and report all incidents of this nature to the Department.
17. A licensee shall promptly pay any financial obligation incurred in connection with racing in this state. If failure or refusal to pay a financial obligation incurred in connection with racing in this state results in the financial obligation being reduced to a judgment against a licensee, the Department shall take disciplinary action against the licensee as authorized under A.R.S. § 5-108.05.
18. Test samples.
  - a. Animal testing.
    - i. A greyhound in any race may be subjected, by order of a steward or the state veterinarian, to

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- urine, blood, or other tests to determine whether a foreign substance is present.
- ii. An individual approved by the Department shall take required samples of urine, blood, or other test substances.
  - iii. A steward may authorize the splitting of any sample.
  - iv. The state veterinarian may require blood or urine samples to be stored in a frozen state for future analysis.
  - v. The owner, trainer, or a representative of the owner or trainer shall be present while samples are taken and prepared for testing.
  - vi. The owner, trainer, or a representative of the owner or trainer shall sign documents evidencing the procedure described in this subsection was followed.
- b. Human testing.
- i. As set forth in A.R.S. § 5-104(C) and this Section, a licensee shall immediately submit to blood, urine, breathe, or other tests ordered by the stewards if the stewards have reason to believe the licensee is under the influence of or in possession of a prohibited substance or has consumed alcohol in violation of subsection (11).
  - ii. The stewards shall ensure that a test sample is taken in the presence of a steward or the steward's designee, placed in a container furnished by the Department, and immediately sealed by the steward or steward's designee in the presence of the licensee being tested.
  - iii. The stewards shall ensure that a container in which a sample is placed is marked with the following items:
    - (1) Sample identification number;
    - (2) Time, date, and location where the sample was given; and
    - (3) Signature of Department personnel sealing the container.
  - iv. The stewards shall ensure that a container in which a sample is placed is submitted to the official laboratory for analysis to determine the presence of alcohol or a prohibited substance.
  - v. The Department shall discipline a licensee, as authorized under R19-2-309(E)(3)(f) and A.R.S. § 5-108.05(A), if laboratory analysis of the licensee's sample shows the presence of a prohibited substance and the licensee does not have a lawfully issued prescription for the substance.
  - vi. The Department shall ensure that results and information obtained as a result of analysis of a sample provided under this subsection are accessible only to members of the Commission, the Director or designees, and the tested licensee until any disciplinary action or administrative proceeding is complete.
  - vii. Compliance with this Chapter by the stewards or stewards' designee constitutes prima facie evidence that the chain of custody of the test samples is secure. The presiding officer or administrative law judge in an administrative proceeding of the Department or Commission shall admit the results as evidence.
19. A trainer, assistant trainer, and other person charged with the custody and care of a greyhound shall protect and guard the greyhound against the administration, either internally or externally, of a foreign substance, except as provided in subsection (12). A test indicating the presence of a foreign substance in the blood or urine of a greyhound in the custody and care of a trainer, assistant trainer, or other person shall give rise to a presumption that the trainer, assistant trainer, or other person failed to fulfill the duties specified.
  20. A person shall not interfere with the collection or procedures conducted under this subsection.
  21. The owner of a greyhound disqualified in a race because of an infraction of this Chapter shall forfeit and return any portion of the purse or stakes and any trophy received from the race and forfeit any entry or subscription money.
    - a. The racing secretary shall redistribute among remaining entries in the race all winnings that are forfeited under this subsection by the owner of a disqualified greyhound.
    - b. If laboratory analysis performed under subsection (18)(a) indicates the presence of a foreign substance in the blood or urine of a greyhound, the greyhound shall be disqualified and may be declared unplaced for every purpose except pari-mutuel wagering.
- Historical Note**
- Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective November 30, 1988 (Supp. 88-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-311 recodified from R4-27-311 (Supp. 95-1). Citations corrected in subsections 12 and 17 at the request of the Arizona Department of Racing (Supp. 96-4). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).
- R19-2-312. Registration and Transfers**
- A. The National Greyhound Association of Abilene, Kansas, (NGA) is the official breeding registry of all greyhounds. The Greyhound Publications, Inc., Information System is the official recordkeeping agency of all greyhound performances and maintains the past performance lines on every greyhound raced at a track licensed by a racing jurisdiction. The Department may certify any greyhound whose registration is attributable to arbitrary, discriminatory, or other unreasonable action or inaction on the part of either agency.
  - B. If for any reason the Greyhound Information System ceases operation, the kennel owner is responsible for furnishing the racing secretary with the last six past performance lines when applicable.
  - C. The registry and recordkeeping agencies are self-funding, and may charge reasonable fees for their services.
  - D. A greyhound shall not be entered for racing or schooling at any official track unless it:
    1. Is tattooed or permanently identified in a manner acceptable to the NGA;
    2. Is registered in the NGA stud book; and
    3. Has its last six performance lines, if applicable, and racing history made available to the racing secretary from the Greyhound Information System.
  - E. The NGA breeding registry furnishes all necessary information to the Greyhound Information System when greyhounds are registered and named. A reasonable fee per start shall be deducted from the weekly purses by the track and paid to the Greyhound Information System.
  - F. Each track shall provide a copy of the official chart of its races to the Greyhound Information System.

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- G. The NGA Breeding Registry and transfer files and the Greyhound Publications, Inc., Information System shall be available to Department officials upon request.
- H. In case of emergency, written authority from the NGA to sign declarations of partnerships shall be given to the racing secretary.
- I. An owner of a greyhound cannot assign the owner's share or any part of it without the written consent of the other partners. The consent shall be filed with the racing secretary.
- J. A certificate of registration for a greyhound shall be filed with the racing secretary at the race track where the greyhound is to be schooled, entered, or raced.
- K. The certificates of registration shall be available at all times for inspection by the stewards.
- L. A transfer of any title to, leasehold in, or other interest in greyhounds schooled, entered, or racing at any track under the jurisdiction of the Department shall be registered and recorded with the National Greyhound Association of Abilene, Kansas.
- M. The Department shall not recognize a title, leasehold, or other interest in a greyhound until the title, leasehold, or other interest is evidenced by written instrument filed with and recorded by the National Greyhound Association of Abilene, Kansas and certified copies of the instrument are filed with the Department and the racing secretary at the race track where the greyhound is to be schooled, entered, or raced.
- N. If a greyhound is sold or transferred, or any interest in a greyhound is sold or transferred, during a meeting or after the greyhound has been registered for a meeting, a copy of the bill of sale shall be filed with the racing secretary and forwarded by the racing secretary to the Department.
- O. If a greyhound is sold with its engagements, or any part of them, the seller cannot strike it out of any engagements. In all cases of private sales, the written acknowledgment of both parties that the greyhound was sold with the engagements is necessary to entitle the seller or buyer to the benefit of this rule. If certain engagements are specified, only those are sold with the greyhound. If the greyhound is sold by public auction, and if certain engagements are specified, only those engagements are sold with the greyhound.
- P. If a greyhound or any interest in a greyhound is sold to a disqualified person, the greyhound's racing engagements are void as of the date of sale.
- Q. In case of transfer of a greyhound with its engagements, the greyhound shall not be eligible to start in any stakes, unless the transfer of the greyhound and its engagements is provided to the racing secretary.
- R. A transfer of a greyhound or engagement shall not be made for the purpose of avoiding disqualification. A person that makes or receives a transfer to avoid disqualification may have a civil penalty invoked or be ruled off by the stewards.
- S. A partnership shall register with the Department. The partnership shall provide the name and address of every person with an interest in a greyhound, the relative proportions of the interest, and the terms of any sales with contingencies or arrangements, which are signed by each party or by an authorized agent, and file this information with the racing secretary. This information shall be provided to the Department before the beginning of the race meet. All persons listed on the partnership registration are jointly and severally liable for all stakes and forfeits.
- T. Statements of partnerships, sales with contingencies, or arrangements, shall declare who receives the winnings, in whose name the greyhound shall run, and who has the power of entry or declaration of forfeit. This information shall be provided to the Department upon request.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-312 recodified from R4-27-312 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-313. Leases**

- A. The lessee of a greyhound shall file a copy of the Uniform Greyhound Certificate of Lease agreement with the Department. The lease agreement shall include:
  1. The name of the greyhound,
  2. The name and address of the owner,
  3. The name and address of the lessee,
  4. The kennel name of each party, and
  5. The terms of the lease.
- B. A corporation with more than 10 stockholders who are the registered or beneficial owners of stock or membership in the corporation may not lease a greyhound owned or controlled by it to any person or partnership for racing purposes.
- C. The Department shall not grant an owner's license to a lessee of a corporation described in subsection (B).
- D. A corporation leasing greyhounds for racing purposes in this state, shall file with the Department, upon request, a report listing the stockholders and members, as well as additional business information the Department may specify. More than one owner may be indicated on the program by the use of the name of one owner and the phrase "et al".

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-313 recodified from R4-27-313 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-314. Weights and Weighing**

- A. Each greyhound shall be weighed in not less than one hour before the time of the first race of the day.
- B. Before a greyhound is allowed to school or to race at a track, the owner or trainer shall establish the racing weight of the greyhound with the clerk of scales.
- C. At weighing-in time, if there is a variation of more than two pounds from the greyhound's established weight, the stewards shall order the greyhound scratched.
- D. At weighing-out time, if a greyhound loses more than two pounds while in the lockout kennels, the stewards shall order the greyhound scratched. However, upon opinion from the veterinarian that the loss of weight while in the lockout kennels does not impair the racing condition of the greyhound, the stewards may allow the greyhound to race.
- E. The weight regulations provided in subsections (A), (B), (C) and (D) above shall be printed in the daily program.
- F. The established racing weight of a greyhound may be changed on written request of the owner or trainer and by consent of the stewards, if the change is made at least four calendar days before the greyhound is allowed to race at the new weight.
  1. A greyhound with a weight change of more than one pound shall be schooled at least once at the discretion of the stewards at the new established weight before being eligible for starting.
  2. A greyhound that has not raced or schooled officially for three weeks shall be allowed to establish new racing weight with the consent of the stewards and shall be schooled officially immediately upon receipt of the consent.

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- G.** The stewards have the authority to order that a greyhound entered in a race be weighed at any time from entry into the lockout kennel until post time.
- H.** Immediately after being weighed in, a greyhound shall be placed in a lockout kennel under the supervision of the paddock judge. Only the paddock judge, veterinarian, kennel master, clerk of scales, lead-out, steward, or Department representative shall be allowed in or near the lockout kennels.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-314 recodified from R4-27-314 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-315. Schooling**

- A.** A schooling race shall be at a distance not less than the distance nearest to 5/16 mile in use at the track.
- B.** Each official schooling race shall consist of at least six greyhounds. However, if this condition creates a hardship, less than six may be schooled with the permission of the stewards.
- C.** Hand schooling shall not be considered official.
- D.** A greyhound that has not raced for 10 racing days or more shall be officially schooled at least once at its racing weight before being eligible for entry.
- E.** A greyhound in an official schooling race shall race at its established racing weight and shall start from the box wearing blankets.
- F.** An owner, trainer, or authorized agent who is responsible for greyhounds that are booked to race on tracks licensed by the Commission, and who permit the greyhounds to be officially schooled on any track in Arizona or elsewhere that is not approved by the Commission during these bookings, shall be subject to immediate license revocation.
- G.** A greyhound may be ordered on the official schooling list by the stewards at any time for good cause and shall be schooled officially and satisfactorily before being allowed to enter a race.
- H.** Each permittee shall provide a photo finish camera, approved by the Department, that operates at all official schooling races.
- I.** A permittee shall make provision for an adequate number of official schooling races, to be run both before and during a meeting, to allow for the qualification of greyhounds.
- J.** A greyhound that fails to meet the established qualifying time shall not be permitted to start in a race other than futurity or stakes races.
- K.** Official schooling shall be maintained throughout a meeting up to at least one week before the last scheduled date of the meeting.
- L.** The distance of official schooling races and number of greyhounds in these races shall appear on the Form chart.
- M.** Only two official schooling lines shall be required for greyhounds in futurity races.
- N.** A greyhound on the veterinarian's list or stewards' suspension list shall not be schooled officially except as provided in R19-2-317(E)(6).
1. The racing secretary shall not allow a greyhound to be entered in a race unless the full name of every person having an ownership in the greyhound or accepting the trainer's percentage or having any interest in its winnings is registered with the racing secretary. A change in a greyhound's ownership or interest made during that meeting shall be registered with the racing secretary; a copy of this shall be delivered promptly to the Department by the racing secretary of the track where the greyhound is racing.
  2. The racing secretary shall not allow a greyhound to be entered in a race unless the conditions in R19-2-313 pertaining to registration are met.
  3. The racing secretary shall not allow a greyhound to enter or start unless it is conditioned by a licensed trainer or owner-trainer.
  4. The racing secretary shall not allow a greyhound to enter or start in a race unless it has been fully identified and tattooed. A person who participates in any manner in establishing the identity of a greyhound, including the breeder, owner, trainer, and identifier, is responsible for the accuracy of the information the person provides.
  5. The stewards may require a person in whose name a greyhound is entered to produce proof that the greyhound is not the property, either wholly or in part, of any person who is disqualified, or to produce proof of the extent of the person's interest in the greyhound. If the stewards are not satisfied as to the ownership of the greyhound, they may declare the greyhound out of the race.
  6. A permittee shall establish a qualifying time for its 3/8- and 5/16-mile races. The permittee shall notify the stewards at least three days before the first day of official racing of the qualifying time established and specify time which, while in effect, shall be continuously posted on the notice board at the track and approved by the stewards.
    - a. A change in the established qualifying time during the course of a meeting may only be made with the approval of the stewards.
    - b. The racing secretary shall not allow a greyhound to enter or race if the greyhound fails to meet the established qualifying time except in a futurity or stakes race.
  7. A greyhound is not eligible to enter or race if:
    - a. The greyhound is ruled off or suspended.
    - b. The owner or trainer is ruled off the track or suspended until the greyhound is made eligible either by reinstatement of its owner or trainer or a transfer or bona fide sale to an ownership or trainer acceptable to the stewards.
    - c. The greyhound is on the schooling list or on the veterinarian's list.
    - d. The greyhound is under the age of 12 months.
  8. A greyhound or kennel whose entry is ordered refused at any recognized meeting because of inconsistent racing shall not be permitted to race on any track where these rules are in force during the continuance of such ruling.
  9. At least three past performances of a greyhound shall be available for the program.
  10. A trainer shall remove an off-form greyhound from the active list. Failure to do so is grounds for suspension of the greyhound.
  11. A greyhound that has been retired for conditions or worming shall be brought back to racing weight before being entered.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-315 recodified from R4-27-315 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-316. Entries and Subscriptions**

- A.** Condition for entry

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12. The stewards may allow a greyhound that has not raced in three or more weeks to establish new racing weight.
  13. The racing secretary shall not allow a greyhound in season on the track nor shall she be eligible to school officially or to race if in milk.
- B. Entry**
1. The racing secretary receives entries and declarations.
  2. Each entry in a race shall be in the name of the registered owner or in the kennel name.
  3. The racing secretary shall not allow a greyhound to run in any race unless it has been and continues to be duly entered.
  4. A greyhound eligible at the time of entry continues to be qualified, except in an overnight event in which the greyhound shall be eligible at the time of the start.
  5. A kennel owner, trainer, or authorized agent may enter a greyhound in person, by telephone, by facsimile, or in writing.
  6. A greyhound entered for a purse shall be a "starting greyhound" unless it has been declared out by the stewards.
  7. An entry from a person or of a greyhound that stands suspended or expelled is void. The Department shall refund any money paid for a void entry. A person who wins money with a void entry shall return the money to the Department.
    - a. The entry form to a stakes race shall include the full name and post office address of the person making the entry.
    - b. A person with an interest in a greyhound less than the interest of another person is not entitled to assume any of the rights or duties of an owner as provided by these rules, including the right of entry and declaration.
    - c. Joint subscriptions and entries may be made by any one or more of the owners. However, all partners and each of them shall be jointly and severally liable for all fees and forfeits.
    - d. Nominations for stakes races received and post-marked before midnight of the day of closing shall be valid if received 24 hours in advance of closing of overnight entries.
    - e. If the invalidity of any entry or declaration in a stakes race is alleged, satisfactory proof that the entry or declaration was timely made shall be presented within a reasonable time or the entry or declaration shall be deemed not received.
- C. Closing**
1. The racing secretary shall close entries for purse races at the advertised time. An entry shall not be received after that time. If a race fails to fill, additional time for entries may be granted by the stewards.
  2. Entries and declarations for stakes races that close during or on the eve of a racing meeting shall close at the office of the racing secretary. Closing sweepstakes at all other times shall be at the office of the permittee.
  3. The racing secretary shall not accept entries or declarations for stakes after the designated time.
  4. A greyhound may not start in a stakes race unless it has passed the entry box on the day on which entries for the stakes race are taken.
  5. There shall be at least six different kennel owners in each race. An owner or trainer may have no more than two greyhounds in a race without the permission of the stewards. The requirements of this subsection are applicable to all greyhound races, including all short field races of five or fewer greyhounds. Prior approval of the stewards shall be obtained before conducting any race in which five or fewer greyhounds are entered.
- D. Fees**
6. If the number of entries to any purse race exceeds the number of greyhounds that, because of track limitations, may start, the starters for the race shall be determined by lot in the presence of those making entries.
  7. The post position of greyhounds shall be assigned by lot or drawing supervised by the stewards and the racing secretary, at a time and place posted on the trainer's bulletin board. The draw shall occur at least one day before the running of the race, so that any and all owners, trainers, or authorized agents interested may be present.
    - a. A change shall not be made in any entry after closing of entries, but an error may be corrected.
    - b. Each greyhound entered for a purse shall be a starter unless it is declared or scratched.
  8. The permittee may withdraw or change any unclosed race.
  9. Following the close of entries, the racing secretary shall compile and conspicuously post the entries.
  10. The holder of any claim, whether a mortgage bill, sale, or lien of any kind, against a greyhound, shall file the claim with the racing secretary before the time the greyhound is entered. The claimholder shall forfeit all rights in any winnings of the greyhound before the claim is filed.
1. Unless otherwise stipulated in the conditions of a race, there is no charge to enter a greyhound in a purse race. When the conditions require an entrance fee, the fee shall accompany the entry.
  2. A person entering a greyhound shall pay the nominating, sustaining, and starting fees. Except as provided in subsections (D)(3) and (D)(4) fees are nonrefundable.
  3. Entrance fees to a purse race that is run are not refundable unless otherwise provided for in the conditions of the race.
  4. Entry, starting, and subscription fees shall be distributed as provided for in the conditions of the race. If a race is not run, all stakes or entrance money shall be refunded.
  5. The death of the nominator or subscriber does not void entry, subscription, or right of entry of a greyhound.
  6. A greyhound may not start in a race unless any stake or entrance money for that race is paid.
  7. A person entering a greyhound is liable for the entrance money or stake.
  8. The entry of a greyhound in a sweepstakes is a subscription to the sweepstakes making the subscriber liable for stake and forfeit fees. If the subscriber properly transfers the entry, the subscriber is liable for stake and forfeit fees only if the transferee defaults. The seller of a greyhound with an engagement is liable for stake or forfeit fees if the engagement is not kept.
    - a. If a person is prevented by these rules from entering or starting a greyhound for a race without paying arrears for which the person would not otherwise be liable, the person may, by paying the arrears, enter or start the greyhound and have the arrears placed on the forfeit list as due to the person.
    - b. If the seller of a greyhound with an engagement is compelled to pay arrears because of the purchaser's default, the seller may place the amount of the forfeit list as due from the purchaser to the seller. This rule also applies in the transfer of an entry when the transferee defaults.

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- c. With the approval of the stewards, the racing secretary may waive the obligations incurred by this Section.
  - d. If the racing secretary permits a greyhound to start in a race without the entrance money or stake having been paid, the racing secretary is liable for the entrance money or stake.
9. An entry in a sweepstakes is a subscription and may not be withdrawn.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-316 recodified from R4-27-316 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-317. Rules of the Race****A. Pre-race activity.**

1. A greyhound shall race under its registered owner's name as shown on the registration papers or upon Department approval.
2. All races shall start at regular intervals. Post times shall be based upon the number of races scheduled to run daily. The intervals shall be set by the permittee with the approval of the stewards.
3. A greyhound shall be identified and exhibited in the paddock before post time of the race in which it is entered.
4. A greyhound shall wear the regulation muzzle and blanket while racing. The muzzle and blanket of each greyhound shall be carefully examined:
  - a. In the paddock by the paddock judge before the greyhound leaves for the post;
  - b. Before the stewards at the stewards' stand; and
  - c. By the starter at the starting box.
5. After the greyhounds have entered the track, the parade of the greyhounds to the post shall be no longer than 15 minutes, unless a delay is unavoidable.
6. After the greyhounds leave the paddock on their way to the starting point, and until the stewards signal the start of the race, all persons except the designated licensees shall be excluded from the course.
7. If a greyhound is injured after weigh-in, the greyhound may be excused by the stewards on the advice of the track veterinarian and shall not be considered a starter.

**B. Races**

1. A race is not declared official by the stewards unless the lure precedes the greyhounds at all times during the race. If, during the race, a greyhound catches or passes the lure, the stewards shall declare it "no race" and all monies wagered shall be refunded.
2. The stewards shall closely observe the operation of the lure and hold the lure operator to strict accountability for any inconsistency of operation. The lure shall be kept at a reasonable distance in advance of the greyhounds.
3. If a greyhound dwells in the box when the doors of the starting box open at the start, there shall be no refund.
4. If a greyhound bolts the course, runs in the opposite direction, or does not run the entire prescribed distance for the race, all rights in the race are forfeited and no matter where it finishes the stewards shall declare the finish of the race as if the greyhound was not a contender. However the greyhound shall be considered a starter.
5. If a greyhound bolts the course or runs in the opposite direction during the running of the race and in so doing, in the opinion of the stewards, alters the outcome of the

race, the stewards shall declare it "no race" and all monies wagered shall be refunded.

6. If it appears that a greyhound may interfere with the running of the race because of failure to leave the starting box, or accident, or for any other reason, a person under the supervision of the stewards may remove the greyhound from the track. However the greyhound shall be considered a starter.
7. If a race is marred by jams, spills, or racing circumstances other than accident regarding the machinery or outside interference, and three or more greyhounds finish, the stewards shall declare the race official, but if fewer than three greyhounds finish, the stewards shall declare it "no race" and all monies wagered shall be refunded.
8. Each permittee shall provide a camera approved by the Department for the purpose of taking photographs of all finishes of all races including schooling races.
9. A greyhound ruled off for fighting or quitting is suspended on any track operating under the jurisdiction of the Commission.
10. If the owner, trainer, or handler of a greyhound is found guilty of an act that prevents the greyhound from running its best, the Department shall suspend the license of the owner, trainer, or handler.

**C. Dead heats**

1. When a race results in a dead heat, the race shall not be run off. When two greyhounds run a dead heat for first place, all prizes to which the first and second greyhounds are entitled shall be divided equally between them. This applies in dividing prizes whatever the number of greyhounds running a dead heat and whatever places for which the dead heat is run.
2. When a dead heat for win occurs, each greyhound involved in the dead heat shall be considered a winner and is liable for any penalty attached to the winning of the race.
3. If the owners of the greyhounds involved in a dead heat cannot agree on the disbursement of a cup or other prize that cannot be divided, the cup or prize shall be determined by lot.

**D. Winnings**

1. Winnings include all prizes earned up to the time appointed for the start and shall apply to all races wherever run. Winnings shall include earnings from a walk over or receiving forfeit, but do not include second and third money, or the value of any non-monetary prize. Winnings during the year shall be determined from the preceding January 1.
2. Winner of a certain sum shall mean winner of a single race of that value unless otherwise expressed in the conditions.
3. In estimating the net value of a race to the winner, all sums contributed by the owner or nominator are deducted from the amount won.

**E. Declarations and scratches**

1. Declarations in purse races shall be made by the kennel owner, trainer, or authorized agent to the racing secretary or his or her assistant at least one-half hour before the time designated for the drawing of post positions on the day before the day on which the greyhound is to race, or at the time appointed by the racing secretary.
2. Declarations in sweepstakes shall be made in the same manner as provided for making entries in sweepstakes to the racing secretary, who shall record the day and hour of receipt and give early publicity to the sweepstakes.

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3. A declaration in a stakes race shall be made in writing by the kennel owner or trainer of a greyhound or by the kennel owner's authorized agent.
  4. The declaration of a greyhound is irrevocable.
  5. A greyhound that is withdrawn from a race after the overnight entries are closed is deemed a scratch. The declared greyhound shall lose all preference accrued up to that date unless excused by the stewards.
    - a. To scratch a greyhound entered in a race, sufficient cause shall be given to satisfy the stewards, and the cause shall be reported immediately.
    - b. The owner or trainer of a greyhound that is scratched because of a violation of a racing rule shall be penalized or suspended for six racing days. Scratches for other causes may be disciplined at the discretion of the stewards.
    - c. If a trainer fails to have a greyhound entered at the track at the appointed time for weighing in causing the scratch of the greyhound, the stewards shall impose a forfeiture and may suspend or fine the person responsible.
    - d. If three or more greyhounds are withdrawn or scratched in any one race, the stewards may cancel the race.
    - e. The stewards may scratch a greyhound entered in a race for sufficient cause.
  6. A greyhound scratched from a race because of overweight or underweight shall receive a six-day suspension and shall school back before starting in an official race. Scratched greyhounds may school during their suspension.
- B. A permittee shall recognize any greyhound for which there is an Arizona Bred Certificate on file with the Department as an Arizona bred greyhound.
  - C. Breeders' awards are not to be paid on nominating, sustaining, or starting fees.
  - D. The Department shall calculate and pay breeders' awards to eligible breeders.
    1. Definitions.
      - a. "Quarterly Breeders' Award" means an amount of money based on the quarterly breeders' award payment factor determined by the Department each fiscal year by October 30.
      - b. "Substitute Breeders' Award" means an amount of money based on a substitute payment factor because of the lack of sufficient money to pay conventional Quarterly Breeders' Awards.
      - c. "Supplemental Breeders' Award" means an amount of money that corrects a shortfall between conventional Quarterly Breeders' Awards and Substitute Breeders' Awards.
      - d. "End-of-year Bonus Award" means an amount of money that may be paid to breeders from available monies that remain in the breeders' award fund after payment of Quarterly Breeders' Awards, Substitute Breeders' Awards and Supplemental Breeders' Awards.
    2. The Department shall pay awards at the end of each fiscal year quarter, provided that the total amount of the awards payments does not exceed the total amount of money available in the fund less the amount required to be set aside for contingent liabilities in subsection (D)(8).
    3. Quarterly Breeders' Awards. Before October 30 of each year, the Department shall determine a quarterly breeders' award payment factor that will be applied during the entire fiscal year. The payment factor determined by the Department is not subject to appeal.
      - a. The Department shall evaluate anticipated revenues for the breeders' award fund and anticipated purses for eligible Arizona-bred animals and set the payment factor at a level that permits recipients of quarterly breeders' awards to receive awards throughout the fiscal year based on the same payment factor.
      - b. The Department shall notify representatives of each breeders' association of the quarterly breeders' award payment factor in writing before October 30 of each year.
      - c. The Department shall calculate quarterly breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the quarterly breeders' award payment factor established for the fiscal year.
      - d. The Department shall make quarterly breeders' awards not later than 30 days after the end of each quarter, unless full quarterly breeders' awards cannot be made due to the lack of available money in the fund.
    4. Substitute Breeders' Awards. The Department shall make substitute breeders' awards if there are sufficient monies in the fund to allow for an award but not enough monies to provide for full payments of quarterly breeders' awards based on the quarterly breeders' award payment factor.
      - a. The Department shall determine the substitute payment factor by dividing the total amount of monies in the Arizona breeders' award fund at the end of the quarter less the amount required to be set aside for contingent liabilities in subsection (D)(8) by the

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). R19-2-317 recodified from R4-27-317 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-318. Repealed****Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended effective March 20, 1990 (Supp. 90-1). R19-2-318 recodified from R4-27-318 (Supp. 95-1). Section repealed by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-319. Arizona Bred Eligibility and Breeders' Award Payments**

- A. A breeder shall file a notarized certificate affirming eligibility under A.R.S. § 5-113(F) with the Department. The certificate shall include name, color, and sex of the animal; name of the sire; name of the female; date and location of whelping; National Greyhound Association registration number; left and right ear identification numbers; name, address, and telephone number of the breeder; a statement that the animal is eligible pursuant to A.R.S. § 5-113(F) and that the person shown as the breeder was the owner of the female at the time of whelping; and such other information as may be required by the Department to determine eligibility and shall be signed by the breeder. The breeder shall submit a copy of the National Greyhound Association registration papers with the certificate.
  1. Certification is deemed to occur upon the Department's receipt of the completed certificate.
  2. The greyhound shall be certified by the Department at the time of the win to be eligible for an award.

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- total amount of purses won by eligible Arizona-bred animals during that quarter.
- b. The Department shall calculate substitute breeders' awards by multiplying the amount of each purse won by an eligible animal during that quarter by the substitute payment factor for that quarter.
5. End-of-year bonus pool. After payment of all quarterly breeders' awards and any substitute breeders' awards has been calculated, the Department shall determine the amount of monies remaining in the fund. The end-of-year-bonus pool is the amount of monies remaining in the Arizona breeders' award fund after the payment of all quarterly breeders' awards for the fiscal year less the amount required to be set aside for contingent liabilities in subsection (D)(8).
  6. Supplemental Breeders Awards. The Department shall first pay any monies in the end-of-year bonus pool in the form of supplemental breeders awards to recipients of substitute breeders' awards.
    - a. The Department shall pay supplemental breeders' awards in an amount equal to the difference between the substitute breeders' award and the quarterly breeders' award the breeder would have received if there had been enough in the fund to pay an award based on the quarterly award payment factor.
    - b. In the event the end-of-year bonus pool cannot pay supplemental breeders' awards to make up for the shortfall to all substitute breeders' award recipients, the Department shall pay supplemental breeders' awards to all breeders eligible to receive a supplemental breeders' award on a pro-rata basis.
    - c. A breeder is eligible to receive a supplemental breeders' award from the end-of-year bonus pool only if the breeder received a substitute breeders' award during that fiscal year.
    - d. The Department shall not make supplemental breeders' awards if all eligible breeders received quarterly breeders' awards during the fiscal year.
  7. End-of-year Bonus Awards. The Department shall pay end-of-year bonus awards if monies remain in the end-of-year bonus pool following any supplemental payments.
    - a. The Department shall determine an end-of-year bonus payment factor by dividing the monies in the end-of-year bonus pool by the total amount of purses won by an eligible animal during the fiscal year.
    - b. The Department shall calculate end-of-year bonus awards by multiplying the amount of each purse won by an eligible animal by the bonus payment factor.
  8. Contingent liabilities. The Department shall retain \$10,000 in the Breeders' Award fund for contingent liabilities.
  9. The Department shall not make quarterly breeders' awards, substitute breeders' awards, supplemental breeders' awards or end-of-year bonus breeders' awards if the total amount available for distribution is less than \$10,000. In the event the Department does not pay an award because less than \$10,000 is available for distribution, the Department shall carry forward the amount in the fund for payment of awards when the Department next calculates awards.
  10. Appeal of Director's Rulings
    - a. The Director shall make the final decision concerning a breeders' award.
      - b. The Department shall give written notice of the decision to an applicant by mailing it to the address of record filed with the Department.
      - c. After service of the Director's decision, an aggrieved party may obtain a hearing under A.R.S. §§ 41-1092.03 through 41-1092.11.
      - d. The aggrieved party shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R19-2-319(D)(10)(b).
      - e. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.
    - E. The permittees shall submit to the Department an Arizona Breeders' Award Report in the form prescribed by the Department. The report shall include name of the animal, name of the breeder, date of win, win purse amount, type of race, name of track, and such other information as may be required by the Department to calculate awards.
    - F. The Arizona Thoroughbred Breeder's Association, Arizona Quarter Racing Association, Arizona Greyhound Breeder's Association and such other associations as may represent breeders in this state may assist the Department in periodic reviews of eligibility lists and may provide such other assistance in administering the fund as may be required by the Department.
    - G. At least every other three years, the Commission shall select a committee, consisting of representatives of each breeders' association and the Department, which shall review this rule and submit written recommendations to the Commission.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
 Amended subsection (A) effective August 21, 1985 (Supp. 85-4). Amended subsection (A) and added subsections (D) through (G) effective August 13, 1986 (Supp. 86-4). Amended subsection (D) effective February 19, 1987 (Supp. 87-1). Amended effective March 20, 1990 (Supp. 90-1). R19-2-319 recodified from R4-27-319 (Supp. 95-1). Amended effective January 10, 1997 (Supp. 97-1).

**R19-2-320. Objections**

- A. An objection to a greyhound may be made by an owner, the owner's authorized agent, a trainer of another greyhound engaged in the same race, or by the officials of the course. An objection shall be made to the stewards, who may require that the objection be made in writing with a copy sent immediately to the Director.
- B. The stewards may require a cash deposit of \$200 to cover costs of determining an objection. The deposit posted may be forfeited if the stewards determine the objection is without foundation.
- C. If the stewards are not able to decide an objection during the meeting, the stewards shall require that the objection be made in writing and forwarded to the Director.
- D. An objection, unless otherwise provided, shall be made within 72 hours after the race is run and shall be determined by the stewards.
- E. An objection pertaining to any matter occurring in a race, except as otherwise provided, shall be made before the stewards declare the race official.
- F. Any objections to a greyhound that has run in a race on the grounds that it was not trained by a licensed trainer, or that the names of all those having ownership in it or an interest in its winnings have not been registered with the secretary, shall be made not later than the day after the race.

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- G.** Any objection on the grounds of fraudulent or purposeful misstatement or omission in the entry under which a greyhound has run, or on the grounds that the greyhound which ran was not the greyhound it was represented to be in the entry or at the time of the race, may be received any time within three days after the race.
- H.** Any objection to a decision of the clerk of the scales shall be made before the greyhounds leave the paddock for the start of the race.
- I.** Pending the determination of an objection, any money or prize which the greyhound objected to may have won, or may win in the race, shall be withheld until the objection is determined, and any sum payable to the owner of the greyhound objected to shall be held for the person who may be determined to be entitled to it.
- J.** Pending the disposition by the stewards, Director, or Commission of any question, both the greyhound which finished first and any greyhound which is claimed to be the winner shall be liable for all penalties attaching to the winner of the race until the matter is decided.
- K.** If an objection to a greyhound which has won or which has been placed in a race is declared valid, that greyhound is disqualified, and the other greyhounds in the race are entitled to place in the order in which they finished. The purses shall be redistributed.
- L.** A person shall not lodge an unsubstantiated objection with the stewards.
- M.** If all the greyhounds in the race have run at wrong weights, or over a wrong course or distance, and objection is made before the official confirmation of the placing of the greyhound in the race, the stewards shall declare it "no race."
- N.** To withdraw an objection, the person that made the objection shall obtain the permission of the stewards.
3. The stewards may refer any ruling made to the Director, recommending further action, including revocation of a license suspended by the stewards. On receipt of a referral, the Director shall review the record and may affirm, reverse, or modify the stewards' ruling or conduct other proceedings the Director deems appropriate.
4. If the Director decides that hearing or other proceeding is appropriate, the Director shall fix a time and place for a hearing. The Director shall give written notice of the hearing to the appellant at least 30 days before the date set for the hearing unless the 30-days' notice is waived in writing by the appellant.
- B.** Appeal of stewards' inquiry and objection rulings.
1. Failure of the stewards to convene a hearing within 10 days after an objection is made shall be deemed a denial that may be appealed by filing a written appeal to the office of the Director within 10 days after the date the objection is denied.
2. A person making an appeal or the person's attorney shall sign the appeal and ensure that it contains the grounds for appeal and reasons for believing the person is entitled to a hearing.
3. After an appeal is filed under subsection (B)(2), the Director shall fix a time and place for hearing or refer the matter to a hearing officer. The Director shall give written notice of the hearing to the appellant at least 30 days before the date set for the hearing unless the 30 days' notice is waived in writing by the appellant.
4. Nothing contained in this Section shall affect distribution of pari-mutuel pools.
5. The Department shall retain purse money affected by an appeal until an order regarding the appeal is issued by the Director.
- C.** License denial, suspension, or revocation.
1. The Director may deny a license without prior notice to a license applicant. However, if the applicant files an appeal with the Director within 30 days after receipt of the denial notice, the Director shall fix a time and place for a hearing on the matter and give written notice of the hearing to the applicant at least 30 days before the date set for the hearing, unless the 30 days' notice is waived in writing by the applicant.
2. The Director may revoke or, independently of the stewards, suspend a license only after notice and opportunity for hearing. The Director shall give written notice of the hearing at least 30 days before the date set for hearing, unless the 30 days' notice is waived in writing by the licensee.
3. Unless specifically ordered otherwise, if the Director suspends one license held by an individual, all licenses held by the individual are suspended for the term of the suspension.
- D.** Director's hearings.
1. A party appearing before the Director or the Director's designee shall be afforded an opportunity for a hearing and to respond and present evidence and argument on all issues.
2. An individual appearing before the Director or the Director's designee has the right to appear in person or by counsel. A corporation appearing before the Director shall appear only through counsel. A party may submit the party's case in writing. If a party fails to appear for a hearing, the Director may act on the evidence without further notice to the party. The Director may reopen a proceeding if a party to the proceeding submits a written

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-320 recodified from R4-27-320 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-321. Repealed****Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended by adding subsection (O) effective September 17, 1984. Amended subsection (D) paragraph (6) effective October 18, 1984 (Supp. 84-5). Amended by adding subsection (P) effective April 4, 1985 (Supp. 85-2). Amended subsection (N) effective November 29, 1985 (Supp. 85-6). Amended subsection (P) paragraph (19) effective June 6, 1986 (Supp. 86-3). Amended by adding subsections (Q), (R), (S), (T), (U) and (V) effective February 19, 1987 (Supp. 87-1). Amended by adding subsections (W) and (X) effective October 14, 1988 (Supp. 88-4). Repealed effective March 20, 1990 (Supp. 90-1). R19-2-321 recodified from R4-27-321 (Supp. 95-1).

**R19-2-322. Procedure before the Department**

- A.** Appeal of stewards' rulings and referrals.
1. A person aggrieved by a ruling of the stewards may appeal to the Director. An appeal shall be filed in writing to the office of the Director within three days after receipt of the steward's ruling.
2. An appeal shall be signed by the person making the appeal or by the person's attorney and shall contain the grounds for appeal and the reasons for believing the person is entitled to a hearing.

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- petition to the Director within 15 days after the proceeding.
- E. Hearing officer.** If the Director assigns a matter to a hearing officer, the hearing officer shall submit to the Director within 15 days after conclusion of the hearing a written decision that includes proposed findings of fact, conclusions of law, and order. The Director may accept, reject, or modify the decision of the hearing officer. Unless modified, the decision of the hearing officer becomes the decision of the Director 45 days after the hearing officer submits the decision to the Director.
- F. Depositions.**
1. If a party desires to take the oral deposition of a witness residing outside the state or otherwise unavailable as a witness, the party shall file with the Director a petition for permission to take the deposition of the witness. The party shall specify in the deposition petition the name and address of the witness and the nature and substance of the testimony expected to be given by the witness. The Director shall grant permission to take the deposition if the Director is able to determine from the deposition petition that the witness resides outside the state or is otherwise unavailable and the witness's testimony is relevant and material.
  2. The Director may, at the Director's discretion, designate the time and place at which the deposition may be taken. The party that takes a deposition is responsible for all expenses involved in taking the deposition.
  3. A party taking a deposition under this subsection shall return and file the deposition with the Director within 30 days after permission for taking the deposition is granted.
- G. Service.**
1. The Department shall make service of a decision, order, or other process in person or by mail. The Department shall make service by mail by enclosing a copy of the material to be served in a sealed envelope and depositing the envelope in the United States mail, postage prepaid, addressed to the party served at the address shown by the records of the Department.
  2. The Department shall calculate time periods prescribed or allowed by this Chapter, order of the Department, or applicable statute as provided in the Arizona Rules of Civil Procedure.
  3. Service on an attorney who has appeared on behalf of a party constitutes service on the party. A person required to serve papers on the Director or Commission shall file the papers in the office of the Department and serve a copy on the Attorney General.
  4. Proof of service may be made by the affidavit or oral testimony of the person making the service.
- H. Rehearing, review, or appeal.**
1. Except as provided in subsection (H)(7), a party aggrieved by a final administrative decision rendered by the Director may file with the Director, within 30 days after service of the final administrative decision, a written motion for rehearing or review of the decision. A party filing a motion for rehearing or review of the decision shall specify in the motion the particular grounds on which the motion is made.
  2. A motion for rehearing or review may be amended at any time before it is ruled on by the Director. A response may be filed within 10 days after service of the motion or amended motion by any other party. The Director may require the filing of written briefs on the issues raised in the motion and may provide for oral argument.
3. The Department may grant a rehearing or review of a decision for any of the following causes materially affecting a party's rights:
    - a. Irregularity in the administrative proceedings or an order or abuse of discretion that deprived a party of a fair hearing;
    - b. Misconduct of the hearing officer, Director, or the prevailing party;
    - c. Accident or surprise that could not have been prevented by ordinary prudence;
    - d. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
    - e. Excessive or insufficient penalty;
    - f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; and
    - g. The findings of fact or decision is not justified by the evidence or is contrary to law.
  4. The Director may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons listed in subsection (H)(3). The Director shall specify with particularity the grounds for an order modifying a decision or granting a rehearing. A rehearing shall cover only the matters specified.
  5. Not later than 10 days after the date of a decision, after giving the parties notice and an opportunity to be heard, the Director may, on the Director's initiative, order a rehearing or review for any reason for which the Director might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard, the Director may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the Director shall ensure that the order granting a rehearing or review specifies the grounds for the order.
  6. When a motion for rehearing or review is based on affidavits, the party making the motion shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Director for an additional 20 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
  7. If the Director makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, safety, and welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Director shall issue the decision as a final decision without an opportunity for a rehearing or review.
  8. If the provisions of this Section are in conflict with the provisions of a statute providing for rehearing of decisions of the Director, the statutory provisions shall govern.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-322 recodified from R4-27-322 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-323. Procedure before the Commission****A. Appeal of Director's rulings.**

1. A person aggrieved by a ruling of the Director may appeal to the Commission. An appeal shall be filed in

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writing to the office of the Commission within 30 days after service of the Director's ruling.

2. The appeal shall be signed by the person making the appeal or the person's attorney and contain the grounds for appeal and the reasons for believing the person is entitled to a hearing.
  3. When an appeal is filed, the Commission shall review the record and may affirm, reverse, or modify the Director's ruling or conduct other proceedings the Commission deems appropriate.
- B. Permit denial, suspension, or revocation.**
1. As required under A.R.S. § 5-108.01(A), the Commission shall hold a hearing on an application for an original or renewal permit. The Commission shall provide 30 days' notice of the hearing.
  2. The Commission may revoke or suspend a permit only after notice and opportunity for hearing. The Commission shall give notice of the hearing in writing at least 30 days before the date set for hearing, unless the 30 days' notice is waived in writing by the permittee.
  3. Unless specifically ordered otherwise, if the Commission suspends one license held by an individual, all licenses held by the individual area suspended for the term of the suspension.
  4. A party appearing before the Commission shall be afforded an opportunity for a hearing and to respond and present evidence and argument on all issues.
  5. An individual appearing before the Commission has the right to appear in person or by counsel. A corporation appearing before the Commission shall appear through counsel. A party may submit the party's case in writing. If a party fails to appear for a hearing, the Commission may act on the evidence without further notice to the party. The Commission may reopen a proceeding if a party to the proceeding submits a written petition to the Commission within 15 days after the proceeding.
- C. Hearing officer.** If the Commission assigns a matter to a hearing officer, the hearing officer shall submit to the Commission within 15 days after conclusion of the hearing a written decision that includes proposed findings of fact, conclusions of law, and order. The Commission may accept, reject, or modify the decision of the hearing officer. Unless modified, the decision of the hearing officer becomes the decision of the Commission 45 days after the hearing officer submits the decision to the Commission.
- D. Depositions.**
1. If a party desires to take the oral deposition of a witness residing outside the state or otherwise unavailable as a witness, the party shall file with the Commission a petition for permission to take the deposition of the witness. The party shall specify in the deposition petition the name and address of the witness and the nature and substance of the testimony expected to be given by the witness. The Commission shall grant permission to take the deposition if the Commission is able to determine from the petition that the witness resides outside the state or is otherwise unavailable and the witness's testimony is relevant and material.
  2. The Commission may, at the Commission's discretion, designate the time and place at which the deposition may be taken. The party that takes a deposition is responsible for all expenses involved in taking the deposition.
  3. A party taking a deposition under this subsection shall return and file the deposition with the Commission within 30 days after permission for taking the deposition is granted.
- E. Service.**
1. The Commission shall make service of a decision, order, or other process in person or by mail. The Commission shall make service by mail by enclosing a copy of the material to be served in a sealed envelope and depositing the envelope in the United States mail, postage prepaid, addressed to the party served, at the address shown by the records of the Department. The Commission shall mail a notice of a hearing before the Commission by certified mail to the address of the party shown by the records of the Department.
  2. Proof of service may be made by the affidavit or oral testimony of the person making the service.
  3. The Commission shall calculate time periods prescribed or allowed by this Chapter, order of the Department, or applicable statute as provided in the Arizona Rules of Civil Procedure.
  4. Service on an attorney who has appeared on behalf of a party constitutes service on the party. A person required to serve papers on the Commission, shall file an original and five copies in the office of the Department and serve a copy on the Attorney General.
- F. Rehearing or review.**
1. Except as provided in subsection (F)(7), a party aggrieved by a final administrative decision rendered by the Commission may file with the Commission within 30 days after service of the final administrative decision, a written motion for rehearing or review of the decision. A party filing a motion for rehearing or review of a decision shall specify the particular grounds on which the motion is made.
  2. A motion for rehearing or review may be amended at any time before it is ruled on by the Commission. A response may be filed within 10 days after service of the motion or amended motion by any other party. The Commission may require the filing of written briefs on the issues raised in the motion and may provide for oral argument.
  3. The Commission may grant a rehearing or review of a decision for any of the following causes materially affecting a party's rights:
    - a. Irregularity in the administrative proceedings, or an order or abuse of discretion that deprived a party of a fair hearing;
    - b. Misconduct of the hearing officer, Commission, or the prevailing party;
    - c. Accident or surprise that could not have been prevented by ordinary prudence;
    - d. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
    - e. Excessive or insufficient penalty;
    - f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; and
    - g. The findings of fact or decision is not justified by the evidence or is contrary to law.
  4. The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons listed in subsection (F)(3). The Commission shall specify with particularity the grounds for an order modifying a decision or granting a rehearing. A rehearing shall cover only the matters specified.
  5. Not later than 10 days after the date of a decision, after giving the parties notice and an opportunity to be heard,

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the Commission may, on the Commission's initiative, order a rehearing or review for any reason for which the Commission may have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the Commission shall ensure that an order granting a rehearing or review specifies the grounds for the order.

6. When a motion for rehearing or review is based on affidavits, the party making the motion shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Commission for an additional 20 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
7. If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, safety, and welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for a rehearing or review.
8. If the provisions of this Section are in conflict with the provisions of a statute providing for rehearing of decisions of the Commission, the statutory provisions shall govern.

**Historical Note**

Adopted effective August 5, 1983 (Supp. 83-4).  
Amended effective March 20, 1990 (Supp. 90-1). R19-2-323 recodified from R4-27-323 (Supp. 95-1). Amended by final rulemaking at 19 A.A.R. 3412, effective November 30, 2013 (Supp. 13-4).

**R19-2-324. Greyhound Housing****A. Kennel housing facilities:**

1. Facilities shall be constructed and maintained in good repair to ensure protection from exposure or hazards that could endanger the greyhounds.
2. Bedding shall be provided for all greyhounds. Heat, insulation, or additional bedding adequate to provide warmth shall be provided when the indoor temperature is below 50 degrees Fahrenheit. Facilities shall have operational cooling devices so the indoor temperature does not exceed 85 degrees Fahrenheit.
3. Facilities shall be provided for greyhounds under the age of eight weeks and for females within two weeks of whelping. The facility shall be disinfected on a daily basis and separate from a racing kennel.
4. Facilities shall at all times provide ventilation to all greyhounds by means of doors, windows, vents, air conditioning, or an evaporative cooling system.
5. Walls and floors shall be constructed to lend themselves to efficient cleaning and sanitizing.
6. Ample lighting shall be provided by natural or artificial means or both to allow efficient cleaning of the facilities, routine inspection of the facilities, and the greyhounds contained therein.
7. Each facility shall have at least one turn-out pen.
8. A minimum of one functional fire extinguisher shall be available at each kennel facility.
9. Facilities shall be cleaned and disinfected at least weekly or more frequently as may be necessary to reduce disease hazards, odors, fleas, ticks and vermin.
10. Smoking shall not be allowed in kennel housing.

**B. Run housing.**

1. Buildings and structures shall be constructed and maintained in good repair to ensure protection from exposure or hazards that could endanger the greyhounds.
2. Sufficient shelter shall be provided to accommodate all greyhounds to allow access to shade from direct sunlight and regress from exposure to inclement weather. Heat, insulation, or bedding adequate to provide warmth shall be provided when the atmospheric temperature is below 50 degrees Fahrenheit.
3. The run area shall be kept free of debris, brush, feces or any unsanitary or hazardous materials that could endanger the greyhounds.
4. Fencing for the run shall be a minimum of 4 feet high. Material for fencing shall be such that the health and safety of the greyhounds are not endangered. Fences shall be maintained in satisfactory repair.
5. Run housing shall be cleaned at least daily or more frequently as may be necessary to reduce disease hazards and odors.

**C. Kennel housing crates.**

1. The crates shall be of sound construction and maintained in good repair to protect the greyhounds from injury.
2. Construction materials and maintenance shall allow the greyhounds to be kept clean and dry. Walls and floors shall be impervious to urine and other moisture.
3. The shape and size of the crate shall afford ample space for the greyhounds to comfortably turn about, stand erect, sit and lie, but the crate shall not be smaller than 31 inches wide, 42 inches long and 32 inches high.
4. The greyhounds shall be removed from their crate at least four times in each 24-hour period. The release time shall be sufficient to relieve bodily functions and to loosen cramped muscles.
5. Except as provided in R19-2-328 (B), there shall be only one greyhound per crate.
6. Crates shall be cleaned and sanitized at least daily or more frequently as may be necessary in order to maintain a sanitary living environment for the greyhounds.

**Historical Note**

Adopted effective March 1, 1995; R19-2-324 recodified from R4-27-324 (Supp. 95-1).

**R19-2-325. Grounds of the Racing Kennel, Breeding Farm, or Other Operation****A. General.**

1. Food supplies and bedding materials shall be stored to protect them from contamination or infestation by vermin or other factors which would render the food or bedding unsanitary. All meat shall be kept frozen or refrigerated until such time that it is to be thawed for immediate consumption.
2. Washrooms, basins, or sinks shall be readily accessible for maintaining cleanliness among greyhound caretakers and sanitizing of food and water utensils. Running water shall be immediately available and hot water shall be obtainable on the premises to properly disinfect dishes, utensils, or other equipment.
3. Waste materials shall be removed at least daily and disposed of at least weekly to minimize vermin infestation, odors, and disease hazards.
4. Dropping buckets shall have lids in place except while in use and shall be stored in an area removed from kennel housing and run housing.
5. Space shall be provided to prevent crowding and to allow freedom of movement and comfort to the greyhounds.

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6. Females in estrus shall not be housed with racing dogs or males except for breeding purposes.
7. Cleaning supplies and pesticides shall be stored in a secure area completely separate from food, bedding storage, and greyhounds.
8. The grounds shall be free of weeds and other materials that may constitute a fire or other hazard and that may create a breeding ground for fleas and ticks.
9. Racing kennels, breeding farms, and other operations in Arizona shall apply for a license to operate from the Department. Greyhounds bred, whelped, raised, trained, or kenneled by unlicensed Arizona operations shall not be eligible to race within Arizona.

**B. Turn-out pens and exercise areas.**

1. Fencing for turn-out pens and exercise areas shall be a minimum of 5 feet high. Material for fencing shall be such that the health and safety of the greyhounds are not endangered. Fences shall be maintained in satisfactory repair.
2. Ample lighting shall be provided by natural or artificial means or both to view the greyhounds while in the turn-out pens and to allow efficient cleaning thereof.
3. Turn-out pens and exercise areas shall be free of debris, brush, feces, or any unsanitary, or hazardous materials that could endanger the greyhounds.
4. The greyhound shall be supervised at all times while in the turnout pens.
5. Sufficient shelter shall be provided to accommodate all greyhounds in the exercise areas and turn-out pens to allow access to shade from direct sunlight and regress from exposure to inclement weather.
6. Turn-out pens shall be cleaned at least daily or more frequently as may be necessary to reduce disease hazards and odors.
7. Fresh sand shall be added to soak up urine at least annually or more frequently as may be necessary to reduce disease and odors.
8. Buildings and structures present in or around the turn-out pens or exercise areas shall be constructed and maintained in good repair to ensure protection from exposure or hazards that could endanger the greyhounds.

**Historical Note**

Adopted effective March 1, 1995; R19-2-325 recodified from R4-27-325 (Supp. 95-1). Amended effective August 7, 1996 (Supp. 96-3).

**R19-2-326. General Care of Greyhounds in a Racing Kennel, on a Breeding Farm, or on Another Operation**

- A. All greyhounds shall be properly cared for on a daily basis. This includes physically inspecting the greyhounds for sores, cuts, abrasions, muzzle bumps, fleas, ticks, and providing adequate feed.
- B. Greyhounds shall be provided with clean, fresh water in run housing, exercise areas, and turnout pens at all times.
- C. All food and water dishes shall be free of mold and slime.
- D. Greyhounds shall be reasonably free of ticks and fleas. Care shall be taken to ensure that the greyhounds do not ingest chemicals used to control fleas and ticks.
- E. Sick, diseased, or injured greyhounds shall be provided with proper veterinary care.
- F. Muzzles used shall be lightweight, plastic, or padded wire tape. Worn, broken, or rusted muzzles are prohibited.
- G. All greyhounds shall be vaccinated annually against common canine diseases such as parvo, rabies, distemper, hepatitis, adenovirus type 2, parainfluenza, and leptospira. Current records

shall be kept and available for review by the Department inspector.

**Historical Note**

Adopted effective March 1, 1995; R19-2-326 recodified from R4-27-326 (Supp. 95-1).

**R19-2-327. Personnel of the Racing Kennel, Breeding Farm, or Other Operation**

- A. The owner of the racing kennel, breeding farm, or other operation manager / agent, or supervising personnel shall be present at least once in each 24-hour period to supervise and to ascertain that the care of the greyhounds and maintenance of the facilities conform to all of the rules.
- B. A sufficient number of employees shall be utilized to provide the required care of greyhounds and maintenance of the facilities.
- C. The racing kennel, breeding farm, or other operation shall be licensed by the Department. If the owner of the racing kennel, breeding farm, or other operation is not physically present to run the racing kennel, breeding farm, or other operation, the owner's manager / agent shall also be licensed by the Department.

**Historical Note**

Adopted effective March 1, 1995; R19-2-327 recodified from R4-27-327 (Supp. 95-1).

**R19-2-328. Transportation of Greyhounds**

- A. When transported within the state, all greyhounds shall be hauled in crates designed for the sole purpose of transporting greyhounds. These crates shall be a minimum of two feet wide, three feet long, and 34 inches high.
- B. When transporting racing greyhounds to and from the race-track, there shall be allowed a maximum of two greyhounds per crate, provided that there is enough space for each greyhound to comfortably turn about sit, lie, and stand erect. When otherwise transporting greyhounds within the state, there shall be allowed only two greyhounds per crate provided that there is enough space for each greyhound to comfortably turn about, sit, lie and stand erect.
- C. The crates shall be of sound construction and maintained in good repair to ensure that the health and safety of the greyhounds are not endangered.
- D. Floors and lower sides of the crates shall be constructed or shall be covered on the inner surfaces to contain excreta and bedding materials.
- E. The crates shall be cleaned and sanitized at least daily, or more frequently as may be necessary in order to maintain a sanitary environment for the greyhounds.
- F. Hauling vehicles shall provide ventilation that reaches each greyhound by means of windows, vents, air conditioner or an evaporative cooling system. Air conditioning, or evaporative cooling devices in good working order shall be provided when the atmospheric temperature is above 90 degrees Fahrenheit to provide comfort to the greyhounds during transport. Heat, insulation or bedding adequate to provide warmth shall be provided when the atmospheric temperature is below 50 degrees Fahrenheit.
- G. Greyhounds in hauling vehicles shall be inspected at least once in each four-hour period and their needs attended to immediately. Water shall be provided at each four-hour interval check.
- H. Racing kennels, breeding farms, or other operations that receive greyhounds transported from out-of-state locations shall maintain a log. The log shall include:
  1. The name of each greyhound,

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2. Left and right ear tattoo numbers or other permanent identification acceptable to the National Greyhound Association,
3. The names of owners or lessees,
4. The date of shipping or receiving,
5. Purpose (breeding, racing, training), and
6. Name of hauling company and driver.

- I. Newly arriving out-of-state greyhounds shall be housed separately until a physical evaluation can be made for the presence of ticks, or fleas and the administration of proper treatment.

**Historical Note**

Adopted effective March 1, 1995; R19-2-328 recodified from R4-27-328 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-329. Disposition of Greyhounds**

- A. Racing kennels, breeding farms, or other operations shall maintain a log as to the disposition of individually registered greyhounds at the end of their breeding, racing, or nonracing careers. The log shall include:
1. The name of each greyhound,
  2. Left and right ear tattoo numbers or other permanent identification acceptable to the National Greyhound Association,
  3. The names of owners or lessees,
  4. Date career ended and reason why, and
  5. Destination.
- B. Every effort shall be made to adopt the greyhounds not used for racing or breeding purposes.
- C. Greyhounds transported to an adoption agency, breeding farm, or other location at the end of their breeding, racing, or non-racing careers are subject to the transportation requirements in R19-2-328.

**Historical Note**

Adopted effective March 1, 1995; R19-2-329 recodified from R4-27-329 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1771, effective July 1, 2006 (Supp. 06-2).

**R19-2-330. Inspection Procedure for a Racing Kennel, Breeding Farm, or Other Operation**

- A. All racing kennels, breeding farms, or other operations shall be available for inspection at all times by representatives of the Department. Hauling vehicles used to transport greyhounds are considered part of the general equipment of the operation and as such shall be subject to inspection.
- B. Inspections shall be unannounced.
- C. A representative of the racing kennel, breeding farm, or other operation shall be present to assist the investigator during the inspection.
- D. A copy of the inspection report detailing the findings of the inspection shall be left by the investigator at the racing kennel, breeding farm, or other operation.
- E. A follow-up inspection shall be conducted by the Department if corrective measures are required, or if sick, or poorly maintained grey hounds are found. The Department may seek assistance from Animal Control authorities for the removal and treatment of sick and poorly maintained greyhounds.

**Historical Note**

Adopted effective March 1, 1995; R19-2-330 recodified from R4-27-330 (Supp. 95-1).

**R19-2-331. Greyhound Adoption Grants**

- A. The purpose of the grants is to promote the adoption of racing greyhounds as domestic pets. A maximum of 25% of the

license fees generated from A.R.S. § 5-104(F)(7) and (8) shall be distributed to nonprofit enterprises pursuant to A.R.S. § 5-104(G).

**B. Procedures.**

1. The enterprise shall submit a Department-generated application form to the Commission by March 1 of each year the enterprise may desire to apply for a grant. The application form shall require the following information:
  - a. A written description of the enterprise and proposed use of the grant;
  - b. Proof of nonprofit status;
  - c. A description of its procedures to acclimate the greyhounds required by A.A.C. R19-2-331(C)(6);
  - d. A description of its adoption procedures required by A.A.C. R19-2-331(C)(7);
  - e. A copy of the application form and the adoption agreement required by A.A.C. R19-2-331(C)(7)(a) and (c); and
  - f. A copy of the owner release form required by A.A.C. R19-2-331(C)(9).
2. The Commission shall decide which enterprise shall receive a grant, the amount of the grant, and the date of disbursement of such grant.
3. The recipients of the grants shall report quarterly to the Commission on a form provided by the Department to gather the following information:
  - a. The number of greyhounds the enterprise received;
  - b. The number of greyhounds adopted;
  - c. The number of greyhounds returned and reason for return;
  - d. The actual use of the grant; and
  - e. A list of people who adopted the greyhounds, or make available to the Department copies of the contracts between the agency and the adoptee.

**C. Minimum qualifications.**

1. The enterprise shall be nonprofit.
2. The enterprise shall not:
  - a. Allow the greyhounds to be used for racing, wagering, or hunting;
  - b. Place the greyhounds in a pound, humane society, or research facility;
  - c. Resell the greyhounds; or
  - d. Place the greyhounds for resale.
3. The enterprise shall not euthanize an adoptable greyhound unless, as determined by a licensed veterinarian, it is medically necessary for humane reasons.
4. The enterprise shall be affiliated with a racetrack that conducts greyhound racing. Affiliation is satisfied when the general manager, or other executive from the racetrack submits to the Commission a written recommendation on behalf of the enterprise.
5. The enterprise shall require that a licensed veterinarian perform a complete check-up on each greyhound. Each greyhound shall be spayed, or neutered, and vaccinated as necessary.
6. The enterprise shall employ procedures for acclimating greyhounds, which include:
  - a. Exposure to the public;
  - b. Exposure to a household environment which may include stairs, couches, toys, mirrors, tables;
  - c. Exposure to cats; and
  - d. Exposure to a new diet.
7. The enterprise shall employ procedures for adopting-out greyhounds, which include:
  - a. An application process for prospective adoptees;

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- b. A visual check of each prospective adoptee's home with written documentation;
  - c. A written adoption agreement between the enterprise and adoptee;
  - d. At a minimum, follow-ups conducted by phone, or visit after seven days and 30 days with written documentation; and
  - e. Procedures for the return of greyhounds.
8. The enterprise shall comply with the housing requirements set forth in R19-2-324.
  9. The enterprise shall have an owner release form for each greyhound in their care.
  10. The enterprise shall make available a person to answer questions from a prospective, or current adoptee.
  11. The enterprise shall keep a file on each greyhound. The file shall include:
    - a. The owner release form;
    - b. The vaccination record, health record, and spay, or neuter record;
    - c. The greyhound personality profile;
    - d. The written adoption agreement between the enterprise and adoptee;
    - e. The written documentation of visits and follow-ups; and
    - f. The adoptee's application form.
  12. The enterprise shall make available to the adoptee an owner's manual, or other packet of information.
  13. Records required by A.A.C. R19-2-331(C)(11) shall be subject to inspection by representatives of the Department.

**Historical Note**

Adopted effective February 28, 1995; R19-2-331 recodified from R4-27-331 (Supp. 95-1).

**R19-2-332. Certifying a Greyhound Arizona Bred**

- A. A breeder shall be properly licensed pursuant to A.R.S. § 5-107.01(B) in order to certify an Arizona-bred greyhound.
- B. Within 10 days of whelping, the breeder shall provide notice of whelping to the Department on a Department-approved form. This notice shall include the names of all owners or lessees of the dam at the time of whelping who will be entitled to breeders' awards at a later date. The breeder shall also provide a copy of the Breeding Acknowledgment Form returned to the breeder by the National Greyhound Association (NGA).
- C. Within 90 days of whelping, the breeder shall provide tattoo numbers of greyhounds from the litter to the Department on a Department-approved form.
- D. The breeder shall apply for Arizona-bred certification by submitting to the Department the completed application form provided by the Department and a National Greyhound Association Individual Registration Application. The application shall include the names of all owners or lessees of the dam at the time of whelping who shall be entitled to breeders' awards.
- E. The breeder shall comply with the following rules in order to be eligible for Arizona-bred certification:
  1. A greyhound must be present in Arizona for not less than six months of its first year.
  2. During the greyhound's first year, the breeder shall notify the Department whenever the greyhound is removed from the state.
  3. The Department may conduct inspections at any time to ensure that greyhounds meet the residency requirement.
- F. The breeder shall make the litter available for inspection by the representatives of the Department at any time. The Department representative shall conduct the inspection of the litter at

a location licensed by the Department and designated on the Breeding Acknowledgment Form within 30 days of whelping. The Department representative may conduct additional inspections of the litter to verify tattoo numbers and ensure compliance with requirements of A.R.S. § 5-114(C).

- G. If the greyhound and its breeder qualify by meeting requirements set forth in subsections (A) through (E), the Department shall certify that the greyhound is Arizona bred and mail all necessary documents, including the National Greyhound Association Individual Registration Application form, to the NGA. A greyhound is considered Arizona bred as of the date indicated on the Department's certificate.
- H. If the Breeder is ineligible for breeders' awards, the Director shall send a letter to the applicant explaining the ineligibility.
- I. The Department shall retain a copy of the NGA registration certificate and mail the original to the registered breeder.
- J. Denial. The Director may deny an application for Arizona-bred certification for any of the following reasons:
  1. Failure to notify the Department of whelping as required by subsection (B),
  2. Failure to provide the greyhound tattoo numbers as required in subsection (C),
  3. Failure to meet the residency requirements in subsection (E)(1) or failure to meet the notification requirement of subsection (E)(2), and
  4. Material misstatement by the breeder.
- K. The Department shall use information contained in applications and notices submitted to the Department in the event of a conflict between Department records and records of another organization.
- L. An applicant may appeal a decision of the Director by following the requirements in R19-2-322.

**Historical Note**

Adopted effective January 6, 1998 (Supp. 98-1).

**ARTICLE 4. ADVANCE DEPOSIT WAGERING, TELETRACKING, AND SIMULCASTING**

*Editor's Note: Under Laws 2014, Ch. 277, § 9, the Commission was required to provide at least one public hearing on the final exempt rulemaking amendments in R19-2-205. The Office of the Secretary of State makes a distinction between exempt rulemakings and final exempt rulemakings. Final exempt rulemakings are those filed with conditional exemptions to the Arizona Administrative Procedures Act such as requirements to conduct a public hearing or accept public comments on a proposed exempt rulemaking (Supp. 15-2).*

*Section R19-2-401 was adopted and subsequently amended under an exemption from the provisions of the Arizona Administrative Procedure Act under A.R.S. § 41-1005(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-401. Definitions**

In addition to the definitions in R19-2-102 and R19-2-302, unless the context otherwise requires, the following definitions apply in this Article:

1. "Account holder" means "natural person" not otherwise precluded from wagering by any Arizona statute or rule.
2. "Advance deposit wagering (ADW)" means a mechanism for pari-mutuel wagering in which wagers are debited and payouts credited to an advance deposit account held by an association or ADWP on behalf of an account holder.

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3. "Advance deposit wagering permit" means a permit issued by the Commission allowing an entity to conduct advance deposit wagering on behalf of a contracted Arizona racetrack permittee.
4. "Advance Deposit Wagering Vendor or Provider (ADWP)" means the Arizona licensed and racetrack permittee-contracted vendor providing advance deposit wagering services for Arizona resident account holders.
5. "Confidential Information" means advance deposit wagering account holders and their accounts; may include money transactions in to or out of accounts, specifics of monies wagered from any account on any race or series of races, the account number and security code of any account holder, the specifics of wagering interests wagered on, the specific identifying details of any account unless authorized by the account holder.
6. "Operating Hours" means the hours in which pari-mutuel windows are open at a teletrack facility.
7. "Pari-Mutuel Output Data" means any data provided by the totalisator system other than sales transaction data including, but not limited to, odds, will pays, race results, and pay-off prices.
8. "Racing Program" means the live races conducted at an authorized track, approved dark-day simulcasts and any simulcast races shown to the public in conjunction with live racing on which pari-mutuel wagering is allowed.
9. "Sales transaction data" means the electronic signals transmitted between totalisator ticket-issuing machines or approved ADW wager-issuing equipment and the totalisator central processing unit for the purpose of accepting wagers and generating, canceling, and cashing pari-mutuel tickets; also, the financial information resulting from processing sales transaction data, such as handle and revenues.
10. "Sending track" means the enclosure where a racing program of authorized live racing is conducted and from which teletracking originates.
11. "Telephone" means any device that a person uses for voice communications in connection with the services of a telephone company but does not include digital devices utilizing non-verbal communications.
12. "Teletrack facility" means an additional wagering facility owned or leased by an Arizona permittee that is used for handling legal wagers.
13. "Teletracking" means the telecast of live audio and visual signals of live or simulcast horse, mule, or greyhound racing programs conducted at an authorized enclosure within Arizona to an authorized additional wagering facility within Arizona, by a racetrack permittee for the purpose of pari-mutuel wagering, or the teletrack wagering conducted on the racing program.
14. "Teletrack wagering" means pari-mutuel wagering conducted at a teletrack facility within Arizona on a racing program conducted at an authorized track within Arizona regardless of whether the racing program is telecast to the teletrack location.
15. "Teletrack wagering permit" means a permit issued by the Commission authorizing an Arizona racetrack permittee to operate a single or multiple teletrack wagering facilities within the state for the purpose of pari-mutuel wagering.
16. "TIM-to-tote linkage" means the connection in which ticket issuing machines (TIM) are directly connected to the permittee's own calculating or compiling totalisator with no intermediate totalisator systems within that connection.
17. "Tote-to-tote linkage" means the connection between totalisator systems in which one of the systems is not part of the permittee's calculating system and may or may not be used for the compilation of TIM-to-tote wagers within its own wagering network that are then forwarded to the permittee's calculating totalisator system.
18. "Transmission" means the point-to-point sending and receiving of an audio or visual signal by any method approved by the Arizona Department of Racing.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Amended by adding paragraphs (8) and (9) effective August 21, 1985 (Supp. 85-4). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-401 recodified from R4-27-401 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Amended effective July 22, 1998, pursuant to an exemption from the rulemaking process (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 532, effective January 29, 1999 (Supp. 99-1). Amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4). Amended by final exempt rulemaking under Laws 2014, Ch. 277, § 9, at 21 A.A.R. 643, effective April 20, 2015 (Supp. 15-2).

*Section R19-2-402 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-402. ADWP Licensing Requirements**

- A. An ADWP shall be licensed by the Department.
- B. An ADWP shall comply with these and all other rules relating to entities permitted by the Commission as they apply to pari-mutuel wagering.
- C. The Department may suspend or revoke an ADWP license, withdraw approval of a contract between an ADWP and a racetrack permittee, or impose fines if the ADWP, its officers, directors or employees violate these rules or applicable sections of A.R.S. Title 5 or fail to abide by orders of the Department.
- D. An ADWP shall accept wagers only on the species for which the contracted Arizona racetrack permittee has a permit.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Amended effective August 21, 1985 (Supp. 85-4). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-402 recodified from R4-27-401 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-402 renumbered to R19-2-412; new Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-403 was adopted and subsequently amended under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or*

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*the Attorney General.***R19-2-403. ADW Permit Applications**

- A. A person, association, or corporation desiring to operate advance deposit wagering and open accounts for residents of Arizona shall file with the Department both a paper and electronic permit application that contains the information required in A.R.S. § 5-107. All electronic submissions shall be compatible with the Department's computer system and software. If any addendum to the permit application cannot be submitted electronically, the applicant shall submit the addendum in a paper copy.
- B. An ADW permittee shall contract only with ADWPs licensed by the Department.
- C. An ADWP shall pay daily the Regulatory Wagering Assessment (RWA) to the Department.
- D. An ADWP shall provide daily wagering information to the Department and the contracted racetrack permittee for verification of RWA and source market fees at a time and in a manner specified by the Department.
- E. A racetrack permittee shall verify that the total RWA paid each day for the both the racetrack's and the ADW's wagering activity is correct.
- F. The following reports shall be available for inspection upon request by the Department in a form acceptable to the Department and at a place of the Department's choosing within a reasonable time:
  1. ADW handle and related pari-mutuel data such as commission and breakage sorted by date, track or event, race and pool or by Source such as customer account; in total or detail;
  2. Reports for taxation purposes;
  3. Customer complaints;
  4. List of active accounts;
  5. List of excluded persons;
  6. List of account holders;
  7. Log of all system accesses; and
  8. List of all deposits, withdrawals, wagers and winning payouts, in summary or detail.
- G. An ADWP shall certify that the ADWP will provide the Department unrestricted access to all records and financial information of the ADWP, including all account information. The ADWP shall make this information available to the Department upon notice from the Department to the extent that disclosure is not expressly prohibited by law. Department access to and use of information concerning wager transactions and ADWP customers shall be considered proprietary and shall not be disclosed publicly, except as may be required by law. This information may be shared for multi-jurisdictional investigative purposes. An ADWP shall report to the Department any known or suspected rule violations by any person involving ADWP and cooperate in any subsequent investigations.
- H. An ADWP shall detail each method used for placing wagers through the ADW system and specify what information and place of recording constitutes proof of a wager placed through each wagering method.
- I. An ADWP shall give access to the Department, or its designee, for review and audit of all records. The ADWP or applicant shall make the required information available at the ADWP's location during business hours. The Department may require an ADWP to submit an annual audited financial statement.
- J. The Department may conduct investigations and inspections or request additional information from an ADWP or applicant if required to determine whether to approve an application.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Amended paragraphs (16) and (17) effective August 21, 1985 (Supp. 85-4). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-403 recodified from R4-27-403 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Amended effective July 22, 1998, pursuant to an exemption from the rulemaking process (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 532, effective January 29, 1999 (Supp. 99-1). Section R19-2-403 repealed; new Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-404 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-404. Application for ADWP Permit; Plan of Operation**

Before operating advance deposit wagering in Arizona, a person shall submit to the Department an application for an ADWP permit and a plan of operation. The Department shall issue an ADWP permit for no more than three years. An ADWP permit shall expire when the racing permit expires. If necessary, the Department may request additional information regarding any plan of operation.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Amended effective August 21, 1985 (Supp. 85-4). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-404 recodified from R4-27-404 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-404 renumbered to R19-2-414; new Section R19-2-404 made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-405 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-405. Contracts and Agreements**

An ADWP shall submit the following information regarding any group, concession, or contract related to the ADW operation whether within or outside of Arizona:

1. Copy of all contracts to provide services, including totalisator vendor services, within or on behalf of Arizona racetrack permittees or residents;
2. Name and background of the individuals responsible for operating the ADW accounts system;
3. Other information that, in the Director's judgment, is or may be material, such as information pertaining to financial background and persons associated with the parties to the contract;
4. Security measures to be employed to protect the ADWP account maintenance and wagering facilities;

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5. Security measures to be employed to protect transmission of sales transaction and pari-mutuel output data;
6. Type of data processing, communication, and transmission equipment to be used;
7. Description of all computer services and all other methods used to transmit any data or signal; and
8. Description of any alternate or backup system in case of principal system failure of communications or data-processing equipment used for forwarding wagers.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Amended effective August 21, 1985 (Supp. 85-4). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-405 recodified from R4-27-405 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-405 repealed; new Section R19-2-405 made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-406 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-406. Plan of Operation Approval and Amendments**

An ADWP shall conduct an ADW operation only according to the provisions of an approved plan of operation. The ADWP shall obtain the Director's written approval for any change to the plan of operation. The ADWP shall:

1. Notify the Department of any anticipated change in the plan of operation,
2. Report to the Department any change in ownership or management groups,
3. Provide the Department with a copy of all new contracts or amendments to existing ones, and
4. Request the approval of the Director for any change in technology used to transmit sales transaction data.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Amended effective August 21, 1985 (Supp. 85-4). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-406 recodified from R4-27-406 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-406 repealed; new Section R19-2-406 made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-407 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-407. ADWP Permit Renewal**

A permittee shall apply to the Department for renewal of its ADWP permit before the permit expires. The application for renewal shall provide the information required on a form available from the Department.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-407 recodified from R4-27-407 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-407 repealed; new Section R19-2-407 made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-408 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-408. ADWP Licensing**

- A. The following individuals shall be licensed as required by the Department:
  1. An individual with at least 10 percent ownership interest in the ADW; and
  2. All ADWP employees working in Arizona.
- B. An ADWP shall ensure that all ADWP employees working in another jurisdiction are licensed as required by that jurisdiction.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-408 recodified from R4-27-408 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-408 renumbered to R19-2-416; new Section R19-2-408 made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-409 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-409. ADW – Racetrack Permittee Contracts**

- A. An ADWP that accepts accounts from Arizona residents shall obtain and maintain a contract with one or more Arizona racetrack permittees. The ADWP shall ensure that the contract includes:
  1. Disclosure of Regulatory Wagering Assessments (RWA) assignment of responsibility for payment of:
    - a. The assessment on wagers placed by Arizona account holders on races conducted in Arizona, which will be considered to be live, in-state, off-track wagers; and
    - b. The assessment on wagers placed by Arizona account holders on races conducted outside of Arizona, which will be considered to be simulcast, in-state, off-track wagers;
  2. Disclosure of all ADWs wagering on any races run in this jurisdiction, and all ADWs wagering on races run in other jurisdictions that would be available for wagering in this jurisdiction under the contract;

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3. Certification of ADW licensing, authorization, or approval by the recognized pari-mutuel authority in the other jurisdiction;
  4. Disclosure of all fees, market share revenue, and distribution details and other financial considerations relating to the contract and any other non-contracted Arizona race-track permittees;
  5. Certification of prompt access for the Department, in print or electronic form acceptable to the Department, to:
    - a. Reports, logs, wagering transaction detail, and customer account detail;
    - b. Records relating to customer identify, age, and residency;
    - c. Records of customer account detail for individuals:
      - i. In any jurisdiction that places wagers on races conducted in this jurisdiction and races available for wagering by individuals in this jurisdiction;
      - ii. The Department has reason to investigate based on possible placing of wagers for individuals other than the account holder; and
      - iii. Determined by the Department to be relevant to an investigation by the Department;
  6. A detailed description and certification of systems and procedures used to validate the identity, age, and jurisdiction of legal residence of account holders and to validate the legality of wagers accepted;
  7. Certification of secure retention of and prompt Department access to all records related to wagering and customers' accounts, including deposits, withdrawals, wagers, and winning payouts for at least three years or a longer period specified by the Department; and
- B.** An ADWP shall attach the following to all contracts under this subsection:
1. A certified copy of rules governing the acceptance and management of accounts, and
  2. A certified copy of any change in the rules provided at least thirty days before the change takes effect.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-409 recodified from R4-27-409 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-409 renumbered to R19-2-417; new Section R19-2-409 made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-410 was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-105(A)(18). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-410. ADW Accounts**

- A.** An individual who wishes to establish an ADW account shall establish the account in person or by mail, telephone, or other electronic means before making any wager. The individual establishing an ADW account shall:
1. Establish the account in the individual's name,
  2. Be at least 21 years old, and
  3. Not be prohibited from wagering by Arizona rules or statutes.
- B.** An ADW account is not transferable.
- C.** An ADWP shall obtain the following regarding an individual who wishes to establish an ADW account:
1. Full legal name;
  2. Address of principal residence;
  3. Address to which communications are to be delivered if different from the principal residence address;
  4. Telephone number;
  5. Social Security number;
  6. Copy of evidence that the individual is at least 21 years old; and
  7. Whether the individual will make ADW deposits through the use of cash, personal check, credit or debit card, or electronic funds transfers.
- D.** An ADWP shall electronically verify an ADW-account applicant's name, principal residence address, date of birth, and Social Security number at the time application is made using a Department-approved national, independent, individual reference company or other independent technology approved by the Department.
- E.** An ADWP may refuse to establish an ADW account if it determines that any of the information supplied is untrue or incomplete and may at any other time, with reasonable cause, refuse to accept a wager or deposit.
- F.** An ADWP shall designate each ADW account with a unique account number. The ADWP may change an ADW account number if the ADWP provides notice to the account holder before the change is made.
- G.** An ADWP shall ensure that an ADW-account holder is able to access the account holder's account by means of personal identification or account password.
- H.** When an ADW account is established, the ADWP shall:
1. Inform the account holder of the assigned account number; and
  2. Provide the account holder a copy of the ADWP's advance deposit wagering procedures, terms and conditions and other information pertaining to the operation of the ADW account including any rules the ADWP has made concerning deposits, withdrawals, average daily balance, user fees (including for EFT deposits), interest payments, and any other aspect of the operation of the account.
- I.** An ADWP shall notify an account holder before making any change to the rules governing the account and provide an opportunity for the account holder to close or cash-in the account. The ADWP may deem an account holder to have accepted the rules of account operation when the account holder opens or does not close the account.
- J.** An ADWP shall comply with Internal Revenue Service (IRS) requirements for reporting and withholding proceeds from advance deposit wagers by account holders. The ADWP shall send an account holder subject to IRS reporting or withholding a form W2-G summarizing the information for tax purposes following a winning wager being deposited into the account holder's account. Upon written request, the ADWP shall provide an account holder with summarized tax information on advance deposit wagering activities.
- K.** An account holder is deemed to be aware of the status of the account holder's account at all times. An ADWP shall not accept a wager that exceeds the available balance of an account. An account not updated when a transaction is completed shall be inoperable until the account balance is updated and the transaction is posted.
- L.** When an ADW account is entitled to a payout or refund, the ADWP shall credit the monies to the account. This will increase the balance in the account. The account holder shall verify that proper credits have been made and, if in doubt,

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notify the ADWP within the agreed upon time for consideration. The ADWP or the account holder may forward an unresolved dispute to the Department. The Department shall not consider a dispute unless it is submitted in writing and accompanied by supporting evidence.

**M. Account Operation.**

1. An ADWP shall maintain complete records of every deposit, withdrawal, wager, and winning payout for each ADW account. The ADWP shall make these records available to the Department promptly upon request and retain the records for the time required under R19-2-502(A).
2. An ADWP shall allow an ADW account holder to make wagers from the account only by telephone.
3. Placing or accepting wagers over the communications facility known as the Internet is not authorized with the exception of multi-jurisdictional totalisator wagering hubs. However, it is permissible to transmit handicapping data, race results, or other information relating to pari-mutuel racing over the Internet.
4. An ADWP shall ensure that the ADW system provides for the account holder to review and finalize a wager before the wager is accepted by the ADW system. Neither the account holder nor the ADWP shall change a wager after the account holder has reviewed and finalized the wager except as allowed under R19-2-504(C).

- N.** An ADWP may close an ADW account when the account holder attempts to operate with an insufficient balance or when the account is dormant for a period approved by the Department. When an ADWP closes an ADW account, the ADWP shall refund the remaining account balance to the account holder.

**Historical Note**

Adopted effective April 3, 1984 (Supp. 84-2). Repealed effective December 14, 1994 (Supp. 94-4). R19-2-410 recodified from R4-27-410 (Supp. 95-1). New Section adopted effective February 26, 1996, pursuant to an exemption from the rulemaking process (Supp. 96-1). Section R19-2-410 renumbered to R19-2-418; new Section R19-2-410 made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-411 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-411. Advance Deposit Wagering**

- A.** All Department rules governing pari-mutuel wagering govern advance deposit wagering. Advance deposit monies wagered are part of the pool of the sending track.
- B.** An ADWP shall maintain sales transaction data from the ADWP to each host track as a separate account for audit purposes.
- C.** An ADWP shall make sales transactions using currently approved technology.
- D.** An ADWP shall pay to the Department an advance deposit wagering assessment of 0.6 percent from the gross revenues generated by advance deposit wagering.

**Historical Note**

Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-412 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-412. Teletrack Wagering**

- A.** All Department rules governing pari-mutuel wagering govern teletrack wagering. Teletrack monies wagered are part of the pool of the sending track for reporting purposes.
- B.** An ADWP shall maintain sales transaction data from a teletrack facility to the sending track as a separate account for audit purposes.
- C.** An ADWP shall make sales transaction data using currently approved technology and transmit the data separately from pari-mutuel data and the visual display of races.
- D.** If there is an interruption of transmission of sales transaction or pari-mutuel output data to or from the teletrack facility, the designated representative of the Department may require that the amount of wagers that have been accepted be deducted from the sending track pool, the odds recalculated, and monies bet at the teletrack facility refunded, taking into consideration time, the extent of the breakdown, and the amount of monies wagered.

**Historical Note**

New Section R19-2-412 renumbered from R19-2-402 and amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-413 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-413. General Provisions Regarding Teletrack Facilities**

- A.** At the Director's discretion, a Department representative may be present during all operating hours at a teletrack facility.
- B.** A teletrack wagering permittee shall, during all operating hours, have back-up or replacement tote equipment available so the down time in the event of equipment failure does not exceed 60 minutes. At teletrack sites with multiple teller equipment installed, back-up equipment may consist of the remaining operating teller machines if the remaining teller machines are sufficient to handle the reasonably anticipated volume of sales transactions without unreasonable delays or inconvenience to patrons.
- C.** During a racing program, the teletrack wagering permittee shall report any problems or delays to the public.
- D.** A teletrack wagering permittee shall ensure that security measures are adequate to control disturbances.
- E.** A teletrack wagering permittee shall ensure that communications between the sending track and teletrack facility occur without delay. In a tote-to-tote situation, if the data transmission link between the tote systems fails, the teletrack wagering permittee shall decide the policy for paying off or refunding pari-mutuel tickets and all other communication failures at the teletrack site.

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- F. A teletrack wagering permittee shall make photo finish pictures of the previous day's live races available for viewing upon request within 48 hours.
- G. If a video display of any portion of a racing program is provided at a teletrack location, the video display shall include the following, if possible:
1. All wagering information including pool totals, will pays, or odds as offered to the general public at the permittee racetrack location;
  2. Each race shown live, as it is run or received at the permittee premises;
  3. Race results;
  4. Prices or payoff;
  5. Minutes to post; and
  6. The race number and track for which the above information is displayed.
- H. A teletrack wagering permittee shall make Arizona pari-mutuel rules available in the wagering area. This requirement may be met by publishing the Department's rules-page web address in the racing program and on the permittee's web site.
- I. A teletrack wagering permittee shall make the results of each race, and the winnings from each race, available from tellers or results-posting terminals as soon as possible at each teletrack facility and shall make the results available to the wagering public for 24 hours on the race day following the day of the race.
- J. A teletrack wagering permittee shall report to the Department any violation or suspected violation of law that occurs on or about the premises of the teletrack facility.
- K. A teletrack wagering permittee shall make daily handle and attendance reports for each teletrack facility as prescribed by the Department.
- L. Betting period:
1. A teletrack wagering permittee shall conduct wagering only during periods approved by the Director or Commission in respect to any race, racing card, pool, or feature pool.
  2. The Director may prescribe the closing time for pari-mutuel equipment at each facility based on the level of sophistication of the pari-mutuel equipment and transmission equipment.
- M. A teletrack wagering permittee shall obtain the Director's written approval of the method used to transmit sales transaction and pari-mutuel output data. The Director shall base approval on determination that provisions to secure the system and transmissions are satisfactory.
- N. A teletrack wagering permittee shall provide computer reports pertaining to pari-mutuel activity as required by the Director.
- Historical Note**
- Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).
- Section R19-2-414 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*
- R19-2-414. Application for Original Teletrack Wagering Permit; Plan of Operation; Renewals of Teletrack Wagering Permit**
- A. An applicant for a teletrack wagering permit shall submit an application and plan of operation to the Commission. The Commission shall issue a teletrack wagering permit for no more than three years.
- B. An applicant shall include the following in the plan of operation:
1. A feasibility study that estimates both gross revenue from the teletrack wagering operation and costs to operate. The feasibility study shall include:
    - a. Types of wagering to be offered and hours during which pari-mutuel windows will be in operation,
    - b. Estimated attendance at all additional wagering facilities,
    - c. Level of anticipated wagering activity,
    - d. Source and amount of estimated revenues other than pari-mutuel wagering,
    - e. Cost of operating the teletrack wagering system,
    - f. Amount and source of revenues needed for financing the teletrack wagering operation,
    - g. Proof of financial stability and assets sufficient to cover projected costs, and
    - h. Estimate of the total amount of anticipated revenues to be paid to the state resulting from teletrack wagering operations;
  2. The following information regarding any group, concession, or contract related to the teletrack wagering operation whether within or outside of Arizona unless the information is already on record with the Department as part of the applicant's original application to operate a racing meet:
    - a. Copy of all contracts to provide service within Arizona;
    - b. Name and background of the individuals responsible for operating the teletrack wagering system;
    - c. Copies of proposed agreements for any transmission of audio-visual signals of racing events and the transmission of sales transaction and pari-mutuel output data; and
    - d. Other information that, in the Director's judgment, is or may be material, such as information pertaining to financial background and persons associated with the parties to the contract;
  3. The following information regarding security:
    - a. Security measures to be employed to protect the teletrack wagering facilities,
    - b. Security measures to be employed to protect the public, and
    - c. Security measures to be employed to protect transmission of sales transaction and pari-mutuel output data; and
  4. The following information regarding equipment, communication, and transmission:
    - a. Type of data processing, communication, and transmission equipment to be used;
    - b. Description of all computer services and all other methods used to transmit any data or signal; and
    - c. Description of any alternate or backup system in case of principal system failure of communications or data-processing equipment used for forwarding wagers.
- C. Approval and amendments. A teletrack wagering permittee shall conduct a teletrack wagering operation only according to the provisions of an approved plan of operation. The teletrack wagering permittee shall obtain the Director's written approval for any change to the plan of operation. The teletrack wagering permittee shall:
1. Notify the Department of any anticipated change in the plan of operation;

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2. Report to the Department any changes in ownership or management groups,
  3. Provide the Department with a copy of all new contracts or amendments to existing ones, and
  4. Request the approval of the Director for any change in technology used to transmit sales transaction data.
- D. Renewal. A teletrack wagering permittee shall apply to the Commission for renewal of its teletrack wagering permit at the time the permittee makes application for a permit to operate a racing meet. The teletrack wagering permittee shall include in the renewal application the information required in subsections (B)(1) through (4).

**Historical Note**

New Section R19-2-414 renumbered from R19-2-404 and amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-415 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-415. Approval of Additional Wagering Facilities; Plan of Operation; Renewal or Approval of Additional Wagering Facilities**

- A. A teletrack wagering permittee shall request approval from and submit a plan of operation to the Commission for each additional teletrack wagering facility. The Commission shall issue a permit for an additional wagering facility for no more than three years.
- B. The teletrack wagering permittee shall include the following in the plan of operation regarding the additional teletrack wagering facility:
  1. A feasibility study that estimates both gross revenue from the teletrack facility and estimated costs to operate the facility. The feasibility study shall include:
    - a. Types of wagering to be offered and the hours during which pari-mutuel windows will be in operation,
    - b. Level of anticipated wagering activity,
    - c. Source and amount of revenues needed for financing the teletrack wagering operation,
    - d. Proof of financial stability and assets sufficient to cover projected costs, and
    - e. Estimate of the total amount of anticipated revenues to be paid to the state resulting from teletrack wagering operations;
  2. The following information regarding any group, concession, or contract related to the teletrack wagering operation whether within or outside of Arizona unless the information is already on record with the Department:
    - a. Listing and background of the management groups responsible for operation of the facility;
    - b. Name of all individuals who own at least 10 percent of the facility; and
    - c. Other information that, in the Director's judgment, is or may be material, such as information pertaining to financial background and persons associated with the parties to the contract;
  3. Measures to be employed by the teletrack wagering permittee to protect the facility, employees, public, and wagering dollars;
  4. Location of the teletrack wagering facility;

5. Proof that approval for use of the facility to handle pari-mutuel wagering has been given by the governing body of the city or town or by the board of supervisors, if the facility is located in an unincorporated area; and
  6. Building plans and specifications that demonstrate sufficient area for patrons to handicap the races and reasonable access by individuals with a disability.
- C. Approval and amendments. The requirements in R19-2-414(C) apply.
- D. Renewal. When a teletrack wagering permittee makes application to renew the teletrack wagering permit, the permittee shall provide the Department a list of its existing additional teletrack wagering facilities. When the Director approves renewal of the teletrack wagering permit, the Director may approve:
  1. Renewal of the existing additional teletrack wagering facilities, and
  2. The permittee's application to begin operation at a teletrack wagering facility previously approved by the Commission and currently used by another permittee.
- E. After the Commission approves an additional teletrack wagering facility, the permittee shall not open the additional facility for business for five working days or until all licensing requirements are satisfied. If the necessary licensing requirements are completed in less than five working days, the Director may waive the remaining days.

**Historical Note**

Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-416 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-416. Suspension of Teletrack Permit**

- A. The Director or the Director's designee may suspend a teletrack wagering permit or a permit to operate an additional teletrack wagering facility if the permittee fails to conduct operations in accordance with the provisions of the approved plan of operation, A.R.S. Title 5, Chapter 1, this Chapter, or directives from the Director.
- B. If the Director finds that the public health, safety, or welfare imperatively requires emergency action, the Director shall order summary suspension of a teletrack wagering permit or any permit authorizing operation of an additional teletrack wagering facility, pending a hearing.

**Historical Note**

New Section R19-2-416 renumbered from R19-2-408 and amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-417 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-417. Licensing of Employees at Teletrack Facilities**

- A. A teletrack wagering permittee shall ensure that no teletrack wagering occurs at a teletrack facility until all individuals

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required to be licensed under subsection (B) have been licensed.

- B.** A teletrack wagering permittee shall ensure that the following individuals are licensed by the Department before participating in teletrack wagering and as circumstances or personnel change during the course of the teletrack permit period:
1. All individuals employed by the permittee at any teletrack wagering facility,
  2. All persons who own at least 10 percent of a teletrack wagering facility leased by the permittee,
  3. Any individual employed by the teletrack wagering facility who has responsibility as manager of the facility during operating (racing) hours, and
  4. Any other person designated by the Director.

**Historical Note**

New Section R19-2-417 renumbered from R19-2-409 and amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-418 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-418. Directives**

*Notwithstanding anything contained in this Article, decisions on matters concerning teletrack wagering facility operations may be made by the Director, within the scope of the Director's statutory authority. The Director's decisions shall be effective immediately upon written notification.*

**Historical Note**

New Section R19-2-418 renumbered from R19-2-410 and amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-419 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-419. Simulcast Wagering**

- A.** The Department may authorize a racetrack permittee to conduct simulcasting as defined in A.R.S. § 5-101 and authorized under A.R.S. § 5-112 and the Interstate Horse Racing Act of 1978.
- B.** A racetrack permittee that wishes to conduct simulcasting shall submit a request for sending or receiving of simulcasts in writing to the Director of the Department.
- C.** For initial approval of horse simulcasts, the Department requires the following:
1. A completed simulcast agreement between a racetrack permittee and out-of-state entity;
  2. Written approval of the out-of-state horsemen's group, if applicable;
  3. Written approval of the out-of-state racing commission; and
  4. Written approval of the local horsemen's group. For purposes of this Section, horsemen's group is the group that represents a majority of the horsemen racing at or contracted with the racetrack permittee.
- D.** For initial approval of greyhound simulcasts, the Department requires the following:
1. A completed simulcast agreement between a racetrack permittee and out-of-state entity, and
  2. Written approval of the out-of-state racing commission.
- E.** Withdrawal of any of the written approvals required under subsections (C) and (D) constitutes grounds for the Department to rescind authorization for simulcasting.
- F.** To renew approval for simulcasting, a racetrack permittee shall submit any changes to the previous contract or addendums and current signature pages. Alternatively, and at the Department's option, the Department may accept an updated list of simulcast import host signals to be received and export guest wagering locations to be hosted by the Arizona racetrack permittee.
- G.** Additional wagering facilities.
1. A racetrack permittee may conduct simulcasting at the racetrack enclosure and at any additional wagering facility operated by the racetrack permittee if the additional wagering facility is included in the simulcast agreement.
  2. A racetrack permittee may send its simulcast signal to an out-of-state racetrack enclosure and any additional wagering facilities operated or used by the out-of-state entity if all locations receiving the simulcast signal are included in the simulcast agreement.
- H.** Duties of Arizona sending racetrack permittee.
1. If video is to be transmitted, the sending racetrack permittee is responsible for the content of the simulcast video program and shall use all reasonable effort to present a simulcast that offers viewers an exemplary depiction of each performance.
  2. Unless otherwise permitted by the Department, every sent simulcast video program shall contain in its video content a digital signal of actual time of day, the name of the host facility from which the signal emanates, the number of the contest being displayed, minutes to post, and any other relevant information available to patrons at the sending facility.
- I.** Duties of Arizona receiving racetrack permittee.
1. A receiving racetrack permittee conducting a commercial racing meet in this state may, with approval of the Department, conduct and operate a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more sending racetrack permittees outside this state.
  2. A receiving racetrack permittee shall provide:
    - a. If video will be displayed, adequate receiving equipment of acceptable broadcast quality for providing any sending-facility patron information;
    - b. Pari-mutuel terminals, pari-mutuel odds displays, modems, and switching units enabling pari-mutuel data transmissions and data communications between the sending and receiving racetrack permittees; and
    - c. In the case of separate pool simulcasting, a voice communication system between the receiving racetrack permittee and the sending racetrack permittee providing timely voice contact among Department designees, placing judges, and pari-mutuel departments.
  3. A receiving racetrack permittee shall conduct pari-mutuel wagering in compliance with this Chapter.
  4. The Department may appoint at least one designee to supervise all approved simulcast facilities and may

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require additional designees as is reasonably necessary to protect the public interest.

- J. In accordance with R19-2-505, a racetrack permittee may make a written request to the Director for authorization to conduct advance performance wagering.

**Historical Note**

Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*Section R19-2-420 was made under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(16). Exemption from the rulemaking process means that the agency did not submit these rules to the Secretary of State's Office for publication in the Register as proposed rules, the agency was not required to accept public comment, and the rules were not approved by either the Governor's Regulatory Review Council or the Attorney General.*

**R19-2-420. Interstate Common Pool Wagering**

**A. General provisions.**

1. All contracts governing participation by a racetrack permittee in interstate common pools shall be submitted to the Department. All parties to the contracts shall certify to the other parties that each will provide the others or their regulatory bodies full and prompt access to necessary requested records.
2. Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined solely for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.
3. The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the information permitted or required to be displayed under these rules.
4. A racetrack permittee may participate in common pool wagering only on the same type of racing as authorized by the permit for live racing conducted by the racetrack permittee.

**B. Participation in interstate common pools by receiving racetrack permittee.**

1. With prior approval of the Department, pari-mutuel wagering pools may be combined with corresponding wagering pools at the sending facility outside of this state.
2. The Department may permit adjustment of the takeout from the pari-mutuel pool so the takeout rate in this jurisdiction is identical to that at the sending track (within the limits permitted by state law).
3. Where takeout rates in the merged pool are not identical, the net price calculation shall be the method by which the differing takeout rates are applied.
4. Rules of racing established for the contest in the sending track apply to the merged pool.
5. If, for any reason, it becomes impossible to merge successfully the bets placed into the interstate common pool, the racetrack permittee shall declare the accepted bets void and make refunds in accordance with applicable rules except that, with permission of the Department, the racetrack permittee may determine to make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere or pay winning tickets at the payoff prices at the sending track. The permittee shall publish the chosen policy under this subsection

tion in the daily racing program and on the permittee's web site and post the policy in all wagering locations.

- C. Participation in merged pools by sending racetrack permittee.
1. With prior approval of the Department, a racetrack permittee conducting a live race meet and pari-mutuel wagering may determine that all or part of the racing program be used for pari-mutuel wagering by sending all or part of the racing program to facilities outside this state and may also determine that pari-mutuel pools at the out-of-state facilities be combined with corresponding wagering pools established by the permittee as the sending track.
  2. This Chapter applies to interstate common pools unless the Department specifically determines otherwise.
  3. A racetrack permittee shall ensure that any contract for interstate common pools entered contains a provision providing that if, for any reason, it becomes impossible to merge successfully the bets placed in another state into the interstate common pool formed by the racetrack permittee or if, for any reason, the Department's or the racetrack permittee's representative determines that attempting to effect transfer of pool data from the receiving facility may endanger the racetrack permittee's wagering pool, the racetrack permittee has no liability for any measures taken that may result in the receiving facility's wagers not being accepted into the pool.
  4. Amounts wagered in an interstate common pool other than amounts wagered within this state are not considered part of the racetrack permittee's pari-mutuel wagering pool for purposes of A.R.S. § 5-111. A racetrack permittee may charge a fee to a receiving facility or location outside this state for the privilege of conducting pari-mutuel wagering on a race and participating in the interstate common pool and for payment of costs incurred to transmit the broadcast of the race.
- D. Takeout rates in interstate common pools. With prior approval of the Department, a racetrack permittee wishing to participate in an interstate common pool may change its takeout rate (within the limits permitted by state law) to achieve a common pool takeout rate with all other participants in the interstate common pool.

**Historical Note**

Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

**ARTICLE 5. PARI-MUTUEL WAGERING**

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-501. General**

Each permittee shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the Department. The totalisator shall be tested prior to and during the meeting as required by the Department.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-501 record-

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ified from R4-27-501 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-502. Records**

- A.** The permittee shall maintain records of all wagering for one year from the end of the racing meet or end of the racetrack's fiscal year, the same term for which outs tickets are valid, so the Department may review the records for any contest. Wagering records maintained shall include the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting, interest, and other information as may be required. The wagering records shall be retained by each permittee and safeguarded for the period specified by the Department. The Department may require that certain records be made available to the wagering public at the completion of each contest.
- B.** The permittee shall provide the Department with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-502 recodified from R4-27-502 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-503. Pari-mutuel Tickets**

A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the permittee and is evidence of the obligation of the permittee to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The permittee shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold, and for a one-year period after the last day of the meeting. Each pari-mutuel ticket purchaser agrees to abide by the terms and provisions of these rules, other applicable rules of the Arizona Racing Commission, and by the laws of the state of Arizona.

1. To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the permittee and recorded as a ticket entitled to a share of the pari-mutuel pool and contain imprinted information as to:
  - a. The name of the permittee operating the meeting,
  - b. A unique identifying number or code,

- c. Identification of the terminal at which the ticket was issued,
  - d. A designation of the performance for which the wagering transaction was issued,
  - e. The contest number for which the pool is conducted,
  - f. The type or types of wagers represented,
  - g. The number or numbers representing the betting interests for which the wager is recorded,
  - h. The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.
2. No pari-mutuel ticket recorded or reported as previously paid, cancelled, or nonexistent shall be deemed a valid pari-mutuel ticket by the permittee. The permittee may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in R19-2-504(E) of these rules.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-503 recodified from R4-27-503 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-504. Pari-mutuel Ticket Sales**

- A.** Pari-mutuel tickets shall be sold only by a permittee licensed to conduct pari-mutuel wagering or a racetrack permittee-contracted ADWP. All tickets shall be sold as prescribed under A.R.S. §§ 5-111 and 5-112.
- B.** A pari-mutuel ticket may not be sold on a contest for which wagering has been closed and a permittee shall not be responsible for sales entered into but not completed by issuance of a ticket before the totalisator is closed for wagering on the contest.
- C.** Claims pertaining to a mistake on an issued or unissued ticket must be made by the bettor before leaving the seller's window. Cancellation or exchange of tickets issued shall not be permitted after a patron has left a seller's window except in accordance with written policies established by the racetrack permittee and approved by the Department. An ADWP shall abide by the most restrictive policy established by any of the racetrack permittees with which the ADWP contracts.
- D.** Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official." Any change in the order of finish or award of purse money that results from a subsequent ruling by the stewards or Department shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.
- E.** A racetrack permittee shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization of the Department.
- F.** A racetrack permittee has no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

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- G. Pari-mutuel tickets shall neither be sold to nor purchased by anyone less than 21 years old.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-504 recodified from R4-27-504 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-505. Advance Performance Wagering**

No permittee shall permit wagering to begin more than one day before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the Department.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-505 recodified from R4-27-505 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-506. Claims for Payment from Pari-mutuel Pool**

At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the permittee in any case where the permittee has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the Department, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the Department within 48 hours.

1. In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required pursuant to R19-2-503(1) of these rules, the permittee shall make a recommendation to accompany the claim forwarded to the Department as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.
2. In the case of a claim made for payment on a pari-mutuel wager, the Department shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the permittee, or may deny the claim, or may make such other order as it may deem proper.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-506 recodified from R4-27-506 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-507. Payment for Errors**

If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed and, as a result of such error, the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

1. Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payoffs is equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payoff, the underpayment shall be paid to the Department for deposit into the State Treasury.
2. Any claim not filed with the permittee within 30 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived, and the permittee shall have no further liability therefore.
3. In the event the error results in an overpayment to winning wagers, the permittee shall be responsible for such payment.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-507 recodified from R4-27-507 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-508. Betting Explanation**

A racetrack permittee shall ensure that a summary explanation of pari-mutuel wagering and each type of betting pool offered is published in the racing program for every wagering performance. The racetrack permittee shall make the rules of racing relative to each type of pari-mutuel pool offered available upon request through permittee representatives at all permittee wagering locations and shall post a link to the Department's rules page on all permittee web sites.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-508 recodified from R4-27-508 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing*

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*Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-509. Display of Betting Information**

- A. A racetrack permittee shall ensure that odds or will-pay amounts for win pool betting are posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.
- B. The racetrack permittee shall ensure that amounts wagered in total for the other pools and on each betting interest or wager combination are displayed to the wagering public at intervals and in a manner approved by the Department.
- C. Official results and payoffs shall be displayed when a contest is declared official.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-509 recodified from R4-27-509 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-510. Cancelled Contests**

If a contest is cancelled or declared "no contest," refunds shall be granted on valid wagers in accordance with this Chapter.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-510 recodified from R4-27-510 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-511. Refunds**

- A. Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:
  1. Win pools, Exacta pools, and first-half Double pools offered in contests in which the number of betting interests has been reduced to fewer than 2.
  2. Place pools, Quinella pools, Trifecta pools, first-half Quinella Double pools, first-half Twin Quinella pools,

first-half Twin Trifecta pools, and first-half Tri-Superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than 3.

3. Show pools, Superfecta pools, and first-half Twin Superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than 4.
- B. Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-511 recodified from R4-27-511 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-512. Coupled Entries and Mutuel Fields**

- A. Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.
- B. For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-512 recodified from R4-27-512 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-513. Pools Dependent upon Betting Interests**

- A. Unless the Department otherwise provides, at the time the pools are opened for wagering, the racetrack permittee:
  1. Shall offer Win wagering on all contests with three or more betting interests and may offer Win wagering on all contests with two or more betting interests.

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2. Shall offer Place wagering on all contests with four or more betting interests and may offer Place wagering on all contests with three or more wagering interests.
  3. Shall offer Show wagering on all contests with five or more betting interests and may offer Show wagering on all contests with four or more betting interests.
  4. May offer Quinella wagering on all contests with three or more betting interests.
  5. May offer Quinella Double wagering on all contests with three or more betting interests.
  6. May offer Exacta wagering on all contests with two or more betting interests.
  7. May offer Trifecta wagering on all contests with three or more betting interests.
  8. May offer Superfecta wagering on all contests with four or more betting interests.
  9. May offer Twin Quinella wagering on all contests with three or more betting interests.
  10. Shall not offer first- or second-leg Twin-Trifecta or Tri-Superfecta wagering on any contests with six or fewer betting interests in either leg of the wager.
  11. May offer Pick-N wagering on any consecutive contests that allow Win wagering.
  12. May offer Place Pick-N wagering on any consecutive contests that allow Place wagering.
  13. May prohibit wagering on any particular contestant in stakes races, if the exclusions are clearly indicated in the racing program.
- B.** Before each racing meet, the racetrack permittee shall establish and submit to the Department the pools to be offered with each number of betting interests.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-513 recodified from R4-27-513 (Supp. 95-1). Amended effective July 3, 1996 (Supp. 96-3). Amended by exempt rulemaking at 6 A.A.R. 786, effective February 1, 2000 (Supp. 00-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-514. Prior Approval Required for Betting Pools**

- A.** A permittee that desires to offer new forms of wagering must apply in writing to the Department and receive written approval prior to implementing the new betting pool.
- B.** The permittee may suspend previously approved forms of wagering with the prior approval of the Department. Any carryover shall be held until the suspended form of wagering is reinstated. A permittee may request approval of a form of wagering or separate wagering pool for specific performances.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-514 recodified from R4-27-514 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-515. Closing of Wagering in a Contest**

- A.** A Department representative shall close wagering for each contest. After wagering is closed, no pari-mutuel tickets shall be sold for that contest.
- B.** The racetrack permittee shall maintain, in good order, a system approved by the Department for closing wagering.
1. If the totalisator fails mechanically and becomes unreliable as to the amounts wagered, all money wagered on the contest shall be refunded.
  2. If a breakdown of the totalisator cannot be repaired during wagering on a contest, the wagering for that contest shall be declared closed. The payoff for a race closed because of totalisator breakdown shall be computed on the sums wagered in each pool before the breakdown.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-515 recodified from R4-27-515 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-516. Complaints Pertaining to Pari-mutuel Operations**

- A.** When a patron makes a complaint regarding the pari-mutuel department to a permittee, the permittee shall immediately issue a complaint report setting out:
1. The name of the complainant;
  2. The nature of the complaint;
  3. The name of the persons, if any, against whom the complaint was made;
  4. The date of the complaint;
  5. The action taken or proposed to be taken, if any, by the permittee.
- B.** The permittee shall submit every complaint report to the Department within 48 hours after the complaint was made.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-516 recodified from R4-27-516 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption*

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*from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-517. Licensed Employees**

All licensees shall report any known irregularities or wrongdoings by any person involving pari-mutuel wagering immediately to the Department and cooperate in subsequent investigations.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-517 recodified from R4-27-517 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-518. State Mutuel Supervisor**

- A. The Director shall appoint a state mutuel supervisor who shall monitor the pari-mutuel department and wagering at all race meetings and additional wagering facilities.
- B. A permittee shall grant the state mutuel supervisor and Department unrestricted access to its facilities and equipment and to all books, ledgers, accounts, documents, and records pertaining to pari-mutuel wagering.
- C. The state mutuel supervisor shall receive all requested information from a permittee's officers and employees promptly and shall receive full cooperation while carrying out the duties of that office.
- D. The state mutuel supervisor shall report to the Director and stewards any failure of the permittee, including its officers and employees, to comply with both the provisions of these rules and the laws of the state of Arizona.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-518 recodified from R4-27-518 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-519. Mutuel Manager**

- A. In the event of an emergency in connection with the pari-mutuel department not covered in these rules, the mutuel manager representing the permittee shall report the problem to the

stewards and the permittee, and the stewards shall render a full report to the Department within 48 hours.

- B. The mutuel manager shall be responsible for the correctness of all payoff prices posted on the odds board, subject to the limitations of nonfraudulent human and mechanical errors. In the event that a payoff is both incorrectly posted and paid, the mutuel manager shall file with the Department a complete report explaining the circumstances prior to the next racing day.
- C. The mutuel manager shall provide the Department with, upon request, complete and detailed reports of each race day; including the handle of each race, the total handle and attendance, the payoffs on each race, breakage and commission, opening and closing lines, and sellers' shortages and overages.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-519 recodified from R4-27-519 (Supp. 95-1).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-520. Stored Value Instruments**

- A. Pari-mutuel cash vouchers. A racetrack permittee may offer pari-mutuel cash vouchers at a wagering location that issues pari-mutuel tickets.
  1. Cash vouchers shall be dispensed through the totalisator system;
  2. The stored value on a cash voucher may be redeemed in the same manner as a value of a winning pari-mutuel ticket for wagers placed at a pari-mutuel window or a self-service terminal, and may be redeemed for the cash value at any time;
  3. The tote system transaction record for all pari-mutuel cash vouchers shall include the voucher identification number in subsequent pari-mutuel transactions; and
  4. Pari-mutuel wagers made from a voucher shall include the voucher by identification number.
- B. A racetrack permittee may, with prior approval of the Department, issue special pari-mutuel cash vouchers as incentives or promotional prizes, and may restrict the use of the special vouchers to the purchase of pari-mutuel wagers.
- C. Other stored value instruments and systems. A racetrack permittee shall not, without the prior approval of the Department, use any form of stored value instrument or system other than a pari-mutuel cash voucher for making or cashing pari-mutuel wagers. A request for approval of a stored value instrument or system other than a pari-mutuel cash voucher shall include a detailed description of the standards used to:
  1. Identify the specific stored value instrument or account in the pari-mutuel system wagering transaction record;
  2. Verify the identity and business address of the person obtaining, holding, and using the stored value instrument or system; and
  3. Record and maintain records of deposits, credits, debits, transaction numbers, and account balances involving the stored value instruments or accounts.
- D. A stored value instrument or system:

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1. Shall prevent a wagering transaction if the wagering transaction will create a negative balance in the account, and
  2. Shall not operate to automatically facilitate a transfer of funds into a stored value instrument or account without direct authorization of each deposit transfer by the person holding the instrument or account.
- E. A request for approval of a stored value instrument or system shall include:
1. An affirmation that records and reports relating to all transactions, account records, and customer identification and verification will be made available on request to the Department in both paper or and electronic form approved by the Department; and
  2. Certification of secure retention of all records for the time specified in R19-2-502.

**Historical Note**

Section reserved. New Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

**R19-2-521. Repealed**

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-521 recodified from R4-27-521 (Supp. 95-1). Amended effective February 17, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 98-1). Amended effective July 22, 1998, pursuant to an exemption under the Administrative Procedure Act. (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 532, effective January 29, 1999 (Supp. 99-1). Amended by exempt rulemaking at 5 A.A.R. 2176, effective June 15, 1999 (Supp. 99-2). Section repealed by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

**R19-2-522. Repealed**

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-522 recodified from R4-27-522 (Supp. 95-1). Amended effective February 17, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 98-1). Amended by exempt rulemaking at 5 A.A.R. 532, effective January 29, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

*The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.*

**R19-2-523. Calculation of Payoffs and Distribution of Pools**

**A. General**

1. All permitted pari-mutuel wagering pools shall be separately and independently calculated and distributed. Take-

out shall be deducted from each gross pool as stipulated by law. The remainder of the monies in the pool shall constitute the net pool for distribution as payoff on winning wagers.

2. For each wagering pool, the amount wagered on the winning betting interest or betting combinations is deducted from the net pool to determine the profit; the profit is then divided by the amount wagered on the winning betting interest or combinations, such quotient being the profit per dollar.
3. Either the standard or net price calculation procedure may be used to calculate single commission pools, while the net price calculation procedure must be used to calculate multi-commission pools.

a. *Standard Price Calculation Procedure*

SINGLE PRICE POOL (WIN POOL)

gross pool = sum of wagers on all betting interests - refunds  
 takeout = gross pool x percent takeout  
 net pool = gross pool - takeout  
 profit = net pool - gross amount bet on winner

profit per dollar = profit / gross amount bet on winner

\$1 unbroken price = profit per dollar + \$1

\$1 broken price = \$1 unbroken price rounded down to the break point

total payout = \$1 broken price x gross amount bet on winner

total breakage = net pool - total payout

PROFIT SPLIT (PLACE POOL)

Profit is net pool less gross amount bet on all place finishers. Finishers split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two unique prices.

PROFIT SPLIT (SHOW POOL)

Profit is net pool less gross amount bet on all show finishers. Finishers split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three unique prices.

b. *Net Price Calculation Procedure*

SINGLE PRICE POOL (WIN POOL)

gross pool = sum of wagers on all betting interests - refunds  
 takeout = gross pool x percent takeout

\* for each source:  
 net pool = gross pool - takeout  
 net bet on winner = gross amount bet on winner x (1 - percent takeout)

total net pool = sum of all sources net pools

total net bet on winner = sum of all sources net bet on winner

total profit = total net pool - total net bet on winner

profit per dollar = total profit / total net bet on winner

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\$1 unbroken base price = profit per dollar + \$1  
 \* for each source:  
 \$1 unbroken price = \$1 unbroken base price x (1 - percent takeout)  
 \$1 broken price = \$1 unbroken price rounded down to the break point  
 total payout = \$1 broken price x gross amount bet on winner  
 total breakage = net pool - total payout

**PROFIT SPLIT (PLACE POOL)**  
 Total profit is the total net pool less the total net amount bet on all place finishers. Finishers split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two unique unbroken base prices.

**PROFIT SPLIT (SHOW POOL)**  
 Total profit is the total net pool less the total net amount bet on all show finishers. Finishers split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three unique unbroken base prices.

4. If a profit split results in only one covered winning betting interest or combinations, it shall be calculated the same as a single price pool.

5. Minimum payoffs and the method used for calculating breakage shall be established by the Department.
  6. The individual pools outlined in these rules may be given alternative names by each permittee, provided prior approval is obtained from the Department.
- B. Win Pools**
1. The amount wagered on the betting interest which finishes first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the betting interest finishing first, such quotient being the profit per dollar wagered to Win on that betting interest.
  2. The net Win pool shall be distributed as a single price pool to winning wagers in the following precedence, based upon the official order of finish:
    - a. To those whose selection finished first; but if there are no such wagers, then
    - b. To those whose selection finished second; but if there are no such wagers, then
    - c. To those whose selection finished third; but if there are no such wagers, then
    - d. The entire pool shall be refunded on Win wagers for that contest.
  3. If there is a dead heat for first involving:
    - a. Contestants representing the same betting interest, the Win pool shall be distributed as if no dead heat occurred.
    - b. Contestants representing two or more betting interests, the Win pool shall be distributed as a profit split.

**Table 1. Win Pool - Standard Price Calculation**

Table 1: WIN POOL (Standard Price Calculation)	
Sum of Wagers on All Betting Interests=	\$194,230.00
Refunds =	\$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds=	\$192,913.00
Percent Takeout=	18%
Takeout:	
Gross Pool x Percent Takeout=	\$34,724.34
Net Pool:	
Gross Pool - Takeout=	\$158,188.66
Gross Amount Bet on Winner=	\$23,872.00
Profit:	
Net Pool - Gross Amount Bet on Winner=	\$134,316.66
Profit Per Dollar:	
Profit / Gross Amount Bet on Winner=	\$5.6265357
\$1 Unbroken Price:	
Profit Per Dollar + \$1=	\$6.6265357

- C. Place Pools**
1. The amounts wagered to Place on the first two betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into two equal portions, one being assigned to each winning betting interest and divided by the amount wagered to Place on that betting interest, the resulting quotient is the profit per dollar wagered to Place on that betting interest.
  2. The net Place pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
    - a. If contestants of a coupled entry or mutuel field finished in the first two places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise
    - b. As a profit split to those whose selection is included within the first two finishers; but if there are no such wagers on one of those two finishers, then
    - c. As a single price pool to those who selected the one covered betting interest included within the first two finishers; but if there are no such wagers, then

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- d. As a single price pool to those who selected the third-place finisher, but if there are no such wagers, then
- e. The entire pool shall be refunded on Place wagers for that contest.
- 3. If there is a dead heat for first involving:
  - a. Contestants representing the same betting interest, the Place pool shall be distributed as a single price pool.
  - b. Contestants representing two or more betting interests, the Place pool shall be distributed as a profit split.
- 4. If there is a dead heat for second involving:
  - a. Contestants representing the same betting interest, the Place pool shall be distributed as if no dead heat occurred.
  - b. Contestants representing two or more betting interests, the Place pool is divided with half of the profit distributed to Place wagers on the betting interest finishing first and the remainder is distributed equally amongst Place wagers on those betting interests involved in the dead heat for second.

**Table 2. Place Pool - Standard Price Calculation**

Table 2: PLACE POOL (Standard Price Calculation)	
Sum of Wagers on All Betting Interests=	\$194,230.00
Refunds =	\$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds=	\$192,913.00
Percent Takeout=	18%
Takeout	
Gross Pool x Percent Takeout=	\$34,724.34
Net Pool:	
Gross Pool - Takeout=	\$158,188.66
Gross Amount Bet on first place finisher=	\$23,872.00
Gross amount Bet on second place finisher=	\$12,500.00
Profit:	
Net Pool- Gross Amount Bet on first place finisher	
- Gross Amount Bet on second place finisher=	\$121,816.66
Place Profit:	
Profit / 2 =	\$60,908.33
Profit Per Dollar for first place:	
Place Profit / Gross Amount Bet on first place finisher=	\$2.5514548
\$1 Unbroken Price for first place:	
Profit Per Dollar for first place + \$1=	\$3.5514548
Profit Per Dollar for second place:	
Place Profit / Gross Amount Bet on second place finisher=	\$4.8726664
\$1 Unbroken Price for second place:	
Profit Per Dollar for second place + \$1=	\$5.8726664

**D. Show Pools**

- 1. The amounts wagered to Show on the first three betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into three equal portions, one being assigned to each winning betting interest and divided by the amount wagered to Show on that betting interest, the resulting quotient being the profit per dollar wagered to Show on that betting interest.
- 2. The net Show pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. If contestants of a coupled entry or mutuel field finished in the first three places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise
  - b. If contestants of a coupled entry or mutuel field finished as two of the first three finishers, the profit is divided with two-thirds distributed to those who selected the coupled entry or mutuel field and one-third distributed to those who selected the other betting interest included within the first three finishers; otherwise
  - c. As a profit split to those whose selection is included within the first three finishers; but if there are no such wagers on one of those three finishers, then
  - d. As a profit split to those who selected one of the two covered betting interests included within the first three finishers; but if there are no such wagers on two of those three finishers, then
  - e. As a single price pool to those who selected the one covered betting interest included within the first three finishers; but if there are no such wagers, then
  - f. As a single price pool to those who selected the fourth-place finisher; but if there are no such wagers, then
  - g. The entire pool shall be refunded on Show wagers for that contest.

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- 3. If there is a dead heat for first involving:
  - a. Two contestants representing the same betting interest, the profit is divided with 2/3rds distributed to those who selected the first-place finishers and one-third distributed to those who selected the betting interest finishing third.
  - b. Three contestants representing a single betting interest, the Show pool shall be distributed as a single price pool.
  - c. Contestants representing two or more betting interests, the Show pool shall be distributed as a profit split.
- 4. If there is a dead heat for second involving:
  - a. Contestants representing the same betting interest, the profit is divided with one-third distributed to those who selected the betting interest finishing first and two-thirds distributed to those who selected the second-place finishers.
  - b. Contestants representing two betting interests, the Show pool shall be distributed as a profit split.
  - c. Contestants representing three betting interests, the Show pool is divided with one-third of the profit distributed to Show wagers on the betting interest finishing first and the remainder is distributed equally among Show wagers on those betting interests involved in the dead heat for second.
- 5. If there is a dead heat for third involving:
  - a. Contestants representing the same betting interest, the Show pool shall be distributed as if no dead heat occurred.
  - b. Contestants representing two or more betting interests, the Show pool is divided with 2/3rds of the profit distributed to Show wagers on the betting interests finishing first and second and the remainder is distributed equally among Show wagers on those betting interests involved in the dead heat for third.

**Table 3. Show Pool - Standard Price Calculation**

Table 3: SHOW POOL (Standard Price Calculation)	
Sum of Wagers on All Betting Interests=	\$194,230.00
Refunds =	\$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds=	\$192,913.00
Percent Takeout=	18%
Takeout	
Gross Pool x Percent Takeout=	\$34,724.34
Net Pool:	
Gross Pool - Takeout=	\$158,188.66
Gross Amount Bet on first place finisher=	\$23,872.00
Gross Amount Bet on second place finisher=	\$12,500.00
Gross Amount Bet on third place finisher=	\$4,408.00
Profit: Net Pool	
- Gross Amount Bet on first place finisher	
- Gross Amount Bet on second place finisher	
- Gross Amount Bet on third place finisher=	\$117,408.66
Show Profit:	
Profit / 3 =	\$39,136.22
Profit Per Dollar for first place:	
Show Profit / Gross Amount Bet on first place finisher=	\$1.6394194
\$1 Unbroken Price for first place:	
Profit Per Dollar for first place + \$1=	\$2.6394194
Profit Per Dollar for second place:	
Show Profit / Gross Amount Bet on second place finisher=	\$3.1308976
\$1 Unbroken Price for second place:	
Profit Per Dollar for second place + \$1=	\$4.1308976
Profit Per Dollar for third place:	
Show Profit / Gross Amount Bet on third place finisher=	\$8.8784528
\$1 Unbroken Price for third place:	
Profit Per Dollar for third place + \$1=	\$9.8784528

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Table 4. Show Pool - Single Takeout Rate &amp; Single Betting Source

Table 4: SHOW POOL	
Single Takeout Rate & Single Betting Source	
<i>(Net Price Calculation)</i>	
Sum of Wagers on All Betting Interests=	\$194,230.00
Refunds =	\$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds=	\$192,913.00
Percent Takeout=	18%
Takeout:	
Gross Pool x Percent Takeout=	\$34,724.34
Total Net Pool:	
Gross Pool - Takeout=	\$158,188.66
Gross Amount Bet on first place finisher=	\$23,872.00
Net Amount Bet on first place finisher=	\$19,575.04
Gross Amount Bet on second place finisher=	\$12,500.00
Net Amount bet on second place finisher=	\$10,250.00
Gross Amount Bet on third place finisher=	\$4,408.00
Net Amount Bet on third place finisher=	\$3,614.56
Total Net Bet on Winners:	
Net Amount Bet on first place finisher +	
Net Amount Bet on second place finisher +	
Net Amount Bet on third place finisher=	\$33,439.60
Total Profit:	
Total Net Pool - Total Net Bet on Winners=	\$124,749.06
Show Profit:	
Total Profit / 3=	\$41,583.02
Profit Per Dollar for first place:	
Show Profit / Net Amount Bet on first place finisher=	\$2.1242879
\$1 Unbroken Base Price for first place:	
Profit Per Dollar for first place + \$1=	\$3.1242879
\$1 Unbroken Price for first place:	
\$1 Unbroken Base Price for first place x (1 -	
percent takeout)=	\$2.5619161
Profit Per Dollar for second place:	
Show Profit / Net Amount Bet on second place finisher=	\$4.0568800
\$1 Unbroken Base Price for second place:	
Profit Per Dollar for second place + \$1=	\$5.0568800
\$1 Unbroken Price for second place:	
\$1 Unbroken Base Price for second place x (1 -	
percent takeout)=	\$4.1466416
Profit Per Dollar for third place:	
Show Profit / Net Amount Bet on third place finisher=	\$11.504310
\$1 Unbroken Base Price for third place:	
Profit Per Dollar for third place + \$1=	\$12.504310
Unbroken Price for third place:	
\$1 Unbroken Base Price for third place x (1 -	
percent takeout)=	\$10.253534

- E. Double Pools**
1. The Double requires selection of the first-place finisher in each of two specified contests.
  2. The net Double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
    - a. As a single price pool to those whose selection finished first in each of the two contests; but if there are no such wagers, then
    - b. As a profit split to those who selected the first-place finisher in either of the two contests; but if there are no such wagers, then
    - c. As a single price pool to those who selected the one covered first-place finisher in either contest; but if there are no such wagers, then
    - d. As a single price pool to those whose selection finished second in each of the two contests; but if there are no such wagers, then
    - e. The entire pool shall be refunded on Double wagers for those contests.

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3. If there is a dead heat for first in either of the two contests involving:
  - a. Contestants representing the same betting interest, the Double pool shall be distributed as if no dead heat occurred.
  - b. Contestants representing two or more betting interests, the Double pool shall be distributed as a profit split if there is more than one covered winning combination.
4. Should a betting interest in the first-half of the Double be scratched prior to the first Double contest being declared official, all money wagered on combinations including the scratched betting interest shall be deducted from the Double pool and refunded.
5. Should a betting interest in the second-half of the Double be scratched prior to the close of wagering on the first Double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the Double pool and refunded.
6. Should a betting interest in the second-half of the Double be scratched after the close of wagering on the first Double contest, all wagers combining the winner of the first contest with the scratched betting interest in the second contest shall be allocated a consolation payoff. In calculating the consolation payoff the net Double pool shall be divided by the total amount wagered on the winner of the first contest and an unbroken consolation price obtained. The broken consolation price is multiplied by the dollar value of wagers on the winner of the first contest combined with the scratched betting interest to obtain the consolation payoff. Breakage is not declared in this calculation. The consolation payoff is deducted from the net Double pool before calculation and distribution of the winning Double payoff. Dead heats including separate betting interests in the first contest shall result in a consolation payoff calculated as a profit split.
7. If either of the Double contests are cancelled prior to the first Double contest, or the first Double contest is declared "no contest," the entire Double pool shall be refunded on Double wagers for those contests.
8. If the second Double contest is cancelled or declared "no contest" after the conclusion of the first Double contest, the net Double pool shall be distributed as a single price pool to wagers selecting the winner of the first Double contest. In the event of a dead heat involving separate betting interests, the net Double pool shall be distributed as a profit split.

**Table 5. Double Pool - Standard Price Calculation**

Table 5: DOUBLE POOL (Standard Price Calculation)	
Sum of Wagers on All Betting Interests=	\$194,230.00
Refunds =	\$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds=	\$192,913.00
Percent Takeout=	18%
Takeout:	
Gross Pool x Percent Takeout=	\$34,724.34
Net Pool:	
Gross Pool - Takeout=	\$158,188.66
Gross Amount Bet on Winning Combination=	\$23,872.00
Profit:	
Net Pool - Gross Amount Bet on Winning Combination=	\$134,316.66
Profit Per Dollar:	
Profit / Gross Amount Bet on Winning Combination=	\$5.6265357
\$1 Unbroken Price:	
Profit Per Dollar + \$1=	\$6.6265357

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Table 6. Double Pool - Consolation Pricing

Table 6: DOUBLE POOL CONSOLATION PRICING	
Sum of Wagers on All Betting Interests=	\$194,230.00
Refunds =	\$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds=	\$192,913.00
Percent Takeout=	18%
Takeout:	
Gross Pool x Percent Takeout=	\$34,724.34
Net Pool:	
Gross Pool -Takeout=	\$158,188.66
Consolation Pool:	
Sum Total Amount Bet on winner of the first contest with all second contest betting interests=	\$43,321.00
\$1 Consolation Unbroken Consolation Price:	
Net Pool / Consolation Pool=	\$3.6515468
\$1 Consolation Broken Price=	\$3.65
Amount Bet on winner of the first contest with scratched betting interests:=	\$1,234.00
Consolation Liability:	
\$1 Consolation Broken Price x (Amount Bet on the winner of the first contest with scratched betting interests)=	\$4,504.10
Adjusted Net Pool:	
Net Pool - Consolation Liability=	\$153,684.56
Gross Amount Bet on the Winning Combination=	\$23,872.00
Profit:	
Adjusted Net Pool - Gross Amount Bet on the Winning Combination=	\$129,812.56
Profit Per Dollar:	
Profit / Gross Amount Bet on the Winning Combination=	\$5.4378586
\$1 Unbroken Price:	
Profit Per Dollar + \$1=	\$6.4378586

F. Pick 3 Pools

1. The Pick 3 requires selection of the first-place finisher in each of three specified contests.
2. The net Pick 3 pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. As a single price pool to those whose selection finished first in each of the three contests; but if there are no such wagers, then
  - b. As a single price pool to those who selected the first-place finisher in any two of the three contests; but if there are no such wagers, then
  - c. As a single price pool to those who selected the first-place finisher in any one of the three contests; but if there are no such wagers, then
  - d. The entire pool shall be refunded on Pick 3 wagers for those contests.
3. If there is a dead heat for first in any of the three contests involving:
  - a. Contestants representing the same betting interest, the Pick 3 pool shall be distributed as if no dead heat occurred.
  - b. Contestants representing two or more betting interests, the Pick 3 pool shall be distributed as a single

price pool with each winning wager receiving an equal share of the profit.

4. Should a betting interest in any of the three Pick 3 contests be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
5. If all three Pick 3 contests are cancelled or declared "no contest," the entire pool shall be refunded on Pick 3 wagers for those contests.
6. If one or two of the Pick 3 contests are cancelled or declared "no contest," the Pick 3 pool shall remain valid and shall be distributed in accordance with subsection (F)(2) of this rule.

G. Pick (n) Pools

1. The Pick (n) requires selection of the first-place finisher in each of a designated number of contests. The permittee must obtain written approval from the Department con-

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cerning the scheduling of Pick (n) contests, the designation of one of the methods prescribed in subsection (G)(2), and the amount of any cap to be set on the carryover. Any changes to the approved Pick (n) format require prior approval from the Department.

2. The Pick (n) pool shall be apportioned under one of the following methods:
  - a. *Method 1, Pick (n) with Carryover:* The net Pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the remainder shall be added to the carryover.
  - b. *Method 2, Pick (n) with Minor Pool and Carryover:* The major share of the net Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the minor share of the net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the major share shall be added to the carryover.
  - c. *Method 3, Pick (n) with No Minor Pool and No Carryover:* The net Pick (n) pool shall be distributed as the single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.
  - d. *Method 4, Pick (n) with Minor Pool and No Carryover:* The major share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If the greatest number of first-place finishers selected is 1, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
  - e. *Method 5, Pick (n) with Minor Pool and No Carryover:* The major share of net Pick (n) pool shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick (n) contests, the entire net Pick (n) pool shall be distributed as a single pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests. If there are no winning wagers, the pool is refunded.
  - f. *Method 6, Pick (n) with Minor Pool and Carryover with "Unique Winning Ticket" Provision (referred to as the "Unique Pick" for purposes of this rule only):* The Unique Pick net pool and carryover, if any, shall be distributed to the sole holder of a unique winning ticket that selected the first-place finisher in every one of the Unique Pick contests, based upon the official order of finish. If there is no sole holder of a unique winning ticket selecting the first-place finisher in every one of the Unique Pick contests, or if there are no wagers selecting the first-place finisher of all Unique Pick contests, the minor share of the Unique Pick net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Unique Pick contests, and the major share shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Unique Pick contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.
    - i. Request for Mandatory Distribution. In lieu of the event of a sole jackpot winner, the permittee may request permission to distribute the Unique Pick jackpot pursuant to subsections (G)(8) and (9) of this rule.
    - ii. Unique Pick Jackpot Identification. Permittees must clearly identify one of the following methods that will be relied upon for determining the existence of a Unique Pick winning ticket. The first method is when there is one and only one winning ticket that correctly selected the first place finisher in each of the Unique Pick contests, based upon the official order of finish, to be verified by the unique serial number assigned by the tote company that issued the winning ticket. The second method is when the total amount wagered on one and only one winning combination selecting the first-place finisher in each of the Unique Pick contests, based up on the official order of finish, is equal to no more than the minimum allowable wager.
3. If there is a dead heat for first in any of the Pick (n) contests involving:
  - a. Contestants representing the same betting interest, the Pick (n) pool shall be distributed as if no dead heat occurred.
  - b. Contestants representing two or more betting interests, the Pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.
4. Should a betting interest in any of the Pick (n) contests be scratched, the actual favorite, as evidenced by total

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- amounts wagered in the Win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
5. The Pick (n) pool shall be cancelled and all Pick (n) wagers for the individual performance shall be refunded if:
    - a. At least two contests included as part of a Pick 3 are cancelled or declared "no contest."
    - b. At least three contests included as part of a Pick 4, Pick 5, or Pick 6 are cancelled or declared "no contest."
    - c. At least four contests included as part of a Pick 7, Pick 8, or Pick 9 are cancelled or declared "no contest."
    - d. At least five contests included as part of a Pick 10 are cancelled or declared "no contest."
  6. If at least one contest included as part of a Pick (n) is cancelled or declared "no contest," but not more than the number specified in subsection (G)(5) of this rule, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the Pick (n) carryover but not the carryover from previous performances.
  7. The Pick (n) carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Pick (n) carryover equals or exceeds the designated cap, the Pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the Pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of Pick (n) contests for that performance.
  8. A written request for permission to distribute the Pick (n) carryover on a specific performance may be submitted to the Department. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
  9. Should the Pick (n) carryover be designated for distribution on the final day of the meeting or on another specified date on which there are no wagers selecting the first-place finisher in each of the Pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests. The Pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
    - a. Upon written approval from the Department as provided in subsection (G)(8) of this rule.
    - b. Upon written approval from the Department when there is a change in the carryover cap, a change from one type of Pick (n) wagering to another, or when the Pick (n) is discontinued.
    - c. On the closing performance of the meet or split meet.
  10. If, for any reason, the Pick (n) carryover must be held over to the corresponding Pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Pick (n) carryover plus accrued interest shall then be added to the net Pick (n) pool of the following meet on a date and performance so designated by the Department.
  11. With the written approval of the Department, the permittee may contribute to the Pick (n) carryover a sum of money up to the amount of any designated cap.
  12. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.
  13. The permittee may suspend previously approved Pick (n) wagering with the prior approval of the Department. Any carryover shall be held until the suspended Pick (n) wagering is reinstated. A permittee may request approval of a Pick (n) wager or separate wagering pool for specific performances.

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Table 7. Pick 7 Pool - Multiple Takeout Rates & Multiple Betting Sources

Table 7: PICK 7 POOL					
Multiple Takeout Rates & Multiple Betting Sources					
<i>(Net Price Calculation)</i>					
	<i>Percent Takeout</i>	<i>Gross Pool</i>	<i>Gross Amt. Bet on Win</i>	<i>Net Pool</i>	<i>Net Amt. Bet on Win</i>
<i>Source 1:</i>	<i>16%</i>	<i>\$190,000.00</i>	<i>\$44.00</i>	<i>\$159,600.00</i>	<i>\$36.96</i>
<i>Source 2:</i>	<i>18.5%</i>	<i>\$10,000.00</i>	<i>\$18.00</i>	<i>\$8,150.00</i>	<i>\$14.67</i>
<i>Source 3:</i>	<i>21%</i>	<i>\$525,730.00</i>	<i>\$124.00</i>	<i>\$415,326.70</i>	<i>\$97.96</i>
<b>TOTALS:</b>		<b>\$725,730.00</b>	<b>\$186.00</b>	<b>\$583,076.70</b>	<b>\$149.59</b>
Total Profit:					
Total Net Pool - Total Net Bet on the Winning Combination= \$582,927.11					
Profit Per Dollar:					
Total Profit / Total Net Bet on the Winning Combination= \$3,896.8321					
\$1 Unbroken Base Price:					
Profit Per Dollar + \$1=\$3,897.8321					
\$1 Unbroken Price for Source 1:					
\$1 Unbroken Base Price x (1 - Percent Takeout)=\$3,274.1789					
\$1 Unbroken Price for Source 2:					
\$1 Unbroken Base Price x (1 - Percent Takeout)=\$3,176.7331					
\$1 Unbroken Price for Source 3:					
\$1 Unbroken Base Price x (1 - Percent Takeout)=\$3,079.2873					

H. Place Pick (n) Pools

1. The Place Pick (n) requires selection of the first- or second-place finisher in each of a designated number of contests. The permittee must obtain written approval from the Department concerning the scheduling of Place Pick (n) contests, the designation of one of the methods prescribed in subsection (H)(2), the distinctive name identifying the pool and the amount of any cap to be set on the carryover. Any changes to the approved Place Pick (n) format require prior approval from the Department.
2. The Place Pick (n) pool shall be apportioned under one of the following methods:
  - a. *Method 1, Place Pick (n) with Carryover:* The net Place Pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first- or second-place finisher in each of the Place Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests; and the remainder shall be added to the carryover.
  - b. *Method 2, Place Pick (n) with Minor Pool and Carryover:* The major share of the net Place Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first- or second-place finisher in each of the Place Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first- or second-place finisher of all Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests; and the major share shall be added to the carryover.
  - c. *Method 3, Place (n) Pick with No Minor Pool and No Carryover:* The net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no major winning wagers, the pool is refunded.
  - d. *Method 4, Place Pick (n) with Minor Pool and No Carryover:* The major share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first- or second-place finisher in a second greatest number of Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests. If the greatest number of first- or second-place finishers selected is 1, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
  - e. *Method 5, Place Pick (n) with Minor Pool and No Carryover:* The major share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in each of the Place

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- Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first- or second-place finisher in all Place Pick (n) contests, the entire net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests. If there are no wagers selecting the first or second-place finisher in a second greatest number of Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first- or second-place finisher in each of the Place Pick (n) contests. If there are no winning wagers, the pool is refunded.
3. If there is a dead heat for first in any of the Place Pick (n) contests involving:
    - a. Contestants representing the same betting interest, the Place Pick (n) pool shall be distributed as if no dead heat occurred.
    - b. Contestants representing two or more betting interests, the Place Pick (n) pool shall be distributed as a single price pool with a winning wager including each betting interest participating in the dead heat.
  4. If there is a dead heat for second in any of the Place Pick (n) contests involving:
    - a. Contestants representing the same betting interest, the Place Pick (n) pool shall be distributed as if no dead heat occurred.
    - b. Contestants representing two or more betting interests, the Place Pick (n) pool shall be distributed as a single price pool with a winning wager including the betting interest which finished first or any betting interest involved in a dead heat for second.
  5. Should a betting interest in any Place Pick (n) contest be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
  6. The Place Pick (n) pool shall be cancelled and all Place Pick (n) wagers for the individual performance shall be refunded if:
    - a. At least two contests included as part of a Place Pick 3 are cancelled or declared "no contest."
    - b. At least three contests included as part of a Place Pick 4, Place Pick 5, or Place Pick 6 are cancelled or declared "no contest."
    - c. At least four contests included as part of a Place Pick 7, Place Pick 8, or Place Pick 9 are cancelled or declared "no contest."
    - d. At least five contests included as part of a Place Pick 10 are cancelled or declared "no contest."
  7. If at least one contest included as part of a Place Pick (n) is cancelled or declared "no contest," but not more than the number specified in subsection (H)(6) of this rule, the net pool shall be distributed as a single price pool to those whose selection finished first or second in the greatest number of Place Pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the Place Pick (n) carryover but not the carryover from previous performances.
  8. The Place Pick (n) carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Place Pick (n) carryover equals or exceeds the designated cap, the Place Pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Place Pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the Place Pick (n) carryover, shall be distributed to those whose selection finished first or second in the greatest number of Place Pick (n) contests for that performance.
  9. A written request for permission to distribute the Place Pick (n) carryover on a specific performance may be submitted to the Department. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
  10. Should the Place Pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first- or second-place finisher in each of the Place Pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first or second in the greatest number of Place Pick (n) contests. The Place Pick (n) carryover shall be designated for distribution on a specified date and performance under any of the following circumstances:
    - a. Upon written approval from the Department as provided in subsection (H)(9) of this rule.
    - b. Upon written approval from the Department when there is a change in the carryover cap, a change from one type of Place Pick (n) wagering to another, or when the Place Pick (n) is discontinued.
    - c. On the closing performance of the meet or split meet.
  11. If, for any reason, the Place Pick (n) carryover must be held over to the corresponding Place Pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Place Pick (n) carryover plus accrued interest shall then be added to the net Place Pick (n) pool of the following meet on a date and performance so designated by the Department.
  12. With the written approval of the Department, the permittee may contribute to the Place Pick (n) carryover a sum of money up to the amount of any designated cap.
  13. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and parimutuel department employees for processing of pool data.
  14. The permittee may suspend previously approved Place Pick (n) wagering with the prior approval of the Department. Any carryover shall be held until the suspended Place Pick (n) wagering is reinstated. A permittee may request approval of a Place Pick (n) wager or separate wagering pool for specific performances.

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## I. Quinella Pools

1. The Quinella requires selection of the first two finishers, irrespective of order, for a single contest.
2. The net Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
  - b. As a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then
  - c. As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one of the those two finishers, then
  - d. As a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then
  - e. The entire pool shall be refunded on Quinella wagers for that contest.
3. If there is a dead heat for first involving:
  - a. Contestants representing the same betting interest, the Quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
  - b. Contestants representing two betting interests, the Quinella pool shall be distributed as if no dead heat occurred.
  - c. Contestants representing three or more betting interests, the Quinella pool shall be distributed as a profit split.
4. If there is a dead heat for second involving contestants representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.
5. If there is a dead heat for second involving contestants representing two or more betting interests, the Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
  - a. As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second, but if there is only one covered combination, then
  - b. As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
  - c. As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then
  - d. As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then
  - e. The entire pool shall be refunded on Quinella wagers for that contest.

## J. Quinella Double Pools

1. The Quinella Double requires selection of the first two finishers, irrespective of order, in each of two specified contests.

2. The net Quinella Double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. If a coupled entry or mutuel field finishes as the first two contestants in either contest, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest, as well as the first two finishers in the alternate Quinella Double contest; otherwise
  - b. As a single price pool to those who selected the first two finishers in each of the two Quinella Double contests; but if there are no such wagers, then
  - c. As a profit split to those who selected the first two finishers in either of the two Quinella Double contests; but if there are no such wagers on one of those contests, then
  - d. As a single price pool to those who selected the first two finishers in the one covered Quinella Double contest; but if there were no such wagers, then
  - e. The entire pool shall be refunded on Quinella Double wagers for those contests.
3. If there is a dead heat for first in either of the two Quinella Double contests involving:
  - a. Contestants representing the same betting interest, the Quinella Double pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest.
  - b. Contestants representing two betting interests, the Quinella Double pool shall be distributed as if no dead heat occurred.
  - c. Contestants representing three or more betting interests, the Quinella Double pool shall be distributed as a profit split.
4. If there is a dead heat for second in either of the Quinella Double contests involving contestants representing the same betting interest, the Quinella Double pool shall be distributed as if no dead heat occurred.
5. If there is a dead heat for second in either of the Quinella Double contests involving contestants representing two or more betting interests, the Quinella Double pool shall be distributed as profit split.
6. Should a betting interest in the first half of the Quinella Double be scratched prior to the first Quinella Double contest being declared official, all money wagered on combinations including the scratched betting interest shall deducted from the Quinella Double pool and refunded.
7. Should a betting interest in the second half of the Quinella Double be scratched prior to the close of wagering on the first Quinella Double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the Quinella Double pool and refunded.
8. Should a betting interest in the second half of the Quinella Double be scratched after the close of wagering on the first Quinella Double contest, all wagers combining the winning combination in the first contest with a combination including the scratched betting interest in the second contest shall be allocated a consolation payoff. In calculating the consolation payoff, the net Quinella Double pool shall be divided by the total amount wagered on the winning combination in the first contest and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers

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on the winning combination in the first contest combined with a combination including the scratched betting interest in the second contest to obtain the consolation payoff. Breakage is not utilized in this calculation. The consolation payoff is deducted from the net Quinella Double pool before calculation and distribution of the winning Quinella Double payoff. In the event of a dead heat involving separate betting interests, the net Quinella Double pool shall be distributed as a profit split.

9. If either of the Quinella Double contests is cancelled prior to the first Quinella Double contest, or the first Quinella Double contest is declared "no contest," the entire Quinella Double pool shall be refunded on Quinella Double wagers for those contests.
10. If the second Quinella Double contest is cancelled or declared "no contest" after the conclusion of the first Quinella Double contest, the net Quinella Double pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Quinella Double contest. If there are no wagers selecting the winning combination in the first Quinella Double contest, the entire Quinella Double pool shall be refunded on Quinella Double wagers for those contests.

**K. Exacta Pools**

1. The Exacta requires selection of the first two finishers, in their exact order, for a single contest.
2. The net Exacta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
  - b. As a single price pool to those whose combination finished in correct sequence as the first two betting interests; but if there are no such wagers, then
  - c. As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one of those two finishers, then
  - d. As a single price pool to those whose combination included the one covered betting interest to finish first or second in the correct sequence; but if there are no such wagers, then
  - e. The entire pool shall be refunded on Exacta wagers for that contest.
3. If there is a dead heat for first involving:
  - a. Contestants representing the same betting interest, the Exacta pool shall be distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
  - b. Contestants representing two or more betting interests, the Exacta pool shall be distributed as a profit split.
4. If there is a dead heat for second involving contestants representing the same betting interest, the Exacta pool shall be distributed as if no dead heat occurred.
5. If there is a dead heat for second involving contestants representing two or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence, based upon the official order of finish:
  - a. As a profit split to those combining the first-place betting interest with any of the betting interests

involved in the dead heat for second; but if there is only one covered combination, then

- b. As a single price pool to those combining the first-place betting interest with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
- c. As a profit split to those wagers correctly selecting the winner for first place and those wagers selecting any of the dead-heated betting interests for second place; but if there are no such wagers, then
- d. The entire pool shall be refunded on Exacta wagers for that contest.

**L. Trifecta Pools**

1. The Trifecta requires selection of the first three finishers, in their exact order, for a single contest.
2. The net Trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
  - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
  - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
  - d. The entire pool shall be refunded on Trifecta wagers for that contest.
3. If less than three betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.
4. If there is a dead heat for first involving:
  - a. Contestants representing three or more betting interests, all of the wagering combinations selecting three betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
  - b. Contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place betting interest shall share in a profit split.
5. If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.
6. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

**M. Superfecta Pools**

1. The Superfecta requires selection of the first four finishers, in their exact order, for a single contest.
2. The net Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
  - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

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- c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
  - d. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
  - e. The entire pool shall be refunded on Superfecta wagers for that contest.
3. If less than four betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.
  4. If there is a dead heat for first involving:
    - a. Contestants representing four or more betting interests, all of the wagering combinations selecting four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
    - b. Contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place betting interest shall share in a profit split.
    - c. Contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.
  5. If there is a dead heat for second involving:
    - a. Contestants representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second shall share in a profit split.
    - b. Contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.
  6. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for third shall share in a profit split.
  7. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth shall share in a profit split.
- N. Twin Quinella Pools
1. The Twin Quinella requires selection of the first two finishers, irrespective of order, in each of two designated contests. Each winning ticket for the first Twin Quinella contest must be exchanged for a free ticket on the second Twin Quinella contest in order to remain eligible for the second-half Twin Quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Quinella contest. There will be no monetary reward for winning the first Twin Quinella contest. Both of the designated Twin Quinella contests shall be included in only one Twin Quinella pool.
  2. In the first Twin Quinella contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Quinella contest:
    - a. If a coupled entry or mutuel field finishes as the first two finishers, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners; otherwise
    - b. Those whose combination finished as the first two betting interests shall be winners; but if there are no such wagers, then
    - c. Those whose combination included either the first- or second-place finisher shall be winners; but if there are no such wagers on one of those two finishers, then
    - d. Those whose combination included the one covered betting interest included within the first two finishers shall be winners; but if there are no such wagers, then
    - e. The entire pool shall be refunded on Twin Quinella wagers for that contest.
  3. In the first Twin Quinella contest only, if there is a dead heat for first involving:
    - a. Contestants representing the same betting interest, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners.
    - b. Contestants representing two betting interests, the winning Twin Quinella wagers shall be determined as if no dead heat occurred.
    - c. Contestants representing three or more betting interests, those whose combination included any two of the betting interests finishing in the dead heat shall be winners.
  4. In the first Twin Quinella contest only, if there is a dead heat for second involving contestants representing two or more betting interests, the Twin Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
    - a. As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then
    - b. As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second, but if there are no such wagers, then
    - c. As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then
    - d. As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then
    - e. The entire pool shall be refunded on Twin Quinella wagers for the contest.
  5. In the second Twin Quinella contest only, the entire net Twin Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Quinella contest:
    - a. If a coupled entry or mutuel field finishes as the first two finishers, as a single price pool to those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
    - b. As a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then

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- c. As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one of those two finishers, then
  - d. As a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then
  - e. As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then
  - f. In accordance with subsection (N)(2) of the Twin Quinella rules.
6. In the second Twin Quinella contest only, if there is a dead heat for first involving:
    - a. Contestants representing the same betting interest, the net Twin Quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
    - b. Contestants representing two betting interests, the net Twin Quinella pool shall be distributed as if no dead heat occurred.
    - c. Contestants representing three or more betting interests, the net Twin Quinella pool shall be distributed as a profit split to those whose combination included any two of the betting interests finishing in the dead heat.
  7. In the second Twin Quinella contest only, if there is a dead heat for second involving contestants representing two or more betting interests, the Twin Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
    - a. As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then
    - b. As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
    - c. As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then
    - d. As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then
    - e. As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then
    - f. In accordance with subsection (N)(2) of the Twin Quinella rules.
  8. If a winning ticket for the first-half of the Twin Quinella is not presented for exchange prior to the close of betting on the second-half Twin Quinella contest, the ticket holder forfeits all rights to any distribution of the Twin Quinella pool resulting from the outcome of the second contest.
  9. Should a betting interest in the first half of the Twin Quinella be scratched, those Twin Quinella wagers including the scratched betting interest shall be refunded.
  10. Should a betting interest in the second half of the Twin Quinella be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Quinella contest, the ticket holder forfeits all rights to the Twin Quinella pool.
11. If either of the Twin Quinella contests is cancelled prior to the first Twin Quinella contest, or the first Twin Quinella contest is declared "no contest," the entire Twin Quinella pool shall be refunded on Twin Quinella wagers for that contest.
  12. If the second-half Twin Quinella contest is cancelled or declared "no contest" after the conclusion of the first Twin Quinella contest, the net Twin Quinella pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Twin Quinella contest and all valid exchange tickets. If there are no such wagers, the net Twin Quinella pool shall be distributed as described in subsection (N)(2) of the Twin Quinella rules.
- O. Twin Trifecta Pools**
1. The Twin Trifecta requires selection of the first three finishers, in their exact order, in each of two designated contests. Each winning ticket for the first Twin Trifecta contest must be exchanged for a free ticket on the second Twin Trifecta contest in order to remain eligible for the second-half Twin Trifecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Trifecta contest. Winning first-half Twin Trifecta wagers will receive both an exchange and a monetary payoff. Both of the designated Twin Trifecta contests shall be included in only one Twin Trifecta pool.
  2. After wagering closes for the first half of the Twin Trifecta and commissions have been deducted from the pool, the net pool shall then be divided into separate pools: the first-half Twin Trifecta pool and the second-half Twin Trifecta pool.
  3. In the first Twin Trifecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Trifecta contest:
    - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
    - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
    - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
    - d. The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that contest and the second half shall be cancelled.
  4. If no first-half Twin Trifecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Twin Trifecta pool. In such case, the second-half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.
  5. Winning tickets from the first half of the Twin Trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the Twin Trifecta. The second-half Twin Trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Trifecta contest:
    - a. As a single price pool, including any existing carryover monies, to those whose combination finished in

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- correct sequence as the first three betting interests; but if there are no such tickets, then
- b. The entire second-half Twin Trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Twin Trifecta pool of the next consecutive performance.
6. If a winning first-half Twin Trifecta ticket is not presented for cashing and exchange prior to the second-half Twin Trifecta contest, the ticket holder may still collect the monetary value associated with the first-half Twin Trifecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool.
  7. Should a betting interest in the first half of the Twin Trifecta be scratched, those Twin Trifecta wagers including the scratched betting interest shall be refunded.
  8. Should a betting interest in the second-half of the Twin Trifecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta contest, the ticket holder forfeits all rights to the second-half Twin Trifecta pool.
  9. If, due to a late scratch, the number of betting interests in the second half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Twin Trifecta pool for that contest as a single price pool, but not the Twin-Trifecta carryover.
  10. If there is a dead heat or multiple dead heats in either the first- or second-half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
    - a. The first half of the Twin Trifecta, the payoff shall be calculated as a profit split.
    - b. The second half of the Twin Trifecta, the payoff shall be calculated as a single price pool.
  11. If either of the Twin Trifecta contests are cancelled prior to the first Twin Trifecta contest, or the first Twin Trifecta contest is declared "no contest," the entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that contest and the second half shall be cancelled.
  12. If the second-half Twin Trifecta contest is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning Twin Trifecta tickets shall be entitled to the net Twin Trifecta pool for that contest as a single price pool, but not Twin-Trifecta carryover. If there are no such tickets, the net Twin Trifecta pool shall be distributed as described in subsection (O)(3) of the Twin Trifecta rules.
  13. The Twin-Trifecta carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Twin-Trifecta carryover equals or exceeds the designated cap, the Twin-Trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the Twin Trifecta carryover is frozen, 100% of the net Twin Trifecta pool for each individual contest shall be distributed to carryover winners of the first half of the Twin Trifecta pool.
  14. A written request for permission to distribute the Twin-Trifecta carryover on a specific performance may be submitted to the Department. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
15. Should the Twin-Trifecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the Twin Trifecta after completion of the first half of the Twin Trifecta:
    - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
    - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
    - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
    - d. As a single price pool to holders of valid exchange tickets.
    - e. As a single price pool to holders of outstanding first-half winning tickets.
  16. Contrary to subsection (O)(4) of the Twin Trifecta rules, during a performance designated to distribute the Twin-Trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the Twin Trifecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the Twin Trifecta, all first-half tickets will become winners and will receive 100% of that day's net Twin Trifecta pool and any existing Twin-Trifecta carryover as a single price pool.
  17. The Twin-Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
    - a. Upon written approval from the Department as provided in subsection (O)(15) of the Twin Trifecta rules.
    - b. Upon written approval from the Department when there is a change in the carryover cap or when the Twin Trifecta is discontinued.
    - c. On the closing performance of the meet or split meet.
  18. If, for any reason, the Twin-Trifecta carryover must be held over to the corresponding Twin Trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Twin-Trifecta carryover plus accrued interest shall then be added to the second-half Twin Trifecta pool of the following meet on a date and performance so designated by the Department.
  19. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

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20. The permittee must obtain written approval from the Department concerning the scheduling of Twin Trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Trifecta format require prior approval from the Department.
- P. Tri-Superfecta Pools**
1. The Tri-Superfecta requires selection of the first three finishers, in their exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first Tri-Superfecta contest must be exchanged for a free ticket on the second Tri-Superfecta contest in order to remain eligible for the second-half Tri-Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Tri-Superfecta contest. Winning first-half Tri-Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Tri-Superfecta contests shall be included in only one Tri-Superfecta pool.
  2. After wagering closes for the first-half of the Tri-Superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half Tri-Superfecta pool and the second-half Tri-Superfecta pool.
  3. In the first Tri-Superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first Tri-Superfecta contest:
    - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
    - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
    - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
    - d. The entire Tri-Superfecta pool shall be refunded on Tri-Superfecta for that contest and the second half shall be cancelled.
  4. If no first-half Tri-Superfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Tri-Superfecta pool. In such case, the second-half Tri-Superfecta pool shall be retained and added to any existing Tri-Superfecta carryover pool.
  5. Winning tickets from the first half of the Tri-Superfecta shall be exchanged for tickets selecting the first four finishers of the second-half of the Tri-Superfecta. The second-half Tri-Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Tri-Superfecta contest:
    - a. As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then
    - b. The entire second-half Tri-Superfecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Tri-Superfecta pool of the next performance.
  6. If a winning first-half Tri-Superfecta ticket is not presented for cashing and exchange prior to the second-half Tri-Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half Tri-Superfecta pool but forfeits all rights to any distribution of the second-half Tri-Superfecta pool.
  7. Coupled entries and mutuel fields shall be prohibited in Tri-Superfecta contests.
  8. Should a betting interest in the first-half of the Tri-Superfecta be scratched, those Tri-Superfecta tickets including the scratched betting interest shall be refunded.
  9. Should a betting interest in the second-half of the Tri-Superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Tri-Superfecta contest, the ticket holder forfeits all rights to the second-half Tri-Superfecta pool.
  10. If, due to a late scratch, the number of betting interests in the second-half of the Tri-Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover.
  11. If there is a dead heat or multiple dead heats in either the first or second half of the Tri-Superfecta, all Tri-Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in
    - a. The first-half of the Tri-Superfecta, the payoff shall be calculated as a profit split.
    - b. The second-half of the Tri-Superfecta, the payoff shall be calculated as a single price pool.
  12. If either of the Tri-Superfecta contests are cancelled prior to the first Tri-Superfecta contest, or the first Tri-Superfecta contest is declared "no contest," the entire Tri-Superfecta pool shall be refunded on Tri-Superfecta wagers for that contest and the second half shall be cancelled.
  13. If the second-half Tri-Superfecta contest is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning Tri-Superfecta tickets shall be entitled to the net Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover. If no there are no such tickets, the net Tri-Superfecta pool shall be distributed as described in subsection (P)(3) of the Tri-Superfecta rules.
  14. The Tri-Superfecta carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Tri-Superfecta carryover equals or exceeds the designated cap, the Tri-Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Tri-Superfecta carryover is frozen, 100% of the net Tri-Superfecta pool for each individual contest shall be distributed to winners of the first-half of the Tri-Superfecta pool.
  15. A written request for permission to distribute the Tri-Superfecta carryover on a specific performance may be submitted to the Department. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
  16. Should the Tri-Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining win-

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- ning tickets for the second half of the Tri-Superfecta after completion of the first half of the Tri-Superfecta:
- a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
  - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
  - c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
  - d. As a single price pool to those whose combination included, in correct sequence, the first-place betting interest only; but if there are no such wagers, then
  - e. As a single price pool to holders of valid exchange tickets.
  - f. As a single price pool to holders of outstanding first-half winning tickets.
17. Contrary to subsection (P)(4) of the Tri-Superfecta rules, during a performance designated to distribute the Tri-Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Tri-Superfecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the Tri-Superfecta, all first-half tickets will become winners and will receive 100% of that day's net Tri-Superfecta pool and any existing Tri-Superfecta carryover as a single price pool.
  18. The Tri-Superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
    - a. Upon written approval from the Department as provided in subsection (P)(15) of the Tri-Superfecta rules.
    - b. Upon written approval from the Department when there is a change in the carryover cap or when the Tri-Superfecta is discontinued.
    - c. On the closing performance of the meet or split meet.
  19. If, for any reason, the Tri-Superfecta carryover must be held over to the corresponding Tri-Superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Tri-Superfecta carryover plus accrued interest shall then be added to the second-half Tri-Superfecta pool of the following meet on a date and performance so designated by the Department.
  20. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and parimutuel department employees for processing of pool data.
  21. The permittee must obtain written approval from the Department concerning the scheduling of Tri-Superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Tri-Superfecta format require prior approval from the Department.
- Q. Twin Superfecta Pools**
1. The Twin Superfecta requires selection of the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first Twin Superfecta contest must be exchanged for a free ticket on the second Twin Superfecta contest in order to remain eligible for the second-half Twin Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Superfecta contest. Winning first-half Twin Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Twin Superfecta contests shall be included in only one Twin Superfecta pool.
  2. After wagering closes for the first half of the Twin Superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half Twin Superfecta pool and the second-half Twin Superfecta pool.
  3. In the first Twin Superfecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Superfecta contest:
    - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
    - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
    - c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
    - d. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
    - e. The entire Twin Superfecta pool shall be refunded on Twin Superfecta wagers for that contest and the second half shall be cancelled.
  4. If no first-half Twin Superfecta ticket selects the first four finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Twin Superfecta pool. In such case, the second-half Twin Superfecta pool shall be retained and added to any existing Twin Superfecta carryover pool.
  5. Winning tickets from the first half of the Twin Superfecta shall be exchanged for tickets selecting the first four finishers of the second half of the Twin Superfecta. The second-half Twin Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Superfecta contest:
    - a. As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then
    - b. The entire second-half Twin Trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Twin Superfecta pool of the next performance.
  6. If a winning first-half Twin Superfecta ticket is not presented for cashing and exchange prior to the second-half Twin Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half

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- Twin Superfecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool.
7. Coupled entries and mutual fields shall be prohibited in Twin Superfecta contests.
  8. Should a betting interest in the first half of the Twin Superfecta be scratched, those Twin Superfecta tickets including the scratched betting interest shall be refunded.
  9. Should a betting interest in the second half of the Twin Superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Superfecta contest, the ticket holder forfeits all rights to the second-half Twin Superfecta pool.
  10. If, due to a late scratch, the number of betting interests in the second-half of the Twin Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Twin Superfecta pool for that contest as a single price pool but not the Twin Superfecta carryover.
  11. If there is a dead heat or multiple dead heats in either the first- or second-half of the Twin Superfecta, all Twin Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
    - a. The first half of the Twin Superfecta, the payoff shall be calculated as a profit split.
    - b. The second half of the Twin Superfecta, the payoff shall be calculated as a single price pool.
  12. If either of the Twin Superfecta contests is cancelled prior to the first Twin Superfecta contest, or the first Twin Superfecta contest is declared "no contest," the entire Twin Superfecta pool shall be refunded on Twin Superfecta wagers for that contest and the second half shall be cancelled.
  13. If the second-half Twin Superfecta contest is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning Twin Superfecta tickets shall be entitled to the net Twin Superfecta pool for that contest as a single price pool but not the Twin Superfecta carryover. If there are no such tickets, the net Twin Superfecta pool shall be distributed as described in subsection (Q)(3) of the Twin Superfecta rules.
  14. The Twin Superfecta carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Twin Superfecta carryover equals or exceeds the designated cap, the Twin Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Twin Superfecta carryover is frozen, 100% of the net Twin Superfecta pool for each individual contest shall be distributed to winners of the first half of the Twin Superfecta pool.
  15. A written request for permission to distribute the Twin Superfecta carryover on a specific performance may be submitted to the Department. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
  16. Should the Twin Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the Twin Superfecta after completion of the first half of the Twin Superfecta:
    - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
    - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
    - c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
    - d. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
    - e. As a single price pool to holders of valid exchange tickets.
    - f. As a single price pool to holders of outstanding first-half winning tickets.
  17. Contrary to subsection (Q)(4) of the Twin Superfecta rules, during a performance designated to distribute the Twin Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Twin Superfecta. If there are no wagers correctly selecting the first-, second-, third-, and fourth-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-, second-, and third-place betting interests. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the Twin Superfecta, all first-half tickets will become winners and will receive 100% of that day's net Twin Superfecta pool and any existing Twin Superfecta carryover as a single price pool.
  18. The Twin Superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
    - a. Upon written approval from the Department as provided in subsection (Q)(15) of the Twin Superfecta rules.
    - b. Upon written approval from the Department when there is a change in the carryover cap or when the Twin Superfecta is discontinued.
    - c. On the closing performance of the meet or split meet.
  19. If, for any reason, the Twin Superfecta carryover must be held over to the corresponding Twin Superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Twin Superfecta carryover plus accrued interest shall then be added to the second-half Twin Superfecta pool of the following meet on a date and performance so designated by the Department.
  20. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communications between totalisator and pari-mutuel department employees for processing of pool data.

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21. The permittee must obtain written approval from the Department concerning the scheduling of Twin Superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Superfecta format require prior approval from the Department.

**R. Grand Slam Pools**

1. The Grand Slam requires selection of the Exacta, Trifecta, and Superfecta, respectively, in three consecutive contests. Each winning ticket for the first Grand Slam contest must be exchanged for a free ticket on the second Grand Slam contest in order to remain eligible for the second contest share of the Grand Slam pool. Such tickets may be exchanged only at attended ticket windows prior to the second Grand Slam contest. Winning Grand Slam tickets on the first race shall receive both an exchange and a monetary payoff. Each winning ticket for the second Grand Slam contest must be exchanged for a free ticket on the third Grand Slam Contest in order to remain eligible for the third contest share of the Grand Slam pool. Such tickets must be exchanged only at attended ticket windows prior to the third Grand Slam contest. Winning tickets on the second race shall receive both an exchange and a monetary payoff. The three designated Grand Slam contests shall be included in only one Grand Slam pool.
2. After wagering closes for the first contest of the Grand Slam and commissions have been deducted from the pool, the net pool shall be divided into three separate pools: the first contest pool (25%), the second contest pool (25%), and the third contest pool (50%).
3. In the first Grand Slam contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Grand Slam contest:
  - a. If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
  - b. As a single price pool to those whose combination finished in correct sequence as the first two betting interests; but if there are no such wagers, then
  - c. As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one of those two finishers, then
  - d. As a single price pool to those whose combination included the one covered betting interest to finish first or second.
4. Winning tickets from the first contest of the Grand Slam shall be exchanged for tickets selecting the first three finishers of the second contest of the Grand Slam. The second contest pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Grand Slam contest:
  - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
  - b. The entire pool for the second and third contests shall be added to any existing carryover monies and retained for the third contest pool of the next performance.
5. Winning tickets for the second contest of the Grand Slam shall be exchanged for tickets selecting the first four finishers of the third contest of the Grand Slam. The third contest pool and any existing carryover monies shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the third Grand Slam contest:
  - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
  - b. The entire pool for the third contest shall be added to any existing carryover monies and retained for the corresponding third contest pool of the next performance.
6. If a winning Grand Slam ticket is not presented for cashing and exchange prior to the next Grand Slam contest, the ticket holder may still collect the monetary value associated with the corresponding pool but forfeits all rights to any distribution of subsequent Grand Slam pools.
7. Coupled entries and mutuel fields shall be prohibited in the second and third races of the Grand Slam.
8. Should a betting interest in the first contest of the Grand Slam be scratched, those Grand Slam wagers including the scratched betting interest shall be refunded.
9. Should a betting interest in the second or third contests of the Grand Slam be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the corresponding contest, the ticket holder forfeits all rights to the remainder of the Grand Slam pool.
10. If there is a dead heat or multiple dead heats in any of the contests of the Grand Slam, all Grand Slam wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be winners. Contrary to the usual practice, the aggregate number of winning tickets shall be divided into the net pool and paid the same price.
11. If any of the Grand Slam contests are cancelled prior to the first Grand Slam contest, or the first Grand Slam contest is declared "no contest," the entire Grand Slam pool shall be refunded on Grand Slam wagers for that contest and the remaining Grand Slam contests shall be cancelled. Any existing carryover monies pursuant to subsections (R)(4) and (5) of this rule shall carryover to the next consecutive racing program of that meeting.
12. If the second contest of the Grand Slam is canceled or declared "no contest," or if less than three contestants finish, the second contest pool of the Grand Slam shall be distributed equally among holders of second contest Grand Slam exchange tickets, and the third-contest pool of the Grand Slam shall carryover to the third-contest pool of the next performance.
13. If the third contest of the Grand Slam is canceled or declared "no contest" before the second contest has been made official but after the first contest (pursuant to subsection (R)(11) of this rule), that racing day's third-contest pool shall be distributed equally among holders of second-contest Grand Slam exchange tickets. If the third contest of the Grand Slam is cancelled or declared "no contest" after the second contest has been made official, that racing day's third contest shall be distributed equally among holders of the third-contest Grand Slam exchange

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tickets. In such instance, no carryover pool would be generated from that racing day.

14. If no distribution is made pursuant to subsection (R)(5)(a) of this rule, on the last day of the race meeting the permittee shall distribute the third-race pool and any existing carryover monies equally among the holders of exchange tickets selecting the finishing contestants in the third race. The net pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
  - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
  - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
  - d. As a single price pool to all holders of third-race tickets.
15. If there were no winning wagers in the second race of the Grand Slam on the last day of the race meeting, the permittee shall distribute the second-race pool and any existing carryover monies equally among the holders of exchange tickets selecting the finishing contestants in the second race. The net pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
  - a. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
  - b. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
  - c. As a single price pool to all holders of second-race tickets.
16. If there were no winning wagers in the first race of the Grand Slam on the last day of the race meeting, the permittee shall distribute the first-race pool and any existing carryover monies as a profit split to the holders of tickets selecting either the first-place finisher to finish first or the second-place finisher to finish second. If there were still no winning wagers in the first race of the Grand Slam, such monies shall be distributed to all ticket holders.
17. Grand Slam tickets shall be issued in multiples of \$1.00.

**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). Amended effective November 16, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18); inadvertently omitted from Supp. 93-4 (Supp. 94-2). Typographical corrections made to subsections (F)(6), (P)(3)(d), and (P)(21) (Supp. 94-4). R19-2-523 recodified from R4-27-523 (Supp. 95-1). Amended effective July 3, 1996 (Supp. 96-3). Amended effective September 17, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 97-3). Amended by exempt rulemaking at 6 A.A.R. 786, effective February 1, 2000 (Supp. 00-1). Amended by exempt rulemaking at 24 A.A.R. 2962, effective September 28, 2018 (Supp. 18-3).

**ARTICLE 6. STATE BOXING AND MIXED MARTIAL ARTS COMMISSION: ADMINISTRATION OF UNARMED COMBAT SPORTS****R19-2-601. Renumbered****Historical Note**

New Section recodified from Section R4-3-415 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-601 renumbered to Section R19-2-A601 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-602. Renumbered****Historical Note**

New Section recodified from Section R4-3-416 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-602 renumbered to Section R19-2-A602 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-603. Renumbered****Historical Note**

New Section recodified from Section R4-3-417 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-603 renumbered to Section R19-2-B607 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-604. Renumbered****Historical Note**

New Section recodified from Section R4-3-418 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-604 renumbered to Section R19-2-B608 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-605. Renumbered****Historical Note**

New Section recodified from Section R4-3-419 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Former Section R19-2-605 repealed; new Section R19-2-605 renumbered from R19-2-609 and amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-605 renumbered to Section R19-2-C603 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-606. Renumbered****Historical Note**

New Section recodified from Section R4-3-420 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Former Section R19-2-606 repealed; new Section R19-2-606 renumbered from R19-2-610 and amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-606 renumbered to Section R19-2-C607 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-607. Repealed****Historical Note**

New Section recodified from Section R4-3-421 at 5

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A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section repealed by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

**R19-2-608. Repealed****Historical Note**

New Section recodified from Section R4-3-422 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section repealed by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

**R19-2-609. Renumbered****Historical Note**

New Section recodified from Section R4-3-423 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section renumbered to R19-2-605 by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

**R19-2-610. Renumbered****Historical Note**

New Section recodified from Section R4-3-424 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section renumbered to R19-2-606 by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

## PART A. GENERAL ADMINISTRATION

**R19-2-A601. Definitions and Interpretation Guidance****A.** The following terms apply to this Article:

1. "Abdominal guard" means a protective device that is designed to protect the abdomen below the umbilicus, and the term includes a pelvic girdle for women designed to protect the pubic area, ovaries, coccyx, and sides of hips. Unless otherwise indicated herein, the term "abdominal guard" will include a "groin guard."
2. "Admission fee" means the charge paid to gain access to an unarmed combat event, as evidenced by a "ticket."
3. "Annual bond" means the cash or surety bond, required under A.R.S. § 5-228(E), to be deposited with the Department by a promoter as a prerequisite for a promoter's license.
4. "Business entity" means any corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity except an individual or sole proprietorship.
5. "Combatant" means any person who practices the sport of unarmed combat in this state.
6. "Commission" means the Arizona State Boxing and Mixed Martial Arts Commission, and staff delegated to provide support to the Commission. Unless otherwise stated, reference to the Commission includes the Executive Director.
7. "Contestant" means any combatant who is engaged in an unarmed combat contest or exhibition.
8. "Department" means the Arizona Department of Gaming.
9. "Division" means the Arizona Department of Gaming, Racing Division.
10. "Event" means any unarmed-combat contest or exhibition for which tickets are issued and sold.
11. "Event bond" means the cash or surety bond, authorized under A.R.S. § 5-229(B), which the Commission may require a promoter to deposit with the Department before each event.
12. "Executive Director" means the director appointed to execute the directions of the Commission.
13. "Exhibition" means any demonstration of technique or training in unarmed combat, which is attended by members of the public, including any such demonstration involving the sale of tickets or collection of admission fees.
14. "Groin guard" means a foul-proof athletic cup or other protection of the pubic area.
15. "Gross receipts" means all gross receipts as defined by A.R.S. § 5-104.02(E).
16. "Industry" means all matters or business related to regulated unarmed-combat events.
17. "License" means any permit, license, approval, sanction, authority, registration, or other permission received from the Commission under these rules or Title 5, Chapter 2, Article 2. For purposes of these rules, a permit is equivalent to a license.
18. "Majority of rounds" means a sufficient number of completed rounds to render a decision via the score cards. For example, two completed rounds in a three-round bout, or three completed rounds in a five-round bout.
19. "Mismatch" means a pairing of unarmed combatants for a contest who have unequal ability. Factors to be considered in matching combatants include, but are not limited to:
  - a. Experience;
  - b. Training;
  - c. Fighting record;
  - d. Age;
  - e. Physical condition;
  - f. Height;
  - g. Weight;
  - h. Skill sets;
  - i. Arm or leg length; and
  - j. Any other differences in the ability of combatants that would create a competitive imbalance between them or that would render a match unsafe.
20. "MMA" means mixed martial arts as defined by A.R.S. § 5-221(8).
21. "Official" means a licensed referee, judge, timekeeper, ringside physician, or inspector.
22. "Permit" means any approval or license to conduct an event.
23. "Prohibited list" means the prohibited substance list published by the World Anti-Doping Agency ("WADA").
24. "Prohibited substance" means any substance, or class of substances, identified as prohibited on the prohibited list. Alcohol shall also be considered a prohibited substance regardless of whether it appears on the prohibited list.
25. "Ticket" means the tangible proof of the right to purchase admission to an event.
26. "Ticket agent" means a person authorized by a promoter to print tickets.
27. "Ticket vendor" means a person authorized by a promoter to sell tickets.
28. "Tickets issued" means all tickets printed for an event.
29. "A.R.S. Title 5, Chapter 2, Article 2" means Arizona Revised Statutes ("A.R.S.") §§ 5-221 to 5-240, and any successor provisions.
30. "Unarmed combat" means any professional or amateur training, contest, or exhibition regulated by the Commission, whether or not conducted for profit, including boxing, kickboxing, MMA, Muay Thai fighting, or Toughman competition.

- B.** Wherever appropriate, and if not expressly indicated, words in the singular form shall be construed to include the plural and vice versa. Nouns and pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.

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- C. Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.
- D. The word “includes” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions.

**Historical Note**

New Section R19-2-A601 renumbered from R19-2-601 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-A602. Delegation by and Reports to the Commission**

- A. The Commission may delegate execution of its statutory powers and duties to the Executive Director.
- B. The Executive Director shall regularly keep the Commission informed regarding those matters which have been delegated to the Executive Director by the Commission.

**Historical Note**

New Section R19-2-A602 renumbered from R19-2-602 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

## PART B. EVENTS

**R19-2-B601. Notice and Approval of Events; Publicity**

- A. A promoter’s request to the Commission for reservation of an event date shall be made as soon as possible and shall be deemed by the Commission to be a representation by the promoter of the promoter’s good faith intention to actually hold the event on that date. A promoter is prohibited from requesting event dates solely for the purpose of preempting the organization of an event by others on or near the scheduled event date or for any other anti-competitive reason, which may be demonstrated by a pattern of requesting and cancelling dates.
- B. The Commission’s approval of an event shall constitute a license to conduct, hold or give an unarmed combat event. A promoter shall not hold an event of unarmed combat unless:
1. No less than 60 calendar days before the event is held, the promoter submits to the Commission a written request for permission to hold the event, and for approval of the date for the event; and
  2. The Commission has approved the request and the date for the event.
- C. The Commission shall not approve an event scheduled to take place within 72 hours before a previously approved event in the same county, unless the second promoter compensates the first promoter or the Commission has determined that special circumstances exist. A promoter is required to have a commitment for an arena, and have advanced funds with respect to his or her scheduled event, in order for a promoter to have a date protected by the Commission in accordance with this rule.
- D. Contracts signed by the combatants for the main event shall be filed with the Commission at least 72 hours prior to the date of the event. Contracts signed by the combatants for preliminary events shall be filed with the Commission 48 hours prior to the date of the event. Copies of all fully-executed contracts, on a form approved by the Commission, shall be filed with the Commission prior to the weigh-in.
- E. Publicity for a scheduled event shall be factual and not misleading to the public. An event may not be publicized prior to approval of the event by the Commission. Tickets shall be priced and available as represented to the public. All promotion materials, both prior to and during an event, shall clearly designate the professional, amateur, or mixed status of the event.
- F. The Commission shall not approve a scheduled event until the promoter discloses in writing all persons having a financial interest in the event, as defined in A.R.S. § 5-228(B), and oth-

erwise complies with these rules insofar as they apply to promoters.

- G. A written request for permission to hold an event shall include, without limitation:
1. The proposed site for the event;
  2. A listing and description of all fights, with designation of all title fights to be held in the event;
  3. A listing of the number of rounds per each fight, and number of contestants; and
  4. If the event will be televised, the date and network on which the program will be premiered, and the date and network of second showings, if known.
- H. The event permit fee required by the Commission, pursuant to R19-2-C603(C), shall be submitted with the application. The Commission shall return the fee if the permit is not approved. The failure of the promoter to notify the Commission of a cancellation at least 30 calendar days before the date of the event shall result in the forfeiture of the permit fee and may subject the promoter to disciplinary action, provided that, if the promoter is able to schedule another date that is acceptable to the Commission, the permit fee shall apply to the rescheduled event.
- I. In determining whether to approve a permit for an event of unarmed combat, the Commission may take into account any factors that affect the best interests of the combatants, the state, the industry, and the Commission.
- J. A promoter who wishes to present an event of unarmed combat for charitable purposes shall file with the Commission an application for a permit to present the event.
1. The application shall contain the name of the charity, charitable fund, or organization which is to benefit from the event, with evidence satisfactory to the Commission that the benefitted organization is recognized as exempt from federal income tax pursuant to the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), and the amount or percentage of the receipts of the event which is to be paid to the charity.
  2. Within 10 days after such an event is held, the promoter shall furnish to the Commission a certified itemized statement of the receipts and expenditures in connection with the event and the net amount paid to the charitable fund or organization. If the promoter fails to file the statement within the prescribed time, the Commission:
    - a. May suspend or revoke the promoter’s license, or impose a civil penalty; and
    - b. May thereafter refuse to issue a permit to the promoter for the holding of any event of unarmed combat for charitable purposes.
- K. The Commission may waive any deadline requirements if good cause is shown and the Commission can accommodate the request.
- L. If approval of events has been generally delegated to the Executive Director, the Executive Director may defer the approval of a specific event to the Commission.

**Historical Note**

New Section R19-2-B601 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B602. State Championships**

- A. The Commission may approve a contest as one for a state championship where:
1. One of the contestants is a bona fide resident of Arizona and the other is either:
    - a. Also a bona fide resident of Arizona; or
    - b. A resident of California, Nevada, Texas, Utah, Colorado, or New Mexico, who has fought in Arizona at

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least two times within the 12-month period prior to the time the Commission's approval is requested.

2. The contestants are qualified to fight for a state championship by virtue of demonstrated ability and record, and
  3. The contestants make the weight for the pertinent weight classification at the weigh-in.
- B.** The Commission shall determine how many rounds are appropriate for any state championship contests.
- C.** A contest may not be promoted as one for a state championship, or as a state championship elimination, without the prior consent of the Commission.
- D.** State championships shall be defended in Arizona.
- E.** The Commission may vacate a state championship title for violation of these rules.

**Historical Note**

New Section R19-2-B602 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B603. Duty of Matchmakers**

- A.** Matchmakers shall use due diligence to determine and report to the Commission in writing, on a form to be provided by the Commission, no later than 48 hours prior to a scheduled event, the following information:
1. The true identity of contestants;
  2. The contestant's complete record, including the date and result of the last contest engaged in by the contestant and any fight or medical records obtained from commissions in other states (the Commission has the discretion to disregard non-sanctioned bouts, in the interests of the industry or the health and safety of combatants);
  3. Whether contestants are under suspension from any unarmed combat regulatory commission; and
  4. The ability of the contestants to compete.
- B.** Matchmakers shall be held responsible for the making of mismatches. For the protection of contestants and the public, repeated making of mismatches is grounds for discipline, up to and including civil penalties and suspension or revocation of a matchmaker's license. The Commission reserves the right to disapprove any matches that are deemed by the Commission to be mismatches.
- C.** The matchmaker's cost of obtaining any fight or medical records from regulatory bodies in other states shall be charged back to the promoter unless the promoter has supplied the Commission with the requisite information.
- D.** Matchmakers shall verify that all matched fighters, trainers, seconds, or other persons involved in a proposed match are licensed in accordance with these rules.

**Historical Note**

New Section R19-2-B603 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B604. Insurance for Contestant**

For each contestant, a promoter shall provide to the Commission proof of insurance that complies with A.R.S. § 5-233.

**Historical Note**

New Section R19-2-B604 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B605. Selection and Payment of Officials**

- A.** Any referees, judges, timekeepers, ringside physicians, and inspectors shall be finally selected by the Commission and notice of the selections shall be provided to the promoter or matchmaker 36 to 48 hours prior to the scheduled event. The Executive Director shall ensure that all officials receive compensation from the promoter immediately after the last scheduled bout in accordance with the Commission's fee schedule.

The fee schedule shall be made known to the promoter before the scheduled event when requested by the promoter.

- B.** A promoter or matchmaker may protest the assignment of officials only upon specific grounds submitted to the Commission in writing no less than 24 hours prior to the start of the scheduled event.
- C.** Referees shall be given a physical examination by the ringside physician before officiating a contest.
- D.** A promoter may be disciplined, up to and including license revocation, if rules of selection of officials and participants are not followed for an event.
1. Bouts may only be arranged by a promoter or a matchmaker licensed by the Commission.
  2. Every combatant and announcer selected by the promoter shall be licensed by the Commission. The promoter's selection of announcer shall be approved by the Commission.

**Historical Note**

New Section R19-2-B605 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B606. Commission Seating at Events**

As designated by the Executive Director, the promoter shall provide a table and front row or contiguous ringside seating for Commission members, the Executive Director, and those officials assigned to work the event, including the judges, timekeepers, ringside physicians, or other staff. Commission representatives or officials who will be working the event have priority for ringside seating with a table.

**Historical Note**

New Section R19-2-B606 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B607. Ticket Manifest, Collection, Accounting**

- A.** General requirements.
1. Admission fees shall be charged for every unarmed-combat event. Tickets may also be sold for an exhibition if approved by the Commission.
    - a. The right of admission to any event of unarmed combat shall not be sold to a person unless that person is provided with a ticket.
    - b. Every ticket shall have the price, name and date of the event, and name of the promoter plainly stated on it. Every ticket stub shall state the price.
  2. No admission fees shall be charged for any event until:
    - a. The promoter achieves compliance with occupant load, fire apparatus and exits, aisle spacing, and other building and fire code permissions or approval required by the relevant regulatory authorities, and provides verification of such approval to the Commission upon request; and
    - b. The Commission issues a permit for the event.
  3. No later than five days after the completion of an event, a promoter shall provide the Commission with an electronic ticket manifest or an accounting from each ticket agent as follows:
    - a. The manifest shall list the total number of tickets issued and the number of tickets in each price category. The manifest shall account for any tickets that are overprints, changes, or extras. The manifest shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the manifest is accurate and complete.
    - b. If tickets issued are sold through a system that cannot produce an electronic manifest, an accounting from each ticket agent of the total number of tickets

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in each price category shall be provided. The accounting shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the accounting is accurate and complete.

4. A promoter shall ensure that tickets are distributed only through ticket vendors specified by the promoter. Notwithstanding the above, a promoter may provide tickets to contestants for sale to friends or family.
  5. The Commission shall, upon request, provide the Department with the names and contract information for all ticket agents and vendors.
- B. Reduced-price tickets.** A promoter shall ensure that the actual price of tickets sold for less than the printed price is plainly displayed by over-stamping or other mechanism on the printed face of the ticket and ticket stub, and the tickets are itemized correctly on the ticket manifest.
- C. Complimentary tickets.**
1. A promoter shall ensure that the total number of complimentary tickets does not exceed the maximum number of tickets specified under A.R.S. § 5-104.02(D). This maximum number shall be referred to as the "Cap."
  2. Complimentary tickets in excess of the Cap are treated as non-complimentary and shall be subject to the levy on attendance under subsection (D).
  3. If complimentary tickets are provided from different price categories, the amount of money that shall be exempt from the attendance levy (the "Total Exemption") shall be calculated in the order of highest to lowest priced tickets, as follows:
    - a. The Cap under Subsection (C)(1) shall be computed;
    - b. Highest-priced complimentary tickets are classified as Tier 1 tickets, and complimentary tickets in successively lower levels of price categories are classified as Tier 2 through Tier X, as needed;
    - c. If the Cap is less than the number of Tier 1 tickets, then the Total Exemption shall be equal to the Cap multiplied by the price of the Tier 1 tickets, and no further calculation need be made;
    - d. If the Cap is higher than the number of Tier 1 tickets, then the next highest Tier shall be applied, in whole or in part, to reach the Cap, and the calculation shall continue in that manner until the total Cap is met;
    - e. The number of complimentary tickets in each Tier used to satisfy the Cap shall be multiplied by the price of the tickets in that Tier to determine the Tier Exemption;
    - f. The Total Exemption for the event shall be the sum of Tier Exemptions.
  4. The word "Complimentary" shall be plainly displayed on complimentary tickets and ticket stubs.
- D. Ticket accounting and levy payment.** Representatives of the promoter and Commission shall meet within 10 days after an event to account for all tickets sold and pay the required attendance levy.
1. The promoter shall provide the Commission with the following information on the Commission's attendance levy form:
    - a. The number of tickets sold and unsold in each price category;
    - b. The amount of the gross receipts calculated using the printed price on each ticket sold; and
    - c. The signature of the promoter, certifying that the information is true and correct.
  2. The Commission shall consider as sold any tickets listed as issued, but not reported as being unsold.

3. The promoter shall pay the Department an attendance levy of 4% of the gross receipts after the deduction of city, state, and federal taxes, of the event.

**Historical Note**

New Section R19-2-B607 renumbered from R19-2-603 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B608. Annual Bond, Event Bond, Claims**

- A. Annual bond under A.R.S. § 5-228(E).**
1. The approval of a promoter's license is contingent upon deposit of the annual bond with the Department.
  2. Upon written request of the promoter, the Commission may release the promoter from the annual bond requirement, if the Commission determines that the promoter has satisfied all past obligations and is not planning additional events for that year.
- B. Event bond under A.R.S. § 5-229(B).**
1. The Commission shall notify the promoter in writing of the imposition and amount of an event bond and the promoter shall deposit the bond with the Commission no later than 48 hours prior to the event. The Commission shall retain the event bond until the promoter has satisfied all obligations for the event, at which time the Commission shall return the bond to the promoter.
  2. If an event is not held, the promoter shall notify the Commission, not later than 22 business days after the scheduled event, whether the promoter's obligations for the event have been satisfied, at which time the promoter's event bond can be returned.
- C. Commission claim.** If a promoter fails to comply with payment of the attendance levy on gross receipts under R19-2-B607(D), the Commission shall notify the promoter and the Department. Notification to the promoter shall be made by registered or certified mail, return receipt requested, and shall state that:
1. The unpaid levy on gross receipts shall be paid within 10 business days from receipt of the notice; and
  2. If the payment is not received within the 10 business days, forfeiture proceedings against the bond may be initiated based on the Commission's determination of whether a promoter's obligations have been faithfully performed.
- D. The Department and Commission shall not release any bond for which a claim is pending.**

**Historical Note**

New Section R19-2-B608 renumbered from R19-2-604 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-B609. Payment of Contestants**

- A.** All contestants shall be paid in full according to their contracts, and no part or percentage of their remuneration may be withheld except by order of the Commission, nor shall any part of their remuneration be returned through arrangement with the combatant or the combatant's manager to any matchmaker or promoter.
- B.** Payment shall be made immediately after the event under the supervision of a Commission representative.
- C.** In cases where the Commission does not require an event bond, the promoter shall execute an assignment in favor of the Commission of box office proceeds to the extent necessary to secure the payment of purses. Such assignment is a condition precedent to the approval of an event. When all contestants have been paid, the assignment shall be returned to the promoter and the promoter shall be released therefrom.

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**Historical Note**

New Section R19-2-B609 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**PART C. LICENSING AND DISCIPLINE****R19-2-C601. Licensing, General Requirements**

- A. An application for a license for every industry combatant, promoter, matchmaker, inspector, manager, second, including trainers and cutmen, referee, judge, timekeeper, announcer, or physician, shall be made in writing on a form supplied by the Commission and signed by the applicant under penalty of perjury. The Commission shall accept electronic signatures on applications, which may include faxed signatures, electronic facsimiles of signatures, or any other electronic methods that comply with state policy and are designed to facilitate the application process for the public. The Commission, in its discretion, may act on an applicant's request for a license before the form is submitted, but a license shall not be issued to the applicant until the applicant complies with the licensing requirements pursuant to this Section. Issuance of a license is in the reasonable discretion of the Commission.
- B. Every combatant shall be licensed prior to participating in any event, with the exception of those individuals excluded under A.R.S. § 5-222.
- C. All licenses shall expire on December 31 at midnight on the year of their issuance and each licensee has the responsibility to apply for renewal prior to such expiration. A combatant may petition the Commission for waiver of medical licensing requirements upon renewal if the combatant fulfilled those requirements within 90 days prior to December 31.
- D. Before issuing a license, the Commission or its staff may require an applicant to provide independent proof of the applicant's true identity, fingerprints, and other material information requested on the license application or otherwise required by the Commission.
- E. An applicant for an official's license shall submit to the Commission a signed copy of the Commission's Code of Ethics and Conduct for the type of license being sought, acknowledging that the applicant has read and understands the Code, and agrees to comply with its terms.
- F. Each license issued is subject to the conditions and agreements set forth in the application.
- G. The applicant shall demonstrate to the satisfaction of the Commission an understanding of the Commission's drug testing program, including, without limitation, an understanding of anti-doping violations and the penalties for those violations.
- H. The Commission may require an applicant to appear before the Commission to answer questions or provide documents in conjunction with an application for a license.
- I. Expenses necessarily incurred by the Commission in the investigation of an applicant shall be charged back to the applicant.
- J. The Commission may take disciplinary action or refuse to issue or renew a license for those reasons stated in A.R.S. § 5-235.01, or if the applicant:
  1. Has violated any industry laws or regulations of any other state;
  2. Does not possess a good reputation or moral character, or demonstrates a lack of honesty, ethics, or moral character so as to reflect discredit to the industry and thereby render adverse action consistent with the public interest and the purpose of A.R.S. Title 5, Chapter 2, Article 2, and these rules adopted thereunder;
  3. Has an industry license that has previously been suspended, revoked, or denied in this or other jurisdictions;

4. Does not, in the sole discretion of the Commission, possess the health, fitness or skills to safely participate in the industry;
  5. Has committed any actions that would be grounds for discipline under R19-2-C605; or
  6. Is not qualified to be granted a license or permit, based on the best interest of the safety, welfare, economy, health, and peace of the industry or the people of the state of Arizona.
- K. A manager need not obtain a manager's license if the manager is not a resident of Arizona and comes into Arizona for the sole purpose of working the corner of the manager's combatant. A second's license is sufficient.
  - L. A licensed manager may act as a second.
  - M. A manager or promoter contract shall not be recognized by the Commission as valid unless the parties to the contract are licensed. Such contracts shall be in a format approved by the Commission.
  - N. Prior to licensing, a promoter or matchmaker shall provide to the Commission:
    1. A copy of any agreement with a combatant that binds the applicant to pay a fixed fee or percentage of gate receipts to the combatant;
    2. If a business entity, a list of all persons who control 25% or more of the entity;
    3. If a corporation, a copy of the latest financial statement of the entity; and
    4. A copy of the insurance contract required by A.R.S. Title 5, Chapter 2, Article 2.

**Historical Note**

New Section R19-2-C601 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C602. Licensing Time-Frames**

- A. Overall time-frame. The Commission shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.
- B. Administrative completeness review.
  1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Commission receives the application. The Commission shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Commission does not provide notice to the applicant, the license application shall be considered complete.
  2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Commission mails the notice of missing information to the applicant until the date the Commission receives the information.
  3. If the applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may submit a new application.
- C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.
  1. If the Commission makes a comprehensive written request for additional information, the applicant shall

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submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Commission mails the request until the information is received by the Commission. If the applicant fails to timely provide the information identified in the written request, the Commission shall consider the application withdrawn.

2. The Commission shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Commission shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

**Historical Note**

New Section R19-2-C602 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C603. License Fees**

- A. The following applicants shall complete an authorized fingerprint card and pay a fingerprint processing fee per A.R.S. § 41-1750(G)(2) and (J): inspectors, ringside physicians, judges, timekeepers, referees, managers, matchmakers, and promoters.
- B. Fees for the issuance of annual licenses shall be as follows:
  1. Promoters, \$400;
  2. Matchmakers, \$125;
  3. Managers, \$100;
  4. Inspectors, judges, referees, timekeepers, announcers, and ringside physicians, \$30;
  5. Cutmen, professional combatants, trainers, and seconds, \$25; and
  6. Amateur combatants, \$10.
- C. At the time an event permit request is submitted for Commission approval, the following fees for events shall be paid to the Commission:
  1. \$750 for non-live televised events at a venue seating 5000 persons or less;
  2. \$1500 for:
    - a. Non-live televised events at a venue seating more than 5000 persons;
    - b. Events streamed live for a charge on Facebook or other equivalent Internet broadcast; and
    - c. Live televised events on cable or satellite television;
  3. \$2000 for live televised events on cable or satellite television that include a recognized world title bout (e.g., WBA, WBC, IBF, WBO, UFC, IBO); and
  4. \$4000 for live pay-per-view events on cable or satellite television (e.g., HBO, Showtime).
  5. If an event has been previously approved by the Commission, any time an event date change request is submitted for Commission approval, an additional fee of \$250 shall be paid to the Commission.
  6. The Commission may establish a fee not to exceed \$2000 for an event that is not within the categories set forth in subsections (C)(1) through (4). If a fee is initially paid for a type of event and that event type later changes to a higher fee category, the promoter shall pay the difference in fees prior to the event date.
- D. The Commission shall forward license fees to, or deposit them in the account of, the Department within five business days of receipt with the following information:
  1. The type of license issued;
  2. The name and date of birth of the licensee;
  3. The license number; and

4. The date and amount of payment received and/or deposited.
- E. The Commission shall retain a current list of the licenses issued and the additional applicable licensing information and make the information available to the Department.
- F. Licensing fees shall be waived for those persons who qualify for exemption under A.R.S. § 41-1080.01. For purposes of waiving licensing fees under A.R.S. § 41-1080.01:
  1. The costs for background checks and fingerprint processing shall not be waived;
  2. Any fees that are waived shall be fully reimbursed to the Division or Department if investigation indicates the applicant does not qualify for waiver;
  3. Licensing fees may only be waived if the applicant complies with the process established by the Commission to determine eligibility and the request for waiver is submitted at the same time that the application is submitted;
  4. A first-time application shall mean the first application for any license and not the first application for each separate category of license.

**Historical Note**

New Section R19-2-C603 renumbered from R19-2-605 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C604. Licensing Requirements Related to Ability and Fitness**

- A. Age and physical condition of combatant applying for license.
  1. Prior to issuance or renewal of a license, an applicant for a license to engage in unarmed combat shall be examined by a physician approved by the Commission, and satisfy the Commission that the applicant has the ability to compete, if the applicant:
    - a. Reached 36 years of age or will reach 36 years of age during the licensing year;
    - b. Has not competed in unarmed combat for at least 36 consecutive months; or
    - c. Has any medical, physical or mental unfitness that could affect the applicant's safety or welfare if the applicant were licensed.
  2. The Commission may revoke, suspend, or refuse to issue or renew the license of any combatant because of injury or unfitness that could affect the safety or welfare of the licensee or other industry participants. The combatant's license shall be reinstated when and if the Commission, in its sole discretion, determines that the injury or unfitness has been resolved. The Commission may consult with a physician selected by the Commission in making this determination.
  3. The Commission shall not issue or renew a license to engage in unarmed combat to an applicant or combatant who is found to be blind in one eye or whose vision in one eye is so poor that a physician recommends that the license not be granted or renewed. This rule applies regardless of how good the vision of the applicant or combatant may be in the other eye.
  4. Together with the medical exams required by A.R.S. § 5-228(F)(1) - (5), an applicant shall submit to testing as follows:
    - a. Before the Commission issues a license, the applicant shall undergo a base-line concussion examination conducted or supervised by a physician who is licensed pursuant to A.R.S. Title 32, Chapter 13 or 17. The base-line concussion examination shall consist of any neurological testing protocol approved by the American Academy of Neurology, that includes

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the following tests, or the reasonable and recognized equivalent to the following tests:

- i. A Post-Concussion Symptom Scale (PCSS), to determine if the applicant is exhibiting any current symptoms that may be related to concussion;
  - ii. A recognized quantitative test of cognition, such as the Cogstate Computerized Cognitive Assessment Tool (CCAT), ImPACT, or the Standardized Assessment of Concussion (SAC);
  - iii. A recognized quantitative test of oculomotor function, such as the King-Devick Test;
  - iv. A recognized quantitative test of balance, such as the Balance Error Scoring System (BESS), the Rhomberg test, pronator drift, or the timed tandem gait test.
- b. Every ringside physician, trainer, second, or cutman present at an event, and every trainer present at a practice session, has the responsibility of acting as a "spotter" and notifying the Commission if the spotter reasonably suspects that a combatant has suffered a head injury or concussion. A spotter's knowing failure to notify the Commission of a suspected head injury or concussion of a combatant shall result in discipline, up to and including revocation. A spotter who, in good faith, reports a suspected head injury or concussion shall be immune from civil liability with respect to all decisions made and actions taken that are based on good faith implementation of the requirements of this subsection, except in cases of gross negligence, intentional misconduct, or wanton or willful neglect. A referee or a ringside physician shall be responsible for stopping a bout if he or she suspects that a combatant has a head injury or concussion.
  - c. The license of every combatant who is suspected of having a head injury or concussion shall be suspended until he or she undergoes a post-injury concussion assessment, and is able to provide to the Commission clearance from his or her treating neurologist that the combatant is cleared to resume participation in the sport of unarmed combat. The post-injury concussion assessment shall consist of the same testing used to perform the base-line concussion examination required above, and shall be compared to the base-line test to determine the concussion status of the combatant.
5. The Commission may hold a hearing to determine whether the license should be denied, granted or renewed, or granted or renewed on a conditional basis, in view of the applicant's ability and fitness.
  6. All combatants shall have attained their 18th birthday before being licensed.
- B. Drug testing and anti-doping.**
1. It is the duty of each combatant to ensure that no prohibited substance enters the combatant's body, and a combatant is strictly liable for the presence of any prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen. To establish a violation of this Section, it is not necessary to establish that the combatant intentionally, knowingly or negligently used a prohibited substance or that the combatant is otherwise at fault for the presence of the prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen.
  2. At any time upon request by the Commission or its representative, whether in or out of competition, a combatant shall submit to a drug test.
    - a. A test of any sample or specimen of a combatant may be performed by a laboratory approved by the Commission or a laboratory approved and accredited by the World Anti-Doping Agency. Approval by the Commission will be based, in part, on whether the laboratory has implemented the *International Standard for Laboratories* and the *Decision Limits for the Confirmatory Quantification of Threshold Substances*.
    - b. The sample or specimen taken for testing will be referred to as the primary sample. The combatant may request that another sample be collected and preserved, which shall be referred to as the secondary sample.
  3. A combatant who utilizes, applies, ingests, injects, or consumes by any means, or attempts to utilize, apply, ingest, inject, or consume by any means, a prohibited substance or prohibited method, whether successful or not, commits an anti-doping violation and is subject to disciplinary action by the Commission. An anti-doping violation is established when:
    - a. Analysis of either the primary or secondary sample indicates that one or both of the samples contains any quantity of a prohibited substance or its metabolites or markers, even if the results of testing on both samples is not identical regarding the amount.
    - b. A combatant, without compelling justification, refuses or fails to submit to the collection of a sample or specimen upon the request of the Commission or its representative or who otherwise evades the collection of a sample or specimen.
    - c. An in-competition combatant possesses any prohibited substance or prohibited method, or an out-of-competition combatant who possesses any prohibited substance or prohibited method which is prohibited out of competition.
  4. A combatant does not violate the provisions of this Section if:
    - a. The quantity of the prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen does not exceed the threshold established in the prohibited list for the prohibited substance or its metabolites or markers.
    - b. The special criteria in the prohibited list for the evaluation of a prohibited substance that can be produced endogenously indicate that the presence of the prohibited substance or its metabolites or markers found to be present in the sample or specimen of the combatant is not the result of the combatant's use of a prohibited substance.
    - c. If one sample is conclusively positive and one is conclusively negative, and there is no reasonable explanation for the variance.
  5. A combatant commits an anti-doping violation and is subject to discipline by possessing any prohibited substance or prohibited method in or out of competition. Any other licensee who possesses a prohibited substance or prohibited method and who is in direct contact with a combatant at the time of possession, has also committed an anti-doping violation.
  6. For the purposes of this Section, "possession" means actual physical or constructive possession of the prohibited substance or prohibited method. "Constructive pos-

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session” means exclusive control or the intent to exercise exclusive control over a prohibited substance or prohibited method or the premises on or in which a prohibited substance or prohibited method is located.

7. The following are anti-doping violations if committed by any means, and will subject a licensee to discipline:
  - a. Supervise, facilitate, or participate in the use of a prohibited substance or prohibited method by another person;
  - b. Sell, give, transport, send, deliver, or distribute a prohibited substance or prohibited method to another person; or
  - c. Possess with the intent to sell, give, transport, send, deliver, or distribute a prohibited substance or prohibited method to another person.
8. A physician or other bona fide medical personnel who provides or supplies a prohibited substance or prohibited method to a combatant, or who supervises, facilitates or otherwise participates in the use or attempted use of a prohibited substance or prohibited method by a combatant, for genuine and legal therapeutic purposes or any other purposes deemed appropriate by the Commission, is not in violation of this Section.
9. The Commission will report any violation of this Section that also violates any other law or regulation of this state to the appropriate law enforcement, administrative, professional or judicial authority.
10. A combatant may obtain a therapeutic use exemption from an anti-doping violation by submitting to the Commission an application and any medical information the Commission deems necessary to determine whether to grant the therapeutic use exemption. The Commission may grant a therapeutic use exemption if the medical information provided demonstrates that the therapeutic use will not confer an unfair advantage or disadvantage on the combatant, in the sole discretion of the Commission.
  - a. The Commission will not grant:
    - i. A therapeutic use exemption that applies to a contest or exhibition in which the applicant has already participated; or
    - ii. A therapeutic use exemption for testosterone replacement therapy or any similar therapy designed to induce or stimulate testosterone replacement.
  - b. A therapeutic use exemption granted by the Commission pursuant to this Section is valid until the end of the calendar year in which it was granted, and may be renewed at the time that a combatant applies for the issuance or renewal of his or her license or at such time as the Commission determines.
11. If the Commission grants a therapeutic use exemption to a combatant, the combatant, a person who is licensed, approved, registered or sanctioned by the Commission, and any other person associated with unarmed combat in this state who acts consistently with the therapeutic use exemption, does not commit an anti-doping violation set forth under this rule.

**Historical Note**

New Section R19-2-C604 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C605. Grounds for Disciplinary Action; Penalties**

- A. Disciplinary action against a person licensed by the Commission, or otherwise associated with unarmed combat in this state, may include denial, revocation, or suspension of license;

ban on participation; imposition of a civil penalty; forfeiture of all or part of a purse; altering the result of a bout; or any combination of such actions as may be appropriate under the aggravating or mitigating circumstances.

- B. A licensee shall be held responsible for knowing these rules and the provisions of A.R.S. Title 5, Chapter 2, Article 2 related to unarmed combat.
- C. In addition to those grounds listed in A.R.S. § 5-235.01(B), grounds for disciplinary action are:
  1. Violation of an order of the Commission;
  2. Breach of an industry contract;
  3. Where the licensee’s conduct is lacking in honesty, ethics, or moral character so as to reflect discredit to the industry and thereby render disciplinary action consistent with the public interest and the purpose of A.R.S. Title 5, Chapter 2, Article 2 and these rules;
  4. Where the licensee has been disciplined in another jurisdiction, if the disciplinary action is ordered for conduct which relates to safety, would be a violation in this state, or tends to reflect negatively on the reputation of this state or the industry;
  5. Where the licensee had knowledge or, in the judgment of the Commission, should have had knowledge that a combatant suffered a concussion or serious injury during training or an event and the licensee failed or refused to inform the Commission of that knowledge; or
  6. Where the licensee has committed any actions that would be grounds for denial of license under R19-2-C601.

**Historical Note**

New Section R19-2-C605 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C606. Effect of Discipline**

- A. Every promoter and matchmaker shall take notice of the suspensions or revocations listed on registries recognized by the Commission and shall not permit any person under suspension or revocation to participate in, arrange, or conduct events during the period of suspension or revocation.
- B. A person whose license has been denied, suspended or revoked by the Commission is prohibited from participating in, matchmaking, or holding events during the period of denial, suspension or revocation.
- C. A person whose license has been suspended or revoked is barred from:
  1. The dressing rooms at the premises where any event of unarmed combat is being held;
  2. Occupying any seat within six rows of the ring platform or cage; and
  3. Communicating in the arena or near the dressing rooms with any of the event principals, their managers, their seconds, or the referee, whether directly or by a messenger, during any event.
- D. A person who violates a provision of this subsection may be ejected from the arena or building where the event is being held, and the price paid for his or her ticket shall be forfeited. Thereafter, the person is barred entirely from all premises used for events during the contest or exhibition.
- E. A manager who is revoked or under temporary suspension is considered to have forfeited all rights in this state under the terms of any contract with a combatant licensed by the Commission. Any attempt by a suspended manager to exercise those contract rights in this state shall result in a revocation of the manager’s license. The Commission may also revoke a license of any combatant, matchmaker, or promoter who continues to engage in any contractual relations with a revoked or suspended manager within the state of Arizona.

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- F. A combatant whose manager has been suspended or revoked may continue competing independently during the term of that suspension or revocation, by personally negotiating and signing the combatant's event contracts or entering into contracts with other managers. Payment of the earnings of a combatant may not be made by any promoter to a manager who is under suspension, or to the manager's agent. Instead the purse must be paid in full to the combatant.
- G. Unless otherwise specified in these rules, any applicant who has been denied a license or whose license has been suspended or revoked by the Commission shall not file a new application or application for reinstatement until one year after the date of the denial, revocation, or suspension (unless the suspension has been lifted by the Commission prior to expiration of the license) and the applicant has paid in full all fees and fines imposed on the applicant by the Commission. The Commission may require a person who has had his or her license suspended for any period because of an anti-doping violation to submit to the Commission documentation satisfactory to the Commission that indicates that a test performed on a sample or specimen obtained from the person did not indicate the presence of a prohibited substance or the use of a prohibited method. Documentation would be unsatisfactory if the documentation creates articulable suspicion that the test may not be valid. Examples of unsatisfactory documentation include:
1. Documentation from a laboratory that does not meet the standards of R19-2-C604(B)(2)(a); and
  2. Documentation that does not establish sufficient controls to eliminate the potential of tampering with samples or specimens.
- H. The expiration of, or failure to obtain, a license from the Commission does not deprive the Commission of jurisdiction to:
1. Proceed with an investigation of any person associated with unarmed combat in this state;
  2. Proceed with an action or disciplinary proceeding against any person associated with unarmed combat in this state;
  3. Render a decision to suspend or revoke the license, approval, registration or sanctioning, or the privilege to obtain such license, approval, registration or sanctioning, as applicable; or
  4. Otherwise discipline any licensee, person approved, registered or sanctioned by the Commission, or any person otherwise associated with unarmed combat in this state, including, without limitation, banning such a person from participation in unarmed combat in this state for any period of time, including, without limitation, a lifetime ban from participation in unarmed combat in this state.

**Historical Note**

New Section R19-2-C606 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C607. Civil Penalties**

- A. The Commission shall notify the Department in writing if a licensee is issued a civil penalty under A.R.S. § 5-235.01(A)(3) or (C).
- B. Upon receipt, the Commission shall immediately forward the civil penalty to the Department for deposit.
- C. Failure to pay a civil penalty of any kind shall result in a suspension of a license until the penalty is paid.

**Historical Note**

New Section R19-2-C607 renumbered from R19-2-606 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C608. Appeal, Rehearing, or Review of Decision**

- A. Except as provided in subsection (I), any party in a contested case before the Commission who is aggrieved by a decision rendered in such case by the Executive Director may file with the Commission, not later than 10 days after service of the decision, a written motion for appeal of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at the party's last known residence or place of business; or by electronic mail if the party has agreed to receive electronic notifications.
- B. An appeal, or a motion for rehearing or review under this rule may be amended at any time before it is ruled upon. A party shall provide a copy of any pleading on all opposing parties or parties who may be directly affected by the issues presented, and the pleading shall contain a certification of delivery to listed recipients. A response may be filed by any other party within 10 days after delivery of such pleading on the other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. 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 following reasons materially affecting the moving party's rights:
  1. Irregularity in the administrative proceedings that causes the moving party to be deprived of a fair hearing;
  2. Misconduct of the Commission or its hearing officer or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; or
  7. The decision is not justified by the evidence or is contrary to law.
- D. If a rehearing is granted, the Commission may hear the case or may refer the case to the Office of Administrative Hearings. The decision of the administrative law judge becomes the decision of the Commission unless rejected or modified by the Commission in accordance with A.R.S. Title 41, Chapter 6, Article 10. A decision of the Commission at this level of review is a final decision.
- E. Except for a decision under subsection (I), a rehearing or review of the final Commission decision shall be requested in order for the aggrieved party to have the right to appeal under A.R.S. Title 12, Chapter 7, Article 6. The Commission shall rule on the motion for rehearing or review within 15 days after the response to the motion is filed or at the Commission's next meeting after the motion is received, whichever is later.
- F. Not later than 10 days after a decision is rendered, and after giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party.
- G. Any order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- H. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits,

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which period may be extended by the Commission for an additional period not exceeding 20 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

- I. If, in a particular decision, the Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety 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 a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Commission's final decisions under A.R.S. Title 12, Chapter 7, Article 6.
- J. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
- K. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Commission, such statutory provisions shall govern.
- L. The Commission may deny a petition or application that is not filed in accordance with this Section without a hearing.
- M. The final result of an unarmed combat bout, even if based upon errors of judgment of the referee or the judges, shall not be overturned or modified by the Commission unless there is substantial evidence that the following have occurred:
  1. The compilation of the scorecards of the judges shows an error if such error would result in the win being given to the wrong contestant; or
  2. There has been fraud or collusion affecting the result.

**Historical Note**

New Section R19-2-C608 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-C609. Registration of Amateur Sanctioning Organizations: Requirements; Application; Fees; Revocation, Suspension or Setting Conditions**

- A. All sanctioning organizations that are required to be approved under A.R.S. § 5-222(A)(4) shall be registered with the Commission. A sanctioning organization that is required to be registered shall submit to the Commission:
  1. A completed application for registration on a form provided by the Commission;
  2. A complete set of rules adopted by the sanctioning organization to govern the particular discipline, which must be substantially equivalent to the rules of this Article 6 with regard to safety of the combatants; and
  3. An application or renewal fee of \$1,000.
- B. A sanctioning organization that is required to be registered may have its registration denied, revoked, suspended, or conditioned by the Commission for:
  1. Failing to provide information as requested by the Commission or the Executive Director;
  2. Failing to establish or follow its own complete set of rules;
  3. Failure to dismantle and remove all equipment, ring, cage, and seating upon conclusion of an event; or
  4. Any other cause for the revocation, suspension or conditioning of a license set forth in A.R.S. Title 5, Chapter 2, Article 2, and these rules adopted thereunder.
- C. A sanctioning body that is required to be registered shall not participate, directly or indirectly, in any amateur event of unarmed combat if registration is not obtained.

- D. The Commission may approve one amateur sanctioning organization for each Muay Thai discipline. The Commission may limit, deny, suspend, or revoke registration of a separate organization, if the Commission, in its sole discretion, determines registration of the organization is not in the best interest of the industry.
- E. The Commission may waive the requirements of subsections (A), (B), (C), and (D).
- F. The provisions of this Section do not apply to professional Muay Thai events, which shall be sanctioned by the Commission, or to a professional Muay Thai promoter whose license is issued by the Commission and who is in good standing.

**Historical Note**

New Section R19-2-C609 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

## PART D. UNARMED COMBAT RULES

**R19-2-D601. General Provisions for All Unarmed Combat Disciplines**

- A. Applicability of requirements/alteration. This Section shall apply to all regulated unarmed combat disciplines, unless otherwise noted herein. In case of a conflict between this general Section and a provision relating to a specific discipline, the specific provision shall control. The Commission may approve the alteration of requirements of Part D if it is determined that the alteration is dictated by the event venue or by nationally-accepted rules and that the alteration will not compromise the safety of the combatants. If the rules regarding a specific unarmed combat discipline do not adequately cover an issue pertinent to that discipline, the Commission may refer to and use rules applicable to a different unarmed combat discipline as guidance.
- B. Time between bouts. Unless special approval is obtained from the Commission, a contestant shall not be allowed to compete until the following time periods have elapsed:
  1. Five days, if the contestant has competed anywhere in a bout of six rounds or less; or
  2. Ten days, if the contestant has competed anywhere in a bout of more than six rounds.
- C. Dressing rooms. The promoter shall provide contestants with dressing rooms or areas which shall be equipped with showers, be sanitary, safe, ventilated, and have sufficient seating. Separate dressing rooms shall be provided for contestants of separate genders.
- D. Mouthpiece.
  1. During competition, each contestant is required to wear a mouthpiece that has been fitted to the contestant's mouth. The mouthpiece shall be subject to examination by and approval of the referee. A round cannot begin without the mouthpiece in place.
  2. If the mouthpiece is dislodged or spit out during the course of a round, the referee shall call time at the first opportune moment without interfering with the immediate action or the advantage the aggressor may have. As soon as it can be properly replaced, the referee shall direct a second to wash the mouthpiece and the referee shall then replace it with all deliberate speed. For professional kickboxing contests, a round will not be stopped by the loss of a mouthpiece.
  3. A contestant who intentionally spits out a mouthpiece in an apparent attempt to cause the progress of a round to be interrupted is subject to penalty to be determined by the referee.
- E. Stools. The promoter shall provide an appropriate number of stools or chairs for each combatant's corner. The stools or chairs shall be of a type approved by the Commission. All

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stools and chairs shall be thoroughly cleaned or replaced after each bout.

- F.** Bell. The term “bell” shall refer to a bell, horn, gong, or other sound device approved by the Commission, which shall be positioned at a location approved by the Commission, and shall carry a clear tone so that the contestants may easily hear its sound.
- G.** Injured Combatants.
1. The ringside physician shall enter the fighting enclosure and examine and tend to a contestant who has been knocked out or is otherwise injured. The physician may enter at the conclusion of a bout, when called in by the referee, or when it is deemed medically necessary by the physician. The seconds of the injured contestant shall not interfere with the physician.
  2. Contestants who have been knocked down and out shall be kept in a stable position until they have recovered.
  3. A contestant who has been knocked out shall not be permitted to compete until the Executive Director and a physician approved by the Executive Director jointly clear the contestant’s return to competition. In making this decision, the consideration of the Executive Director and the physician shall include, but shall not be limited to, the requirements under R19-2-C604(A)(3).
  4. A combatant who has been knocked out three times within a 12-month period shall be suspended from competition for six months from the date of the last knock-out, and must satisfy the Commission that he or she is capable of returning to competition, including, but not limited to, documenting clearance under R19-2-C604(A)(3).
  5. The term “knockout” as used in this subsection includes a technical knockout that is injury-based.
- H.** Female Combatant. A female combatant shall not be matched or engage in a bout with a male combatant, unless approved by the Commission.
- I.** Weigh-in; when contestants are required to appear.
1. The weigh-in shall be held at a time and place approved by the Commission in conformance with A.R.S. § 5-225(E). It shall be supervised by a Commission representative. Promoters are required to contact the Commission at least 48 hours in advance of the weigh-in to make appropriate arrangements therefor. Contestants shall appear at the weigh-in and the failure to do so may subject the contestant to discipline, up to and including disqualification from competing.
  2. Contestants shall appear at the event location at least one hour before the scheduled bout in which they will compete.
  3. Contestants who are already licensed and scheduled to fight shall be present in the city of the scheduled event at least 24 hours before the event and make their presence known to the Commission.
- J.** Physical examination, appearance and weight.
1. Each contestant shall be required to complete a pre-fight physical examination by an appointed physician as directed by the Commission. The examining physician shall be satisfied that a contestant is in good physical condition and able to compete in the scheduled event. Each contestant shall be re-examined within one hour after the bout in which he or she has competed.
  2. Facial and head hair shall not create a hazard to safety or interfere with the supervision or conduct of the event. The Commission may require alteration to facial and head hair in the sole discretion of the Commission representative at the weigh-in. Hair stays must be approved by the Commission. Jewelry and piercing accessories are prohibited during competition.
3. A contestant who exceeds his or her contractual weight by more than one pound at the weigh-in is in breach of his or her contract. At the discretion of the Commission, the contestant may be permitted a second opportunity to make the weight within two hours. In the alternative, the Commission may impose a penalty consisting of a forfeiture of no more than 20% of the gross purse. Penalty amounts may be added to the purse of the contestant’s opponent.
  4. There shall be allowed variations in weight allowances and weight classes in non-championship fights, if both contestants and the Commission approve the variation.
- K.** Illness and absence.
1. Whenever a contestant, because of injuries or illness, is unable to take part in an event for which the contestant is under contract, that contestant or the contestant’s designated representative shall immediately report that fact to the Commission. The Commission may then require the contestant to submit to an examination by a physician. The examination fee of the physician shall be paid by the contestant, or by the promoter, if the latter requests the examination.
  2. Any contestant who fails to appear for an event in which the contestant is under contract shall be subject to disciplinary action, unless the contestant has submitted to the Commission a written valid excuse or physician’s certification of illness or injury in advance of the event.
- L.** Substances.
1. It is prohibited for drugs, injections, intravenous fluids, or stimulants to be administered to, possessed by, or used by, a contestant during, or within 24 hours preceding an event. This includes smelling salts, ammonia capsules, or similar irritants. Caffeine or caffeinated beverages cannot be consumed during or within two hours before a fight.
  2. The Commission may order anti-doping examinations immediately before and/or after the event. A sample (blood, breath, or urine) shall be provided, using sterile containers, in the presence of the Commission representative, the physician appointed by the Commission, or his or her appointee; and a representative of the combatant.
  3. During an event, administering to a contestant any substance other than plain water or Commission-approved electrolyte drinks is absolutely prohibited.
  4. Coagulants such as adrenalin 1/1000, and others expressly approved by the ringside physician, may be used between rounds to stop bleeding of cuts. “Iron type” coagulants, such as Monsel’s solution, are absolutely prohibited and shall be grounds for disqualification.
  5. In the discretion of the referee, a small amount of petroleum jelly may be used around the eyes. The use of lubricants, grease, or any other foreign substance on the arms, legs, or body is prohibited. The referee of a Commission representative has the right to require the removal of excessive lubricants or other foreign substances.
- M.** Inspectors.
1. The Commission shall appoint a minimum of one chief inspector for each event for the purpose of overseeing and coordinating the activities occurring in the dressing rooms with the activities occurring at ringside and the television coordinator.
  2. Chief Inspectors shall:
    - a. Enforce the rules regarding hand wraps, glove weights and types, approved substances, and equipment and supplies that must be in the corner during a

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match, conduct of the seconds in the corner during the match, how a fight may be stopped by the chief second, and drug test administration;

- b. Have drug testing kits, tape, pens, gloves, and other equipment available and in good working condition, for use by the Commission; and
  - c. Ensure that the promoter has provided the required emergency medical personnel and their equipment.
3. The Commission shall appoint additional inspectors as necessary for each event for the purpose of overseeing, directing, and controlling the activities occurring in the dressing room and at ringside.
  4. Inspectors shall know and follow these rules and the Inspector's Training Guidelines provided by the Commission.
- N. Presence of medical assistance.**
1. At least one licensed physician shall be assigned to cover every contest, and shall sit at the immediate ringside of all bouts, unless the Commission determines that more than one assigned physician is necessary to protect the safety of fighters or promote the success of the event. No bout shall be allowed to proceed until at least one assigned physician is seated ringside. No assigned ringside physician shall leave the fighting venue until the dressing rooms are cleared after the final bout. Every assigned ringside physician shall be prepared to assist if any serious emergency arises and shall render temporary or emergency treatments for cuts and minor injuries sustained by the contestants.
  2. No manager or second shall attempt to render aid to a contestant during the course of a round before the assigned ringside physician has had an opportunity to examine the contestant who may have been injured.
  3. No event shall take place, whether amateur, professional, or both, without a team of fully equipped, qualified paramedics and a paramedic ambulance (collectively, a "paramedic unit") present at the event venue for each bout at all times.
    - a. If a paramedic unit leaves the site of the event to transport an unarmed combatant to a medical facility, the unarmed combat event must not continue until another paramedic unit is present and available. If the event cannot be stopped, as in the case of a televised event, the promoter shall make prior arrangements to ensure that there will be a paramedic unit present at all times, including arranging for the presence of additional paramedic units at the event start.
    - b. If a paramedic unit is not available because of the location of the site, the highest level of paramedic assistance and transportation in that location shall be present, able, and available to treat and transport an unarmed combatant to a medical facility.
    - c. The medical personnel described in this subsection shall be designated to render service only to the unarmed combatants in the event, and shall be positioned in a location that is deemed appropriate by the ringside physician.
    - d. Each promoter shall give notice of the event to:
      - i. The paramedic-unit companies that are located nearest to the site of the event and ascertain from the service the length of time required for one of its ambulances to reach the site; and
      - ii. The nearest hospital emergency room.
    - e. For purposes of this subsection, an event of unarmed combat begins with the commencement of the first bout and ends when the last unarmed combatant leaves the site.
- O. Conduct of seconds.**
1. A contestant may have up to three seconds and shall designate to the referee which of them is the chief second. The chief second is responsible for the conduct of the assistant seconds. Only one second can be inside the ring during a period of rest, unless a greater number is approved by the Commission, except that there may be two seconds in the ring during a Muay Thai rest. The Commission, in its sole discretion, may approve an increase in the number of seconds to four in a championship contest or in a special event.
  2. A second shall remain seated outside of, and shall not enter, the fighting area or stand on the apron during the progress of a round. A second shall not administer aid to a contestant during a round. During an officially interrupted round, a second may stand on the apron only with the express permission of the referee.
  3. Seconds shall not interfere with the progress of a round, for example, by banging on the apron or excessive coaching. The referee has the discretion to disqualify a second whose conduct is interfering with a bout.
  4. Any excessive or undue spraying or throwing of water on a combatant by a second during a period of rest is prohibited.
  5. A chief second may signal a referee to stop the fight in the manner approved by the Commission.
- P. Referee.**
1. The referee shall have direction and control over contestants and their seconds during a bout subject to the governing laws and rules. The referee shall have final authority to decide if an injury is produced by a fair or foul blow and if an act is intentional or accidental. The referee shall have final authority to stop a bout when in the referee's opinion a contestant is unfit to continue or otherwise cannot compete. When instant replay is available, the referee, in the referee's sole discretion, may utilize the instant replay to determine the actual result of the fight-ending sequence in the case where a fight has been officially stopped and the result may have been caused by any type of foul, under the following rules:
    - a. A fight-ending sequence shall mean the final exchange of strikes or maneuvers that results in the ending of a bout.
    - b. The referee, and only the referee, may use the instant replay if the referee indicates to the Commission the need to do so ("Call for Replay Review") within three minutes from the stoppage of the fight.
    - c. The referee may have no more than five minutes to review the fight-ending sequence once the instant replay is made available and shall make a final decision within that period of time.
    - d. The information obtained from the replay shall not be used to restart the fight as the fight is officially over and cannot be resumed.
    - e. If there is technical difficulty in accessing the instant replay that cannot be resolved within 10 minutes of the Call for Replay Review, the referee's initial determination shall be final.

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- f. Instant replay shall not to be used by any party to challenge the decisions of the referee.
2. In the case of a cut or other injury which the referee believes may be incapacitating, the referee may consult with the ringside physician before making a decision and may interrupt a round and have the clock stopped for this purpose. The Referee shall notify Commission representatives of any cuts or injury observed, regardless of the severity of the injury.
  3. When a contestant is incapacitated because of a foul, the referee has the discretion to interrupt a round and have the clock stopped for up to five minutes to enable the contestant to recover.
  4. If the referee reasonably suspects that the contestants are not honestly competing, the referee shall stop the bout and declare a "no contest." Purses of both contestants shall be held pending investigation and disposition by the Commission, in its sole discretion.
  5. Prior to giving a warning for rule infringement, the referee shall stop the fight, use the correct warning signal to ensure the contestant's understanding and then indicate the offending contestant to the judges. Any contestant, who is warned three times or more, may be disqualified.
  6. The referee shall pick up the count for knock downs from the timekeeper by the fourth second.
  7. The referee shall provide a 10-second warning to the seconds to leave the fighting area. The seconds must be out of the fighting area when the bell rings.
  8. Should the contestant causing a knockdown fail to stay in the farthest neutral corner during the count, the referee shall cease counting until the contestant has returned to that corner. The referee shall then go on with the count from the point at which it was interrupted.
  9. The referee shall wave both arms to indicate that a contestant has been counted out or cannot otherwise continue.
  10. The referee shall raise the hand of the winner at the end of the bout.
- Q. Judges.**
1. The judges shall be independent and free to score according to the rules and normal practice.
  2. Each judge shall sit separately from each other and from the audience.
  3. The judges shall remain neutral during the match. However, a Muay Thai judge may notify the referee of a rule violation during the round interval.
  4. At the end of each round, the judges shall complete the score card for that round.
  5. The judges are not allowed to leave their seat until the match ends and result has been announced.
- R. Type of results.** Unless otherwise indicated in these rules, the following result types apply to every unarmed combat discipline regulated by the Commission:
1. A knockout occurs by failure of a combatant to rise from the canvas. The failure to resume fighting after a rest period shall be considered as if a knockout or technical knockout occurred in the next round.
  2. A technical knockout occurs when:
    - a. The referee stops a bout;
    - b. The ringside physician stops a bout; or
    - c. An injury as a result of a legal maneuver is severe enough to terminate a bout.
  3. A decision via score cards occurs when there is no knockout or technical knockout. A score card decision is of three types:
    - a. Unanimous – when all three judges score the bout for the same contestant;
    - b. Split Decision – when two judges score the bout for one contestant and one judge scores for the opponent; or
    - c. Majority Decision – when two judges score the bout for the same contestant and one judge scores a draw.
  4. A draw is of three types:
    - a. Unanimous – when all three judges score the bout a draw;
    - b. Majority – when two judges score the bout a draw; or
    - c. Split – Where one of the three judges scores the contest in favor of one fighter, another judge scores the contest in favor of the other fighter, and the third judge scores the contest as a draw.
  5. Disqualification of a contestant who has committed fouls may occur when the referee determines that a foul was intentional, severe, or flagrant, there is a combination of fouls of any type, or the bout is terminated as a result of an injury resulting from an intentional foul. A disqualification shall result in a win for the opponent of the disqualified contestant.
  6. Forfeiture may occur when a contestant fails to begin competition or prematurely ends the bout for reasons other than those listed in these rules.
  7. A technical draw may occur when an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of stoppage. A technical draw will also occur when both fighters are simultaneously knocked out ("double knockout"), both contestants are in such condition that a continuance may subject them to serious injury, or, in kickboxing, an accidental foul terminates a bout during the first round.
  8. A technical decision may occur when the bout is prematurely stopped due to injury and a contestant is leading on the score cards.
  9. No contest may occur when a bout is prematurely stopped due to accidental injury and a majority of rounds has not been completed to render a decision via the score cards. A no contest shall render the contest a nullity, with no winner or loser.
  10. In a discipline using a 10-point must system of scoring, an even 10-10 score is allowed, but shall be a relatively rare result.
- S. Timekeeper.**
1. The timekeeper shall keep precise timing of each round and the breaks, following the referee's instructions to start or stop, according to the rules and normal practice. A timekeeper is responsible for keeping the official time of each bout and shall:
    - a. Start and end the round by striking the bell or other sound device approved for the bout.
    - b. Warn contestants when there is only 10 seconds remaining in a round by the method approved for the unarmed combat discipline.
    - c. Signal the end of each rest period by use of a distinctive whistle or other approved sound.
    - d. Correctly regulate all periods of time and counts by a stop watch or clock, but shall only stop the clock when instructed by the referee with the command "time," then resuming timekeeping when the referee gives the command "time in."

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- e. Use two stop watches or clocks for regulating rounds and rehabilitation periods.
  - f. For all disciplines other than MMA, start the knock down count by standing and signaling to the referee, audibly and by hand gestures, the correct count in one-second intervals.
2. There is no saving by the bell during a count, except during the last round.
- T. Announcer.** The announcer has the responsibility to:
1. Announce the combatants' names, corner, and weight or weight class prior to the fight and again as they arrive in the ring;
  2. Hold the microphone for the referee to announce the rules or guidelines;
  3. Announce the round number at the start of each round;
  4. Announce the correct winner's name and corner, when the referee raises the combatant's hand; and
  5. Announce any other information required by the unarmed combat discipline or the Commission.
- U. Gloves.** The Commission may require that promoters provide, for approval, a deconstructed sample of non-certified gloves to be used in any match, together with a list of materials used to construct the gloves.
- V. Bandaging.**
1. As a general rule, soft surgical bandage ("gauze") and surgeon's adhesive tape ("tape") may be used to protect the hands or feet of combatants, depending on the discipline.
  2. With regard to hand bandaging, tape shall be placed directly on the skin of the hand nearest to the wrist to protect that part of the hand. Said tape may cross the back of the hand twice, but shall not exceed one winding's width (for example two inches for boxing hand wraps). Bandages shall be evenly distributed across the hand.
  3. Contestants shall not wet wraps or apply a substance to the wrapping.
  4. Bandages and tape shall be applied in the dressing room in the presence of the inspector. Gloves shall not be placed on the hands of a contestant until the bandages are approved by the inspector. If approved by the Commission, a contestant has the right to have a second or manager witness the bandaging of an opponent's hands.
  5. Variations specific to each discipline are listed in Table 2.
  6. All other wraps or bandages that are not specifically allowed in these rules must be approved by the Commission.
- W. Fouls.** The following actions are fouls in every unarmed combat discipline:
1. Striking or abusing an official;
  2. Hitting on a break, after the round has ended, or after the referee has stopped the bout;
  3. Butting with the head;
  4. Groin attacks of any kind;
  5. Refusal to obey the commands of the referee;
  6. Timidity (avoiding contact, intentionally falling down, faking an injury, intentional stalling, refusing to engage, intentionally dropping the mouthpiece, or using passive tactics);
  7. Spitting or biting;
  8. Use of swearing or abusive language during the event by a contestant or the contestant's representatives;
  9. Eye gouging;
  10. Hair pulling;
  11. Strikes to the spine, back of the head, or base of the skull ("rabbit blows");
  12. Interference by seconds;
  13. Intentionally throwing an opponent out of fighting area;
  14. Holding the ropes or onto the cage for any reason; and
  15. Any unsportsmanlike conduct that, in the opinion of the referee, does, or is likely to, cause an injury to an opponent or interference with the contest.
- X. Rounds.**
1. A round of unarmed combat includes a period of unarmed combat immediately followed by a period of rest, with the exception that there is no period of rest after the final round.
  2. The Commission may approve a variation on the standard number and duration of rounds during a bout.
  3. A round only begins upon the sounding of the bell. Any stoppage during the match for any reason, will not be counted as part of the round time.

**Historical Note**

New Section R19-2-D601 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-D602. Boxing**

- A.** The ring. The promoter is responsible for providing a safe ring in accordance with the following:
1. The ring shall be four sided, between 16 and 20 feet per side, with two feet outside the ropes, and securely assembled.
  2. The floor shall be covered with shock-absorbent padding, such as Ensolite or the equivalent.
  3. The padding shall be covered with tightly-stretched clean canvas securely laced to the platform.
  4. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than one inch in diameter, and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.
- B.** Gloves. The promoter is responsible for providing boxing gloves for contestants in accordance with the following:
1. Gloves shall be 8 ounces in weight for all divisions under 135 pounds; and 10 ounces in weight for all divisions over 135 pounds, except that fighters of weight between 135 to 147 pounds may mutually agree in writing to use 8-ounce gloves. The promoter shall have two extra sets of 8-ounce and 10-ounce gloves available during an event.
  2. All gloves shall be nationally-approved brands or shall be submitted for approval to the Commission, and shall be in sanitary, safe, and good condition.
  3. Gloves for title bouts shall be new and delivered to the Commission representative with the packaging unbroken.
- C.** Contestant's equipment and apparel. Each contestant has the duty to provide personal hand bandaging, uniforms, robe, boxing or combat shoes, abdominal guard, mouthpiece, water bottle, bucket, and towel for use during a bout, unless certain items are provided under the promoter/fighter contract. A contestant's equipment is subject to the approval of the Commission or its representative and the following requirements apply to the equipment and apparel of all contestants:
1. The contestants may not wear the same colors in the ring, without the approval of the Commission's representative. Each contestant shall have two uniforms in contrasting colors, with each uniform consisting of trunks for male contestants and a top and shorts for female contestants.
  2. The belt of the trunks or shorts shall not extend above the waistline.
  3. Facial cosmetics shall be prohibited.
  4. Each contestant shall wear an abdominal guard that will protect him or her against injury from a foul blow. The

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abdominal guard shall not cover or extend above the umbilicus.

- D. Weight classes. The following traditional weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Flyweight	Less than 118
Bantamweight	118-125.9
Featherweight	126-134.9
Lightweight	135-146.9
Welterweight	147-159.9
Middleweight	160-174.9
Light Heavyweight	175-199.9
Heavyweight	200+

- E. Fair blows and fouls.
  1. Fair blows are delivered by a combatant with the padded knuckle part of the glove to the front or sides of the head, shoulders, arms, and front torso above the belt line of an opponent.
  2. All blows that are not fair as described in subsection (E)(1) above are fouls. In addition to the foul blows listed in R19-2-D601(W), the following practices are also classified as fouls in boxing:
    - a. Hitting an opponent who is down or in the process of getting up after being down;
    - b. Holding an opponent with one hand and hitting with the other, or duck so low that the contestant's head is below an opponent's belt line;
    - c. Holding or maintaining a clinch after directed by the referee to break, or failure to take a full step back when the referee breaks a clinch;
    - d. Pushing, tripping, kicking, or wrestling;
    - e. Hitting with elbows, shoulder, or forearm;
    - f. Hitting with an open glove, the inside of the glove, the wrist, the backhand, or the side of the hand; and
    - g. Punching an opponent's back or the kidneys (kidney punch).
- F. Intentional foul.
  1. The referee shall have discretion as to the penalty for fouling. The referee may direct the deduction of points, and may also disqualify the wrongdoer, in the case of persistent or major fouling, or where the foul prevents continuance of the bout. Normally, in the case of minor fouling, the referee is expected to issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.
  2. If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if the injured contestant is ahead on points, or the points are even, and a technical draw will be rendered if the injured contestant is behind on points.
- G. Accidental foul.
  1. If a contestant is accidentally fouled so that the contestant cannot continue, the referee shall stop the bout and a technical decision shall be rendered in favor of the contestant ahead on points. If the points are even, or if the

foul occurs in the first three rounds, a no contest shall be declared.

- 2. If a contestant is injured by an accidental foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, the bout will be stopped and a technical win will be rendered in favor of the contestant ahead on points. If the points are even, or if the injury occurs in the first three rounds, a no contest shall be declared.

- H. Results specific to boxing.
  1. In addition to the type of results listed in R19-2-D601(R), the following results are specific to boxing:
    - a. When contestant is considered knocked down. A contestant is considered to be knocked down when any part of the contestant's body, other than the soles of the feet are on the canvas, or the contestant hangs helplessly on the ropes, unable to stand, or the contestant is knocked out of the ring.
    - b. Counting. When the contestant is knocked down the referee shall order the opponent to the farthest neutral corner of the ring, pointing to the corner. The count shall begin by the timekeeper immediately upon the knockdown. The timekeeper, by audible counting and hand signaling, shall give the referee the correct one-second interval for the count. The referee shall pick up and audibly announce the passing of the seconds, accompanying the count with appropriate hand motions. The referee's count is the official count.
    - c. Length of Count. A contestant who is knocked down shall not be allowed to resume boxing until the referee has finished counting 8 ("mandatory 8 count"). A contestant may take the count either on the floor or standing. If the contestant taking the count is not standing in a complete upright position when the referee calls the count of 10, the referee shall wave both arms indicating that the contestant has been knocked out.
    - d. No saving by bell. Except in the last round, there is no saving by the bell. If a contestant is knocked down during the last 10 seconds of a round, the count shall continue after the end of the round as if the round was not ended. The one-minute rest period will begin from the time the contestant rises after the knockdown. If a contestant is knocked down during a round, and counted out after the end of a round, the knockout shall be considered as having taken place during the round which was last finished.
    - e. Wiping gloves. Before a contestant resumes boxing after having been knocked down, or having slipped, to the floor, the referee shall wipe any foreign substance from the contestant's gloves before allowing the bout to resume.
    - f. Three knockdowns. When a contestant is knocked down for the third time in a round, the referee shall stop the bout. The opponent shall be declared the winner. This rule shall not apply to championship contests, unless both contestants and the Commission agree that it should apply.
    - g. Knocked out of ring. A contestant who is knocked or fallen out of the ring, may be helped back onto the ring apron by anyone except the contestant's manager or seconds. The contestant has a total of 20 seconds to get into the ring and rise.

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- I. Method of judging.
  1. Three judges shall score all bouts. Under special circumstances two judges and the referee may score. The method of judging shall be the 10-point must system. In this system the better contestant receives 10 points and the opponent proportionately less, but not less than 7 points. If the round is even, each contestant receives 10 points. A fraction of points may not be given. Points for each round shall be awarded immediately after the termination of the round and not subsequently changed. Judges shall sign their scorecards.
  2. After each round, the referee shall pick up the scorecards of the judges and then deliver the cards to the Commission representative assigned to check them for mathematical accuracy. When the Commission representative has completed checking the final scorecards, the representative shall advise the announcer of the decision, and the announcer shall then inform the audience of the decision over the speaker system. The Commission representative shall be present at the ring apron when checking the scorecards.
- J. Rounds.
  1. The number of rounds in a boxing bout shall not exceed a maximum of 12.
  2. The duration of each round shall be a maximum of three minutes, followed by a one-minute rest period after each non-final round.

**Historical Note**

New Section R19-2-D602 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-D603. Mixed Martial Arts**

- A. The fighting area.
  1. Regardless of the shape of the fighting area, the fighting area canvas shall be no smaller than 518 square feet and no larger than 746 square feet. The fighting area canvas shall be padded in a manner as approved by the Commission, with at least a 1-inch layer of foam padding. Padding shall extend beyond the fighting area and over the edge of the platform. Vinyl or other plastic rubberized covering shall not be permitted unless approved by the Commission.
  2. The fighting area canvas shall not be more than 4 feet above the surface upon which the fighting area is constructed and shall have suitable steps or ramp for use by the participants. Posts shall be made of metal not more than 6 inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the fighting area canvas and shall be properly padded in a manner approved by the Commission.
  3. The fighting area shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, including, but not limited to, vinyl coated chain link fencing. All metal parts shall be covered and padded in a manner approved by the Commission and shall not be abrasive to the contestants.
  4. The fence may provide two separate entries onto the fighting area canvas, but one entrance is acceptable.
- B. Gloves. The promoter is responsible for providing gloves for contestants in accordance with the following:
  1. The gloves shall be new for all main events and in good condition, or they must be replaced.
  2. All contestants shall wear gloves of 4, 5, or 6 ounces in weight, approved by the Commission. No contestant shall supply their own gloves for participation, unless

approved by the Commission and mutually agreed upon by the contestants.

- C. Contestant’s equipment and apparel.
  1. For each bout, the promoter shall provide at least one clean water bucket and clean plastic water bottle in each corner.
  2. Male contestants shall wear a groin guard of their own selection, of a type approved by the Commission.
  3. Female contestants are prohibited from wearing groin guards, but may be required to wear a chest protector during competition, of a type approved by the Commission.
  4. Gis, shirts, socks, and shoes are prohibited during competition. Each contestant shall wear MMA shorts, biking shorts, or kickboxing shorts, and women contestants shall also wear approved tops.
- D. Weight classes. The following weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Flyweight	Less than 126
Bantamweight	126-134.9
Featherweight	135-144.9
Lightweight	145-154.9
Welterweight	155-169.9
Middleweight	170-184.9
Light Heavyweight	185-204.9
Heavyweight	204-264.9
Super-Heavyweight	265+

- E. Fouls.
 

In addition to the foul blows listed in R19-2-D601(W), the practices addressed in subsections (E)(1) and (2) below are classified as fouls in MMA.

  1. The following infractions shall receive a warning for the first instance, and thereafter shall result in a penalty:
    - a. Holding or grabbing the fence;
    - b. Holding an opponent’s shorts or gloves; and
    - c. The presence of more than one second in the fighting area during a period of rest or the presence of a second on the apron without permission from the referee.
  2. The following infractions shall receive a penalty if committed at any time:
    - a. Fish hooking;
    - b. Intentionally placing a finger in any orifice of an opponent;
    - c. Downward pointing of elbow strikes (i.e. a “12-to-6” downward elbow strike);
    - d. Small joint manipulation;
    - e. Heel kicks to the kidney;
    - f. Throat strikes of any kind;
    - g. Clawing, pinching, twisting the flesh or grabbing the clavicle;
    - h. Kicking or kneeing the head of a grounded contestant;
    - i. Stomping a grounded contestant, or kneeing or kicking the head of a grounded contestant;
    - j. Spiking an opponent to the canvas on the opponent’s head or neck; and
    - k. For amateurs only:
      - i. Elbow strikes to the head of a grounded opponent;
      - ii. Twisting leg submissions;
      - iii. Linear kicks to the knees; or

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- iv. Foot stomps.
  - 3. Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.
  - 4. If a foul is committed, the referee shall:
    - a. Call time;
    - b. Check the condition and safety of the fouled contestant; and
    - c. Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges, and the official scorekeeper of that decision.
  - 5. There shall be no scoring of an incomplete round. If the referee penalizes either contestant, the appropriate deduction of points will occur when the final score is calculated.
  - 6. For purposes of MMA, a "grounded" contestant occurs when any part of the contestant's body, aside from a single hand and soles of the feet, are touching the fighting-area floor. To be grounded, both hands palm/fist down, and/or other body part, will be touching the fighting-area floor. If a single knee or arm is touching the fighting-area floor, the combatant or contestant is grounded without having to have another body part touching the fighting area floor.
- F. Intentional fouls.** For intentional fouls, the following rules shall apply:
- 1. An intentional foul that does not result in an injury shall result in a deduction of one point from the offending combatant's score. If an injury results from an intentional foul, the referee shall inform the scorekeeper to deduct two points from the score of the offending contestant.
  - 2. The offending contestant loses by disqualification if the referee determines that any of the offenses were intentional, severe, or flagrant, there is a combination of three of the fouls listed in subsection (E)(2) above, or the bout is terminated as a result of an injury resulting from an intentional foul.
  - 3. If an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue at a subsequent point in the bout:
    - a. The injured contestant will win by a technical decision, if the injured contestant was ahead on the score cards; or
    - b. The outcome will be declared a technical draw, if the injured contestant was behind on the score cards.
  - 4. If a contestant incurs injury while attempting to foul an opponent, the referee shall not take any action in the contestant's favor, and the injury shall be treated in the same manner as an injury produced by a fair blow.
  - 5. If, during grappling, the contestant on the bottom commits a foul, the bout will continue to protect the superior position of the topmost contestant, unless the contestant on the top is too injured to continue.
- G. Accidental fouls.**
- 1. Accidental fouls will result in one point being deducted by the official scorekeeper from the offending combatant's score if directed by the referee.
  - 2. If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a no contest, if stopped before a majority of rounds have been completed.
  - 3. If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a technical decision awarded to the contestant who is ahead on the score cards at the time the bout is stopped only when the bout is stopped after a majority of rounds have been completed.
- H. Results specific to MMA.** In addition to the type of results listed in R19-2-D601(R), bout results can include submission by:
- 1. Tap out, which occurs when a contestant physically uses his or her hand to indicate that he or she no longer wishes to continue; or
  - 2. Verbal tap out, which occurs when a contestant verbally announces to the referee that he or she does not wish to continue.
- I. Method of judging.**
- 1. All bouts will be evaluated and scored by three judges.
  - 2. The 10-point must system will be the standard system of scoring a bout. Under the 10-point must scoring system, 10 points must be awarded to the winner of the round and 9 points or less must be awarded to the loser, except for an even (10-10) round.
  - 3. Judges shall evaluate the following MMA techniques in the following order of importance: effective striking, grappling, control of the fighting area, aggressiveness, and defense.
    - a. Effective striking is judged by determining the total number of legal heavy strikes landed by a contestant.
    - b. Effective grappling is judged by considering the amount of successful executions of a legal takedown and reversals. Examples of factors to consider are takedowns from standing position to mount position, passing the guard to mount position, and bottom position contestant using an active, threatening guard.
    - c. Effective fighting area control is judged by determining who is dictating the pace, location, and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking, taking down an opponent to force a ground fight, creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.
    - d. Effective aggressiveness means moving forward and landing a legal strike.
    - e. Effective defense means avoiding being struck, taken down, or reversed while countering with offensive attacks.
  - 4. The following objective scoring criteria shall be utilized by the judges when scoring a round:
    - a. A round is to be scored as a 10-10 round when both contestants appear to be fighting evenly and neither contestant shows clear dominance in a round;
    - b. A round is to be scored as a 10-9 round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling and other maneuvers;
    - c. A round is to be scored as a 10-8 round when a contestant overwhelmingly dominates by striking or grappling in a round; and
    - d. A round is to be scored as a 10-7 round when a contestant totally dominates by striking or grappling in a round.
  - 5. Judges shall use a sliding scale and recognize the length of time the contestants are either standing or on the ground, as follows:
    - a. If the contestants were on the canvas most of the round, then:

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- i. Effective grappling is weighed first; and
  - ii. Effective striking is then weighed.
  - b. If the contestants were standing most of the round, then:
    - i. Effective striking is weighed first; and
    - ii. Effective grappling is then weighed.
  - c. If a round ends with a relatively even amount of standing and canvas fighting, striking and grappling are weighed equally.
- J. Rounds.**
1. The number of rounds in a professional MMA bout shall not exceed a maximum of five rounds.
  2. The duration of each professional round shall be a maximum of five minutes, followed by a one-minute rest period after each non-final round.
  3. The number of rounds in an amateur MMA bout shall not exceed a maximum of three rounds.
  4. The duration of each amateur round shall be a maximum of three minutes, followed by a one-minute rest period after each non-final round.

**Historical Note**

New Section R19-2-D603 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-D604. Kickboxing**

- A.** The ring. The promoter is responsible for providing a safe ring in accordance with the following:
1. The ring shall be four-sided, not less than 17 feet nor more than 20 feet per side measured within the ropes.
  2. The ring platform shall not be more than 4 feet above the surface upon which the ring is constructed and shall be provided with suitable steps for use of the contestants. Ring posts shall be of metal, not more than 4 inches in diameter, extending from the floor of the building to a height of 58 inches above the ring floor and shall be properly padded.
  3. The floor shall be covered with shock-absorbent padding, as approved by the Commission, which shall extend beyond the ring ropes and over the edge of the platform.
  4. The padding shall be covered with tightly-stretched clean canvas securely laced to the platform.
  5. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than 1 inch in diameter and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.
- B.** Gloves and footpads.
1. World title bouts for men shall be fought with 8-ounce regulation gloves. All other male professional bouts may be fought with 8-ounce or 10-ounce gloves by agreement between the promoter and the contestants. All women's professional bouts, including world title bouts, and all amateur competitions shall be held with 10-ounce regulation gloves. Those contestants matched at a weight heavier than super welterweight may be required to wear gloves with more extensive padding than those contestants matched at a lighter weight.
  2. All gloves must be nationally-approved brands or shall be submitted for approval to the Commission, and shall be in sanitary, safe, and good condition. Matched contestants shall wear padded protective equipment on the hands and feet of an identical size, shape, style and manufacture as provided by the promoter.
  3. Gloves for title fights shall be new and delivered to the Commission representative with the packaging unbroken.

4. If footpads or shin guards are used, they shall be new and unbroken and shall be approved by the Commission.
- C.** Contestant's equipment and apparel.
1. For each bout, the promoter shall provide at least one clean water bucket in each corner, and shall provide the gloves for each contestant to ensure that matched contestants wear equipment of the same size, shape, style and manufacture.
  2. Each contestant has the duty to provide the contestant's own hand bandaging, at least one light-colored and one dark-colored uniform, padded protective equipment to be worn on the feet, abdominal guard, breast protector (for women), mouthpiece, water bottle, and towel for use during an event. A contestant's equipment is subject to the approval of the Commission or its representative and the following requirements apply to the equipment and apparel of contestants:
    - a. The combatants may not wear the same colors in the ring, without the approval of the Commission's representative. In bouts involving a champion currently recognized by the Commission, the champion shall choose which color uniform to wear. In all other bouts, the referee or the Commission representative in charge will designate which contestant will wear the light-colored uniform and which contestant will wear the dark-colored uniform.
    - b. All contestants must follow the World Kickboxing Association Dress Code approved for the discipline their bout is fought under.
    - c. Facial cosmetics shall be prohibited.
    - d. Male contestants must wear a foul-proof groin guard or abdominal guard. A plastic or aluminum cup with an athletic supporter is adequate.
    - e. Female contestants must wear foul-proof breast guards. Plastic breast covers are adequate. Female contestants may also wear an abdominal guard.
- D.** Weight classes. No bout shall be scheduled when the weight difference between combatants exceeds an allowance of three and one-half percent of the division weight.
1. The following weight classes shall be used as a general guide for men:

Weights	Weight Range in Pounds
Strawweight	Less than 108
Atomweight	108-111.9
Flyweight	112-116.9
Bantamweight	117-121.9
Featherweight	122-126.9
Lightweight	127-131.9
Super Lightweight	132-136.9
Light Welterweight	137-141.9
Welterweight	142-146.9
Super Welterweight	147-152.9
Light Middleweight	153-158.9
Middleweight	159-164.9
Super Middleweight	165-171.9
Light Heavyweight	172-178.9
Light Cruiserweight	179-185.9
Cruiserweight	186-194.9
Super Cruiserweight	195-214.9
Heavyweight	215-234.9

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2. The following weight classes shall be used as a general guide for women:

Weights	Weight Range in Pounds
Strawweight	Less than 108
Atomweight	108-111.9
Flyweight	112-116.9
Bantamweight	117-121.9
Featherweight	122-126.9
Lightweight	127-131.9
Super Lightweight	132-136.9
Light Welterweight	137-141.9
Welterweight	142-146.9
Super Welterweight	147-152.9
Light Middleweight	153-158.9
Middleweight	159-164.9
Super Middleweight	165-174.9
Cruiserweight	175-184.9
Super Cruiserweight	185-214.9
Heavyweight	215-234.9
Super Heavyweight	235+

E. Fair blows and fouls.

1. All punches must land with the knuckle part of the glove, and no other part of the glove or forearm can be used. All kicks must connect with the ball of the foot, the instep, the heel, side of the foot, or the shin from below the knee to the instep.
2. In professional kickboxing competition there is a minimum kick expectation of eight kicks per round, although kick counters will not be used. If the referee feels that a contestant is not kicking enough he or she may give a verbal warning. If the contestant continues without using enough kicks, the referee may deduct a point, and judges shall implement that deduction.
3. Contestants may kick or sweep to the inside or outside region of the leg. Any deliberate kick to the knee, groin, or hip joint shall be prohibited and shall constitute a foul. The referee may issue a warning, order point deductions from the judges scoring, or may disqualify the offending contestant for repeated violations.
4. In addition to the foul blows listed in R19-2-D601(W), the following practices are classified as fouls in kickboxing:
  - a. Knee strikes, elbow strikes, palm-heel strikes, slapping, or clubbing blows with the hands.
  - b. Striking the throat, collarbone, the kidneys, or a female contestant's breasts.
  - c. Hitting with the open glove, or with the wrist.
  - d. Kicking into the knee, or striking below the belt in any unauthorized manner.
  - e. Anti-joint techniques (i.e. striking or applying leverage against any joint).
  - f. Holding an opponent with one hand and hitting with the other.
  - g. Grabbing or holding onto an opponent's leg or foot.
  - h. Leg checking the opponent's leg (act of extending the leg or foot to stop the kick of an opponent) or stepping on the opponent's foot to prevent the opponent from moving or kicking.

- i. Holding any part of the body or deliberately maintaining a clinch for any purpose.
- j. Throwing or taking an opponent to the floor in any unauthorized manner.
- k. Striking a downed opponent, or an opponent who is getting up after being down. A contestant is "downed" when any part of the contestant's body other than the soles of the feet touches the floor.

F. Intentional foul.

1. The referee shall have discretion as to the penalty for fouling. The referee may direct the deduction of one to two points and may also disqualify the wrongdoer, in the case of persistent or major fouling, or where the foul prevents continuance of the bout. Normally, in the case of minor fouling, the referee is expected to issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.
2. If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if that contestant is ahead on points, or the points are even, and a technical draw will be rendered if the injured contestant is behind on points.

G. Accidental foul.

1. If a bout is stopped because of an accidental foul, the referee shall determine whether or not the contestant who has been fouled can continue. The referee may consult with the attending physician. If the contestant's chances have not been seriously jeopardized as a result of the foul, the referee may order the bout continued after a reasonable interval.
2. On the other hand, if by reason of accidental foul a contestant shall be rendered unfit to continue the bout, it shall be terminated. The scorekeeper shall tally all scores, subtracting all penalties. If the injured contestant is behind on points in the majority opinion of the judges, then the referee shall declare the bout to be a technical draw. But if the injured contestant has a lead in points, then the referee shall declare the injured contestant to be the winner by technical decision.
3. Should an accidental foul terminate a bout during the first round, the referee shall declare the bout to be a technical draw.

H. Results specific to kickboxing.

1. When contestant is considered knocked down. A contestant shall be declared knocked down if any portion of the contestant's body, other than the feet touch the floor, or if the contestant hangs helplessly over the ropes. A contestant shall not be declared knocked down if he or she is pushed, thrown, or accidentally slips to the floor. The determination as to whether a contestant is pushed, thrown or slips to the floor, rather than being knocked down, shall be made by the referee.
2. Counting. Whenever a contestant is knocked down, the referee shall order the contestant's opponent to retire to the farthest neutral corner of the ring, pointing to the corner and immediately begin the count over the knocked down contestant. The timekeeper, through effective signaling, shall give the referee the correct one-second intervals for the count. The referee will audibly announce the

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- passing of each one-second interval, indicating its passage with a downward motion of the arm. The referee's count is the only official count.
3. Length of Count.
    - a. Any time a contestant is knocked down, the referee shall automatically begin a mandatory 8 count and then, if the contestant appears able to continue, will allow the bout to resume.
      - i. The referee may, at his or her discretion, administer an 8 count to a contestant who has been stunned, but who remains standing. He or she shall direct the contestant's opponent to a neutral corner, then begin counting from 1 to 8, examining the stunned contestant as during the counts.
      - ii. If, after completing the standing 8 count, the referee determines that the contestant is able to continue, the referee shall order the bout to resume. But if the referee determines that the contestant is not able to continue, the referee shall stop the bout and declare the contestant's opponent to be the winner by technical knockout.
    - b. If the contestant taking the count is still down when the referee calls the count of 10, the referee shall wave both arms to indicate that the contestant has been knocked out and will signal that the contestant's opponent is the winner. A round's ending before the referee reached the count of 10 will have no bearing on the count. The contestant must still rise before the count of 10 to avoid a knockout.
    - c. Should a downed contestant rise before the count of 10 is reached and then go down again before being struck, the referee shall resume the count where he or she stopped counting.
    - d. Should both contestants go down at the same time, the referee shall continue to count as long as one of the contestants is down. If both contestants remain down until the count of 10, the bout will be stopped and the referee shall declare the bout to be a technical draw. But if one contestant rises before the count of 10 and the other contestant remains down, the first contestant to rise shall be declared the winner by knockout. Should both contestants rise before the count of 10, the round will continue.
  4. Should a contestant be knocked down three times in one round from blows to the head, the referee shall stop the bout and declare the contestant's opponent to be the winner by technical knockout.
  5. Whenever a contestant is knocked out primarily as a result of a kick, whether or not the kick occurred in combination with punches, the referee shall declare the contestant's opponent to be the winner by either kick knockout or technical kick knockout whichever is appropriate and shall be entered into the contestant's official record as a KKO.
  6. A contestant who has been wrestled, pushed, or who has fallen through the ropes during the bout, may be helped back by anyone except the contestant's own seconds or manager. The referee shall allow reasonable time for the return. When on the ring platform outside the ropes, the contestant must enter the ring immediately. Should the contestant stall for time outside the ropes, the referee shall start the count without waiting for the contestant to re-enter the ring.
    - a. Once a fallen contestant re-enters the ring, the referee shall start the round from the moment that the contestant is back in the ring.
    - b. Whenever contestant falls through the ropes, the contestant's opponent must retire to the farthest neutral corner, as directed by the referee, and remain there until ordered to resume the bout.
    - c. A contestant who deliberately wrestles or throws an opponent from the ring, or who hits an opponent who is partly out of the ring and thus prevented by the ropes from assuming a position of defense, may be penalized.
  7. Wiping gloves. Before a fallen contestant resumes competition, after having been knocked to, slipped to, or fallen to the floor, the referee shall wipe the contestant's gloves free of any foreign substance.
  8. If after consulting with the physician, the referee decides that further contact below the belt, whether from fair or foul blow, will result in injury to a contestant's knee, the referee shall prohibit striking below the belt for the remainder of the bout.
- I. Method of judging.
    1. The judges shall score all bouts and determine the winner through the use of the 10-point must system. In this system the winner of each round receives 10 points and the opponent receives a proportionately smaller number. But in no circumstances shall a judge award the loser of each round with fewer than 7 points. If a round is judged even, each contestant shall receive 10 points. No fraction of points may be given.
    2. Judges should base their scores on the relative effectiveness of each contestant in a given round. An official knockdown always demonstrates superior effectiveness. However, a contestant who is knocked down more from instability than from an opponent's blow, may be able to return from the knockdown and dominate the round by a large enough margin to be judged the winner. Also, the weight given to an official knockdown scored by one contestant must be equal to the weight given to an official knockdown scored by the contestant's opponent.
    3. Generally, sweeps should not be given the same weight as an official knockdown. Judges should watch for the technique's effectiveness in slowing down an opponent.
    4. A contestant who wins the round and does so with exceptional above-the-belt kicking technique, should be given a more favorable point advantage than the contestant who wins a round with a predominance of punching technique. Below-the-belt kicking technique should be given the same weight as punching techniques. A round should be awarded to the overall most effective above-the-waist kicker.
    5. Further, a contestant who aggressively presses an opponent throughout a round, but cannot land a threatening kick or punch, should not be judged as favorably as the contestant who back pedals throughout the round but counter attacks with visible impact.
    6. Judges shall award points to contestants on the basis of round by round outcomes and in accordance with the following scores:
      - a. 10 points to 10 points whenever neither contestant dominates the other with a superiority in effectiveness.
      - b. 10 points to 9 points whenever the winning contestant dominates the losing contestant with a marginal superiority in effectiveness.

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- c. 10 points to 8 points whenever the winning contestant dominates the losing contestant with exceptional above-the-waist kicking technique, or whenever the winning contestant dominates the losing contestant with a significant superiority in effectiveness as might be indicated by one knockdown.
  - d. 10 points to 7 points whenever the winning contestant dominates the losing contestant with an overwhelming superiority in effectiveness as must be indicated by more than one knockdown.
7. In the case of a professional or Pro Am title bout that ends in a draw, there shall be a tie-breaking extra round, that shall be decided by the referee.

**J. Rounds.**

- 1. The number of rounds in a kickboxing bout shall not exceed a maximum of 12 rounds.
- 2. The duration of each round shall be a maximum of two minutes, followed by a one-minute rest period after each non-final round.

**Historical Note**

New Section R19-2-D604 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-D605. Muay Thai**

**A. The ring.** The promoter is responsible for providing a safe ring in accordance with the following:

- 1. The ring shall be four-sided, not less than 16 feet nor more than 24 feet per side, measured within the ropes.
- 2. The floor and corner shall be well constructed with no obstructions and with a minimum extension outside the ring of at least 3 feet. The minimum floor height should be 4 to 5 feet from the surface upon which the ring is constructed. The corner posts shall have a diameter of between 4 to 5 inches with a height of 58 inches from the ring floor. All four posts must be properly cushioned.
- 3. The ring floor must be padded by either cushioning, rubber, soft cloth, rubber mat, or similar material with a thickness of 1 to 1 1/2 inches. The padding shall be completely covered by a canvas cloth.
- 4. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than 1 inch in diameter and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.
- 5. The ring shall have suitable steps for use of the contestants.

**B. Gloves.**

- 1. Promoters are responsible for providing gloves for contestants in accordance with the following:
  - a. Mini Flyweight - Junior Featherweight shall use 6-ounce gloves.
  - b. Featherweight - Welterweight shall use 8-ounce gloves.
  - c. Junior Middleweight and heavier classes shall use no less than 10-ounce gloves; and higher weights may use gloves of 12, 14, 16, or 18 ounces in weight, as approved by the Commission.
  - d. The promoter shall have one extra set of gloves for each glove weight, corresponding with the contestants' weight classes participating in the event.
- 2. All gloves will be inspected by a Commission inspector prior to the fight.
- 3. In the case of any problem with the boxing gloves themselves, the referee may temporarily halt the match until the problem is corrected.

**C. Contestant's equipment and apparel.**

- 1. Only boxing shorts may be worn by all contestants, and women shall also wear approved tops. Contestants shall have one extra set of apparel for an event.
- 2. To ensure the combatant's safety, a groin guard must be worn and shall be checked by an inspector.
- 3. Long hair may be worn, but hair shall be tied back, and facial hair shall be trimmed.
- 4. The Mongkol may be worn when performing the Wai Kru (paying respect to one's teacher) prior to the match start.
- 5. Arm bands may be worn.
- 6. Single elastic bandages are allowed to be worn on the arms or legs to prevent sprains, however insertion of a shin guard, or similar object, is not allowed.
- 7. No decoration, jewelry, or material with sharp or metal components is allowed to be worn during the bout.
- 8. The use of liniment is allowed as long as both contestants and Commission agree. Contestants shall not use liniment on the face.
- 9. Contestants may wear elastic ankle socks to protect their feet.
- 10. Any infringement to the dress code may result in the contestant's disqualification.

**D. Weight classes.** The following weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Mini Flyweight	Less than 105
Junior Flyweight	105-107.9
Flyweight	108-111.9
Junior Bantamweight	112-114.9
Bantamweight	115-117.9
Junior Featherweight	118-121.9
Featherweight	122-125.9
Junior Lightweight	126-129.9
Lightweight	130-134.9
Junior Welterweight	135-139.9
Welterweight	140-146.9
Junior Middleweight	147-153.9
Middleweight	154-159.9
Super Middleweight	160-167.9
Light Heavyweight	168-174.9
Cruiserweight	175-189.9
Heavyweight	190-208.9
Super Heavyweight	209+

**E. Fair blows and fouls.**

- 1. A fair strike may be made by a punch, kick, knee, or elbow. Contestants may strike with punches above the waist, kicks above the waist and to the inside and outside of an opponent's legs, but not to the groin or leg joints. Direct kicks (side-kick style) to the front of an opponent's legs are not allowed. Fighters, promoters, trainers, and the Commission may agree prior to the event to use modified rules, which agreement shall be documented in the promoter/fighter contract.
- 2. Clinching is allowed if one contestant is active within the clinch.
- 3. Contestants are allowed to catch their opponent's leg and take one step forward. After one step, the contestant holding the leg must strike before taking further steps.

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4. A contestant may kick his or her opponent's supporting leg with the top of the contestant's foot or shin, but may not use the instep as in a karate-style sweep.
  5. In addition to the foul blows listed in R19-2-D601(W), the following practices are classified as fouls in Muay Thai:
    - a. Slapping with the lace side of the gloves;
    - b. Holding an opponent's head or arm and hitting;
    - c. Strikes to leg joints or other joint attacks;
    - d. Palm heel strikes;
    - e. Wrestling, back or arm locks or any similar judo or wrestling hold, takedowns or grappling;
    - f. Spinning sweeps;
    - g. Karate-style chopping strikes;
    - h. Striking opponent when the opponent has slipped or fallen down (an opponent is down or downed when any part of his or her body other than the soles of his or her feet touches the floor of the ring);
    - i. Spinning forearm or elbow strike. A spinning backhand strike is allowed if the hit is made with the portion of the glove that is above the wrist line (from the tape line at the wrist to the end of the glove);
    - j. Deliberately falling on an opponent;
    - k. Hip throws.
- F. Intentional foul.** If a contestant commits an intentional foul in the ring, the referee shall have the discretion to do the following, depending on the nature and seriousness of the foul:
1. Deduct one point from the fouling contestant per foul;
  2. Disqualify the contestant who has fouled; or
  3. If there is a disqualification, the purse may be withheld and the contestant may be automatically suspended.
- G. Accidental foul.**
1. If a contestant commits an accidental foul in the ring, the referee shall have the discretion to do the following, depending on the nature and seriousness of the foul:
    - a. Give the contestant who has fouled a caution or a warning (only one warning may be given per bout, and a caution may not follow a warning given for the same type of foul);
    - b. Deduct one point from the fouling contestant per foul; or
    - c. Disqualify the contestant who has fouled, if it is a serious accidental foul or if multiple accidental fouls have been committed.
  2. When a self-inflicted injury or an accidental foul causes the bout to be stopped, the result would be a no contest or a disqualification if the bout is stopped before a majority of rounds have been completed. If the injury occurs after a majority of rounds have been completed, then the judge's scorecards will be totaled and the decision of the bout will be announced.
- H. Results specific to Muay Thai.**
1. In addition to the type of results listed in R19-2-D601(R), the following are the types of bout results:
    - a. A draw will be declared if both contestants are injured and cannot continue the bout, when the stoppage occurs before a majority of rounds have been completed.
    - b. Individual scores will decide a match if both contestants are injured and cannot continue the bout after the majority of rounds have been completed.
  2. Counting. The count interval will be at one-second intervals, from 1 to 10. During the count, the referee will signal with his or her hand, to ensure that the contestant receiving the count understands.
    - a. A contestant, upon receiving a count, cannot continue the match prior to a count of 8 and loses immediately on receiving a count of 10.
    - b. If both contestants fall down, the referee will direct the count to the last contestant that fell. If both contestants receive a 10 count, a draw will be declared. Should the contestants lean against each other while sitting up, the referee shall stop counting at that time.
    - c. The referee shall continue the count from the count of 8 when a contestant is "down" as a result of a hit, the contestant rises at or before the complete count of 8, and the bout is continued after the count of 8 is completed, but the contestant falls again without receiving a fresh hit.
    - d. A contestant not ready to fight again when the bell rings after a break, shall receive a count, unless the failure to fight is caused by an equipment problem. The referee will determine the length of time that will be allowed to fix an equipment problem. If the problem cannot be fixed, the result will be a forfeiture under R19-2-601(R)(6).
- 3. Knocked out of ring.**
- a. If a contestant falls partially or completely through the ring ropes onto the apron, the referee shall order the opponent to stand in the farthest neutral corner and if the contestant remains partially outside the ropes, the referee shall start to count to 10. If a contestant falls completely out of the ring, the referee shall count to 20. A contestant must re-enter the ring on his own without assistance from another person.
    - i. If the contestant returns to the ring before the count ends, the contestant will not be penalized.
    - ii. If anyone prevents the fallen contestant from returning to the ring, the referee shall stop the count and warn such person or stop the fight until such interference ceases.
    - iii. If both contestants fall out of the ring and one tries to prevent his or her opponent from returning to the ring before the count ends, the interfering contestant will be warned or disqualified.
    - iv. If both contestants fall out of the ring, the one that returns to the ring before the count ends will be considered the winner. If neither contestant can return to the ring, the result will be considered a technical draw.
- 4. "Flash knockdowns,"** where the downed contestant rises up immediately, are usually not counted as knockdowns with a standing 8 count. However, if the contestant is stunned by the knockdown, the referee may decide to perform an 8 count if he or she deems it necessary, no matter how fast the contestant rises after the fall.
- I. Method of judging.**
1. The following are the scoring rules:
    - a. The maximum score for each round is 10 points, the loser scoring either 9, 8, or 7;
    - b. A round that is a draw is scored as 10 points for both contestants;
    - c. The winner and loser in an indecisive round score 10 to 9 respectively;
    - d. The winner and loser in a decisive round score 10 to 8 respectively;
    - e. The winner and loser in an indecisive round with a single count score 10 to 8 respectively;

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- f. The winner and loser in a decisive round with a single count score 10 to 7 respectively; and
- g. The contestant scoring two counts against his or her opponent will score 10 to 7.
- 2. Strikes are scored as follows:
  - a. Points are awarded for a correct Thai boxing style, combined with hard and accurate strikes;
  - b. Points are awarded for aggressive and dominating Muay Thai skill;
  - c. Points are awarded for a contestant actively dominating an opponent; and
  - d. Points are awarded for the use of a traditional Thai style of defense and counter-attack.
- 3. The following strikes will not receive points:
  - a. A strike which is against the rules;
  - b. A strike in defense against the leg or arm of an opponent; or
  - c. A weak strike.
- 4. Fouls will be scored as follows:
  - a. Any contestant who commits a foul will have one point deducted from his or her score for each foul committed;
  - b. The judges will deduct points for fouls as directed by the referee; and
  - c. Any foul observed by the judges but not by the referee, will be penalized accordingly.
- J. Rounds.
  - 1. Prior to the start of the first round, both contestants may perform the Wai Kru (paying respect to the teacher), accompanied by the appropriate Thai traditional music.
  - 2. The number of rounds in a Muay Thai bout shall not exceed a maximum of five rounds.
  - 3. The duration of each round shall be a maximum of three minutes, followed by a two-minute rest period after each non-final round.

**Historical Note**

New Section R19-2-D605 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-D606. Toughman**

Unless otherwise specified herein, R19-2-D602 shall apply to Toughman events, with the following exceptions:

- 1. Toughman contestants shall wear headgear, padded kidney belt, and abdominal guards, as approved by the Commission.
- 2. A bout shall consist of three one-minute rounds, with a one-minute rest period between each round, and may involve two or more contestants.
- 3. No kicking is permitted.
- 4. The following weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Lightweight	Less than 140
Middleweight	140 to 159.9
Light Heavyweight	160 to 184.9
Heavyweight	185+

- 5. The Commission reserves the right to disallow Toughman events or licenses for Toughman participants, if, in the Commission's discretion, the event or licensing would not be in the best interests of the combatants, the state, the industry, and the Commission.

**Historical Note**

New Section R19-2-D606 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**R19-2-D607. Exhibitions; Fee**

- A. Exhibitions may only be allowed if approved by both the Commission and the Executive Director, and shall be subject to all requirements of A.R.S. Title 5, Chapter 2, Article 2 and these rules adopted thereunder.
- B. The fee for an Exhibition shall be \$1000, to be paid by the promoter.

**Historical Note**

New Section R19-2-D607 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

## CHAPTER 2. ARIZONA RACING COMMISSION

**Table 1. Time-frames**

License	Statutory Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Promoter, Matchmaker, Manager, Judge, Inspector, Referee, Physician, Timekeeper, Combatants over the age of 36 years	A.R.S. § 5-228 R19-2-C602	30	10	15	10	45
Combatant, Second, Cutman, Trainer, Ring Announcer	A.R.S. § 5-228 R19-2-C602	10	10	10	10	20

**Historical Note**

New Table 1 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

**Table 2. Bandages (Gauze and Tape)**

	Maximum Gauze Dimensions	Maximum Tape Dimensions	Method of Wrapping
Boxing, per hand	2" wide 60' long	2" wide 10' long	• Tape shall not extend higher on the hand beyond three-fourths of an inch from the knuckles, when the hand is clenched to make a fist.
MMA, per hand	2" wide 39' long	1" wide 10' long	• Tape may extend to cover and protect the knuckles when the hand is clenched to make a fist.
Kickboxing, per hand	2" wide 30' long	1.5" wide 6' long	• Tape shall not extend higher on the hand beyond one inch from the knuckles, when the hand is clenched into a fist. • It is acceptable to place 1 strip of tape between the fingers not to exceed ¼" in width and 4" in length to hold bandages in place.
Kickboxing, per foot	None	1.5" wide 12' long	• Tape may be used to protect the ankles. • Gauze shall not be used on the feet. • A single elastic or neoprene style supportive sleeve may be worn on each foot and around each knee as long as it has no padding, braces, hinges, or anything that could injure the wearer or his opponent or create an advantage of any kind.
Muay Thai, per hand	2" wide 30' long	1.5" wide 6' long	• Tape shall not extend higher on the hand beyond one inch of the knuckles when the hand is clenched to make a fist.

**Historical Note**

New Table 2 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

5-101.01. Division of racing; director; qualifications; term; deputy director; conflict of interest

- A. There is established a division of racing within the department of gaming.
- B. The director shall administer the division. To be eligible for appointment as director, a person must have a minimum of five years of experience in business and administration and shall not have a financial interest in a racetrack or in the racing industry in this state during that person's appointment.
- C. The director may establish the position of deputy director of the division.
- D. The position of deputy director, if applicable, is exempt from title 41, chapter 4, articles 5 and 6. The deputy director, if applicable, is eligible to receive compensation pursuant to section 38-611.
- E. The provisions of title 38, chapter 3, article 8, relating to conflict of interest, apply to the director and all other employees of the department.
- F. Neither the director, any employee of the department nor any member of the immediate family of the director or other employee of the department may:
1. Have any pecuniary interest in a racetrack in this state or in any stable, compound or farm licensed under this chapter.
  2. Wager money at a racetrack enclosure or additional wagering facility in this state or wager money on the results of any race held at a racetrack enclosure in this state.
  3. Hold more than a five percent interest in any entity doing business with a racetrack in this state.
  4. Have any interest, whether direct or indirect, in a license issued pursuant to this chapter or in a licensee, facility or entity that is involved in any way with pari-mutuel wagering. For the purposes of this paragraph, "interest" includes employment.
- G. Failure to comply with subsection F of this section is grounds for dismissal.
- H. For the purposes of subsection F of this section, "immediate family" means a spouse or children who regularly reside in the household of the director or other employee of the department.

5-104. Arizona racing commission; director; division; powers and duties

A. The commission shall:

1. Issue racing dates.
2. Prepare and adopt complete rules to govern the racing meetings that are required to protect and promote the safety and welfare of the animals participating in racing meetings, to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering and any other matter pertaining to the proper conduct of racing within this state.
3. Conduct hearings on applications for permits and approve permits and shall conduct rehearings on licensing and regulatory decisions made by the director as required pursuant to rules adopted by the commission.
4. Conduct all reviews of applications to construct capital improvements at racetracks as provided in this chapter.

B. The director shall license personnel and shall regulate and supervise all racing meetings held and pari-mutuel wagering conducted in this state and cause the various places where racing meetings are held and wagering is conducted to be visited and inspected on a regular basis. The director may delegate to stewards any of the director's powers and duties that are necessary to fully carry out and effectuate the purposes of this chapter. The director shall exercise immediate supervision over the division. The director is subject to ongoing supervision by the commission, and the commission may approve or reject decisions of the director in accordance with rules established by the commission.

C. The commission or the division is authorized to allow stewards, with the written approval of the director, to require a jockey, apprentice jockey, sulky driver, groom, horseshoer, outrider, trainer, assistant trainer, exercise rider, pony rider, starter, assistant starter, jockey's agent, veterinarian, assistant veterinarian, cool-out, security or maintenance worker, official or individual licensed in an occupational category whose role requires direct hands-on contact with horses, while on the grounds of a permittee, to submit to a test if the stewards have reason to believe the licensee is under the influence of or unlawfully in possession of any prohibited substance regulated by title 13, chapter 34.

D. The division shall employ the services of the office of administrative hearings to conduct hearings on matters requested to be heard by the director or the commission for the division except for those rehearings that are required by the terms of this chapter to be conducted by the commission. Any person adversely affected by a decision of a steward or by any other decision of the division may request a hearing on the decision. The decision of the administrative law judge becomes the decision of the director unless rejected or modified by the director within thirty days. The commission may hear any appeal of a decision of the director in accordance with title 41, chapter 6, article 10.

E. The division may visit and investigate the offices, tracks or places of business of any permittee and place in those offices, tracks or places of business expert accountants and other persons as the division deems necessary for the purpose of ascertaining that the permittee or any licensee is in compliance with the rules adopted pursuant to this article.

F. The division shall establish and collect the following licensing fees and regulatory assessments, which shall not be reduced for capital improvements pursuant to section 5-111.02:

1. For each racing license issued, a license fee.
2. From the purse accounts provided for in section 5-111, a regulatory assessment to pay for racing animal medication testing, animal safety and welfare.

3. From each permittee, a regulatory assessment for each day of dark day simulcasting conducted in excess of the number of live racing days conducted by the permittee.

4. From each commercial racing permittee, a regulatory assessment payable from amounts deducted from pari-mutuel pools by the permittee, in addition to the amounts the permittee is authorized to deduct pursuant to section 5-111, subsection B from amounts wagered on live and simulcast races from in-state and out-of-state wagering handled by the permittee.

G. The commission shall establish financial assistance procedures for promoting adoption of retired racehorses. The provision of financial assistance to nonprofit enterprises for the purpose of promoting adoption of retired racehorses is contingent on a finding by the commission that the program presented by the enterprise is in the best interest of the racing industry and this state. On a finding by the commission, the commission is authorized to make grants to nonprofit enterprises whose programs promote adoption of retired racehorses. The commission shall develop an application process. The commission shall require an enterprise to report to the commission on the use of grants under this subsection. Financial assistance for nonprofit enterprises that promote adoption of retired racehorses under this subsection shall not exceed the amount of retired racehorse adoption surcharges collected pursuant to this subsection. The commission shall collect a retired racehorse adoption surcharge in addition to each civil penalty assessed in connection with horse or harness racing pursuant to this article. The amount of the retired racehorse adoption surcharge shall be five percent of the amount collected for each applicable civil penalty.

H. A license is valid for the period established by the commission, but not more than five years, except for a temporary license issued pursuant to section 5-107.01, subsection F. The licensing period shall begin July 1.

I. A person may submit an application in writing that objects to any decision of track stewards within three days after the official notification of the decision. On application, the division or administrative law judge shall review the objection. In the case of a suspension of a license by the track stewards, the suspension shall run for a period of not more than six months. Before the end of this suspension period, filing an application for review is not cause for reinstatement. If at the end of this suspension period the division or administrative law judge has not held a hearing to review the decision of the stewards, the suspended license shall be reinstated until the division or administrative law judge holds a hearing to review the objection. Except as provided in section 41-1092.08, subsection H, a final decision of the commission is subject to judicial review pursuant to title 12, chapter 7, article 6.

J. The commission or the director may issue subpoenas for the attendance of witnesses and the production of books, records and documents relevant and material to a particular matter before the commission or division and the subpoenas shall be served and enforced in accordance with title 41, chapter 6, article 10.

K. Any member of the commission, the administrative law judge or the director or the director's designee may administer oaths, and the oaths shall be administered to any person who appears before the commission to give testimony or information pertaining to matters before the commission.

L. The commission shall adopt rules that require permittees to retain for three months all official race photographs and videotapes. The division shall retain all photographs and videotapes that are used as evidence in an administrative proceeding until the conclusion of the proceeding and any subsequent judicial proceeding. All photographs and videotapes must be available to the public on request, including photographs and videotapes of races concerning which an objection is made, regardless of whether the objection is allowed or disallowed.

M. The director may establish a management review section for the development, implementation and operation of a system of management reports and controls in major areas of division operations, including licensing, workload management and staffing, and enforcement of this article and the rules of the commission.

N. In cooperation with the department of public safety, the director shall establish a cooperative fingerprint registration system. Each applicant for a license or permit under this article or any other person who has a financial interest in the business or corporation making the application shall submit to fingerprint registration as

part of the background investigation conducted pursuant to section 5-108. The cooperative fingerprint registration system shall be maintained in an updated form using information from available law enforcement sources and shall provide current information to the director on request as to the fitness of each racing permittee and each racing licensee to engage in the racing industry in this state.

O. The director shall develop and require division staff to use uniform procedural manuals in the issuance of any license or permit under this article and in the enforcement of this article and the rules adopted under this article.

P. The director shall submit an annual report containing operational and economic performance information as necessary to evaluate the department's budget request for the next fiscal year to the governor, the speaker of the house of representatives, the president of the senate and the secretary of state not later than September 30 each year. The annual report shall be for the preceding fiscal year and shall contain performance information as follows:

1. The total state revenues for the previous fiscal year from the overall pari-mutuel handle with an itemization for each horse racing meeting, each harness racing meeting, each advanced deposit wagering permittee and each additional wagering facility.
2. The total state revenues for the previous fiscal year from the regulation of racing, including licensing fees assessed pursuant to subsection F of this section and monetary penalties assessed pursuant to section 5-108.02.
3. The amount and use of capital improvement funds pursuant to section 5-111.02 that would otherwise be state revenues.
4. The number of licenses and permits issued, renewed, pending and revoked during the previous fiscal year.
5. The investigations conducted during the previous fiscal year and any action taken as a result of the investigations.
6. The division budget for the immediately preceding three fiscal years, including the number of full-time, part-time, temporary and contract employees, a statement of budget needs for the forthcoming fiscal year and a statement of the minimum staff necessary to accomplish these objectives.
7. Revenues generated for this state for the preceding fiscal year by persons holding racing meeting and advanced deposit wagering permits.
8. Recommendations for increasing state revenues from the regulation of the racing industry while maintaining the financial health of the industry and protecting the public interest.

Q. The commission may certify animals as Arizona bred or as Arizona stallions. The commission may delegate this authority to a breeders' association it contracts with for these purposes. The commission may authorize the association, racing organization or division to charge and collect a reasonable fee to cover the cost of breeding or ownership certification or transfer of ownership for racing purposes.

R. The commission may obtain the services of the office of administrative hearings on any matter that the commission is empowered to hear.

S. The division may adopt rules pursuant to title 41, chapter 6 to carry out the purposes of this article, ensure the safety and integrity of racing in this state and protect the public interest.

### 5-104.01. Audits and special investigations; exemption

A. The department shall require that an annual financial audit be conducted of each permittee licensed under this chapter. The department may also require a financial audit from any concessionaire licensed under this article. The department may, for any audit required by this section, require a permittee or concessionaire to supply a certified audit to the department. The commission shall adopt rules that require each permittee to select an accounting firm approved by the auditor general to conduct the annual financial audit when a certified audit is required. Audits performed pursuant to this section shall be conducted in accordance with auditing standards established by the auditor general.

B. All permittees and licensees subject to the financial audit as prescribed by this section shall afford reasonable and needed facilities and make returns and exhibits to the department or audit firm in the form and at the time prescribed by the department. The auditor representing the department shall have access to all information, records, pari-mutuel betting devices and equipment necessary to conduct electronic data processing and other audits and reviews. The computer software and other proprietary information and records obtained by the auditor are not subject to disclosure and are exempt from title 39, chapter 1.

C. The commission may reduce the number of racing days of a permittee or revoke the permit or license of a person who knowingly fails or refuses to make the prescribed returns or exhibits or give information as required.

D. The department may expend monies for the purpose of special investigations of permittees or licensees to determine compliance with this chapter or the rules issued pursuant to this chapter.

E. The department may require that the audit and investigation of a permittee and licensee include any person who has a substantial interest, as defined in section 38-502, in the permittee or licensee.

F. This section does not apply to a racing meeting operated by a county fair association.

5-107. Nature of racing meeting permits; application for permit; cash deposit; return; bond; conditions and priorities for satisfaction of bond

A. Permits to conduct racing meetings are deemed to be personal in nature, are nontransferable and shall terminate on a substantial change of ownership of the permittee. The sale or transfer of twenty-five percent or more of the equity of a permittee shall be considered a substantial change of ownership. Nothing in this subsection shall be construed so as to cause the termination of a permit on the death of the permittee, or if a corporation, the death of a shareholder thereof, during the period for which such permit was granted.

B. Every applicant making application for a permit to hold a racing meeting shall file an application with the commission. The commission shall promulgate rules and regulations regarding application procedures. The application shall include:

1. The full name and address of the applicant, and if a corporation, the name of the state under which it is incorporated. If such applicant is an association or corporation, the residence addresses of the members of the association and the names of all directors of the corporation shall be included, and the stock certificate records of such applicant shall be made available to the department on request of the director. The department shall be notified within ten days of the election of any new officer or director of a permittee, and the identity of every person who acquires ten percent or more of a permittee's equity or interest. Each new officer, director or substantial owner shall furnish all information requested by the department to facilitate approval of his participation in racing in this state.

2. The exact location where it is desired to conduct or hold a racing meeting.

3. A statement as to whether or not the racing plant is owned or leased, and if leased, the name and residence of the fee owner, or if a corporation, the names and addresses of the directors of the corporation.

4. A complete financial statement and balance sheet of the person, corporation or other business entity making such application, completed and certified by a certified public accountant. In the case of applications for renewal of dog racing meeting permits that were in existence before May 5, 1972, such financial statement and balance sheet shall be on a calendar year basis. In the case of applications for renewal of horse or harness racing meeting permits that were in existence before May 5, 1972, such financial statement and balance sheet shall be on a fiscal year basis. In the case of all new permit applications made from and after May 5, 1972, and renewal applications of such permits, such financial statement and balance sheet shall be on either a calendar year or fiscal year basis, at the discretion of the department. In addition, the application shall identify any guarantors or any indebtedness of the applicant, and the department shall be provided, on request, with a statement from a certified public accountant certifying that the net worth of any guarantor or guarantors is at least equal to the amount of the unpaid indebtedness so guaranteed. Applications for racing meetings operated by county fair racing associations are exempt from this paragraph.

5. A complete list of all management and concession contracts in effect at the time of the application, copies of which shall be furnished to the department on request. If the applicant is granted a permit he shall further be required, on the request of the department, to submit a complete list of all subsequent management and concession contracts, and copies of such contracts shall be submitted to the department on request.

6. Such other relevant and material information pertaining to the application as the department may require.

C. Not less than ten days before the commencement of a commercial racing meeting, the permittee shall submit to the department a cash deposit in such amount, but not to exceed five thousand dollars, as the director deems necessary to insure payment of fees and the amount due the state as the percentage of pari-mutuel receipts payable to the state as prescribed by law. On termination of the racing meeting, the deposit shall be returned to the applicant, less any fees or pari-mutuel receipts remaining unpaid.

D. In addition to the cash deposit and before the issuance of a racing meeting permit, the applicant shall deposit with the department a bond payable to the state for the benefit of the state and any person covered by this

section, in such amount, but not to exceed three hundred thousand dollars in the case of horse or harness racing meeting permittees, as the director deems necessary, with a surety or sureties to be approved by the department and the attorney general and conditioned in accordance with the following order of priorities:

1. That the permittee shall first faithfully pay to the state the percentage of the pari-mutuel receipts, as applicable, prescribed by law and all taxes due to the state.
2. That thereafter the permittee shall pay to the owner thereof all funds held by the permittee for the account of such owner, including purses won, if such owner is or has been licensed by the department.
3. That thereafter the permittee shall pay all salaries and wages due to the employees of such permittee in connection with the conduct of the racing meeting.
4. That thereafter the permittee shall pay all amounts due to the breeder of any horse for a breeder's award.

E. Any person, including the state, claiming against the bond may maintain an action at law against the permittee and the surety or sureties, and the surety or sureties may be sued on the bond in successive actions until the penal sum thereof is exhausted. If it appears that there is more than one claim on such bond or if it appears that the state may have an interest therein, the state or any other claimant may move the court in which such actions are filed to intervene or to consolidate such actions to determine the priority order of claims in accordance with subsection D of this section. No suit may be commenced on the bond after the expiration of one year following the day of the closing of the racing meeting during which any act or failure to act giving rise to a claim against the bond shall arise.

F. The bond prescribed by this section shall be effective for the period of the racing permit granted by the commission, and the liability of the surety for all claims shall be limited to the face amount of the bond. If the surety desires to make payment without awaiting court action, the amount of any bond filed in compliance with this chapter shall be reduced to the extent of any payments made by such surety in good faith thereunder. Any such payment shall be based first on the priority of claim order as established by subsection D of this section and thereafter on the priority of the date the written claims are received by the surety before court action.

### 5-111. Wagering percentage to permittee and state; exemptions

A. The commission shall prescribe rules governing wagering on races under the system known as pari-mutuel wagering. Wagering shall be conducted by a permittee only by pari-mutuel wagering and only on the dates for which racing or dark day simulcasting has been authorized by the commission. Wagering for a licensed racing meeting shall be conducted by a commercial live-racing permittee only within an enclosure and, in counties having a population of less than five hundred thousand persons or at least one million five hundred thousand persons, at those additional facilities that are owned or leased by a permittee, that are approved by the commission and that are used by a permittee for handling wagering as part of the pari-mutuel system of the commercial live-racing permittee. In all other counties, wagering may also be conducted at additional facilities that are owned or leased by a commercial live-racing permittee who is licensed to conduct live racing in those counties or, until January 1, 2019, who has the consent of all commercial permittees currently licensed to conduct live racing in those counties, and that are used by a permittee for handling wagering and as part of the pari-mutuel system of the commercial live-racing permittee. Beginning January 1, 2019, consent of commercial permittees licensed to conduct live racing in those counties is not required. From and after December 31, 2016, any agreement concerning simulcasting that is executed between a permittee that conducted live dog racing in 2016 and a horse racing facility that is located in a county with a population of more than three million persons shall provide that twenty percent of the commission fee paid to a permittee that conducted live dog racing in 2016 under that agreement be distributed to the recognized horsemen's association that represents horsemen participating in race meets in this state. If the additional facilities have not been used for authorized racing before their use for handling wagering, a permittee shall not use the facilities for handling wagering before receiving approval for use by the governing body of the city or town, if located within the corporate limits, or by the board of supervisors, if located in an unincorporated area of the county. A permittee may televise any live or simulcast races received at the permittee's racing enclosure to the additional facilities at the times the races are conducted or received at the permittee's enclosure. For the purpose of section 5-110, subsection C only, a race on which wagering is permitted under this subsection shall be deemed to also occur at the additional facility in the county in which the additional facility is located, and shall be limited in the same manner as actual live racing in that county. For the purpose of subsection B of this section, the wagering at the additional facility shall be deemed to occur in the county in which the additional facility is located.

B. During the period of a permit for horse or harness racing, the permittee that conducts the meeting may deduct up to and including twenty-five percent of the total amount handled in the regular pari-mutuel pools and, at the permittee's option, may deduct up to and including thirty percent of the total amount handled in the exacta, daily double, quinella and other wagering pools involving two horses, and up to and including thirty-five percent of the total amount handled in the trifecta or other wagering pools involving more than two horses in one or more races. The amounts if deducted shall be distributed as prescribed in subsection C of this section and section 5-111.02 for horse or harness racing permittees.

C. During the period of a permit for horse or harness racing, the state shall receive two percent of the gross amount of the first one million dollars of the daily pari-mutuel pools and five percent of the gross amount exceeding one million dollars of the daily pari-mutuel pools. Notwithstanding any other provision of this subsection, the percentage paid by a permittee to the state does not apply to monies handled in a pari-mutuel pool for wagering on simulcasts of out-of-state races. The permittee shall retain the balance of the total amounts deducted pursuant to subsection B of this section. Of the amount retained by the permittee, minus the amount payable to the permittee for capital improvements pursuant to section 5-111.02, breakage distributed to the permittee pursuant to section 5-111.01 and other applicable state, county and city transaction privilege or other taxes, unless otherwise agreed by written contract, fifty percent shall be used for purses. Unless otherwise agreed by written contract, fifty percent of the revenues received by the permittee from simulcasting races as provided in section 5-112, net of costs of advertising, shall be utilized as a supplement to the general purse structure. All amounts that are deducted from the pari-mutuel pool for purses pursuant to this section and sections 5-111.01, 5-112 and 5-114 and revenues that are received from simulcasting and that are to be used as a supplement to the general purse structure pursuant to this subsection shall be deposited daily into a trust account for the payment of purse amounts.

D. Any county fair racing association may apply to the commission for one racing meeting each year and the commission shall set the number of days and the dates of the meetings. A racing meeting conducted under this subsection shall be operated in such manner so that all profits accrue to the county fair racing association, and the county fair racing association may deduct from the pari-mutuel pool the same amount as prescribed in subsection B of this section. All county fair racing meetings, whether conducted by county fair racing associations under this subsection or by an individual, corporation or association other than a county fair racing association, are exempt from the payment to the state of the percentage of the pari-mutuel pool prescribed by subsection C of this section and are also exempt from the provisions of section 5-111.01.

E. Monies from charity racing days are exempt from the state percentage of the pari-mutuel pool prescribed in this section.

F. Sums held by a permittee for payment of unclaimed pari-mutuel tickets are exempt from the revised Arizona unclaimed property act, title 44, chapter 3.

G. All of the amounts received by a permittee from the gross amount of monies handled in a pari-mutuel pool and all amounts held by a permittee for payment of purses pursuant to this section and sections 5-111.01, 5-112 and 5-114 are exempt from the provisions of title 42, chapter 5.

### 5-113. Disposition of revenues and monies; funds; committee

A. All revenues derived from permittees, permits and licenses as provided by this article shall be deposited, pursuant to sections 35-146 and 35-147, in the racing regulation fund established by section 5-113.01. The commission shall further allocate all monies deposited in the Arizona breeders' award fund pursuant to this subsection to support incentives as authorized by subsection F of this section for thoroughbred and quarter horse breeds only.

B. The Arizona county fairs racing betterment fund is established under the jurisdiction of the department. The department shall distribute monies from the fund to the county fair association or county fair racing association of each county conducting a county fair racing meeting in a proportion that the department deems necessary for the promotion and betterment of county fair racing meetings. All expenditures from the fund shall be made on claims approved by the department. In order to be eligible for distributions from the fund, a county fair association must provide the department with an annual certification in the form required by the department supporting expenditures made from the fund. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund.

C. The county fairs livestock and agriculture promotion fund is established under the control of the governor and shall be used for the purpose of promoting the livestock and agricultural resources of the state and for the purpose of conducting an annual Arizona national livestock fair by the Arizona exposition and state fair board to further promote livestock resources. The direct expenses less receipts of the livestock fair shall be paid from this fund, but this payment shall not exceed thirty percent of the receipts of the fund for the preceding fiscal year. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund. All expenditures from the fund shall be made on claims approved by the governor, as recommended by the livestock and agriculture committee, for the promotion and betterment of the livestock and agricultural resources of this state. The livestock and agriculture committee is established and shall be composed of the following members, at least three of whom are from counties that have a population of less than five hundred thousand persons, appointed by the governor:

1. Three members representing county fairs.
2. One member representing Arizona livestock fairs.
3. One member representing the university of Arizona college of agriculture.
4. One member representing the livestock industry.
5. One member representing the farming industry.
6. One member representing the governor's office.
7. One member representing the Arizona state fair conducted by the Arizona exposition and state fair board.
8. One member representing the general public.

D. The governor shall appoint a chairman from the members. Terms of members shall be four years.

E. Members of the committee are not eligible to receive compensation but are eligible to receive reimbursement for expenses pursuant to title 38, chapter 4, article 2.

F. The Arizona breeders' award fund is established under the jurisdiction of the department. The department shall distribute monies from the fund to the breeder, or the breeder's heirs, devisees or successors, of every winning horse or greyhound foaled or whelped in this state, as defined by section 5-114, in a manner and in an amount established by rules of the commission to protect the integrity of the racing industry and promote, improve and advance the quality of race horse and greyhound breeding within this state. The department may

contract with a breeders' association to provide data, statistics and other information necessary to enable the department to carry out the purposes of this subsection. Persons who are not eligible to be licensed under section 5-107.01 or persons who have been refused licenses under section 5-108 are not eligible to participate in the Arizona greyhound breeders' award fund. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund. For the purposes of this subsection, "breeder" means the owner or lessee of the dam of the animal at the time the animal was foaled or whelped.

G. The Arizona stallion award fund is established under the jurisdiction of the department to promote, improve and advance the quality of stallions in this state. The department shall distribute monies from the fund to the owner or lessee, or the owner's or lessee's heirs, devisees or successors, of every Arizona stallion whose certified Arizona bred offspring, as prescribed in section 5-114, finishes first, second or third in an eligible race in this state. The department may contract with a breeders' association to provide data, statistics and other information necessary to enable the department to carry out the purposes of this subsection. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out the purposes of this subsection. The rules shall prescribe at a minimum:

1. The manner and procedure for distribution from the fund, including eligibility requirements for owners and lessees.
2. Subject to availability of monies in the fund, the amount to be awarded.
3. The requirements for a stallion registered with the jockey club, Lexington, Kentucky or with the American quarter horse association, Amarillo, Texas to be certified as an Arizona stallion.
4. The types and requirements of races for which an award may be made.

H. The retired racehorse adoption fund is established. The department shall administer the fund. All revenues derived from retired racehorse adoption surcharges collected pursuant to section 5-104, subsection G shall be deposited, pursuant to sections 35-146 and 35-147, in the fund. The fund also consists of any monies contributed to the fund by a nonprofit organization pursuant to subsection K of this section. The department shall distribute monies from the fund to provide financial assistance to nonprofit enterprises approved by the commission to promote the adoption of retired racehorses pursuant to section 5-104, subsection G in a manner and in an amount established by rules of the commission. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund.

I. The county fair racing fund is established. The department shall administer the fund. Monies in the fund are continuously appropriated. The department shall use fund monies for the administration of county fair racing. Any monies remaining unspent in the fund at the end of the fiscal year in excess of \$75,000 shall revert to the state general fund.

J. The agricultural consulting and training trust fund is established for the exclusive purpose of implementing, continuing and supporting the agricultural consulting and training program established by section 3-109.01. The director of the Arizona department of agriculture shall administer the trust fund as trustee. The state treasurer shall accept, separately account for and hold in trust any monies deposited in the state treasury, which are considered to be trust monies as defined in section 35-310 and which shall not be commingled with any other monies in the state treasury except for investment purposes. On notice from the director, the state treasurer shall invest and divest any trust fund monies deposited in the state treasury as provided by sections 35-313 and 35-314.03, and monies earned from investment shall be credited to the trust fund. The beneficiary of the trust is the agricultural consulting and training program established by section 3-109.01. Surplus monies, including balances remaining in the trust fund at the end of a fiscal year, do not revert to the state general fund.

K. One percent of the in-state handle, none of which shall come from the amount paid to bettors, shall be allocated to the department on a monthly basis for distribution to a nonprofit organization that represents a majority of the horse breeders in this state, that maintains a financial bond and that has previously contracted with the department to provide data, statistics and other information. The nonprofit organization that receives

monies pursuant to this subsection shall establish a separate fund for the receipt of these monies that shall be designated as the Arizona horse breeders' fund. The nonprofit organization shall add monies to purses and provide purse awards for the Arizona bred horses that finish in first, second or third place in races held in this state, provide awards to the breeders, owners or lessees or the breeders', owners' or lessees' heirs, devisees or successors, of the dams and sires whose certified Arizona bred offspring finish in first, second or third place in races held in this state and contribute not more than \$25,000 of these monies each year to the retired racehorse adoption fund established by subsection H of this section. The nonprofit organization may spend a portion of these monies for administrative costs. For the purposes of this subsection, the breeder of a thoroughbred horse shall be considered the owner of the broodmare at the time that the foal is dropped. The nonprofit organization shall submit an annual report to the governor, the president of the senate and the speaker of the house of representatives that provides a detailed summary of the monies distributed pursuant to this subsection, including the amount spent for administrative costs. The nonprofit organization shall provide a copy of this report to the commission and the secretary of state. For the purposes of this subsection, "in-state handle" means the total amount of monies contributed on live races in this state to all pari-mutuel pools by bettors plus the total amount of monies contributed by bettors in this state on simulcast races that originate outside this state.

***NOTE:*** *This 5YRR was previously considered at the September 29, 2020 Study Session and October 6, 2020 Council Meeting. At the October 6, 2020 Council Meeting, the Council voted to return a portion of the report related to the proposed course of action timeframe to amend Articles 6, 8, 12, 16, 22, and 23 by regular rulemaking by December 2023. The Council directed DES to revise the proposed course of action timeframe and re-submit that portion of the 5YRR by October 27, 2020. The revised portion of the 5YRR with an updated proposed course of action timeframe is included in these final materials for your reference.*

**DEPARTMENT OF ECONOMIC SECURITY (F20-0907)**

Title 6, Chapter 6, All Articles, Department of Economic Security



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT: DEPARTMENT OF ECONOMIC SECURITY**  
Title 6, Chapter 6, All Articles, Department of Economic Security

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### Summary

This Five-Year Review Report (5YRR) was previously considered at the August 25, 2020 Study Session and September 1, 2020 Council Meeting. At the September 1, 2020 Council Meeting, the Council voted to table consideration of this report to the September 29, 2020 Study Session and October 6, 2020 Council Meeting to allow the Department of Economic Security (Department) to revise its proposed course of action timeframe.

The Department revised the proposed course of action deadlines and resubmitted the report. At the October 6, 2020 Council Meeting, the Council voted to approve the majority of the Department's report. However, due to continuing concerns over the length of time for the proposed course of action to amend Articles 6, 8, 12, 16, 22, and 23 by regular rulemaking by December 2023, the Council voted to return the portion of the report related to the proposed course of action timeframe to amend Articles 6, 8, 12, 16, 22, and 23. The Council directed the Department to revise the proposed course of action timeframe for those Articles and re-submit that portion of the 5YRR by October 27, 2020. The revised portion of the 5YRR with an updated proposed course of action timeframe to amend Articles 6, 8, 12, 16, 22, and 23 was submitted by the Department on October 22, 2020 and is included in these final materials for your reference.

As a reminder, this 5YRR from the Department related to all Articles in Title 6, Chapter 6 regarding developmental disabilities. The Division of Developmental Disabilities (DDD) within the Department provides support and services for eligible people with autism, cerebral palsy, epilepsy, or intellectual disability. DDD provides, or contracts to provide, a variety of services, depending on available funding and eligibility, including: attendant care, day treatment and training, habilitation, home health assistance, home nursing, home modifications, housekeeping, services in intermediate care facilities, medical services, services in nursing facilities, respiratory therapy, respite, occupational therapy, physical therapy, speech therapy, and non-emergency transportation.

The Articles reviewed included the following:

- Article 1. General Provisions
- Article 3. Eligibility for Developmental Disabilities Services
- Article 4. Application
- Article 6. Program Services
- Article 8. Programmatic Standards and Contract Monitoring for Community Residential Settings
- Article 9. Managing Inappropriate Behaviors
- Article 10. Child Developmental Foster Home License
- Article 11. Adult Developmental Home License
- Article 12. Cost of Care Portion
- Article 13. Coordination of Benefits; Third-Party Payments
- Article 15. Standards for Certification of Home and Community-Based Service (HCBS) Providers
- Article 16. Abuse and Neglect
- Article 18. Administrative Review
- Article 20. Contracts
- Article 21. Division Procurement and Rate Setting - Qualified Vendors
- Article 22. Appeals and Hearings
- Article 23. Deemed Status

In the previous 5YRR for these rules , approved by the Council on December 15, 2015, the Department proposed changes to all Articles in Chapter 6. The Department amended Article 3 and repealed Article 5 effective August 24, 2018. The Department amended Article 18 effective January 27, 2018. The Department published a Notice of Proposed Rulemaking to amend Article 4 on January 3, 2020. The amendments to the remaining Articles have not been completed. The Department noted that progress on amendments to the Articles in Chapter 6 is balanced against competing priorities primarily related to Medicaid funding. Specifically, between 2015 and 2020, the Department indicates that implementing continuing changes in Medicaid requirements impacting the Department has a high priority in order to avoid jeopardizing federal funding.

### **Proposed Action**

With regards to the updated proposed course of action to amend Articles 6, 8, 12, 16, 22, and 23 by regular rulemaking, the Department plans to request a moratorium exception to proceed with regular rulemaking to amend these Articles by March 2022 to conform to current practice and terminology and to make the rules more clear, concise, and understandable. The Department plans to file the Notices of Docket Opening for these Articles by August 2022 and start the stakeholder engagement process to draft amendments to the rules.

### **Conclusion**

Council staff encourages the Council to discuss with the Department their revised proposed course of action timeframe in response to the Council's prior concerns.

*-Preface-*

# **Department of Economic Security**

## **Five – Year Review Reports**

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule’s effectiveness, clarity, conciseness, and understandability. The reports also describe the agency’s proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor’s Regulatory Review Council. A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency’s website.

**1. Authorization of the rule by existing statutes:**

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-134(10)

Specific Statutory Authority: A.R.S. §§ 36-554(A)(6), 36-554(A)(11), 36-554(C)(6), 36-557(O), 36-557(P), 36-560(A), 36-561(B), 36-562(C), 36-562(G), 36-562(M), 36-563(C), 36-565(D), 36-568, 36-592(B), 36-595(B), 36-596.01(G)

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R6-6-101	The objective of this rule is to define terms used in Chapter 6.
R6-6-102	The objective of this rule is to guarantee the rights of clients when services are being provided.
R6-6-103	The objective of this rule is to designate a confidentiality officer who administers and supervises the use and maintenance of all personally identifiable information.
R6-6-104	The objective of this rule is to identify individuals or titles authorized to access personally identifiable information and where it is kept.
R6-6-105	The objective of this rule is to ensure personally identifiable information is only released with the consent of the client or responsible person.
R6-6-106	The objective of this rule is to ensure an employee of the Division (DDD) who makes an unlawful disclosure of personally identifiable information is subject to disciplinary action or dismissal.
R6-6-107	The objective of this rule is to state the client's right to live in the least restrictive environment.
R6-6-108	The objective of this rule is to ensure a written plan for meeting potential emergencies and disasters is posted in non-licensed settings.
R6-6-301	The objective of this rule is to define terms used in Article 3.
R6-6-302	The objective of this rule is to establish general criteria regarding eligibility for DDD services.
R6-6-303	The objective of this rule is to identify the diagnoses used to determine eligibility for Division services.

R6-6-304	The objective of this rule is to explain the process for eligibility under Arizona Long-term Care System (ALTCS).
R6-6-305	The objective of this rule is to require the Support Coordinator, along with the Planning Team, to complete a Planning Document to document any necessary supports and services when the Department determines an individual is eligible and enrolls the individual in the program.
R6-6-306	The objective of this rule is to clarify that in an emergency, the Department may provide DDD services to an individual who has been enrolled in the program without a Planning Document.
R6-6-307	The objective of this rule is to outline when the Department may redetermine eligibility for the program.
R6-6-308	The objective of this rule is to enumerate the responsibilities of a member.
R6-6-309	The objective of this rule is to identify under what circumstances a member may be terminated from DDD services, and time-frames for notification of termination from DDD services.
R6-6-401	The objective of this rule is to define terms used in Article 4.
R6-6-402	The objective of this rule is to describe the application process for DDD services, the information required on the application, and what happens if an application is incomplete.
R6-6-403	The objective of this rule is to identify the required documents for lawful presence, residency, and health insurance coverage while applying for admission to services.
R6-6-404	The objectives of this rule are to require DDD to refer individuals with developmental disabilities who may be eligible for ALTCS to the Arizona Health Care Cost Containment System (AHCCCS) to determine eligibility under ALTCS.
R6-6-601	The objective of this rule is to clarify that an assigned case manager will assist the client and the client's family in all aspects of the service delivery system.
R6-6-602	The objective of this rule is to describe how appropriate services for the individual and family are determined and requires the Individual Service and Program Plan (ISPP) team to develop an ISPP for the client based on an evaluation.

R6-6-603	The objective of this rule is to describe the client's assignment to appropriate services and describes the circumstances in which the client may be assigned to a waiting list when appropriate services are not available.
R6-6-604	The objective of this rule is to clarify how often the case manager and the ISPP team will review the client's ISPP.
R6-6-605	The objective of this rule is to describe the right of responsible persons to request a transfer or change to services and the responsibility of DDD to review each request.
R6-6-606	The objective of this rule is to explain that admission or assignment of any client to a program, service, or facility requires consent of the responsible person and, if not obtained, those services shall be terminated.
R6-6-801	The objective of this rule is to describe the applicability of Article 8 to community residential settings with the exception to developmental homes.
R6-6-802	The objective of this rule is to describe the roles of the licensee and DDD in complying with and determining compliance with A.R.S. Title 36, Chapter 5.
R6-6-803	The objective of this rule is to explain the types of incidents that must be reported to DDD immediately; the requirement for the licensee to cooperate in investigations; and the requirement for the licensee to maintain staff-to-client ratios that conform to the contract.
R6-6-804	The objective of this rule is to describe the rights of clients who live in community residential settings.
R6-6-805	The objective of this rule is to describe the requirements for developing and amending an ISPP.
R6-6-806	The objective of this rule is to explain the requirements for obtaining consent for emergency medical care, documentation of health status, medical records, medications, medication administration, use of protective restraints, nutrition, storage of toxins, and fencing of bodies of water for community residential settings.
R6-6-807	The objective of this rule is to describe what programmatic records a licensee shall maintain in a client's place of residence and the requirement to ensure that the records are legible, typed or written in ink, dated, and properly corrected, as

	necessary.
R6-6-808	The objective of this rule is to describe the qualifications, training, and responsibilities of staff, and to explain the documentation that a licensee shall maintain.
R6-6-809	The objective of this rule is to describe the policies and procedures that the licensee must develop and implement to address incidents that occur in the operation of the setting.
R6-6-810	The objective of this rule is to explain that a licensee shall obtain consent from the responsible person before releasing personally identifiable information for a client residing in a community residential setting.
R6-6-811	The objective of this rule is to explain that a licensee may request an exemption from a rule in Article 8 and provide how the licensee otherwise intends to meet the requirements of that rule.
R6-6-901	The objective of this rule is to describe the applicability of Article 9 to all programs operated, licensed, certified, supervised or financially supported by DDD, as well as to all habilitation programs.
R6-6-902	The objective of this rule is to establish limits on the use of certain behavioral intervention techniques.
R6-6-903	The objective of this rule is to describe the responsibilities and composition of the Program Review Committee.
R6-6-904	The objective of this rule is to describe the role of the ISPP team.
R6-6-905	The objective of this rule is to establish the standards for monitoring behavior treatment plans.
R6-6-906	The objective of this rule is to describe the minimum training requirements for any person involved in the use of a behavior treatment plan.
R6-6-907	The objective of this rule is to describe the sanctions for non-compliance with Article 9.
R6-6-908	The objective of this rule is to describe both the limits and requirements for physical management of a client in an emergency situation.

R6-6-909	The objective of this rule is to describe the requirements for how behavior-modifying medications shall be prescribed and administered.
R6-6-1001	The objective of this rule is to describe the requirements for a person applying for a child developmental foster home license.
R6-6-1002	The objective of this rule is to describe the criteria for issuing an initial license and the length of time a license is effective.
R6-6-1003	The objective of this rule is to establish the requirements and criteria to renew a child developmental foster home license.
R6-6-1004	The objective of this rule is to establish the criteria for a provisional license for a child developmental foster home and the length of time a provisional license is effective.
R6-6-1004.01	The objective of this rule is to establish the time-frame for granting or denying a child developmental foster home license.
R6-6-1004.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1004.03	The objective of this rule is to explain the contents of a complete application package for an initial child developmental foster home license.
R6-6-1004.04	The objective of this rule is to explain the contents of a complete child developmental foster home license renewal application package.
R6-6-1004.05	The objective of this rule is to explain the contents of a complete request for an amended child developmental foster home license.
R6-6-1005	The objective of this rule is to describe training requirements for a child developmental foster home licensee and applicant.
R6-6-1006	The objective of this rule is to describe the responsibilities of a licensee in a child developmental foster home.
R6-6-1007	The objective of this rule is to require a licensee to comply with behavior management, as specified in Article 9 of this Chapter, establish rules for behavior, provide appropriate discipline, and identify and report behavioral issues to DDD.

R6-6-1008	The objective of this rule is to describe the requirement of a licensee to provide appropriate, comfortable, and safe sleeping arrangements for children in a child developmental foster home.
R6-6-1009	The objective of this rule is to describe the types of events a licensee shall report to DDD or placing agency.
R6-6-1010	The objective of this rule is to describe a licensee's recordkeeping requirements in a child developmental foster home.
R6-6-1011	The objective of this rule is to prescribe the health and safety standards with which a child developmental foster home shall comply.
R6-6-1012	The objective of this rule is to establish standards for a licensee who provides transportation to foster children.
R6-6-1013	The objective of this rule is to establish dual licensure or certification requirements for foster parents residing off-reservation and licensed by a tribal jurisdiction.
R6-6-1014	The objective of this rule is to establish the rights of clients in a child developmental foster home.
R6-6-1015	The objective of this rule is to explain that a licensee may request an exemption from a rule in Article 10 and explain how the licensee otherwise intends to meet the requirements of that rule.
R6-6-1016	The objective of this rule is to describe the requirement for a licensee to cooperate in home inspections and monitoring of a child developmental foster home and to specify the minimum frequency of inspections and monitoring.
R6-6-1017	The objective of this rule is to describe the process for receiving and investigating complaints about a child developmental foster home.
R6-6-1018	The objective of this rule is to describe under what conditions a child developmental foster home license may be denied, suspended, or revoked.
R6-6-1019	The objective of this rule is to describe the appeal rights of a licensee or applicant when a license for a child developmental foster home is denied, suspended, or revoked.
R6-6-1101	The objective of this rule is to list the requirements for a person applying for an

	adult developmental home license.
R6-6-1102	The objective of this rule is to describe the criteria for issuing an initial license and to set the length of time a license is effective.
R6-6-1103	The objective of this rule is to establish the requirements and criteria to renew an adult developmental home license.
R6-6-1104	The objective of this rule is to establish the criteria for a provisional license for an adult developmental home license and the length of time a provisional license is effective.
R6-6-1104.01	The objective of this rule is to establish the time frame for granting or denying an adult developmental home license.
R6-6-1104.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1104.03	The objective of this rule is to explain the contents of a complete application package for an initial adult developmental home license.
R6-6-1104.04	The objective of this rule is to list the required contents of a complete adult developmental home license renewal application package.
R6-6-1104.05	The objective of this rule is to list the required contents of a complete request for an amended adult developmental home license.
R6-6-1105	The objective of this rule is to describe the training requirements for an adult developmental home licensee and applicant.
R6-6-1106	The objective of this rule is to describe the responsibilities of a licensee in an adult developmental home.
R6-6-1107	The objective of this rule is to require a licensee to comply with behavior management, as specified in Article 9 of this Chapter, establish rules for behavior, provide appropriate discipline, and identify and report behavioral issues to DDD.
R6-6-1108	The objective of this rule is to describe the requirement of a licensee to provide appropriate, comfortable, private, and safe sleeping arrangements for adult clients in an adult developmental home.
R6-6-1109	The objective of this rule is to describe the types of events and incidents in an adult

	developmental home a licensee shall report to DDD.
R6-6-1110	The objective of this rule is to describe the records for each adult a licensee shall maintain in an adult developmental home.
R6-6-1111	The objective of this rule is to prescribe the health and safety standards with which an adult developmental home shall comply.
R6-6-1112	The objective of this rule is to define the standards for adult developmental home providers who supply transportation.
R6-6-1113	The objective of this rule is to establish dual licensure or certification requirements for an adult developmental home provider licensed by another jurisdiction.
R6-6-1114	The objective of this rule is to establish the rights of clients in an adult developmental home.
R6-6-1115	The objective of this rule is to explain that an adult developmental home licensee or applicant may request an exemption from a rule in Article 11 and how the licensee or applicant otherwise intends to meet the requirements of that rule.
R6-6-1116	The objective of this rule is to describe the requirement for a licensee to cooperate in home inspections and monitoring of an adult developmental home and to specify the minimum frequency of inspections and monitoring.
R6-6-1117	The objective of this rule is to describe the process for receiving and investigating complaints about an adult developmental home.
R6-6-1118	The objective of this rule is to describe under what conditions an adult developmental home license may be denied, suspended, or revoked.
R6-6-1119	The objective of this rule is to describe the appeal rights of a licensee or applicant when a license for an adult developmental home is denied, suspended, or revoked.
R6-6-1201	The objective of this rule is to prescribe the cost of care contribution requirements for clients, parents of minor clients, and trusts, estates, and annuities of which a client is a beneficiary.
R6-6-1202	The objective of this rule is to describe how DDD determines a client's cost of care portion for services.

R6-6-1203	The objective of this rule is to describe how DDD determines the client's cost for services based on the client's income from an estate, trust, or annuity.
R6-6-1204	The objective of this rule is to describe how DDD determines the cost of care portion for clients receiving residential services.
R6-6-1205	The objective of this rule is to describe the method DDD uses for collecting financial information, billing, and referrals for collections regarding non-payment.
R6-6-1206	The objective of this rule is to explain the review and appeal process for the cost of care portion.
Article 12, Appendix A	The objective of Article 12, Appendix A is to establish the cost of care portion for which a responsible person is liable based on the cost of services, monthly family income, and family size.
R6-6-1301	The objective of this rule is to describe the health insurance information required to complete an initial application or an application for redetermination for eligibility.
R6-6-1302	The objective of this rule is to describe the requirements for the assignment of rights to benefits.
R6-6-1303	The objective of this rule is to describe the process for collecting third party insurance reimbursements.
R6-6-1304	The objective of this rule is to describe the process for monitoring service providers for compliance with Article 13.
R6-6-1305	The objective of this rule is to describe the process a service provider shall use to notify DDD of the need for a lien.
R6-6-1501	The objective of this rule is to define terms used in Article 15.
R6-6-1502	The objective of this rule is to clarify that the rules in Article 15 apply to Home and Community-based Service (HCBS) providers.
R6-6-1503	The objective of this rule is to describe the requirements for a HCBS certificate.
R6-6-1504	The objective of this rule is to explain how to become certified as a HCBS provider and establish the documentation required for application to become HCBS certified.
R6-6-1504.01	The objective of this rule is to establish the time-frames for granting or denying a

	HCBS certificate.
R6-6-1504.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1504.03	The objective of this rule is to explain the contents of a complete application package for an initial HCBS certificate.
R6-6-1504.04	The objective of this rule is to explain the contents of a complete application package for a HCBS renewal certificate.
R6-6-1504.05	The objective of this rule is to explain the contents of a complete request for an amended HCBS certificate.
R6-6-1505	The objective of this rule is to establish health and safety standards a HCBS provider shall provide in a residence or facility where HCBS services are to be provided.
R6-6-1506	The objective of this rule is to establish fingerprint requirements for HCBS applicants.
R6-6-1507	The objective of this rule is to establish the requirements to renew a HCBS certificate.
R6-6-1508	The objective of this rule is to describe DDD's requirements when issuing an initial or renewal HCBS certificate.
R6-6-1509	The objective of this rule is to identify how long a HCBS certificate is valid.
R6-6-1510	The objective of this rule is to describe the requirements for amending a HCBS certificate.
R6-6-1511	The objective of this rule is to explain the requirements a service provider shall maintain during the term of a HCBS certificate.
R6-6-1512	The objective of this rule is to describe the audit process to review provider records and to ensure compliance with HCBS rules.
R6-6-1513	The objective of this rule is to describe how complaints against a HCBS service provider are registered and the subsequent action that may be taken.
R6-6-1514	The objective of this rule is to describe under what conditions a HCBS certificate

	may be denied, suspended, or revoked.
R6-6-1515	The objective of this rule is to establish the conditions under which a corrective action plan may be required to enforce compliance with these rules.
R6-6-1516	The objective of this rule is to explain an applicant's or service provider's right to an administrative review and appeal rights when a HCBS certificate is denied, revoked, or suspended.
R6-6-1517	The objective of this rule is to identify the types of incidents that a HCBS provider shall report to DDD while a client is in the direct care of a HCBS provider.
R6-6-1518	The objective of this rule is to explain that HCBS providers shall observe the rights of clients listed in A.R.S. § 36-551.01 and A.A.C. R6-6-102.
R6-6-1519	The objective of this rule is to describe records a provider shall maintain for compliance with HCBS rules.
R6-6-1520	The objective of this rule is to describe the basic qualifications, training, and responsibilities of HCBS providers.
R6-6-1521	The objective of this rule is to describe additional qualifications for attendant care services.
R6-6-1522	The objective of this rule is to describe additional qualifications for day treatment and training services.
R6-6-1523	The objective of this rule is to describe additional qualifications for habilitation services.
R6-6-1524	The objective of this rule is to describe additional qualifications for home health aide services.
R6-6-1525	The objective of this rule is to describe additional qualifications for home health nurse services.
R6-6-1526	The objective of this rule is to describe additional qualifications for hospice services.
R6-6-1527	The objective of this rule is to describe additional qualifications for housekeeping services.

R6-6-1528	The objective of this rule is to describe additional qualifications for occupational therapy services.
R6-6-1529	The objective of this rule is to describe additional qualifications for personal care services.
R6-6-1530	The objective of this rule is to describe additional qualifications for physical therapy services.
R6-6-1531	The objective of this rule is to describe additional qualifications for respiratory therapy services.
R6-6-1532	The objective of this rule is to describe additional qualifications for respite services.
R6-6-1533	The objective of this rule is to describe additional qualifications for speech/hearing therapy services.
R6-6-1601	The objective of this rule is to establish reporting procedures for an employee of a service provider regarding allegations of abuse and neglect.
R6-6-1602	The objective of this rule is to describe how reports of abuse and neglect are investigated.
R6-6-1603	The objective of this rule is to describe requirements for service providers to refer a client for a medical evaluation when there is suspected abuse or neglect.
R6-6-1801	The objective of this rule is to define terms used in Article 18.
R6-6-1802	The objective of this rule is to describe the applicability of Article 18.
R6-6-1803	The objective of this rule is to explain to whom DDD needs to give written notice when taking action and to specify the contents of the notice.
R6-6-1804	The objective of this rule is to describe who may file a request for an Administrative Review.
R6-6-1805	The objective of this rule is to explain the process for filing a request for an Administrative Review.
R6-6-1806	The objective of this rule is to describe contents that shall be included in a request for an Administrative Review.
R6-6-1807	The objective of this rule is to explain when DDD shall deny a request for an

	Administrative Review.
R6-6-1808	The objective of this rule is to describe the time-frame for completing an Administrative Review.
R6-6-1809	The objective of this rule is to explain the content of an Administrative Decision.
R6-6-1810	The objective of this rule is to explain that DDD shall not authorize services until a final administrative or judicial decision of an Administrative Review establishes eligibility.
R6-6-1811	The objective of this rule is to describe conditions under which DDD shall continue authorizing a Member's service during an Administrative Review.
R6-6-1812	The objective of this rule is to explain when HCBS Certificates shall be continued during an Administrative Review Process.
R6-6-1813	The objective of this rule is to explain a Requestor's appeal rights under Article 22 of this Chapter.
R6-6-2001	The objective of this rule is to define terms used in Article 20.
R6-6-2002	The objective of this rule is to describe DDD's contracting process for procuring goods and services.
R6-6-2003	The objective of this rule is to describe DDD's process when there is an insufficient response to a competitive solicitation.
R6-6-2004	The objective of this rule is to describe the process DDD shall use when DDD identifies an immediate or emergency need for service and current providers cannot meet the service needed.
R6-6-2005	The objective of this rule is to describe the Acute Care solicitation process and the information that providers shall include in a request for proposal.
R6-6-2006	The objective of this rule is to describe the process for evaluating Acute Care proposals, and the circumstances under which a proposal may be cancelled or rejected.
R6-6-2007	The objective of this rule is to describe the circumstances under which DDD shall award an Acute Care contract.

R6-6-2008	The objective of this rule is to describe the circumstances under which a protest regarding an Acute Care contract proposal or award may be filed and how a protest is resolved.
R6-6-2009	The objective of this rule is to describe how DDD recruits individual providers for Acute Care services in a geographic area without a health plan.
R6-6-2010	The objective of this rule is to describe the process DDD shall follow when statute, regulation, rules, or program changes occur.
R6-6-2011	The objective of this rule is to describe record retention for Acute Care services procurement.
R6-6-2101	The objective of this rule is to define terms used in Article 21.
R6-6-2102	The objective of this rule is to describe the applicability of Article 21.
R6-6-2103	The objective of this rule is to describe the Qualified Vendor application process.
R6-6-2104	The objective of this rule is to describe the criteria required for Qualified Vendor Agreements.
R6-6-2105	The objective of this rule is to describe the circumstances under which DDD shall enter a Qualified Vendor Agreement with an applicant.
R6-6-2106	The objective of this rule is to explain that DDD shall maintain a list of services as a means of providing information to service providers and interested parties.
R6-6-2107	The objective of this rule is to explain how a consumer or a consumer's representative shall select a service provider from the Qualified Vendor Directory, Individual Independent Provider list, or by requesting DDD post a Vendor Call for Services on the DDD website.
R6-6-2108	The objective of this rule is to describe DDD's emergency procurement procedures.
R6-6-2109	The objective of this rule is to describe consumer choice and the process for selecting and changing vendors.
R6-6-2110	The objective of this rule is to describe procedures for DDD service authorization, payment rates, reimbursement, non-reimbursement, and Qualified Vendor notification requirements for necessary emergency services.

R6-6-2111	The objective of this rule is to describe the basis for terminating a Qualified Vendor Agreement and the criteria for removing providers from the Qualified Vendor List.
R6-6-2112	The objective of this rule is to grant the DDD Assistant Director authority to totally or partially cancel a Request for Qualified Vendor Applications or a Vendor Call for Services, and to give the rationale for such action if it is deemed to be in the state's best interest.
R6-6-2114	The objectives of this rule are to establish a rate structure for reimbursing providers of community developmental disability services; describe the process to annually review the adequacy of rates; describe the process to phase in new rates; and describe the process for negotiating rates.
R6-6-2115	The objective of this rule is to describe the problem solving and appeal process for protests by applicants and Qualified Vendors regarding posting of requests for services and denials of applications in whole or in part.
R6-6-2116	The objectives of this rule are to: describe the process for resolving payment disputes by mutual agreement; grant the Department procurement officer the authority to settle claims; provide timelines for decisions; and explain the appeal process and procedures for unresolved claims regarding Qualified Vendors.
R6-6-2117	The objective of this rule is to define the process for handling controversies involving state claims against a Qualified Vendor.
R6-6-2118	The objective of this rule is to explain how hearings on appeals of claims decisions shall be conducted as contested cases under A.R.S. Title 41, Chapter 6, Article 1.
R6-6-2119	The objective of this rule is to explain a protester's right to seek relief through the Superior Court after receiving a decision from the Department's Office of Appeals.
R6-6-2201	The objective of this rule is to describe who may file an appeal and to specify the timelines for filing an appeal.
R6-6-2202	The objectives of this rule are to explain the process and requirements for filing an appeal.
R6-6-2203	The objective of this rule is to explain how service on a party is accomplished.
R6-6-2204	The objective of this rule is to explain the method for calculating days as referenced

	in Article 22.
R6-6-2205	The objective of this rule is to explain who may represent an appellant at a hearing.
R6-6-2206	The objective of this rule is to explain that reduction or termination of services may be done prior to a hearing only as provided by federal and state law, regulations, or rules.
R6-6-2207	The objective of this rule is to describe hearing locations, scheduling responsibilities, and timelines for providing a notice of hearing.
R6-6-2208	The objective of this rule is to describe the process and specify a timeline for changing hearing officers.
R6-6-2209	The objective of this rule is to explain what occurs if a party fails to appear for a hearing and to allow rescheduling under certain circumstances.
R6-6-2210	The objective of this rule is to require the Division to prepare a prehearing summary and to provide timelines for submission.
R6-6-2211	The objective of this rule is to grant authority to the hearing officer to subpoena witnesses or documents.
R6-6-2212	The objectives of this rule are to: describe the way a hearing shall be conducted; allow for a closed hearing if in the best interest of the parties; and specify the duties of the hearing officer regarding the proceeding.
R6-6-2213	The objective of this rule is to explain the method for making a hearing decision, the impact of a decision, and further appeal rights.
R6-6-2214	The objective of this rule is to establish the criteria for terminating an appeal.
R6-6-2215	The objective of this rule is to describe how an appeal of a hearing officer's decision is filed and to allow the Department to request a review by the Appeals Board before a decision is made final.
R6-6-2216	The objective of this rule is to explain how an appeal of an AHCCCS hearing officer's decisions are filed and to provide a timeline for filing.
R6-6-2301	The objective of this rule is to define terms used in Article 23.
R6-6-2302	The objective of this rule is to establish the criteria for deemed status eligibility.

R6-6-2303	The objective of this rule is to establish the Department's time frames for reviewing an application for deemed status.
R6-6-2304	The objective of this rule is to describe the responsibilities of a provider with deemed status and how deemed status may be renewed.
R6-6-2305	The objective of this rule is to describe the expiration date of deemed status and how deemed status may be renewed.
R6-6-2306	The objective of this rule is to describe the responsibility of a provider with deemed status to report changes in the provider's accreditation.
R6-6-2307	The objective of this rule is to explain that deemed status is not assignable or transferable.
R6-6-2308	The objective of this rule is to describe the programmatic and contractual monitoring requirements of a provider with deemed status.
R6-6-2309	The objective of this rule is to explain when the Department shall revoke deemed status of a provider.
R6-6-2310	The objective of this rule is to describe the process and time-frames for a provider seeking administrative review of the Department's decision to revoke a provider's deemed status.
R6-6-2311	The objective of this rule is to explain judicial review rights for any person adversely affected by an Appeals Board decision.

**3. Are the rules effective in achieving their objectives?**

**Yes No**

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

<b>Rule</b>	<b>Explanation</b>
R6-6-101	R6-6-101 is ineffective because it is missing definitions that apply across all Articles, including "member" and "support coordinator".
R6-6-105	R6-6-105 is ineffective because it does not conform to relevant requirements of Health Insurance Portability and Accountability Act of 1996 (HIPAA) as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.

R6-6-106	R6-6-106 is ineffective because it does not conform to relevant requirements of HIPAA as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.
R6-6-801	R6-6-801 is ineffective because applicability does not include group home settings.
R6-6-802	R6-6-802 is ineffective because the Department does not have the authority to enforce corrective action for group homes through licensing. The licensing authority for Division group homes is the Arizona Department of Health Services (ADHS). The Department uses the rules in Article 8 for contract monitoring, pursuant to A.R.S. § 36-595.
R6-6-803	R6-6-803 is ineffective because reporting of incidents does not include reporting of incidents by email.
R6-6-808	R6-6-808 is ineffective because it references expired Article 7 requirements for meeting potential emergencies and disasters.
R6-6-809	R6-6-809 is ineffective because it does not address the requirement in A.R.S. § 36-554(A)(7) to inform parents or guardians in writing of the complaint handling procedure; A.R.S. § 36-554(A)(6) requires a rule outlining a procedure for handling complaints about community residential settings.
R6-6-810	R6-6-810 is ineffective because it does not conform to relevant requirements of HIPAA as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.
R6-6-903	R6-6-903 is ineffective because it contains an outdated reference to Article 17, which expired effective August 30, 2005.
R6-6-1001	R6-6-1001(B) is ineffective because the wording pertaining to fingerprinting is obsolete. The rule makes no mention of fingerprint clearance cards.  R6-6-1001(C) is ineffective because the wording pertaining to Department of Child Safety (DCS) and Adult Protective Service (APS) checks is obsolete. The rule requires checks of CPS and APS "referral files" with no mention of the registries.
R6-6-1002	R6-6-1002 is ineffective because there is no mention of what criteria may be considered when determining the bed capacity of a home.

R6-6-1003	R6-6-1003(B)(3) is ineffective because it requires a criminal check every three years, rather than every six years per the fingerprint clearance card system.
R6-6-1004	R6-6-1004 is not effective due to a conflict with A.R.S. § 36-593. While the rule states that a provisional license is valid for six months, statute sets the length of a provisional license at three months.
R6-6-1004.02	R6-6-1004.02 is ineffective because it mentions an address and a process that is obsolete.
R6-6-1004.03	R6-6-1004.03 is ineffective because it does not account for the vendor supported model of licensing employed for 98 percent of the developmental homes. In addition to information supplied by the applicant, a licensing agency completes a detailed home/social study and submits the home study to DDD on the applicant's behalf.
R6-6-1011	R6-6-1011(D) and R6-6-1011(K) are ineffective because they refer to an inspection by the Department of Health Services which is not reflective of current practice.
R6-6-1013	R6-6-1013 is not effective because it does not reflect the Child Developmental Certified home provisions outlined in A.R.S. § 36-593.01.
R6-6-1101	R6-6-1101(B) is ineffective because the wording pertaining to fingerprinting is obsolete. The rule makes no mention of fingerprint clearance cards.  R6-6-1101(C) is ineffective because the wording pertaining to DCS and APS checks is obsolete. The rule requires checks of CPS and APS "referral files" with no mention of the registries.
R6-6-1102	R6-6-1102 is ineffective because there is no mention of what criteria may be considered when determining the bed capacity of a home.
R6-6-1103	R6-6-1103(B)(3) is ineffective because it requires a criminal check every three years, rather than every six years per the fingerprint clearance card system.
R6-6-1104	R6-6-1104 is not effective due to a conflict with A.R.S. § 36-593. While the rule states that a provisional license is valid for six months, statute sets the length of a provisional license at three months.

R6-6-1104.02	R6-6-1104.02 is ineffective because it mentions an address and a process that is obsolete.
R6-6-1104.03	R6-6-1104.03 is ineffective because it does not account for the vendor supported model of licensing employed for 98 percent of the developmental homes. In addition to information supplied by the applicant, a licensing agency completes a detailed home/social study and submits to the Division on the applicant's behalf.
R6-6-1111	R6-6-1111(D) and R6-6-1111(K) are ineffective because they refer to an inspection by ADHS, which is not reflective of current practice.
R6-6-1204	R6-6-1204 is ineffective because it allows a client to retain a minimum of twelve percent of the client's income or benefits for personal use whereas A.R.S. § 36-562(M) allows the client to retain a minimum of thirty percent.
Article 12, Appendix A	Article 12, Appendix A is not effective because it does not conform to the new federal poverty guidelines.
R6-6-1305	R6-6-1305 is ineffective because the requirement to disclose a SSN is prohibited by the Federal Privacy Act of 1974, 5 U.S.C. 552a.
R6-6-1501	R6-6-1501 is ineffective because an applicant may be an individual or an agency. In practice, certifying an individual requires a different process than certifying an agency.
R6-6-1503	R6-6-1503 will become obsolete and ineffective when AHCCCS launches the provider enrollment portal later this year.
R6-6-1504	R6-6-1504 is ineffective because it requires DCS and APS background checks, "only when the application indicates a past history of child or elder abuse." It is unclear how or if this rule applies when the "applicant" is an agency. Some of the requirements include self-declaration of criminal history, description of work experience, description of educational background, and three references.
R6-6-1504.02	R6-6-1504.02(F) is ineffective because the address is outdated.
R6-6-1505	R6-6-1505(A) is ineffective because it does not provide an adequate inspection cycle. Per the current rule, a setting only needs to be inspected one time. Current practice is that sites are inspected every two years. R6-6-1505(B) is ineffective because it is not reflective of current practice. Current practice is that HCBS settings are inspected for general safety and fire safety by

	DDD every two years.
R6-6-1506	R6-6-1506 is ineffective because it details a fingerprinting process that is in conflict with A.R.S. § 36-594.01. The rule does not reflect our current statute § 36-594.01 and lists current specific crimes that may preclude someone from passing a fingerprint background check. Furthermore, it does not mention the process by which a card can be suspended by the Department of Public Safety (DPS) based on a recent arrest by virtue of a file stop which suspends the clearance card and therefore stops the person from providing direct care. The time-frames mentioned in the rule are not applicable based on current statutes and contract compliance requirements. The rule states an individual shall have a background check every three years. The current clearance cards are good for six years and are renewed on expiration. Clearance cards are portable and can be used at any DES program as long as they are valid. The current rule mentions a clearance letter, which is not portable. The Office of Special Investigation is no longer involved with the background check process. Current notifications of denied, suspended, and driving restricted statuses are sent to contracted agencies and Individual Independent Provider applicants. The contracted agency must respond within 10 business days that the employee is no longer providing direct care. If a contracted agency hires someone with a Level I fingerprint clearance card the agency must update the DPS database during the hiring and employment process using the form supplied by DPS.
R6-6-1508	R6-6-1508 is ineffective because it fails to account for the current practice of "certifying" group homes. Currently, DDD issues a certificate to each individual group home upon verification that the group home is licensed by ADHS and operated by an HCBS certified qualified vendor (agency).
R6-6-1512	R6-6-1512(1)(d) is ineffective because it only requires a "review" of Article 9. However, DDD has a well-established training and certification structure for Article 9.
R6-6-1601	R6-6-1601 is ineffective because it needs to include "exploitation" to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, or APS.)

R6-6-1602	R6-6-1602 is ineffective because it needs to include “exploitation” to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, Safety, or APS.)
R6-6-1603	R6-6-1603 is ineffective because it needs to include “exploitation” to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, or APS.)
R6-6-2111	R6-6-2111 is ineffective because it requires DDD to terminate a Qualified Vendor Agreement (QVA) for any of the following reasons: (3) when a vendor no longer meets the criteria defined in the Request for Qualified Vendor Application, (4) for non-compliance with the QVA requirements, and (6) as determined by DDD after the Qualified Vendor (QV) has been given notice and the opportunity to be heard. This rule appears to indicate that a QVA must be terminated immediately when a QV is non-compliant or no longer meets the criteria (not taking into account contract actions that can be taken prior to termination (for example, demand for assurances, enrollment suspense, etc.)). Also, subsection (6) seems to contradict subsections (3) and (4).
R6-6-2115	R6-6-2115 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.
R6-6-2116	<p>R6-6-2116 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.</p> <p>Also, R6-6-2116(D) does not create a deadline by which a party must submit a written request for a final decision. This makes the process ineffective because a provider can potentially request a final decision five years after the problem-solving meeting.</p>

R6-6-2117	R6-6-2117 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.
R6-6-2201	R6-6-2201 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice.  R6-6-2201(B) should be repealed because the appeal process for disputes with ALTCS members and ALTCS providers involving Medicaid-funded services is governed by AHCCCS. The process is fully outlined in AHCCCS' rules (Title 9, Chapter 34, Articles 2 and 4).
R6-6-2205	R6-6-2205 is ineffective because it uses gender specific language. Additionally, language should be added that the person assisting a member designated by the member should do so free of charge (unless an attorney). Otherwise, that is an unauthorized practice of law.
R6-6-2206	R6-6-2206 is ineffective. A.R.S. § 41-1001 defines a rule as “an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” However, R6-6-2206 is ineffective because it does not provide specific citation of federal statute, regulation, state statute, or rules when benefits may be reduced or terminated prior to a hearing decision.
R6-6-2212	R6-6-2212 is ineffective because it does not indicate who has the burden of proof at the different types of administrative hearings held under this Article.
R6-6-2213	R6-6-2213 is ineffective because it contains inaccurate references to AHCCCS/ALTCS rules, “R9-28-802 and R9-28-804.” The correct citation for AHCCCS rules for grievances and appeals is Title 9, Chapter 34.
R6-6-2215	R6-6-2215 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The

	Department needs to amend these rules to memorialize current practice.
R6-6-2216	R6-6-2216 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice.
R6-6-2308	R6-6-2308 is ineffective because it does not address day programs and employment services in monitoring requirements as specified in A.R.S. § 36-557.

**4. Are the rules consistent with other rules and statutes? **Yes No****

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

<b>Rule</b>	<b>Explanation</b>
R6-6-105	R6-6-105 is inconsistent with federal law and needs to be amended to conform to relevant requirements of HIPAA, Pub. L. 104-19, also known as the Kennedy-Kassebaum Act, signed August 21, 1996 as amended and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164. For example, R6-6-105 reads “consents for release of information obtained during intake shall expire within 90 days;” however, per HIPAA, authorizations can last until the expiration dates memorialized on the authorization as long as it is a definite end date (i.e., 30 days, one year, 10 years, end of 2015 school year, death of individual). Per HIPAA, if no expiration date is provided on the authorization, it is valid for one year from the effective (signed) date.
R6-6-106	R6-6-106 is inconsistent with federal law and needs to be amended to conform to relevant requirements of HIPAA as amended, and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164.
R6-6-802	R6-6-802 is inconsistent because the licensing authority for Division group homes is ADHS. The Department uses the rules in Article 8 for contract monitoring, pursuant to A.R.S. § 36-595.
R6-6-809	R6-6-809 is inconsistent with A.R.S. § 36-554(A)(7) regarding the requirement to notify parents or guardians of the complaint handling procedure in the community residential setting program.

R6-6-810	R6-6-810 is inconsistent with federal law and needs to be amended to conform to relevant requirements in HIPAA, as amended, and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164. For example, the rule does not identify language required to be included in the authorization by HIPAA (i.e., individual's right to revoke the authorization; the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization; and the potential of information disclosed pursuant to the authorization to be subject to redisclosure by the recipient).
R6-6-903	R6-6-903 contains an outdated reference to Article 17, which expired effective August 30, 2005.
R6-6-1204	R6-6-1204, which allows a client to retain a minimum of 12 percent of the client's income or benefits for personal use, is inconsistent with A.R.S. § 36-562(M), which allows a minimum of thirty percent.
Article 12, Appendix A	Article 12, Appendix A, Cost of Care Portion Table does not conform to the new federal poverty guidelines.
R6-6-1305	In R6-6-1305, the requirement to provide a SSN is inconsistent with the Federal Privacy Act of 1974, 5 § U.S.C. 552a.
R6-6-1601	R6-6-1601 needs to be updated to include "exploitation" to be consistent with A.R.S. § 46-454.
R6-6-1602	R6-6-1602 needs to be updated to include "exploitation" to be consistent with A.R.S. § 46-454.
R6-6-1603	R6-6-1603 needs to be updated to include "exploitation" to be consistent with A.R.S. § 46-454.
R6-6-2213	R6-6-2213 contains an inaccurate reference to the AHCCCS Office of Administrative Legal Services.
R6-6-2308	R6-6-2308 needs to be amended to conform to A.R.S. § 36-557 by adding day programs and employment services to the monitoring requirements.

**5. Are the rules enforced as written?**

**Yes No**

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.*

Rule	Explanation
NA	NA

**6. Are the rules clear, concise, and understandable? Yes No**

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
Article 1	The Department proposes some outdated definitions be removed or amended to reflect current health care law and practice. For example, the following definitions in R6-6-101 are outdated: “Behavior management,” “Case management,” “Community residential setting resident” or “resident,” “Cost of care,” “Cost of care portion,” “Direct care staff,” “Family support voucher,” “Individual service and program plan” or “ISPP,” “Individual service and program plan team” or “ISPP team,” “Least intrusive” or “least obtrusive,” “Lives independently,” “Main provider record,” “Medication error,” “Overcorrection,” “Physical restraint,” “Protective device,” “Residential service,” “Responsible party,” “Seclusion” or “locked time-out room,” “Service provider,” “Third-party liability,” “Third-party payor,” and “Time-out procedure.” Additionally, the term “Division” needs to be defined for clarity.
Article 6	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. R6-6-601 should be amended to reflect the current language of “Support Coordination” instead of “Case Management.” In addition, the Department proposes to update language and remove the provisions in R6-6-606 that are duplicative of A.R.S. § 36-560.
Article 8	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. The Department proposes to update the rules in this Article to reflect new terminology. The use of the term “licensee” is not the most appropriate term to describe the relationship between the Division and the party being monitored.

Article 9	The Department proposes to update the rules in this Article to reflect the most current evidenced based practices. The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Articles 10 and 11	The Department proposes to consolidate the rules in Articles 10 and 11 into Article 10. The Department proposes to amend the rules within Articles 10 and 11 to enhance clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 12	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. Appendix A: Cost of Care Portion Table is outdated due to changes in federal poverty guidelines.
Article 13	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 15	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. For example, the use of the term “licensee” is not the most appropriate term to describe the relationship between the Division and the party being monitored. The current rule does not mention the current practice that an employee or Individual Independent Provider may apply for a Good Cause Exception through the Arizona Board of Fingerprinting to be granted a Clearance Card under A.R.S. § 41-619(53).
Article 16	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 20	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 21	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current

	requirements.
Article 22	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.

**7. Has the agency received written criticisms of the rules within the last five years?**

**Yes No**

*If yes, please fill out the table below:*

<b>Commenter</b>	<b>Comment</b>	<b>Agency's Response</b>
NA	NA	NA

**8. Economic, small business, and consumer impact comparison:**

**General**

DDD provides high-quality supports and services for eligible people who have autism, cerebral palsy, epilepsy, or intellectual disability. DDD provides, or contracts to provide, a variety of services, depending on available funding and eligibility, including: attendant care, day treatment and training, habilitation, home health assistance, home nursing, home modifications, housekeeping, services in intermediate care facilities, medical services, services in nursing facilities, respiratory therapy, respite, occupational therapy, physical therapy, speech therapy, and non-emergency transportation.

**Funding**

DDD is funded through state appropriations, federal Medicaid monies from the ALTCS program through AHCCCS, charges for services, and other revenue.

State Only Funds refers to funding for the state’s program for persons with developmental disabilities who are not Medicaid-eligible. “Operating” refers to the money spent to operate or administer each program at the agency level, while “direct” refers to funding that is used directly for client services. The current funding breakdown is as follows:

<u>Arizona Long Term Care System</u>	<b>General Fund</b>	<b>Long Term Care System Fund</b>	<b>Total</b>
Total ALTCS	\$597,559,600	\$1,396,988,900	\$1,994,548,500

Appropriation			
ALTCS Operating	\$39,767,100	\$98,252,600	\$138,019,700
ALTCS Direct Services	\$557,380,400	\$1,298,736,300	\$1,856,116,700
<i>State Only</i>			
Total State-Only Appropriation	\$36,513,400	\$26,559,600	\$63,073,000
State-Only Operating	\$2,400,000	\$0	\$2,400,000
State-Only Direct Services	\$34,113,400	\$26,559,600	\$60,673,000
Total FY 2020 FTE Allocation	2,299.00		

1. Members

As of June 1, 2019, DDD was serving 42,504 clients, with the program breakdown as follows:

Family Home	37,774
Group Home	3,041
Adult Developmental Foster Home	1,301
Child Developmental Foster Home	186
Institutional	96
Coolidge	75
State-Operated Group Home	25
Assisted-Living Centers/Facilities	6
<b>Total</b>	<b>42,504</b>

## 2. Contractors

As of June 2019, DDD contracted with 566 HCBS Agencies and currently there are 1,209 Individual Providers. Currently there are 721 licensed Adult Developmental Foster Homes, and 306 licensed Child Developmental Foster Homes.

## 3. Employees

The total FY20 FTE allocation for DDD is 2,299.00.

## 4. Advocacy Organizations

Advocacy organizations that work on behalf of DDD members include The Arc of Arizona, Arizona Bridge to Independent Living, Arizona Center for Disability Law, Arizona Consortium for Children with Chronic Illness, Autism Society, Epilepsy Foundation of Arizona, Governor's Council on Developmental Disabilities, Pilot Parents of Southern Arizona, People First of Arizona, and Raising Special Kids. The Division also has member advocates on staff and publishes direct contact information for those employees on its website.

### **Previous Economic Impact Statements**

DDD has previously prepared economic impact statements for Articles 3 (Article 5 was repealed), 18, and 23. Economic Impact Statements were not completed on Articles 1, 4, 6, 8, 9, 10 (except R6-6-1004.01 through R6-6-1004.05), 11 (except R6-6-1104.01 through R6-6-1104.05), 12, 13, 16, 20, 21, and 22 because the rulemakings were exempt from the formal rulemaking process. Economic impact statements were not completed on R6-6-1004.01 through R6-6-1004.05 and R6-6-1104.01 through R6-6-1104.05 (adopted effective February 1, 1998); and Article 15 (adopted effective February 1, 1996) because the rulemakings were conducted prior to the requirement for an economic impact statement or were appropriately purged under public record requirements then in effect. The Department does not anticipate an economic impact for these rules as the rulemaking has been completed for some time.

### **Additional Economic Impact**

Overall, the rules in Chapter 6 have a positive economic impact because they explain to the public the requirements and procedures for accessing DDD services, interacting with DDD as a contractor, and serving as a licensed provider. The rules that are outdated or unclear create a negative economic impact, which the Department intends

to rectify by amending these rules, as outlined in this report. To mitigate the negative economic impact, DDD provides supplemental information to its clients through its website, public meetings, workgroups, publications, and other forms of communication.

Articles 1, 3, 4, 6, 8, 9, 12, 13, 16, 18, and 22

Articles 1, 3, 4, 6, 8, 9, 12, 13, 16, 18, and 22 directly impact DDD's 33,925 clients, their families, and advocates.

- Article 1 contains definitions, and addresses the rights of individuals with developmental disabilities, confidentiality, and appropriate environment guidelines for placements and programs. These rules impact all current and prospective clients and contracted providers of DDD.
- Article 3 provides eligibility criteria and contains guidelines for making developmental disability determinations.
- Article 4 describes the process for applying for services.
- Article 6 explains how developmental disabilities services are provided.
- Article 8 describes programmatic standards and contract monitoring for community residential settings.
- Article 9 addresses the Department's requirements for managing inappropriate behaviors.
- Article 12 provides guidelines for the cost of care portion for services for minor client's parents, cost of care portion from a client's estate or trust, special provisions for clients receiving residential services, billing and the review and appeal process for cost of care portion.
- Article 13 describes how coordination of benefits and third-party payments are handled by the Department.
- Article 16 explains how the Department handles allegations of abuse and neglect.
- Article 18 provides a method for review of Department decisions.
- Article 22 describes the process for appeals and hearings.

Articles 10, 11, 15, 20, and 21

Articles 10, 11, 15, 20, and 21 directly impact DDD's 2,496 contractors, and indirectly impact clients, families, and advocates.

- Article 10 describes the process for obtaining a child developmental foster home license.
- Article 11 describes the process for obtaining an adult developmental home license.
- Article 15 describes the requirements for HCBS certification.
- Article 20 explains the Department's contracting process.
- Article 21 describes the procurement process and rate setting for Qualified Vendors.

Although most of the rules in this Chapter are out of date and require revision, the Department communicates regularly with all of its stakeholders and provides comprehensive information to supplement these rules on its website. Because the rules contain outdated terms, references, and procedures, they may be confusing to stakeholders when read in conjunction with current policy and procedure, but the Department communicates regularly with its stakeholders and provides ample documentation to ensure stakeholders are adequately informed of current activities.

**9. Has the agency received any business competitiveness analyses of the rules?**

**Yes No**

**10. Has the agency completed the course of action indicated in the agency's previous five-year review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

In the previous Five-Year Review Report approved by the Council on December 15, 2015, the Department recommended changes to all Articles in Chapter 6. On July 16, 2014, the Department received an exemption to draft Article 23. On May 16, 2016, the Department received an exemption to proceed with rulemakings on eight Articles (Articles 3, 5, 9, 10, 11, 15, 18, and 21). On November 6, 2017, the Department received an exemption to proceed with rulemakings on Article 4. On May 31, 2018, the Department received an exemption to proceed with rulemakings on Article 20. The

Department amended Article 3 and repealed Article 5 effective August 24, 2018. The Department amended Article 18 effective January 27, 2018. Amendments to Article 4 were approved by the Governor's Regulatory Review Council on August 4, 2020. The Department has not yet made any decision regarding the amendment of Article 20. The draft Notices of Proposed Rulemaking on remaining Articles 9, 10, 11, 15, and 21 are in various stages of development. However, revisions to Article 10, 11, 15, and 21 have been delayed until the end of 2020 in an effort to prioritize DDD efforts to complete the transition of the integrated behavioral health contract and emergency preparedness regarding COVID-19. The Department did not take any action to revise Article 23 due to other competing priorities. The Department plans to request an exemption to proceed with Expedited rulemaking to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report by December 2020.

Progress on these Articles has been accomplished while balancing resource assignments and competing priorities primarily related to Medicaid funding. The Department is the AHCCCS program contractor responsible for the delivery of Medicaid services to individuals with developmental disabilities in Arizona. Between 2015 and 2020, implementing continuing changes in Medicaid requirements impacting the Department was a high priority in order not to jeopardize federal funding. Rulemaking was assigned to the same program unit that is responsible for updating program policy, which is an AHCCCS contract requirement. DDD has designated one position that is responsible to coordinate rule development along with other duties in the Policy Unit. DDD has recognized the lack of resources issues. Nevertheless, DDD is committed to timely implementation of the commitments made in this report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulator objectives. The amendment seeks to align the rule with statute and to make the rule more clear,

concise, and understandable to the public. Program subject matter experts indicate that the amendment to the rule, as proposed in this report, is the most cost-effective way to bring the Department into compliance with state requirements and ensure that the rules reflect current program practice.

**12. Are the rules more stringent than corresponding federal laws?      Yes    No**

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?*

The Department has determined that R6-6-401 and R6-6-1305 are more burdensome than, and in conflict with, corresponding federal statutes and regulations, including federal Privacy Act of 1974, 5 U.S.C. § 552a, because the federal law does not permit the use of members' SSNs by service providers when notifying DDD of third party liens or by applicants for DDD services.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that, because the licenses under Articles 8, 10, and 11 are issued under A.R.S. §§ 36-592, 36-594.01, 36-595, and 36-595.03, the exception in A.R.S. § 41-1037(A)(5) applies.

**14. Proposed course of action**

*If possible, identify a month and year by which the agency plans to complete the course of action.*

The Department plans to request an exemption to proceed with Expedited Rulemaking to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report by December 2020. The Department plans to submit the Notice of Final Expedited Rulemaking to the Governor's Regulatory Council to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report by August 2021. The Department plans to submit the Notices of Final Rulemaking to the Governor's Regulatory Council to amend Articles 9, 10, 11, 15, and 21 by December 2021. The Department plans to submit the Notices of Final

Rulemaking to the Governor's Regulatory Council to amend Articles 1 and 13 by December 2022.

At the October 6, 2020 Council Meeting, the Council returned the portion of the report related to the proposed course of action for Notice of Final Rulemaking to amend Articles 6, 8, 12, 16, 22, and 23 and approved the remainder of the report. As stated in the report, the Department plans to submit the Notice of Final Expedited Rulemaking to the Council to resolve inconsistencies with other rules and statutes in these Articles by August 2021. The Department plans to request a moratorium exception to proceed with regular rulemaking to amend these Articles by March 2022 to conform to current practice and terminology and to make the rules more clear, concise, and understandable. The Department plans to file the Notices of Docket Opening for these Articles by August 2022 and start the stakeholder engagement process to draft amendments to the rules.

Apart from the rules reviewed in this Report, the Department received a Moratorium exception from the Governor's Office on September 17, 2019 to promulgate new rules to implement A.R.S. § 36-568 (Group homes; intermediate care facilities; electronic monitoring; definition). The Department is drafting the Notice of Proposed Rulemaking for the new rules.

**DEPARTMENT OF REVENUE (O20-1201)**

Title 15, Chapter 10, Articles 3 & 5, Department of Revenue - General Administration



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 4, 2020

**SUBJECT: DEPARTMENT OF REVENUE (O20-1201)**  
Title 15, Chapter 10, Article 3, Authorized Transmission of Funds and Article 5,  
Electronic Filing Program

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### Summary

This One Year Review Report (1YRR) from the Department of Revenue (Department) relates to four rules in Title 15, Chapter 10, Article 3, Authorized Transmission of Funds, and Article 5, Electronic Filing Program. The rules under review address the following:

- R15-10-301 (Definitions);
- R15-10-302 (General Requirements);
- R15-10-501 (Definitions); and
- R15-10-505 (Electronic Signatures for Transaction Privilege and Use Tax).

As the Department explains in its Notice of Exempt Rulemaking for these rules, it amended them pursuant to Laws 2019, Ch. 273 (HB 2757). This rulemaking amended the rules and added new requirements to accommodate the needs of remote sellers and marketplace facilitators, who beginning on October 1, 2019, were required to become licensed with the Department and report and remit Arizona transaction privilege taxes if they meet dollar thresholds in retail sales to Arizona customers as established in HB 2757. In addition, the Department amended the rules to remove and clarify outdated and potentially confusing

language. The Notice of Exempt Rulemaking is included with these materials for the Council Members' review.

The Department submitted this 1YRR pursuant to A.R.S. § 41-1095.

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

Yes. The Department cites both general and specific statutory authority for the rules under review. The session law authorizing an exemption to the Department from the Administrative Procedure Act to make these rules is Laws 2019, Ch. 273, § 32.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department identifies stakeholders as the Department, marketplace facilitators, and remote sellers. The rules under review were exempt from the requirements of the Arizona Administrative Procedure Act and consequently have no Economic, Small business, and Consumer Impact Statement (EIS) for review. However, the Department considers the rules to be economically beneficial for the identified stakeholders. The requirement of marketplace facilitators and remote sellers to make TPT payments through electronic funds transfer and to file their TPT returns electronically, unless a waiver is granted, should reduce the time and labor costs in processing payments for the parties involved.

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

The Department states that the probable benefits of these rules outweigh the probable costs, and these rules impose the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

**4. Has the agency received any written criticisms of the rules since the rule was adopted?**

No. The Department did not receive any written criticisms of the rules since they were adopted.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department states that the rules under review are clear, concise, and understandable.

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

Yes. The Department states that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

10. **Has the agency completed any additional process required by law?**

The Department states that there is no additional process required by law. However, the Department states that it did post a draft version of the then proposed rules for public comment. The Department states that it did not receive any public comments. This information was included in the Department's Notice of Exempt Rulemaking submitted to the Secretary of State.

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

No. The rules under review do not require a permit, license, or agency authorization.

12. **Conclusion**

Council staff finds that the Department submitted an adequate report that meets the requirements of A.R.S. § 41-1095. The Department does not propose to take any action on these rules. Council staff recommends approval of this report.

September 29, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Ms. Nicole Sornsin, Chair Governor's  
Regulatory Review Council 100 North  
15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Revenue, Title 15 Revenue, Chapter 10 Department of  
Revenue – General Administration, Articles 3 and 5 One Year Review Report

Dear Ms. Sornsin:

Please find enclosed the One Year Review Report of the Department of Revenue for Title  
15 Revenue, Chapter 10 Department of Revenue – General Administration, Articles 3 and 5 which is due  
on October 1, 2020

Department of Revenue hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Christopher Dowsey at 602-716-6788 or  
[cdowsey@azdor.gov](mailto:cdowsey@azdor.gov).

Sincerely,

Dr. Grant Nülle  
Deputy Director

**ARIZONA DEPARTMENT OF  
REVENUE**

**1 YEAR REVIEW REPORT**

**Title 15 Revenue**

**Chapter 10 Department of  
Revenue General Administration**

**Articles 3 and 5**

**September 29, 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority:

- A.R.S. § 42-1003
- A.R.S. § 42-1005

Implementing Statute:

- A.R.S. § 42-1129 is the specific statute on which the following rules are based.

R15-10-301 Definitions

R15-10-302 General Requirements

- A.R.S. §§ 42-42-1105.02, and 42-1131 are the specific statutes on which the following rules are based.

R15-10-501 Definitions

R15-10-505 Electronic Signatures for Transaction Privilege and Use Tax

**2. The objective of each rule:**

Rule	Objective
R15-10-301	<i>(Definitions)</i> This rule defines terms used in the rules for the Department's authorized transmission of funds.
R15-10-302	<i>(General Requirements)</i> This rule sets forth the Department's general requirements for authorized transmission of funds.
R15-10-501	<i>(Definitions)</i> This rule defines terms used in the rules for the Department's electronic filing program.
R15-10-505	<i>(Electronic Signatures for Transaction Privilege and Use Tax)</i> This rule sets forth the Department's general requirements for a taxpayer to use electronic signatures when filing transaction privilege and use tax.

**3. Are the rules effective in achieving their objectives?**

Yes X No \_\_\_

The rules are effective in achieving their objectives.

**4. Are the rules consistent with other rules and statutes?**

Yes X No \_\_\_

The rules are consistent with other rules and statutes.

5. **Are the rules enforced as written?** Yes X No \_\_\_

The rules are enforced as written.

6. **Are the rules clear, concise, and understandable?** Yes X No \_\_\_

The rules are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules since the rules were adopted?** Yes \_\_\_ No X

The Department has not received written criticisms of the rules since the rules were adopted.

8. **The estimated economic, small business, and consumer impact of the rules:**

1. Rules in A.A.C. Title 15, Chapter 10, Article 3

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

However, these rules will likely be economically feasible for the marketplace facilitators, remote sellers, and The Department. The requirement of marketplace facilitators and remote sellers to make TPT payments through electronic funds transfer, unless there is a waiver granted, should reduce the time and labor costs in processing payments for these parties involved.

2. Rules in A.A.C. Title 15, Chapter 10, Article 5

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

However, these rules will likely be economically feasible for the marketplace facilitators, remote sellers, and The Department. The requirement of marketplace facilitators and remote seller to file their TPT returns electronically, unless there is a waiver granted, should reduce time spent filing and processing filing; thus, reducing labor costs for all parties involved.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

The Department has not received any business competitiveness analyses of the rules since the rules were adopted.

10. **Has the agency completed any additional process required by law?**

Although there are no additional processes required by law the Department posted a draft version of the then proposed rules for public comment. No substantive comments were received in relation to the change of the rules. This information was detailed in the Notice of Exempt Rulemaking submitted to the Arizona Secretary of State.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

After analysis, the probable benefits of these rules outweigh the probable costs of the rule, and these rules impose

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

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_\_\_ No X

There are no federal laws that apply or correspond to the rules being reviewed.

13. **For rules that require the issuance of a regulatory permit, license or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules being reviewed do not require the issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

These rules are currently being administered as intended with as little burden on the regulated persons. As such, these rules do not need any amending at this point in time.





nature, the following summary provides a rule-by-rule description of changes from the rules as they had existed before this rulemaking action:

R15-10-301 (Definitions). The rule is amended to add cross-references to the statutory definitions of “marketplace facilitator” and “remote seller.”

R15-10-302 (General Requirements). The rule is amended to require marketplace facilitators and remote sellers who meet or reasonably can expect to meet the threshold requirements in A.R.S. § 42-5044 on or after October 1, 2019 to make TPT payments through electronic funds transfer unless the Department grants them a waiver based on one of the conditions listed in A.R.S. § 42-1129.

R15-10-501 (Definitions). The rule is amended to add cross-references to the statutory definitions of “marketplace facilitator” and “remote seller.” Definitions have been conformed to rulemaking guidelines, eliminating potentially confusing inconsistencies in capitalization usage and internal cross-references.

R15-10-505 (Electronic Signatures for Transaction Privilege and Use Tax). The rule is amended to require marketplace facilitators and remote sellers who meet or reasonably can expect to meet the threshold requirements in A.R.S. § 42-5044 on or after October 1, 2019 to file returns electronically unless, pursuant to A.R.S. § 42-5014, the Department either grants them a waiver or instructs them to file by paper. Additionally, the rule is amended to conform to rulemaking guidelines, eliminating potentially confusing inconsistencies in capitalization usage and internal cross-references.

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

None

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

Not applicable

**9. Summary of the economic, small business, and consumer impact, if applicable:**

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

**10. Description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking, if applicable:**

Not applicable

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

Despite the exemption granted to HB 2757’s rulemaking, the Department posted a draft version of the rules included in this rulemaking for public review and feedback. The Department received no substantive comments for these rules during this period.

**12. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules:**

None

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

No

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

No

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

No

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

None

**14. Whether the rules were previously made, amended, or repealed as emergency rules (if so, state where the text changed between the emergency and final rulemaking packages):**

No

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

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE  
GENERAL ADMINISTRATION

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

Section  
R15-10-301. Definitions



R15-10-302. General Requirements

### ARTICLE 5. ELECTRONIC FILING PROGRAM

Section

R15-10-501. Definitions

R15-10-505. Electronic Signatures for Transaction Privilege and Use Tax

### ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

#### R15-10-301. Definitions

The following definitions apply for purposes of In this Article:

1. "ACH" means an automated clearing house that is a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.
2. "ACH credit" means an electronic funds transfer generated by a payor, cleared through an ACH for deposit to the Department account.
3. "ACH debit" means an electronic transfer of funds from a payor's account, as indicated on a signed authorization agreement, that is generated at a payor's instruction on AZTaxes.gov and cleared through an ACH for deposit to the Department account.
4. "Addenda record" means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R15-10-306(B).
5. "ALTO" is the Arizona Luxury Tax Online web site, luxury.aztaxes.gov or such other web site as the Department may determine from time to time, and means the Department's luxury taxpayer service center web site that provides luxury taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.
6. "Authorized means of transmission" means the deposit of funds into the Department account by electronic funds transfer.
7. "AZTaxes.gov" means the Department's taxpayer service center web site, or such other web site as the Department may determine from time to time, that provides taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.
8. "Cash Concentration or Disbursement plus" or "CCD plus" means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.
9. "Department" means the Arizona Department of Revenue.
10. "EFT Program" means the payment of taxes by electronic funds transfer as specified by this Article.
11. "Electronic Funds Transfer" or "EFT" means the electronic transfer of funds from one bank account to another via computer based systems, where the person initiating the transfer orders, instructs, or authorizes a financial institution to debit or credit an account using the methods specified in these rules.
12. "Financial institution" means a state or national bank, a trust company, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.
13. "Marketplace facilitator" has the same meaning as prescribed in A.R.S. § 42-5001.
- ~~13-14.~~ "Payment information" means the data that the Department requires of a payor making an electronic funds transfer payment.
- ~~14-15.~~ "Payor" means a taxpayer or payroll service.
- ~~15-16.~~ "Payroll service" means a third party, under contract with a taxpayer to provide tax payment services on behalf of the taxpayer.
17. "Remote seller" has the same meaning as prescribed in A.R.S. § 42-5001.
- ~~16-18.~~ "State Servicing Bank" means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.
- ~~17-19.~~ "Tax type" means a tax that is subject to electronic funds transfer, each of which shall be considered a separate category of payment.
- ~~18-20.~~ "Wire transfer" or "Fedwire" means an instantaneous electronic funds transfer initiated by a payor.

#### R15-10-302. General Requirements

- A. For tax periods beginning on or after January 1, 1997, corporations ~~which that~~ had an Arizona income tax liability during the prior tax year of \$20,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.
- B. For tax periods beginning on or after July 1, 2017, taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of \$5,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission.
- C. The average Arizona quarterly withholding tax liability is determined by dividing the taxpayer's total Arizona withholding tax liability for the calendar year by 4.
- D. For tax periods beginning on and after July 1, 2017, any taxpayer who under A.R.S. Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability during the prior calendar year of \$20,000 or more shall remit these tax payments by an authorized means of transmission.
- E. For tax periods after July 1, 2015, tobacco tax taxpayers are required to remit tobacco tax payments by an authorized means of transmission.
- F. Unless otherwise waived pursuant to A.R.S. § 42-1129, for tax periods beginning on or after the following tax years, any taxpayer, other than an individual income taxpayer, that had a tax liability equal to or more than the following amounts during the prior tax year or that can reasonably anticipate tax liability in the current tax year exceeding the following amounts, shall remit tax payments to the Department by an authorized means of transmission. For periods on or after:
  1. January 1, 2018, prior tax year or expected current year tax liability of \$20,000;
  2. January 1, 2019, prior tax year or expected current year tax liability of \$10,000;
  3. January 1, 2020, prior tax year or expected current year tax liability of \$5,000;
  4. January 1, 2021, prior tax year or expected current year tax liability of \$500.
- G. For tax periods beginning on and after October 1, 2019, marketplace facilitators and remote sellers who, at the time of registering for a transaction privilege tax license, can reasonably anticipate their tax liability will exceed the thresholds detailed in subsection (F)



above are required to remit any applicable taxes to the Department by an authorized means of transmission, unless granted a waiver pursuant to A.R.S. § 42-1129.

ARTICLE 5. ELECTRONIC FILING PROGRAM

R15-10-501. Definitions

In addition to the definitions provided in A.R.S. §§ 42-1101.01, 42-1103.01, 42-1103.02, 42-1103.03, and 42-1105.02, unless the context provides otherwise, the following definitions apply to this Article and to A.R.S. Title 42, Chapter 2:

- 1. "AZTaxes.gov" means the Department's taxpayer service center web site that provides taxpayers with the ability to conduct transactions and review tax account information over the internet.
2. "Authorized user" means an individual, primary user, or delegate user, including a return preparer or electronic return preparer as defined in A.R.S. § 42-1101.01, who has been granted authority by the taxpayer, an owner of the taxpayer or an authorized officer of the taxpayer to access taxpayer information available on the AZTaxes.gov web site.
3. "Bulk Transmitter" is an Electronic Return Transmitter electronic return transmitter that submits multiple electronic returns, statements or other documents to the Department for filing or processing at one time.
4. "Delegate User user" means any a registered customer of the AZTaxes.gov web site, other than a primary user, who is authorized by a taxpayer, an owner of the taxpayer or an authorized officer of the taxpayer to access the taxpayer's account information on AZTaxes.gov. A Delegate User that user who uses a PIN to sign and file transaction privilege or use tax returns on behalf of a taxpayer shall be presumed to be authorized by that taxpayer to take such action on behalf of the taxpayer.
5. "Department" means the Arizona Department of Revenue.
6. "Electronic return preparer" has the same meaning as prescribed in A.R.S. § 42-1101.01.
7. "Electronic return, statement or other document" means all data entered into a return, statement, or other document that is prepared using computer software and transmitted electronically to the Department.
8. "Electronic return transmitter" includes a person who is part of the chain of transmission of an electronic return, statement, or other document from the taxpayer or from an electronic return preparer to the Department even though the person did not receive the transmitted return, statement, or other document directly from the taxpayer or electronic return preparer.
9. "Electronic signature" means the electronic method or process as defined in A.R.S. § 41-132 has the same meaning as prescribed in A.R.S. § 18-106.
10. "License" means one or more transaction privilege, use, or withholding tax licenses or registrations obtained from the Department by completing and submitting a mail-in Arizona Joint Tax Application paper application or by completing the online AZTaxes.gov business registration process and, where applicable, submitting an executed AZTaxes.gov Registration Signature Card.
11. "Marketplace facilitator" has the same meaning as prescribed in A.R.S. § 42-5001.
12. "PIN" means a Self Select Personal Identification Number user-created personal identification number made up of a prescribed number of characters and used as an electronic signature to sign returns, statements or other documents submitted to the Department through AZTaxes.gov; or by any other electronic means.
13. "Primary User user" means the taxpayer, an owner of the taxpayer or any authorized officer of the taxpayer who registers to use AZTaxes.gov. A Primary User primary user has the unlimited ability to access the taxpayer's online accounts, conduct online transactions for the taxpayer, designate Delegate Users delegate users, specify the level of access granted to a Delegate User delegate user and modify or terminate the access of any Delegate User delegate user.
14. "Registered customer" means any individual that who has, by means of providing specific information requested by the Department through its the AZTaxes.gov web site registration process, obtained selected a username and password entitling that taxpayer individual to conduct transactions and access information through the AZTaxes.gov web site.
15. "Remote seller" has the same meaning as prescribed in A.R.S. § 42-5001.
16. "Return preparer" has the same meaning as prescribed in A.R.S. § 42-1101.01.

R15-10-505. Electronic Signatures for Transaction Privilege and Use Tax

- A. As a registrant for AZTaxes.gov, a taxpayer, primary user or delegate user shall do the following to become a registered customer of the AZTaxes.gov web site for transaction privilege and use tax purposes:
1. Provide his the registrant's legal name and e-mail address,
2. Create a unique username and password which shall be used to gain entitling the registrant access to AZTaxes.gov web site,
3. Select a prescribed number of security questions and submit their answers,
4. Create a PIN, and
5. Agree to the Department's Terms of Service.
B. By registering as becoming a registered customer of the AZTaxes.gov website or by and continuing to use the AZTaxes.gov website, the taxpayer, primary user or delegate user registrant declares that:
1. The information provided during the AZTaxes.gov registration process is accurate and complete, and
2. If a mail-in paper application was previously submitted, the information contained in the Arizona Joint Tax Application application is accurate and complete.
C. A taxpayer that has not obtained a transaction privilege or use tax license from the Department shall obtain a license by completing either the mail-in Arizona Joint Tax Application paper application or the AZTaxes.gov online application. From and after January 9, 2016, a taxpayer, primary user or delegate user may use his the PIN created pursuant to subsection (A)(4) to electronically sign the taxpayer's online Arizona Joint Tax application.
D. A Delegate User delegate user shall do the following to become associated with a taxpayer on the AZTaxes.gov web site:
1. Provide answers to prescribed questions about the taxpayer if the taxpayer has a license, or
2. Complete the online or mail-in Joint Tax Application paper application and provide answers to prescribed questions about the taxpayer.



- ~~D.E.~~ If filing a taxpayer's transaction privilege or use tax return by electronic means, an ~~Authorized User~~ authorized user of the ~~AZTaxes.gov web site~~ shall, from and after July 5, 2016, use ~~his~~ the authorized user's PIN to electronically sign a taxpayer's electronic transaction privilege, ~~tax~~ or use tax returns. By using ~~his~~ the PIN, the ~~Authorized User is making a declaration;~~ authorized user declares under penalties of perjury that the electronic return is, to the best of ~~his~~ the authorized user's knowledge and belief, true, correct, and complete.
- ~~E.E.~~ To file an electronic transaction privilege or use tax return under subsection (~~D~~) (E) above, a taxpayer, primary user, or delegate user preparing the electronic return may access ~~the AZTaxes.gov website or other website~~ and electronically file the return after signing the return with ~~his~~ the PIN created under subsection (A)(4).
- ~~F.G.~~ From and after July 5, 2016, unless otherwise required by Article 3 of this Title and Chapter, an ~~Authorized User of the AZTaxes.gov website~~ authorized user may pay its transaction privilege and use tax liability by electronic check.
- ~~G.H.~~ For tax periods beginning on or after the following years, any taxpayer ~~who that~~, under A.R.S. Title 42 Chapters 5 and 6, had total annual tax liability of at least the following amounts during the prior tax year or can reasonably anticipate that its current year tax liability will exceed the following amounts, shall, unless otherwise waived pursuant to A.R.S. § 42-5014, file the required return using an electronic filing program established by the Department. For periods on or after:
1. January 1, 2018, prior tax year or expected current year total tax liability of \$20,000;
  2. January 1, 2019, prior tax year or expected current year total tax liability of \$10,000;
  3. January 1, 2020, prior tax year or expected current year total tax liability of \$5,000;
  4. January 1, 2021, prior tax year or expected current year total tax liability of \$500.
- ~~I.~~ For tax periods beginning on and after October 1, 2019, marketplace facilitators and remote sellers who, at the time of registering for a transaction privilege tax license, can reasonably anticipate their tax liability will exceed the thresholds detailed in subsection (G) above shall, unless granted a waiver or if instructed to file by paper by the Department pursuant to A.R.S. § 42-5014, file the required return using an electronic program established by the Department.
- ~~H.J.~~ Any taxpayer ~~who that~~, under A.R.S. Title 42 Chapters 5 and 6, was required to file a return using an electronic filing program pursuant to subsection (~~G~~) (H) or (I) of this rule and that fails to do so after notice and demand by the Department shall, unless reasonable cause exists, be subject to the penalty imposed under A.R.S. § 42-1125(X) and (Y).

42-1003. Department organization; director's staff; deputy director; assistant directors; fingerprinting; consumer reports; definition

- A. The department consists of such divisions as the director deems necessary to achieve maximum efficiency, economy and effectiveness in administering and collecting taxes. The departmental organization shall provide for administering taxes as prescribed by law and for administrative services to the department, including data processing, accounting, records management, publications, collection of delinquent accounts, personnel services and budget and property control.
- B. The director may divide the state into a reasonable number of districts and establish a full-time or part-time branch office or offices in each district as may be necessary. In establishing districts and branch offices, the director shall give due consideration to economy of administration and service to the taxpayers.
- C. The director may employ, appoint and remove, in the manner prescribed by law, such officers, agents, branch office deputies and other staff personnel as the director deems necessary to assist in administering the department. The director's staff may perform such functions as the director prescribes, including budget development, legal research and analysis, tax research, departmental audit and public relations.
- D. A deputy director of the department may be appointed by the director with the approval of the governor. The deputy director, if appointed, serves at the pleasure of the director with the approval of the governor. The deputy director shall assist the director in administering the department and has the duties and responsibilities as the director assigns.
- E. The director, with the approval of the governor, may appoint an assistant director to head each division of the department. Any assistant director appointed is directly responsible for the functions performed by the assistant director's division. Each assistant director serves at the pleasure of the director with the approval of the governor.
- F. The director may appoint other deputies or assistants to conduct hearings, prescribe administrative rules or perform any other duty prescribed for the department by law.
- G. The director may require officers, agents, deputies and other employees designated by the director to give bond for the faithful performance of their duties in such an amount and with such sureties as the director determines or as prescribed by statute. The department shall pay all premiums on the bonds out of monies appropriated for the administration of the department.
- H. The director and officers and employees designated by the director may administer an oath to any person or take the acknowledgement of any person in respect of any return or report required by law or the administrative rules of the department.
- I. The director may reassign the administration of taxes and may assign and delegate the duties, powers and functions of the department among its divisions in order to achieve maximum efficiency, economy and effectiveness. The director or the deputy director, if any, shall enforce cooperation among the divisions in the provision and integration of all functions at all levels of the department.
- J. The director may obtain a state and federal criminal records check for an applicant for employment for the purpose of hiring personnel or for any employee, contractor or temporary employee as required by internal revenue service guidelines or any other federal guidelines. Before making a final offer of employment or for purposes of screening an employee or contractor, the director shall require the preferred applicants, employees or contractors to submit a full set of fingerprints. The director shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The department of revenue may disclose information obtained pursuant to this subsection only to members of the department's staff solely for employment purposes. An applicant, employee, contractor or temporary employee is not disqualified from employment under this subsection except in accordance with section 13-904, subsection E.

K. The director may obtain a consumer report for an applicant for employment for the purpose of hiring personnel whose job duties include the distribution of tax revenues pursuant to this title and title 43. Consumer report information may be obtained and used only in accordance with the fair credit reporting act (P.L. 90-321; 84 Stat. 1128; 15 United States Code sections 1681 through 1681x). The consumer report information shall not be the sole reason for the disqualification of the applicant.

L. For the purposes of this section, "applicant" means any person who seeks employment as a new hire or any employee of the department who seeks a transfer, a reclassification or a reassignment to a different position.

#### 42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.
2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.
3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.
4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.
5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.
6. Provide such assistance to the governor and the legislature as they may require.
7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

#### 42-1129. Payment of tax by electronic funds transfer

A. The department may require by rule, consistent with the state treasurer's cash management policies, that any tax administered pursuant to this article, except for individual income tax or as required under section 42-3053, be paid on or before the payment date prescribed by law in monies that are immediately available to this state on the date of the transfer as provided by subsection B of this section by any taxpayer that owes:

1. \$20,000 or more for any taxable year beginning before January 1, 2019.
2. \$10,000 or more for any taxable year beginning from and after December 31, 2018 through December 31, 2019.
3. \$5,000 or more for any taxable year beginning from and after December 31, 2019 through December 31, 2020.
4. \$500 or more for any taxable year beginning from and after December 31, 2020.

B. A payment in immediately available monies shall be made by electronic funds transfer, with the state treasurer's approval, that ensures the availability of the monies to this state on the date of payment.

C. A taxpayer may apply to the director, on a form prescribed by the department, for an annual waiver from the electronic payment requirement prescribed by subsection B of this section. The application must be received by the department on or before December 31. The director may grant the waiver, which may be renewed, if any of the following applies:

1. The taxpayer has no computer.
2. The taxpayer has no internet access.
3. Any other circumstance considered to be worthy by the director exists, including the taxpayer having a sustained record of timely payments and no delinquent tax account with the department.

D. The taxpayer shall furnish evidence as prescribed by the department that an electronic payment was remitted on or before the due date.

E. A taxpayer who is required to pay by electronic funds transfer but who fails to do so may be subject to the civil penalties prescribed by section 42-1125, subsection O.

F. A failure to make a timely payment in immediately available monies as prescribed pursuant to this section is subject to the civil penalties prescribed by section 42-1125, subsection D.

#### 42-1105.02. Date of filing by electronic means; definitions

A. Any return, statement or other document that is electronically filed pursuant to an electronic filing program established by the department shall be deemed filed and received by the department on the date of the electronic postmark. If the taxpayer and the electronic return preparer or the electronic return transmitter are in different time zones, it is the taxpayer's time zone, as determined by the taxpayer's address, that controls the timeliness of the electronically filed return, statement or other document. When a return, statement or other document has been electronically received on the host system of more than one electronic return preparer or electronic return transmitter during its ultimate transmission to the department, the return, statement or other document shall be deemed filed and received by the department on the date of the earliest electronic postmark.

B. Any return, statement or other document that is filed under subsection A of this section and that is not received by the department shall be deemed filed and received on the date of the electronic filing, as evidenced by the electronic postmark if the sender:

1. Establishes the date of the electronic filing.
2. Files a duplicate filing with the department within ten days after the department notifies the sender in writing of the nonreceipt of the filing.

C. If the due date of any return, statement or other document filed under subsection A of this section falls on a Saturday, Sunday or legal holiday, the filing shall be considered timely if it is performed on the next business day.

D. In this section, unless the context otherwise requires:

1. "Electronic filing program" means any program established by the department that authorizes the electronic filing of a return, statement or other document.
2. "Electronic postmark" means a record of the date and time in a particular time zone that the return, statement or other document is electronically received on the host system of the electronic return preparer or electronic return transmitter that participates in the transmission of the electronic return, statement or other document to the department.

42-1131. Electronic signatures; definition

A. The department shall accept or require an electronic signature to serve as a functional equivalent of a written signature on a document that is submitted to the department. The electronic signature has the same force and effect as a written signature.

B. An electronic signature must meet all of the following requirements:

1. Be executed or adopted by a person with the intent to sign the document so as to indicate the person's approval of the information contained in the document.
2. Be attached to or logically associated with the information contained in the document being signed.
3. Be capable of reliable identification and authentication of the person as the signer. Identification and authentication may be accomplished through additional security procedures or processes if reliably correlated to the electronic signature.
4. Be linked to the document in a manner that would invalidate the electronic signature if the document is changed.
5. Be linked to the document so as to preserve its integrity as an accurate and complete record for the full retention period of the document.
6. Be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by state governments.

C. For documents that are signed electronically, the department shall prescribe the following:

1. The type of electronic signature required.
2. The manner and format in which the electronic signature must be affixed to the electronic record.

D. Notwithstanding any other provision of this section, the department's use and acceptance of electronic signatures are subject to the standards and requirements of title 44, chapter 26, article 3.

E. For the purposes of this section, "electronic signature" has the same meaning prescribed in section 44-7002.

**DEPARTMENT OF REVENUE**

Title 15, Chapter 5, Articles 1, 18, 20, 22 & 23, Department of Revenue - Transaction Privilege and Use Tax Section



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** December 1, 2020

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

**FROM:** Council Staff

**DATE:** November 9, 2020

**SUBJECT: DEPARTMENT OF REVENUE**  
Title 15, Chapter 5, Articles 1, 18, 20, 22 & 23

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### Summary

This One-Year Review Report (1YRR) from the Department of Revenue (Department) relates to 28 rules in Title 15, Chapter 5, Articles 1, 18, 20, 22, and 23 related to implementation of the Transaction Privilege and Use Tax Section.

As described in the Department's Notice of Exempt Rulemaking, included with the final materials for the Council's reference, the relevant rulemaking amended existing rules and introduced new rules to accommodate the needs of remote sellers and marketplace facilitators who, beginning October 1, 2019, were required to become licensed with the Department and report and remit Arizona transaction privilege taxes (TPT) if they meet the dollar thresholds in retail sales to Arizona consumers that are established by Laws 2019, 1st Reg. Sess., Ch. 273 ("HB 2757"). Additionally, the rulemaking repealed or updated outmoded, redundant, or potentially confusing language that diminished the utility of rules that are applicable to remote sellers, marketplace facilitators, and other taxpayers.

Before the enactment of HB 2757, liability for state and local privilege taxes was based on a taxpayer's physical presence in Arizona, rather than the level of gross sales with Arizona consumers. Consequently, in addition to introducing new provisions addressing the criteria for transaction privilege tax liability, liability relief provisions for remote sellers and marketplace

facilitators and filing methodology, the Department reviewed its existing rules on retail sales and reporting and filing requirements and amended or repealed language to accurately reflect its current position vis-à-vis all taxpayers, including remote sellers and marketplace facilitators.

An exhaustive list of the amendments to the 28 rules at issue can be found in Section 6 of the Department's Notice of Exempt Rulemaking.

The Department submitted this 1YRR pursuant to A.R.S. § 41-1095.

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

Yes. The Department cites both general and specific statutory authority for the rules under review. The session law authorizing an exemption to the Department from the Administrative Procedure Act to make these rules is Laws 2019, Ch. 273, § 32.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, these rulemakings are exempt from the requirements of the Arizona Administrative Procedure Act (APA) and no economic, small business, and consumer impact statement is required.

However, the rules have had a significant economic impact. These rules help outline how marketplace facilitators and remote sellers are liable for transaction privilege tax. The implementation of these rules generated a significant amount of revenue for Arizona while creating a system that is efficient for marketplace facilitators, remote sellers, and the Department. Since October 1, 2019, the Department has brought in more than \$467 million in TPT from over 4,500 remote sellers and marketplace facilitators. In fiscal year 2020, the Department collected over \$278.7 million and over \$128.6 million towards the General Fund. *See* First Year of Remote Seller and Marketplace Facilitator Tax Collection, Arizona Department of Revenue (Nov. 5, 2020), <https://azdor.gov/news-events-notices/news/first-year-remote-seller-and-marketplace-facilitators-tax-collection>.

Stakeholders are the Department, the marketplace facilitators, and the remote sellers.

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

The Department believes that the probable benefits of these rules outweigh the probable costs of the rule, and these rules impose the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

In performing the cost-benefit analysis, the Department indicates it analyzed the rules at issue using two criteria: 1) do the rules discriminate against or unduly burden remote sellers and marketplace facilitators; and 2) do the rules set a framework to easily administer the implementation of the remote seller and marketplace facilitator laws.

The Department indicates the reasoning behind these two parameters for analysis of the rules is to avoid costly litigation for either Arizona or the new taxpayers. The Department indicates Laws 2019, 1st Reg. Sess., Ch. 270 § 33 provides the legislative intent behind the remote seller/marketplace facilitator laws was to conform to the ruling in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018). In *Wayfair*, the Court held that an economic presence can create a sufficient basis for taxation. The bill provided for the adoption of provisions on economic nexus, safe harbor and undue burden. The Dormant Commerce Clause of the U.S. Constitution does not allow states to discriminate against interstate commerce nor can they unduly burden interstate commerce. As such, the Department indicates that many of the rules simply add remote sellers and marketplace facilitators to rules that are in place for Arizona businesses, thus, staying in compliance with the legislative intent and Dormant Commerce Clause.

Additionally, the Department indicates rules that have been created outside of adding remote sellers and marketplace facilitators to the rules already in place for Arizona businesses are intended to make the transition to being liable for TPT as seamless as possible. The Department also notes, to provide even greater assistance to new taxpayers who may be unfamiliar with Arizona's TPT structure, the Department has developed supplemental resources, including a ruling on the sourcing of retail sales (Arizona Transaction Privilege Tax Ruling TPR 20-2), and a website dedicated to remote sellers and marketplace facilitators (<https://azdor.gov/transaction-privilege-tax/retail-sales-subject-tpt/out-state-sellers>).

**4. Has the agency received any written criticisms of the rules since the rule was adopted?**

No. The Department did not receive any written criticisms of the rules since they were adopted.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department states that the rules under review are clear, concise, and understandable.

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

Yes. The Department states that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

10. **Has the agency completed any additional process required by law?**

The Department states that there are no additional processes required by law. However, the Department states that it posted a draft version of the then proposed rules for public comment. The Department indicates comments were made during the public comment period and certain comments were incorporated into the rules. This information was detailed in the Department's Notice of Exempt Rulemaking submitted to the Arizona Secretary of State and included with the final materials for the Council's reference.

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

No. The rules under review do not require a permit, license, or agency authorization.

12. **Conclusion**

Council staff finds that the Department submitted an adequate report that meets the requirements of A.R.S. § 41-1095. The Department does not propose to take any action on these rules. Council staff recommends approval of this report.

September 29, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Ms. Nicole Sornsin, Chair Governor's  
Regulatory Review Council 100 North  
15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Revenue, Title 15 Revenue, Chapter 5 Department of  
Revenue – Transaction Privilege and Use Tax Section, Articles 1, 18, 20, 22, and  
23 One Year Review Report

Dear Ms. Sornsin:

Please find enclosed the One Year Review Report of the Department of Revenue for Title  
15 Revenue, Chapter 5 Department of Revenue – Transaction Privilege and Use Tax Section, Articles 1,  
18, 20, 22, and 23 which is due on October 1, 2020

Department of Revenue hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Christopher Dowsey at 602-716-6788 or  
[cdowsey@azdor.gov](mailto:cdowsey@azdor.gov).

Sincerely,

Dr. Grant Nülle  
Deputy Director

**ARIZONA DEPARTMENT OF  
REVENUE**

**1 YEAR REVIEW REPORT**

**Title 15 Revenue**

**Chapter 5 Department of  
Revenue Transaction Privilege  
and Use Tax Section**

**Articles 1, 18, 20, 22 and 23**

**September 29, 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority:

- A.R.S. § 42-1003
- A.R.S. § 42-1005

Implementing Statute:

1. A.R.S. § 42-5061 is the specific statute in which the following rules are based.

R15-5-101 Definitions  
R15-5-102 Casual Sales or Activities  
R15-5-107 Sales for Resale or Lease  
R15-5-111 Consignment Sale  
R15-5-112 Sales by Auctioneers  
R15-5-151 Artists and Sale of Artwork  
R15-5-155 Delivery Sales of Tobacco Products

2. A.R.S. §§ 42-5003, 42-5042, 5043, and 42-5044 are the specific statutes in which the following rules are based.

R15-5-2001 Renumbered  
R15-5-2002 Liability for Transaction Privilege Tax  
R15-5-2003 Applicability of Provisions to Marketplace Facilitators and Remote Sellers  
R15-5-2004 Multi-Location or Multi-Business Taxpayers  
R15-5-2009 Transactions Between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers

3. A.R.S. § 42-5003 is the specific statute in which the following rules are based.

R15-5-2201 Display and Issuance of License  
R15-5-2202 Change in Ownership  
R15-5-2204 Change in Business Location or Mailing Address  
R15-5-2205 Surrender of License upon Sale or Termination of Business  
R15-5-2206 Cancellation of License  
R15-5-2207 Taxpayer Bonds  
R15-5-2212 Reporting by Marketplace Facilitators and Remote Sellers  
R15-5-2213 Repealed  
R15-5-2215 Return and Payment of Estimated Tax  
R15-5-2216 Liability Relief for Marketplace Facilitators and Remote Sellers  
R15-5-2217 Reasonable Cause for Waiver of Civil Penalties

R15-5-2220 Repealed

4. A.R.S. §§ 42-5155, and 42-5167 are the specific statutes in which the following rules are based.

R15-5-2301 Definitions

R15-5-2302 General

R15-5-2310 Payment of Use Tax of Purchaser

R15-5-2350 Repealed

**2. The objective of each rule:**

Rule	Objective
R15-5-101	<i>(Definitions)</i> This rule defines terms used in the rules for the retail classification of transaction privilege tax.
R15-5-102	<i>(Casual Activities or Sales)</i> This rule sets forth what is a causal activity or sale.
R15-5-107	<i>(Sales for Resale or Lease)</i> This rule defines a sale for resale or leased in the regular course of business.
R15-5-111	<i>(Consignment Sale)</i> This rule sets forth the taxable party in a consignment sale.
R15-5-112	<i>(Sales by Auctioneers)</i> This rule sets forth the taxable party in an auction sale.
R15-5-151	<i>(Artists and Sales of Artwork)</i> This rule sets forth the taxability of the sales of artists and the certain artworks in which they sell.
R15-5-155	<i>(Delivery Sales of Tobacco Products)</i> This rule prohibits the sale of tobacco products for delivery.
Article 18	<i>(Repealed)</i> The rules in this article had all been previously repealed or renumbered, as such, this Article was renamed from “Sales Tax – Retail Classification” to “Repealed.”
Article 20	<i>(General Administration)</i> This Article was renamed from “General” to “General Administration.”
R15-5-2001	Renumbered
R15-5-2002	<i>(Liability for Transaction Privilege Tax)</i> This rule provides the general liability for transaction privilege tax on a person engaged in a taxable activity in or within Arizona.
R15-5-2003	<i>(Applicability of Provisions to Marketplace Facilitators and Remote Sellers)</i> This rule sets forth that only Articles 1, 20 and 22 apply to marketplace facilitators and remote sellers.
R15-5-2004	<i>(Multi-Location and Multi-Business Taxpayers)</i> This rule sets forth how multi-location and multi-business are required to report transaction privilege tax.
R15-5-2009	<i>(Transactions Between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers)</i> This rule prescribes that affiliated persons sales should be aggregated for purposes of meeting the marketplace facilitator or remote seller threshold.
R15-5-2201	<i>(Display and Issuance of License)</i> This rule sets forth that a person who maintains a place of business in Arizona, that they must display their license in their business.
R15-5-2202	<i>(Change in Ownership)</i> This rule prescribes that transaction privilege tax licenses are non-transferrable.
R15-5-2204	<i>(Change in Business Location or Mailing Address)</i> This rule prescribes a business must obtain a new license if it’s physical location changes.
R15-5-2205	<i>(Surrender of License upon Sale or Termination of Business)</i> This rule gives notice that a business must surrender their transaction privilege tax license if they sell or terminate their business.
R15-5-2206	<i>(Cancellation of License)</i> This rule sets forth when a business may cancel their transaction privilege tax license.
R15-5-2207	<i>(Taxpayer Bonds)</i> This rule prescribes when a taxpayer is required to obtain a surety bond.
R15-5-2212	<i>(Reporting by Marketplace Facilitators and Remote Sellers)</i> This rule prescribes how a

	marketplace facilitator and remote seller must report and remit transaction privilege tax owed.
R15-5-2213	Repealed
R15-5-2215	<i>(Return and Payment of Estimated Tax)</i> This rule sets forth when a business is required to make an annual estimated tax payment.
R15-5-2216	<i>(Liability Relief for Marketplace Facilitators and Remote Sellers)</i> This rule prescribes when marketplace facilitators and remote sellers are able to obtain liability relief.
R15-5-2217	<i>(Reasonable Cause for Waiver of Civil Penalties)</i> This rule describes the circumstances that may be considered reasonable cause to waive certain civil penalties on a failure to pay a required amount of transaction privilege tax.
R15-5-2220	Repealed
R15-5-2301	<i>(Definitions)</i> This rule sets forth the definitions for use tax.
R15-5-2302	<i>(General)</i> This rule prescribes the general imposition of use tax.
R15-5-2310	<i>(Payment of Use Tax by Purchaser)</i> This rule prescribes who use tax must be paid to.
R15-5-2350	Repealed

3. **Are the rules effective in achieving their objectives?** Yes X No \_\_\_

The rules are effective in achieving their objectives.

4. **Are the rules consistent with other rules and statutes?** Yes X No \_\_\_

The rules are consistent with other rules and statutes.

5. **Are the rules enforced as written?** Yes X No \_\_\_

The rules are enforced as written.

6. **Are the rules clear, concise, and understandable?** Yes X No \_\_\_

The rules are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules since rules were adopted?** Yes \_\_\_ No X

The Department has not received written criticisms of the rules since the rules were adopted.

8. **The estimated economic, small business, and consumer impact of the rules:**

1. Rules in A.A.C. Title 15, Chapter 5, Article 1

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

However, the rules have had a significant economic impact. These rules help outline how marketplace facilitators and remote sellers are liable for transaction privilege tax. The implementation of these rules generated a significant amount of revenue for Arizona while creating a system that is efficient for marketplace facilitators, remote sellers and the Department.

2. Rules in A.A.C. Title 15, Chapter 5, Article 20

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

However, the rules have had a significant economic impact. These rules help outline how marketplace facilitators and remote sellers are liable for transaction privilege tax. The implementation of these rules generated a significant amount of revenue for Arizona while creating a system that is efficient for marketplace facilitators, remote sellers and the Department.

3. Rules in A.A.C. Title 15, Chapter 5, Article 22

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

However, the rules have had a significant economic impact. These rules help outline how marketplace facilitators and remote sellers are liable for transaction privilege tax. The implementation of these rules generated a significant amount of revenue for Arizona while creating a system that is efficient for marketplace facilitators, remote sellers and the Department.

4. Rules in A.A.C. Title 15, Chapter 5, Article 23

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

However, the rules have had a significant economic impact. These rules help outline how marketplace facilitators and remote sellers are liable for transaction privilege tax. The implementation of these rules generated a significant amount of revenue for Arizona while creating a system that is efficient for marketplace facilitators, remote sellers and the Department.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

The Department has not received any business competitiveness analyses of the rules.

10. **Has the agency completed any additional process required by law?**

Although there are no additional processes required by law the Department posted a draft version of the then proposed rules for public comment. Comments were made during the public comment period and certain comments were incorporated into these rules. This information was detailed in the Notice of Exempt Rulemaking submitted to the Arizona Secretary of State.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

After analysis, the probable benefits of these rules outweigh the probable costs of the rule, and these rules impose the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

There are no federal laws that apply or correspond to the rules being reviewed.

**13. For rules that require the issuance of a regulatory permit, license or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules being reviewed do not require the issuance of a regulatory permit, license or agency authorization.

**14. Proposed course of action**

These rules are currently being administered as intended with as little burden on the regulated persons. As such, these rules do not need any amending at this point in time.

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## NOTICES OF EXEMPT RULEMAKING

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This section of the *Arizona Administrative Register* contains Notices of Exempt Rulemaking.

It is not uncommon for an agency to be exempt from all steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act (APA) or Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10.

An agency's exemption is either written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters; or a court has

determined that an agency, board or commission is exempt from the rulemaking process.

The Office makes a distinction between certain exemptions as provided in these laws, on a case by case basis, as determined by an agency. Other rule exemption types are published elsewhere in the *Register*.

Notices of Exempt Rulemaking as published here were made with no special conditions or restrictions; no public input; no public hearing; and no filing of a Proposed Exempt Rulemaking.

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### NOTICE OF EXEMPT RULEMAKING TITLE 15. REVENUE CHAPTER 5. DEPARTMENT OF REVENUE TRANSACTION PRIVILEGE AND USE TAX SECTION

[R19-207]

#### PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R15-5-101	Renumber
R15-5-101	Amend
R15-5-102	Amend
R15-5-107	Renumber
R15-5-111	Amend
R15-5-112	Amend
R15-5-151	Amend
R15-5-155	New Section
Article 18	Amend
Article 20	Amend
R15-5-2001	Renumber
R15-5-2002	Amend
R15-5-2003	New Section
R15-5-2004	Amend
R15-5-2009	New Section
R15-5-2201	Amend
R15-5-2202	Amend
R15-5-2204	Amend
R15-5-2205	Amend
R15-5-2206	Amend
R15-5-2207	Amend
R15-5-2212	New Section
R15-5-2213	Repeal
R15-5-2215	Amend
R15-5-2216	New Section
R15-5-2217	New Section
R15-5-2220	Repeal
R15-5-2301	Amend
R15-5-2302	Amend
R15-5-2310	Amend
R15-5-2350	Repeal

**2. Citations to the agency's statutory rulemaking authority, including the authorizing state (general), the implementing statute (specific), and the statute or session law authorizing the exemption:**

Authorizing statute: A.R.S. §§ 42-1003(F), 42-1005(A)(1); Laws 2019, 1st Reg. Sess., Ch. 273, § 32.

Implementing statute: A.R.S. §§ 42-3004(1), 42-5009(C); Laws 2019, 1st Reg. Sess., Ch. 273, §§ 6, 32.

Statute or session law authorizing the exemption: Laws 2019, 1st Reg. Sess., Ch. 273, § 32.

**3. Effective date of the rules and the agency's reason it selected the effective date:**

October 1, 2019

The effective date of the rules is October 1, 2019, which the Department has selected because it falls after the August 27, 2019, general effective date applicable to the underlying legislation and coincides with the start of the first filing period for affected taxpayers on October 1, 2019.

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

None

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

Name: Lisa Querard, Research and Policy Administrator  
Address: Department of Revenue  
1600 W. Monroe St., Mail Code 1300  
Phoenix, AZ 85007  
Telephone: (602) 716-6813  
Fax: (602) 716-7996  
E-mail: lquerard@azdor.gov  
Website: www.azdor.gov

**6. Agency's justification and reason why rules should be made, amended, repealed, or renumbered, including an explanation about the rulemaking:**

This rulemaking amends existing rules and introduces new rules to accommodate the needs of remote sellers and marketplace facilitators who, beginning October 1, 2019, are required to become licensed with the Department and report and remit Arizona transaction privilege taxes if they meet the dollar thresholds in retail sales to Arizona consumers that are established by Laws 2019, 1st Reg. Sess., Ch. 273 (hereafter referred to in its entirety as "HB 2757"). Additionally, it repeals or updates outmoded, redundant, or potentially confusing language that diminishes the utility of rules that are applicable to remote sellers, marketplace facilitators, and other taxpayers.

Before the enactment of HB 2757, liability for state and local privilege taxes (collectively referred to as "TPT" in this Notice) was based on a taxpayer's physical presence in Arizona, rather than the level of gross sales with Arizona consumers. Consequently, in addition to introducing new provisions addressing the criteria for transaction privilege tax liability, liability relief provisions for remote sellers and marketplace facilitators and filing methodology, the Department reviewed its existing rules on retail sales and reporting and filing requirements and amended or repealed language to accurately reflect its current position vis-à-vis all taxpayers, including remote sellers and marketplace facilitators.

The Department received approval to engage in this rulemaking action as an exception to Executive Order 2019-01, 25 A.A.R. 131 (Jan. 9, 2019) on September 16, 2019. Aside from stylistic, grammatical, or technical corrections intended to be nonsubstantive in nature, the following summary provides a rule-by-rule description of changes from the rules as they had existed before this rulemaking action:

- a. *R15-5-101 (Definitions)*. This rule contains definitions renumbered from R15-5-2001 and is further amended to include cross-references to statutory definitions and to clarify that the definition of the term "retailer" includes manufacturers and wholesalers.
- b. *R15-5-102 (Casual Activities or Sales)*. This rule is amended to clarify that marketplace facilitators and remote sellers cannot be considered as engaging in a casual activity or sale if they regularly make sales at retail of the same type offered. In particular, it specifies that a marketplace facilitator is deemed to be regularly in the business of selling any tangible personal property sold on its marketplace.
- c. *R15-5-107 (Sales for Resale or Lease)*. This rule is renumbered from R15-5-101 without further amendment.
- d. *R15-5-111 (Consignment Sales)*. This rule is amended to specify that marketplace facilitators with no physical presence in Arizona and that are consignors are required to obtain a TPT license if they meet the applicable threshold requirements.
- e. *R15-5-112 (Sales by Auctioneers)*. This rule is amended to specify that marketplace facilitators with no physical presence in Arizona and that are auctioneers are required to obtain a TPT license if they meet the applicable threshold requirements.
- f. *R15-5-151 (Artists and Sales of Artwork)*. This rule is amended to be consistent with statute by specifying that sales of fine art is exempt in accordance with the retail TPT statutes if the sale is to a nonresident of Arizona and is delivered and used outside Arizona.
- g. *R15-5-155 (Delivery Sales of Tobacco Products)*. This new rule explicitly states that a retailer—including a remote seller, marketplace seller, or marketplace facilitator—cannot make or facilitate a delivery sale of tobacco products in violation of A.R.S. § 36-798.06. Although clearly laid out in statute, the rule clarifies that HB 2757 did not expand the scope of lawful retail sales to include these sales.
- h. *R15-5-2001*. This rule is renumbered to R15-5-101.
- i. *R15-5-2002 (Liability for Transaction Privilege Tax)*. This rule is amended to provide the Department's positions regarding a person's nexus for TPT purposes based on economic nexus or physical presence within Arizona. Regarding physical presence nexus, the rule also provides examples of when a person has or has not established physical presence in Arizona. It furthermore explicitly states when physical presence will end following a retailer's termination of its physical presence in this state (*i.e.*, the last day of the month in which the retailer terminates its physical presence), which is sometimes referred to as "trailing nexus."



- j. *R15-5-2003 (Applicability of Provisions to Marketplace Facilitators and Remote Sellers)*. This new rule simply specifies that the administrative rules found in A.A.C. Title 15, Chapter 5, Articles 1, 20, and 22 are generally applicable to remote sellers and marketplace facilitators who meet the threshold requirements in A.R.S. § 42-5044.
- k. *R15-5-2004 (Multi-Location and Multi-Business Taxpayers)*. This rule is amended to specify the records required to be maintained by remote sellers and marketplace facilitators and to provide a limited safe harbor for marketplace facilitators who reported and remitted tax on sales made on their own behalf and on behalf of their marketplace sellers for periods on or before August 27, 2019.
- l. *R15-5-2009 (Transactions between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers)*. This rule is being added to specify that in determining whether a marketplace facilitator or remote seller’s sales meet the threshold, the retail sales of the marketplace facilitator or remote seller’s affiliates must be aggregated. In addition, if all sales when aggregated meet the threshold, all affiliates are required to obtain an Arizona TPT license. However, the affiliates need to file consolidated returns.
- m. *R15-5-2201 (Display and Issuance of License)*. This rule is amended to provide that remote sellers and marketplace facilitators lacking a physical presence in Arizona are not considered to maintain a public place of business in Arizona and, thus, are not required to display their TPT licenses for public view. However, as licensees, they will still be required to maintain copies or equivalent documentation of such licenses.
- n. *R15-5-2202 (Change in Ownership)*. This rule is amended to comply with the statutory provisions of A.R.S. 42-5005(G), which provides that a TPT license is not transferable upon a *complete* change of ownership or change of location. A former provision that required a new license for *any* change in ownership has been stricken.
- o. *R15-5-2204 (Change of Business Location or Mailing Address)*. This rule is amended to clarify that a business may change its location on record with the Department by a completing and submitting a form.
- p. *R15-5-2205 (Surrender of License upon Sale or Termination of Business)*. This rule is amended to clarify that a business may notify the Department of a sale or termination of a business or may surrender its TPT license by either submitting a completed paper form to the Department or through AZTaxes.gov.
- q. *R15-5-2206 (Cancellation of License)*. This rule is amended to specify that remote sellers and marketplace facilitators are permitted to cancel their TPT license if they did not meet the applicable threshold under A.R.S. § 42-5044 in the prior year.
- r. *R15-5-2207 (Taxpayer Bonds)*. This rule is amended to clarify that remote sellers and marketplace facilitators are not required to obtain a bond when initially registering for a TPT license, pursuant to the exemption under A.R.S. § 42-5006(E). However, subsequent to registration, the bonding provisions of A.R.S. § 42-1102 will apply.
- s. *R15-5-2212 (Reporting by Marketplace Facilitators and Remote Sellers)*. This rule is being added to specify that remote sellers and marketplace facilitators are required to report and remit taxes in aggregate by jurisdiction, not by location.
- t. *R15-5-2213*. This rule, which contained alternate reporting provisions, is repealed as superseded by statute.
- u. *R15-5-2215 (Return and Payment of Estimated Tax)*. This rule is amended to provide current estimated tax thresholds and replace obsolete statutory references.
- v. *R15-5-2216 (Liability Relief for Marketplace Facilitators and Remote Sellers)*. This rule interprets terms that HB 2757 did not define and explains the general circumstances under which the Department will grant liability relief to remote sellers and marketplace facilitators as statutorily authorized under A.R.S. § 42-5043.
- w. *R15-5-2217 (Reasonable Cause for Waiver of Civil Penalties)*. This rule provides general principles under which the Department will not apply penalties on the basis of reasonable cause, and specific instances in which the Department will waive civil penalties with or without receiving a request from a taxpayer.
- x. *R15-5-2220*. The rule is being repealed. HB 2757 supersedes subsection (A)’s guidance that out-of-state vendors selling to Arizona purchasers must obtain a use tax license, as out-of-state remote sellers and marketplace facilitators who meet the applicable statutory thresholds must be registered and licensed for transaction privilege tax, not use tax. Subsection (B), allowing a taxpayer collecting use tax on an isolated sale to file and remit via cover letter rather than the Department’s return, has been preserved in amended form in R15-5-2310(B).
- y. *R15-5-2301 (Definitions)*. This rule is amended to remove obsolete definitions and to update the definition of the term “retailer” to exclude remote sellers and marketplace facilitators that do not meet the applicable threshold. A definition for the term “utility business” is added.
- z. *R15-5-2302 (General)*. This rule is amended to remove definitions now included in R15-5-2301, which defines terms for all of A.A.C. Tit. 15, Ch. 5, Article 23.
- aa. *R15-5-2310 (Payment of Use Tax by Purchaser)*. The rule is amended to clarify that marketplace facilitators and remote sellers liable for retail TPT are not also required to collect use tax on such sales. HB 2757 supersedes subsection (A)’s guidance that out-of-state vendors selling to Arizona purchasers must obtain a use tax license, as out-of-state remote sellers and marketplace facilitators who meet the applicable statutory thresholds must be registered and licensed for transaction privilege tax, not use tax. Subsection (B), allowing a taxpayer collecting use tax on an isolated sale to file and remit via cover letter rather than the Department’s return, preserves a provision from former R15-5-2220(B).
- bb. *R15-5-2350*. An obsolete rule on mail-order retailers is repealed.

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

None



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

Not applicable

**9. Summary of the economic, small business, and consumer impact, if applicable:**

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after the August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

**10. Description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking, if applicable:**

Not applicable

**11. Agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

Despite the exemption granted to HB 2757's rulemaking, on August 13, 2019, the Department posted a draft version of proposed rules for public review and feedback. Based on comments received during this period and in addition to stylistic or typographical corrections made subsequent to the public comment draft, the Department has responded as follows:

a. *R15-5-101.*

- (i) Formatting corrections have been made to the final version to reflect the fact that the renumbering of existing rule language from R15-5-2001 to R15-5-101. Additional nonsubstantive stylistic and paragraph numbering changes have also been made subsequent to the public comment draft.
- (ii) The Department received questions regarding the change from the term "casual sale" under current administrative rules to "casual activity or sale" in this rulemaking. In fact, by referring to casual activities *or* sales, the language in the administrative rules simply parallels terminology actually used in statute. *See* A.R.S. § 42-5001(1) (defining "business" for purposes of the privilege and use tax levy and administration statutes to exclude "[c]asual activities or sales"). Moreover, city privilege tax codes also refer to casual activities *or* sales. *See* Model City Tax Code ("MCTC") § 100 (definitions of "business" and "casual activity or sale").

The Department also received questions on the casual activity or sale definition's reference to "used capital assets," which paraphrases similar language found in city privilege tax codes. *See* Model City Tax Code ("MCTC"), *id.* ("casual activity or sale" definition adopted by all Arizona cities and towns). By including this language, the Department wishes to make explicit the state's position that bulk transfers of assets resulting from such transactions as the sale of a business will generally not trigger TPT liability because such transfers would be considered casual activities or sales.

- (iii) The Department received comments expressing confusion over the use of the term "retailer" throughout A.A.C. Tit. 15, Ch. 5, specifically with regards to its intended scope. Retailer is statutorily defined in A.R.S. § 42-5001 to include "every person engaged in the business" and can include, "when in the opinion of the department it is necessary for the efficient administration of this article, includes dealers distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them." It is notable that this longstanding statutory definition may differ from colloquial or industry usage of the term.

Consequently, the Department has added a "retailer" definition in R15-5-101(8) that cross-references the statutory definition *and* specifically clarifies that the term includes wholesalers, manufacturers, and any other seller of tangible personal property to Arizona purchasers. To wit, such persons are subject to the reporting provisions for retail privilege taxes on sales to Arizona purchasers, even if all of their gross receipts derived from such transactions are rendered nontaxable by application of deductions, exclusions, or exemptions.

- b. *R15-5-133.* In the public comment draft of the rules, the Department proposed changes to R15-5-133 to amend its treatment of a retailer's additional charges for shipping, handling, and similar services to conform it to A.R.S. § 42-5061(A)(2)'s exemption for "[s]ervices rendered in addition to selling tangible personal property at retail," which is distinguishable from A.R.S. § 42-5002(A)(2)'s exclusion for freight costs. However, due to questions and concerns over the Department's proposed approach that were raised by commenters, the Department removed the rule from this rulemaking to allow for further review and discussion.

c. *R15-5-151.*

- (i) The Section title has been changed from "Artists" to "Artists and Sales of Artwork" to more accurately describe the subject matter covered by the rule.
- (ii) Based on recommendations received, the Department removed direct references to municipal tax codes within language in subsection (C)(2) addressing the fine art exemption.

d. *R15-5-2002.*

- (i) The Department received comments questioning aspects of its pre-HB 2757 position (as articulated in *Arizona Transaction Privilege Tax Ruling* TPR 16-1 (Sept. 20, 2016), which will be separately rescinded and superseded by this rulemaking) that the presence of employees, independent contractors, or non-employee representatives or agents of a retailer within Arizona for more than two days per calendar year may be sufficient to establish a substantial physical presence nexus with Arizona. The Department acknowledges that it is reasonable to infer that, with the promulgation of HB 2757's economic nexus principles, the parameters for establishing a retail business's physical presence in Arizona necessarily contract. For this reason, the Department will only consider activities significantly associated with a



retailer's ability to establish and maintain a market in this state for its sales *if they are not of a transitory nature*. On this basis, the two-day factors were rejected as activities of a potentially transitory nature and the references removed from subsection (B). This is distinguishable from a situation in which an ostensibly out-of-state retailer comes into Arizona and makes sales from within the state at a trade show or exhibition, as discussed in the following paragraphs.

- (ii) Even if a retailer's non-transitory physical presence in Arizona is established, the question remains as to when the retailer is relieved of its duties to report and remit retail TPT following its departure from the state. In response, the Department has added new language in subsection (E) providing that the retailer's trailing nexus ends on the last day of the month in which the business terminates its physical presence in Arizona. A notable exception exists, however, for a seasonal or special event licensee, as explained below.

The Department will *not* deem a retailer's in-state business activities to be of a transitory nature if the activities generate gross receipts and either of the following applies: (a) the activities are ongoing and regularly conducted from inside Arizona or (b) the retailer regularly conducts the same business activities outside the state and engages in that activity from within Arizona, from which it generates taxable gross receipts. A common example of this principle involves businesses from outside the state traveling to Arizona to participate in a trade show or exhibition. In such instances, the businesses may make a discrete number of sales at the show or exhibition but will, at the event's conclusion, return to its business location outside of Arizona. Although the businesses' sales made from within Arizona will clearly be subject to retail privilege taxes, the question remains as to whether they will bear an ongoing liability to report and remit Arizona retail TPT on sales made to Arizona following their departure from the state.

In such cases, if the retailer obtains a *seasonal* or *special event* license from the Department to report and remit any applicable retail tax on sales made at the event, it will be able to terminate its obligation to report and remit TPT for sales to Arizona customers if it cancels the license after reporting and remitting the tax. This special event scenario is a limited exception to the general application of trailing nexus.

To further illustrate the application of this principle, the Department has added examples in subsections (D)(6) and (7) of an out-of-state retailer making sales at a hypothetical special event in Arizona and an Arizona-based retailer selling at the same event.

- (iii) Based on questions received regarding the nature of a retailer's real or personal property used or stored in Arizona and its resulting effect on the business's physical presence nexus, the Department has made two clarifications. For purposes of a retailer's office or other place of business maintained in this state, language has been added to explain that the location need not perform a function related to sales, but must otherwise be maintained for a business function, thereby excluding in-state properties used for purposes wholly unrelated to the business (*e.g.*, vacation property). Regarding a retailer's inventory of goods stored in Arizona, such activity would only be relevant to physical presence nexus if stored under the retailer's direction and control. In many cases, a third party logistics provider may direct and control where and how a retailer's inventory is stored. In such cases, the fact that an out-of-state retailer's inventory of goods are stored in Arizona would not be relevant to determining the business's physical presence in the state.
  - (iv) References throughout the rule have been conformed to correctly refer to "retailers" rather than generically to "persons," "companies," or "businesses." This change is expected to reduce the likelihood of confusion by properly limiting the scope of the rule to those transactions that may be subject to retail TPT.
  - (v) Based on questions received, the Department added an additional example in subsection (D)(5) to address a remote worker of an out-of-state retailer who is temporarily within the state and performing activities that, while constituting routine business functions (*i.e.*, bookkeeping), are not significantly associated with the retailer's ability to establish and maintain an Arizona market for its goods. As such, the activity would not be considered a factor in determining whether the retailer has sufficient physical presence in Arizona.
- e. *R15-5-2004*.
    - (i) Based on questions received, the Department has amended language referring to copies of exemption certificates that taxpayers need to maintain to clarify that they can be digital copies or hard copies.
    - (ii) Based on concerns expressed by marketplace facilitators that are current taxpayers filing on behalf of a multitude of marketplace sellers, the Department has amended the rulemaking to provide a safe harbor for those marketplace facilitators that have *already* been filing on their own behalf and on behalf of such sellers for periods before the August 27, 2019 effective date. In such cases, an alternate method for demonstrating what portion of the marketplace facilitators' TPT liability is attributable to sales on behalf of marketplace sellers will be permitted on audit or for the purpose of claiming liability relief.
  - f. *R15-5-2201*. Based on a suggested correction, the Department has clarified that a marketplace facilitator lacking a physical presence in Arizona, as well a remote seller, will not be required to post a copy of its Arizona TPT license in a conspicuous public location in its business.
  - g. *R15-5-2216*.
    - (i) Based on a suggested correction, the Department amended the definition of "incorrect information" that may prompt liability relief for a marketplace facilitator to specify that such erroneous information must be furnished to the marketplace facilitator by a marketplace seller. While a commenter ask whether the exclusion of "[f]ailure to remit all amounts collected and represented as tax" from the definition was limited to amounts separately stated on invoices, the clarification of the source of the information (*i.e.*, a marketplace facilitator's marketplace sellers) addresses the fact that the language refers to amounts represented as tax in the underlying marketplace sellers' sales to purchasers.



- (ii) A commenter found issue with the examples of reasonable cause for liability relief purposes found in subsection (D). In response, the Department has amended the language to clarify that such examples are not exhaustive.
- (iii) The Department received concerns over the conclusions drawn in the example provided in subsection (E)(1). Specifically, the Department concluded that a marketplace facilitator’s liability relief is based on the applicable percentage as applied to the total tax due for all Arizona sales made by marketplace sellers through the marketplace facilitator. The commenters argued that this interpretation seemed overly broad and beyond the legislative intent of the statute as they understood it to be, based on personal involvement in the legislative process.

However, absent any ambiguity, the Department relies upon the plain language of the statute to effectuate legislative intent, giving words contained within their ordinary meanings unless a different meaning appears to be intended. *SolarCity Corp. v. Ariz. Dep’t of Revenue*, 243 Ariz. 477, 480 (2018); *Ariz. Elec. Power Coop., Inc. v. State ex rel. Dep’t of Revenue*, 243 Ariz. 264, 266 (App. 2017). The liability relief granted to a marketplace facilitator under A.R.S. § 42-5043(B) is applied as against the “total tax due under this chapter on taxable sales facilitated by the marketplace facilitator on behalf of a marketplace seller and sourced to this state under section 42-5040 during the same calendar year.” The language is unambiguous, unless one argued that “taxable sales . . . of a marketplace seller” literally were to a single marketplace seller. This reading would seem unnatural and unsupported by the related provisions of the statute. Consequently, the Department declined to make any change to the example.

- (iii) A minor change was made to the amounts used in the example in subsection (E)(2) to reduce confusion, as it was an amount coincidentally similar to a figure used in a separate example.
- h. *R15-5-2301*. As noted by several commenters, the definition for “mail order retailer” is outdated and, in any event, no longer required because of the repeal of R15-5-2350. As such, R15-5-2301(1) has been struck from this rule.

Based on issues raised in stakeholder discussions, the Department anticipates amending its existing rules in subsequent rulemaking actions on retail sales topics including: shipping and handling charges; photography; and prescription drugs, durable medical equipment, and prosthetic appliances.

**12. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules:**

None

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

No

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

No

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

No

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

None

**14. Whether the rules were previously made, amended, or repealed as emergency rules (if so, state where the text changed between the emergency and final rulemaking packages):**

No

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

**TITLE 15. REVENUE  
CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION**

**ARTICLE 1. RETAIL CLASSIFICATION**

Section

- ~~R15-5-2001~~ R15-5-101. Definitions
- R15-5-102. Casual Activities or Sales
- ~~R15-5-104~~ R15-5-107. Sales for Resale or Lease
- R15-5-111. Consignment Sales
- R15-5-112. Sales by Auctioneers
- R15-5-151. Artists and Sales of Artwork
- R15-5-155. ~~Reserved~~ Delivery Sales of Tobacco Products

**~~ARTICLE 18. SALES TAX – RETAIL CLASSIFICATION REPEALED~~**

**ARTICLE 20. GENERAL ADMINISTRATION**

Section

- R15-5-2001. Renumbered
- R15-5-2002. Liability for Transaction Privilege Tax
- R15-5-2003. ~~Repealed~~ Applicability of Provisions to Marketplace Facilitators and Remote Sellers
- R15-5-2004. ~~Multi-location~~ Multi-Location and Multi-business Multi-Business Taxpayers



R15-5-2009. ~~Reserved~~ Transactions between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers

**ARTICLE 22. TRANSACTION PRIVILEGE TAX - ADMINISTRATION**

Section

- R15-5-2201. Display and Issuance of License
- R15-5-2202. Change in Ownership
- R15-5-2204. Change of Business Location or Mailing Address
- R15-5-2205. Surrender of License upon Sale or Termination of Business
- R15-5-2206. Cancellation of License
- R15-5-2207. Taxpayer Bonds
- R15-5-2212. ~~Expired~~ Reporting by Marketplace Facilitators and Remote Sellers
- R15-5-2213. ~~Alternative Reporting~~ Repealed
- R15-5-2215. Return and Payment of ~~Tax-estimated~~ Estimated Tax
- R15-5-2216. ~~Repealed~~ Liability Relief for Marketplace Facilitators and Remote Sellers
- R15-5-2217. ~~Repealed~~ Reasonable Cause for Waiver of Civil Penalties
- R15-5-2220. ~~Registration and Licensing~~ Repealed

**ARTICLE 23. USE TAX**

Section

- R15-5-2301. Definitions
- R15-5-2302. General
- R15-5-2310. Payment of Use Tax by Purchaser
- R15-5-2350. ~~Mail-Order Retailers~~ Repealed

**ARTICLE 1. RETAIL CLASSIFICATION**

~~R15-5-2001~~ **R15-5-101. Definitions**

The following definitions apply for the purposes of the rules in In this Chapter, unless the context requires otherwise or unless otherwise defined. ~~An individual rule may contain definitions which are specific to the context of that rule.~~

1. "AZTaxes.gov" has the same meaning as prescribed in R15-10-301.
- ~~1-2.~~ "Casual activity or sale" means an occasional transaction of an isolated nature made by a person persons who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold neither represent themselves to be nor are engaged in a business that is subject to transaction privilege tax. Casual activity or sale includes, but is not limited to, sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.
- ~~2-3.~~ "Department" means the Arizona Department of Revenue has the same meaning as prescribed in A.R.S. § 42-1001.
- ~~3-4.~~ "Gross income," means all receipts of a trade or business from sales or services. It includes the total consideration received or constructively received. The value of all services which are part of the sale is considered part of the gross income, unless excluded "gross receipts," "marketplace facilitator," and "marketplace seller" have the same meanings as prescribed in A.R.S. § 42-5001.
4. "Gross receipts" means gross receipts as defined in A.R.S. § 42-5001.
5. "Real property" means land and anything permanently affixed to land.
6. "Taxpayer" means any person required by law to file returns or to pay transaction privilege tax, use tax, rental occupancy tax, or excise taxes to the Department.
6. "Remote seller" has the same meaning as prescribed in A.R.S. § 42-5001.
7. "Retailer" has the same meaning as prescribed in A.R.S. § 42-5001, and includes a wholesaler, manufacturer, or other seller of tangible personal property.
8. "Taxpayer" has the same meaning as prescribed in A.R.S. § 42-5001.
- ~~7-9.~~ "Vendor" means any person engaged in a business which activity that is subject to Arizona any tax levied under A.R.S. Title 42, Chapter 5 and 6, including a retailer.

**R15-5-102. Casual Activities or Sales**

- ~~A.~~ Gross receipts from a casual activity or sale, as defined in R15-5-2001, are not taxable under the retail classification.
- ~~B.~~ Except as otherwise provided in R15-5-2002, a retailer, including as a marketplace facilitator or remote seller, cannot engage in a casual sale of tangible personal property of the same type or character as that which the person regularly sells at retail. A marketplace facilitator is deemed to regularly sell any tangible personal property sold on its marketplace.

~~R15-5-101~~ **R15-5-107. Sales for Resale or Lease**

- A. Gross receipts from the sale of tangible personal property to be resold by the purchaser in the ordinary course of business are not subject to tax under the retail classification.
- B. Gross receipts from the sale of tangible personal property to be leased by a person in the business of leasing such personal property are not subject to tax under the retail classification.
- C. Gross receipts from the sale of tangible personal property to a lessor of real property are subject to tax if:
  1. The tangible personal property is incorporated into, or leased in conjunction with, the real property; and
  2. The rental of the tangible personal property is not separately stated as part of the real property lease transaction.



- D. Gross receipts from the sale of repair or replacement parts for tangible personal property that is to be leased by a person engaged in the business of leasing such tangible personal property are not subject to tax under the retail classification.

**R15-5-111. Consignment Sales**

- A. ~~The following definitions apply for purposes of this rule~~ In this Section:
1. “Consignee” means the party that is in the business of selling tangible personal property belonging to a consignor.
  2. “Consignor” means the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.
- B. Gross receipts from consignment sales are subject to tax under the retail classification.
- C. ~~A~~ Except as provided in subsection (D), a consignee shall obtain a transaction privilege tax license before making consignment sales.
- D. A consignee who is a marketplace facilitator without a physical presence in Arizona, as provided in R15-5-2002(B), is required to obtain a transaction privilege tax license upon meeting the threshold requirements in A.R.S. § 42-5044.

**R15-5-112. Sales by Auctioneers**

- A. Gross receipts from the sales of tangible personal property by an auctioneer are subject to tax under the retail classification.
- B. ~~An~~ Except as provided in subsection (C), an auctioneer shall obtain a transaction privilege tax license ~~prior to~~ before conducting an auction.
- C. An auctioneer who is a marketplace facilitator without a physical presence in Arizona, as provided in R15-5-2002(B), is required to obtain a transaction privilege tax license upon meeting the threshold requirements in A.R.S. § 42-5044.

**R15-5-151. Artists and Sales of Artwork**

- A. Gross receipts from the sale of paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers shall be taxable under the retail classification if the person is making regular sales of these items.
- B. Gross receipts from the sale of paints, canvasses, frames, sculpture ingredients, and other items which will become an integral part of the finished product shall not be taxable if sold to a creating artist who is regularly engaged in the business of creating and selling paintings, drawings, etchings, sculptures, craftwork, other artwork, or reproductions of such items. Sales of brushes, easels, tools, and similar items to be consumed by the creating artist shall be taxable.
- C. ~~Gross~~ Except as otherwise provided in A.R.S. § 42-6017, gross receipts from the sale by the creating artist of a painting, drawing, etching, sculpture, or a piece of craftwork that is not a reproduction of an original work shall not be taxable if:
1. The sale is a casual ~~activity or sale pursuant to the definition in R15-5-1812;~~ or
  2. The sale is a work of fine art at an art auction or gallery in this state to a nonresident of this state for use outside the state, if the retailer ships or delivers the work to a destination outside this state and if exempt under A.R.S. § 42-5061(A). In this subsection, “work of fine art” has the same meaning as prescribed in A.R.S. § 44-1771.
  3. The sale is of commissioned artwork by an individual artist. For purposes of In this rule subsection, “commissioned artwork” is a custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser.

**R15-5-155. ~~Reserved~~ Delivery Sales of Tobacco Products**

- A. In this Section:
1. “Delivery sale” means a sale made by using any of the following:
    - a. The mail or a delivery service.
    - b. The Internet or a computer network.
    - c. Any other electronic method.
  2. “Tobacco product” has the same meaning as prescribed in A.R.S. § 36-798.06.
- B. A retailer, including a remote seller or marketplace seller, or marketplace facilitator shall not make or facilitate a delivery sale of any tobacco product that violates A.R.S. § 36-798.06.

**ARTICLE 18. SALES TAX—RETAIL CLASSIFICATION REPEALED**

**ARTICLE 20. GENERAL ADMINISTRATION**

**R15-5-2001. Renumbered**

**R15-5-2002. Liability for Transaction Privilege Tax**

- A. The transaction privilege tax is imposed directly on the person engaged in a taxable business in or within Arizona, including a retailer located outside the state who is engaging or continuing in business in this state as a remote seller or marketplace facilitator and who meets the threshold requirements in A.R.S. § 42-5044. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.
- B. A retailer establishes its physical presence within Arizona by activities performed in this state on its behalf that are significantly associated with the retailer’s ability to establish and maintain a market in this state for its sales. Activities and factors that, by themselves or in conjunction with others, establish a retailer’s physical presence within Arizona include the following:
1. The retailer maintains an office or other place of business in Arizona, regardless of whether such location performs a sales-related or other business function.
  2. The retailer owns or leases real or personal property in Arizona.
  3. The retailer maintains an inventory of products in Arizona at its own direction and control.
  4. The retailer’s merchandise or goods are delivered into Arizona on vehicles owned or leased by the retailer and the retailer makes such deliveries into Arizona on an ongoing basis.
  5. Other local activities performed by the retailer’s employees, agents, representatives, contractors, or affiliated persons in Arizona that enable the retailer to maintain and improve its name recognition, market share or sales volume, goodwill, and individual customer relations may establish physical presence if the activities are not of a transitory nature, as described in subsections (D) and (E). Such activities may include: soliciting sales through an ongoing local marketing contract; delivering, installing or



repairing property sold to customers through an ongoing contract with either the customer or a local partner; or conducting training or similar support services for customers or for employees or representatives of the retailer on an ongoing basis.

- C.** A retailer having a physical presence within Arizona as described in subsection (B) of this Section shall be considered liable for transaction privilege tax as a taxpayer located within Arizona.
- D.** A retailer’s activities in Arizona are not of a transitory nature if such activities generate gross receipts, are ongoing, and are regularly conducted from within the state. Alternately, a retailer’s activities in Arizona are not of a transitory nature if such activities generate gross receipts and the retailer regularly conducts the same business activities outside of Arizona.
  - 1. Example: Employees who travel to Arizona for a business meeting, conference, or similar event and who do not otherwise engage in a taxable business activity during their time within the state would not establish physical presence in Arizona, regardless of the duration of their stay. Such stays would not be considered ongoing, even though the events take place in Arizona.
  - 2. Example: A retailer that provides remote one-time assistance to a customer who has a specific problem installing or using a product purchased remotely would not establish physical presence. The retailer’s assistance does not appear ongoing and the activity is conducted from outside the state.
  - 3. Example: A retailer that sells WiFi-enabled (IoT) appliances also offers a service contract that allows its technicians to remotely access its customers’ appliances to regularly update, maintain, or troubleshoot firmware. The provision of services through such contracts with Arizona customers would not establish physical presence for the retailer. The retailer’s services, while ongoing, are conducted from outside the state.
  - 4. Example: A retailer that has a salesperson who regularly travels to Arizona for the purposes of selling goods and services and supporting previously sold goods and services may have physical presence, even if the salesperson is a resident of California and only present in Arizona temporarily throughout the calendar year. The retailer’s sales activities, as conducted through its salesperson, are ongoing and conducted from within the state.
  - 5. Example: A retailer’s employee who is a Nevada resident but is working remotely from Arizona while on vacation, performing bookkeeping and other routine business functions, does not establish physical presence in Arizona for the business. The employee’s in-state activities are not significantly associated with a retailer’s ability to establish and maintain a market in Arizona for its sales.
  - 6. Example: A new Utah-based retailer that has never made any sales to Arizona purchasers brings an inventory of crystals to sell at a two-day mineral and fossil show in Arizona. Over the two-day period, the retailer makes \$3,000 in sales. As an out-of-state retailer making sales from within Arizona who has not met the threshold requirements in A.R.S. § 42-5044, the retailer will incur an Arizona transaction privilege tax liability on the sales it makes at the show. Such Arizona-based sales are not considered for purposes of meeting the threshold requirements for a remote seller, pursuant to A.R.S. § 42-5044. If the retailer does not anticipate conducting additional sales from within Arizona on an ongoing basis, it should apply for a seasonal license to participate in the show.
  - 7. Example: At the same mineral and fossil show described in subsection (D)(6), an new Arizona-based retailer of semi-precious gems also brings an inventory to sell at the show for the first time. As a retail business located in Arizona, the retailer must be licensed and must report and remit Arizona transaction privilege tax on its sales made at the show.
- E.** Effective October 1, 2019, a retailer that establishes physical presence in Arizona pursuant to this rule shall continue to be responsible for reporting and remitting transaction privilege tax for the duration of such physical presence. If the retailer terminates its physical presence in the state, it shall report and remit transaction privilege tax for all transactions occurring on or before the last day of the month in which the vendor terminates its physical presence.

**R15-5-2003. ~~Repealed~~ Applicability of Provisions to Marketplace Facilitators and Remote Sellers**  
Articles 1, 20, and 22 of this Chapter apply to any marketplace facilitator or remote seller who meets the threshold requirements in A.R.S. § 42-5044.

- R15-5-2004. ~~Multi-location~~ Multi-Location and ~~Multi-business~~ Multi-Business Taxpayers**
  - A.** A taxpayer with multiple licenses for separate businesses shall maintain separate records for each licensed business, including details relating to the computation of taxes and exempt sales and digital or hard copies of applicable exemption certificates, as provided in subsection (B).
  - B.** The Department may request that records required to be maintained under this Section be made accessible for inspection or copying. To the extent reasonable or possible, the taxpayer shall make these records available to the Department in an electronic format, if requested.
  - ~~**C.**~~ A tax is levied upon the privilege of engaging in specified businesses within Arizona. Class codes for reporting gross receipts subject to tax have been determined by the Department based on statutory provisions. Each business classification is independent of the others even when transacted under one license. A person who engages in more than one type of business under each license shall maintain books and records so that the gross proceeds of sales or gross income of each taxable business classification is shown separately.
  - D.** Except as provided in subsection (E), a marketplace facilitator shall maintain records that separately show sales made on its own behalf and sales made on behalf of marketplace sellers. Such records shall include details relating to the computation of taxes and exempt sales and also include digital or hard copies of applicable exemption certificates, as provided in subsection (B).
  - E.** If a marketplace facilitator reported through non-amended returns and remitted transaction privilege tax on sales made on its own behalf and sales made on behalf of marketplace sellers for tax periods on or before August 27, 2019, the marketplace facilitator shall maintain records that show details relating to the computation of taxes and exempt sales, and also include copies of applicable exemption certificates for both sales made on their own behalf and on behalf of a marketplace seller. A marketplace facilitator shall have an alternate method to demonstrate the portion of sales made on behalf of marketplace sellers if under audit or for the purposes of claiming liability relief under A.R.S. § 42-5043 and R15-5-2216.
  - F.** A remote seller shall maintain records that separately show sales made directly to its own customers and sales made on its behalf through a marketplace facilitator. Such records shall include details relating to the computation of taxes and exempt sales and also include digital or hard copies of applicable exemption certificates, as provided in subsection (B).



~~C.G.~~ Failure to maintain appropriate books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales or gross income applicable to a classification under which the taxpayer is doing business.

**R15-5-2009. ~~Reserved~~ Transactions Between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers**

- A.** In this Section, “affiliated person” has the same meaning as prescribed in A.R.S. § 42-5043.
- B.** For the purposes of determining whether a remote seller or marketplace facilitator meets the threshold requirements in A.R.S. § 42-5044, the sales of marketplace facilitators and remote sellers who are affiliated persons shall be aggregated. If the threshold is met after aggregation of such sales, then all affiliated marketplace facilitators and remote sellers shall register with the Department for the filing and remission of retail transaction privilege tax. Marketplace facilitators and remote sellers who are affiliated persons are required to register with the Department and obtain a transaction privilege tax license under this Section for each affiliated person even if some or none of the affiliated persons would meet the threshold on an individual basis.
- C.** A marketplace facilitator or remote seller with affiliated persons who meets the threshold requirements in A.R.S. § 42-5044 are not required to file consolidated returns.
- D.** For the purposes of determining whether a remote seller meets the threshold requirements in A.R.S. § 42-5044, only the remote seller’s sales that are not facilitated on a marketplace shall be counted towards its threshold.

**ARTICLE 22. TRANSACTION PRIVILEGE TAX - ADMINISTRATION**

**R15-5-2201. Display and Issuance of License**

- A.** A person maintaining a public place of business in Arizona shall display the transaction privilege tax license in a location conspicuous to the public. For the purposes of this subsection, a remote seller or marketplace facilitator who lacks an in-state physical presence as provided in R15-5-2002 is not considered to maintain a public place of business in Arizona.
- B.** If a person maintains more than one place of business in Arizona, a transaction privilege tax license shall be displayed at each location.
- C.** For lessors engaged in the business of commercial leasing, a transaction privilege tax license shall be displayed in each location from which the lessor engages in business transactions.
- D.** The Department may issue a transaction privilege tax license to a licensee in either a hard copy format or digitally, including through AZTaxes.gov. Licensees shall maintain copies or equivalent documentation of their transaction privilege tax licenses for the record retention period prescribed in A.R.S. Title 42, Chapter 1.
- E.** A transaction privilege tax license issued by the Department is for administering and collecting transaction privilege tax and is not issued for the purpose of authorizing a business to operate in this state, pursuant to A.R.S. § 41-1080 and except as otherwise required by law.

**R15-5-2202. Change in Ownership**

- A.** A transaction privilege tax or use tax license is issued to a specific person. The license shall not be transferred to the new owner when selling a business. The new owner shall apply to the state for a new license before engaging in business transactions.
- B.** Court-appointed trustees, receivers, and others in cases of liquidation or operational bankruptcies shall obtain a transaction privilege tax or use tax license.
- ~~C.~~ If a licensee has any change in ownership, the licensee shall apply for a new license.

**R15-5-2204. Change of Business Location or Mailing Address**

- A.** The taxpayer shall apply for a new transaction privilege tax or use tax license if the physical location of the business changes.
- B.** The taxpayer shall notify the Department ~~in writing~~ of a change in mailing address by submitting a form prescribed by the Department or through AZTaxes.gov.

**R15-5-2205. Surrender of License upon Sale or Termination of Business**

- A.** If a business is sold or terminated, the taxpayer shall notify the Department ~~in writing~~ of the date of sale or termination by submitting a form prescribed by the Department or through AZTaxes.gov and shall surrender the transaction privilege tax or use tax license to the Department.
- B.** For the purposes of A.R.S. § 42-5005 and this Section, the Department shall consider a license surrendered if the licensee submits a request to cancel its license by submitting a form prescribed by the Department or through AZTaxes.gov.

**R15-5-2206. Cancellation of License**

- A.** In this Section, “affiliated person” has the same meaning as prescribed in A.R.S. § 42-5043.
- ~~A.B.~~ The Department may cancel a license if:
1. During any consecutive 12-month period, the licensee reports no taxable transaction; and
  2. The licensee is not a subcontractor or wholesaler.
- ~~B.C.~~ The Department shall notify a licensee in writing of its intention to cancel the license. The notice shall explain the action the licensee may take to contest cancellation of the license and when cancellation is final.
- ~~C.D.~~ The Department shall cancel a license 30 days after the notice of intention to cancel is mailed unless, within 30 days, the licensee objects to the cancellation in writing and produces documentation that the licensee is actively engaged in a taxable business. Suitable documentation includes, but is not limited to, the following:
1. Evidence that the licensee holds an inventory of raw or finished tangible personal property for sale or resale;
  2. Evidence that the licensee maintains segregated bank accounts for the purpose of transacting business;
  3. Bona fide contracts for future sale or resale of tangible personal property;
  4. Profit and loss statements for federal or state income tax purposes; or
  5. Evidence that the licensee otherwise actually engages in bona fide business activities.



- ~~D-E.~~ Within 30 days of receipt of the licensee’s objections and documentation, the Department shall notify the licensee in writing of its decision to cancel or retain the license. If the decision is to cancel the license, the licensee may request an administrative hearing.
- E. Except as provided in subsection (G), a marketplace facilitator or remote seller may choose not to renew a license or cancel a license for the following calendar year if the sales of the marketplace facilitator or remote seller to Arizona purchasers fall below the current year threshold in A.R.S. § 42-5044 in the prior year.
- G. A marketplace facilitator or remote seller may choose not to renew a license or cancel a license for the following calendar year if the current year sales of the marketplace facilitator or remote seller, together with the aggregated sales of all affiliated persons of the marketplace facilitator or remote seller to Arizona purchasers, fall below the current year threshold in A.R.S. § 42-5044 in the prior year.

**R15-5-2207. Taxpayer Bonds**

- A. The amount of the bond required under A.R.S. § ~~42-112~~ 42-1102 shall be the greater of five hundred dollars, or:
  1. For licensees reporting monthly, four times the average monthly liability;
  2. For licensees reporting quarterly, six times the average monthly tax liability; or
  3. For licensees reporting annually, fourteen times the average monthly tax liability.
- B. For purposes of determining the bond amount, the average monthly tax liability is equal to the average monthly tax due from the licensee for the preceding six consecutive months. If an applicant does not have a six-month payment history, the bond amount shall be a minimum of five hundred dollars.
- C. If a licensee provides a surety bond and the bond lapses, the licensee must deposit with the Department cash or other security in an amount equal to the lapsed surety bond within five business days of the licensee’s receipt of written notification by the Department.
- D. The bond amount may be increased or decreased as necessary based upon a change in the licensee’s previous filing period, filing compliance record, or payment history. If the bond amount has been increased above the amount computed under subsection (B) of this rule, the licensee may request a hearing pursuant to ~~A.R.S. § 42-112~~ A.R.S. § 42-1102 to show why the order increasing the bond amount is in error.
- E. Except as required under A.R.S. § 42-1102, this Section shall not be construed to require a bond under A.R.S. § 42-5006 for any license issued pursuant to the criteria established in A.R.S. § 42-5044.

**R15-5-2212. Expired Reporting by Marketplace Facilitators and Remote Sellers**

Marketplace facilitators and remote sellers registered with the Department shall report and remit the applicable taxes payable pursuant to A.R.S. § 42-5044 in aggregate total amounts for each applicable jurisdiction designated by AZTaxes.gov. A marketplace facilitator shall not be required to list or otherwise identify any individual marketplace seller on any return or attachment to a return.

**R15-5-2213. Alternative Reporting Repealed**

- ~~A.~~ The Department shall authorize taxpayers to report on an annual or quarterly basis, if the taxpayer has established a filing history that shows that the taxpayer is not currently delinquent and that the taxpayer’s annual tax liability is between \$500 and \$1,250 for quarterly reporting or \$500 or less for annual reporting.
- ~~B.~~ The Department shall authorize new businesses that reasonably estimate their annual tax liability for the succeeding 12 months will be between \$500 and \$1,250 to report and remit tax on a quarterly basis.
- ~~C.~~ A taxpayer shall increase the reporting frequency to monthly and notify the Department of the change in reporting if the taxpayer’s annual tax liability equals or exceeds or can reasonably be expected to equal or exceed \$1,250. The taxpayer shall increase the reporting frequency to quarterly and notify the Department of the change in reporting if the taxpayer’s annual tax liability exceeds or can reasonably be expected to exceed \$500, but is or will be less than \$1,250. Failure to increase reporting frequency will subject the taxpayer to interest. Failure to increase reporting frequency will also subject the taxpayer to penalties unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect.
- ~~D.~~ A taxpayer shall begin to report on a monthly basis at any time during a 12 month period if the annualized tax liability for the taxpayer reporting on an annual or quarterly basis equals or exceeds \$1,250. A taxpayer shall begin to report on a quarterly basis at any time during a 12 month period if the annualized tax liability for the taxpayer reporting on an annual basis is expected to exceed \$500, but be less than \$1,250.

**R15-5-2215. Return and Payment of ~~Tax-estimated~~ Estimated Tax**

- A. For purposes of this rule, the following definitions apply:
  1. “Annual estimated tax payment” means ½ of the total tax liability for the entire month of May or the total tax liability for the first 15 days of the month of June.
  2. “Annual tax liability” means a total tax liability of ~~\$100,000.00 or more~~ in the preceding calendar year or a reasonable anticipation of a total tax liability of ~~\$100,000.00 or more~~ in the current year as follows:
    - \$1,000,000 in 2019
    - \$1,600,000 in 2020
    - \$2,300,000 in 2021
    - \$3,100,000 in 2022
    - \$4,100,000 in 2023 and thereafter.
  3. “Taxpayer” has the meaning set forth in ~~A.R.S. § 42-1322(J)~~ A.R.S. § 42-5014(S). The following are considered a single taxpayer:
    - a. Members of an Arizona-affiliated group filing a consolidated corporate income tax return under A.R.S. § 43-947;
    - b. Corporations in a unitary business filing a combined corporate income tax return under ~~A.A.C. R15-2-1131(E)~~ R15-2D-401;
    - c. Married taxpayers operating separate sole proprietorships and filing a joint income tax return; or
    - d. Partnerships, Limited Liability Companies, S Corporations, trusts, or estates conducting multiple businesses, filing a single income tax return.



4. "Total tax liability" means the combined total of the transaction privilege tax, telecommunications services excise tax, and county excise tax liabilities.
- B. The requirement to make an annual estimated tax payment is based on the annual tax liability. Use tax and severance tax are not subject to the estimated tax provisions.
  1. A taxpayer shall make an annual estimated tax payment if during the current calendar year the taxpayer, through use of ordinary business care and prudence, can anticipate incurring the annual tax liability. For example:
 

ABC Company has been selling home electronics for several years. Its tax liability for previous calendar years has averaged between ~~\$60,000~~ \$600,000 and ~~\$70,000~~ \$700,000. In February of the current year, ABC Company begins selling computers and accessories as well. Early sales reports show an increase in total sales of approximately 50%. Based on these facts, ABC Company can reasonably anticipate incurring the annual tax liability.
  2. Taxpayers with multiple locations shall make the annual estimated tax payment based on the combined actual or anticipated annual tax liability from all locations. Taxpayers with multiple locations, shall make a single estimated payment each June.
- C. A taxpayer shall not amend an annual estimated tax payment except to increase the amount of the payment.
- D. The annual estimated tax payment shall not be applied, credited, or refunded until a Transaction Privilege, Use, and Severance Tax Return (~~FPT-1~~) for the month of June is filed.
- E. Late payment, underpayment, or non-payment of the annual estimated tax payment shall result in the following:
  1. Application of the penalty provisions under ~~A.R.S. § 42-136~~ A.R.S. § 42-1125;
  2. Accrual of interest beginning from the due date of the annual estimated tax payment as prescribed in ~~A.R.S. § 42-1322(D)~~ A.R.S. § 42-5014(D); and
  3. Loss of the accounting credit, as defined in ~~A.R.S. § 42-1322.04~~ A.R.S. § 42-5017 for the June reporting period.
- F. Taxpayers who are not required to make the annual estimated tax payment but make a voluntary annual estimated payment are not subject to subsection (E).

**R15-5-2216. ~~Repealed~~ Liability Relief for Marketplace Facilitators and Remote Sellers**

- A. In this Section:
  1. "Affiliated person" has the same meaning as prescribed in A.R.S. § 42-5043.
  2. "Incorrect information" means any information that was given to the marketplace facilitator by the marketplace seller and that is not accurate. Incorrect information does not include any of the following:
    - a. Mistakes related to the process of filing a return, such as the frequency, non-filing, or manner of filing;
    - b. Mistakes related to the manner of remitting tax liability to the Department;
    - c. Failure to remit all amounts collected and represented as tax.
  3. "Errors other than sourcing" means errors related to the details of a sale and errors related to tax rates. "Errors other than sourcing" does not include any of the following:
    - a. Mistakes related to the process of filing a return, such as the frequency, non-filing, or manner of filing.
    - b. Mistakes related to the manner of remitting tax liability to the Department.
    - c. Failure to remit all amounts collected and represented as tax.
  4. "Taxable sales" means gross sales sourced to this state less any allowable deductions or exemptions.
- B. A marketplace facilitator or remote seller may apply for liability relief pursuant to A.R.S. § 42-5043 as outlined by Department-issued procedure.
- C. A marketplace facilitator or remote seller may not obtain liability relief under A.R.S. § 42-5043 if the marketplace facilitator or remote seller does not act in good faith. "Good faith" means acting with honesty and with no knowledge of circumstances that would render the marketplace facilitator or remote seller ineligible for liability relief.
- D. In processing an application for liability relief pursuant to A.R.S. § 42-5043, the Department will waive penalties and interest when reasonable cause exists. Whether reasonable cause exists is based on the facts and circumstances of the specific request for relief, which may include whether the marketplace facilitator should have known that the information provided by the marketplace seller was incorrect; whether the marketplace facilitator or remote seller applied for liability relief for the same errors other than the sourcing in the prior 12 months; and other relevant factors.
- E. The liability relief limitations provided in A.R.S. § 42-5043 for a marketplace facilitator shall be applied in relation to the total tax liability of all the marketplace sellers selling on the marketplace facilitator's marketplace. Nothing in this rule shall be construed as allowing any liability relief for a marketplace facilitator in relation to its own sales or sales on behalf of any of its affiliates.
  1. Example: ABC, a marketplace facilitator, applies for liability relief based on a filing error in 2019 because it applied a lower tax rate to all of one of its marketplace seller's sales. The total tax due for all taxable Arizona sales for all marketplace sellers' sales in 2019 is \$63,000. Liability relief may be granted to ABC for up to \$3,150 (5% × 63,000).
  2. Example: Assume the same facts as in the example found in subsection (E)(1). Besides sales that ABC facilitated on behalf of third-party marketplace sellers, ABC also made its own sales through its marketplace. These direct sales by ABC resulted in an actual combined tax liability of \$10,000 that ABC erroneously reported to the Department as \$5,000. ABC will not be granted liability relief for errors resulting from these direct sales.
  3. Example: In 2020, ABC, a marketplace facilitator, files an amended return based on incorrect information provided to it by one of its marketplace sellers. ABC applies for liability relief as soon as possible after discovering the error. The evidence shows that ABC acted in good faith and could not have known that the information was incorrect. This constitutes an error under A.R.S. § 42-5043(A)(1). This statutory provision authorizes the Department to grant relief, and there is no limitation on the amount of relief that can be granted. The Department may grant relief that is reasonable under the circumstances.
  4. Example: In 2020, XYZ, a remote seller, deducted amounts for sales that it thought were exempt, but after further research, realized were in fact taxable. XYZ's total tax due from its gross sales for the period under consideration is \$31,500. Pursuant to A.R.S. § 42-5043(B)(2), liability relief for XYZ's non-sourcing related error may be granted in any amount up to \$945 (3% × \$31,500).



- 5. Example: In 2022, ABC, a marketplace facilitator, files an amended return based on incorrect information provided to it by one of its marketplace sellers. In the same year, ABC also makes a filing error by using the incorrect tax rate on a sale. ABC applies for liability relief in both instances. The Department may grant liability relief under A.R.S. § 42-5043(A)(1) for errors resulting from the incorrect information provided to ABC by its seller. However, no liability relief is available for ABC’s filing error, pursuant to A.R.S. § 42-5043(B).
- 6. Example: XYZ, a remote seller, files a paper tax return late and also pays late. Consequently, XYZ accrues penalties for late filing, late payment, and filing in an inappropriate manner (i.e., not electronically through AZTaxes.gov). The Department may grant penalty relief in all instances if XYZ shows reasonable cause.

**R15-5-2217. ~~Repealed~~ Reasonable Cause for Waiver of Civil Penalties**

- ~~A.~~ Pursuant to A.R.S. 42-1125, the Department shall not apply specified civil penalties for failure to pay a required amount of transaction privilege tax or file a required transaction privilege return if reasonable cause exists and the failure to pay was not due to willful neglect or fraud. Generally, reasonable cause exists whenever a taxpayer uses prudent and timely business practices but nonetheless fails to fully comply with its tax remittance and reporting requirements due to circumstances beyond the taxpayer’s control.
- ~~B.~~ The Department must consider a taxpayer requesting waiver of civil penalties to have reasonable cause if a failure to pay transaction privilege tax due or file a required transaction privilege tax return was due to a system outage or other system unavailability—whether scheduled or unscheduled—of AZTaxes.gov that prevents or substantially interferes with a taxpayer’s ability to access, submit, or otherwise complete a required return or payment and submit the return or payment in the time required by law.
- ~~C.~~ The Department must consider a taxpayer requesting waiver of civil penalties to have reasonable cause if a failure to pay the full and correct amount of transaction privilege tax due or file a complete and correct transaction privilege tax return was due to a software- or application-based error by either AZTaxes.gov or a Department-approved vendor’s software to calculate and file a transaction privilege tax return, if the error demonstrably results in the incorrect calculation or payment of any taxes due.
- ~~D.~~ Except as provided in subsection (E), a taxpayer requesting waiver of civil penalties for reasonable cause shall notify the Department of the issue or error in writing within a reasonable time after becoming aware of the issue or error.
- ~~E.~~ The Department may waive civil penalties without requiring a written taxpayer request for any system outage, system unavailability, or other event or anomaly as described in subsections (B) and (C) if it becomes aware of the event or anomaly before issuing a penalty assessment.

**R15-5-2220. ~~Registration and Licensing Repealed~~**

- ~~A.~~ Out of state vendors making sales to Arizona purchasers shall obtain a use tax license from the Department.
- ~~B.~~ Use tax collected on an isolated sale to an Arizona customer may be remitted under a cover letter rather than on a standard report form.

**ARTICLE 23. USE TAX**

**R15-5-2301. Definitions**

The following definitions apply for the Department’s administration of use tax ~~In this Article:~~

- ~~1.~~ “Mail order retailer” means a retailer who solicits orders by mail, notwithstanding the fact that orders may be received by telephone or by mail or that goods may be delivered by mail or by private delivery system.
- ~~2-1.~~ “Purchases” means purchase for storage, use, or consumption in Arizona.
- ~~3-2.~~ “Retailer” ~~includes any retailer located outside this state who solicits orders for tangible personal property by mail from points in this state if the solicitations are substantial and recurring~~ has the same meaning as prescribed in A.R.S. § 42-5151, but does not include a marketplace facilitator or remote seller who meets the threshold requirements in A.R.S. § 42-5044.
- 3. “Utility business” has the same meaning as prescribed in A.R.S. § 42-5151.

**R15-5-2302. General**

- ~~A.~~ In this Section, “retailer” and “utility business” have the same meanings as prescribed in A.R.S. § 42-5151.
- ~~B-A.~~ A.R.S. § 42-5155 imposes Arizona use tax upon a purchaser that purchases tangible personal property from an out-of-state retailer or utility business if the retailer or utility business’s gross receipts from the sale have not already been included in the measure of Arizona transaction privilege tax. Because Arizona transaction privilege tax and Arizona use tax are complementary taxes, only one of the taxes is imposed on a given transaction.
- ~~C-B.~~ Arizona use tax generally applies to the use, storage, or consumption in this state of tangible personal property purchased from an out-of-state retailer or utility business.
- ~~D-C.~~ If a purchaser pays to an out-of-state retailer or utility business a tax of another state levied on the sale or use of tangible personal property that is subject to Arizona use tax, the purchaser may apply the amount of tax paid to the other state against the purchaser’s use tax liability.
- ~~E-D.~~ A purchaser that purchases tangible personal property exempt from tax because the property is purchased for resale in the ordinary course of business but subsequently uses or consumes the tangible personal property shall pay Arizona use tax.

**R15-5-2310. Payment of Use Tax by Purchaser**

- A. ~~The Use Tax tax~~ must be paid to:
  - 1. An out-of-state vendor holding a certificate of authority for the collection of ~~Use Tax~~ use tax, or
  - 2. The Arizona Department of Revenue, in cases where the vendor is not a marketplace facilitator or remote seller liable for transaction privilege tax under A.R.S. § 42-5044 or is not registered for the collection of ~~the use tax~~.
- ~~B.~~ A one-time, nonrecurring payment of use tax may be remitted to the Department under a cover letter rather than on a standard report form.
- ~~B-C.~~ Arizona purchasers making recurring purchases from out of state may apply to the Department for a registration certificate and remit payment directly to the state on a monthly report form in lieu of making payment to the vendor.



~~C.D.~~ The purchaser will be relieved of his liability for the tax when payment is made directly to the out-of-state vendor registered and a receipt of the tax paid is obtained by him.

**R15-5-2350. Mail Order Retailers Repealed**

~~This rule is not a limitation on other provisions of Arizona Revised Statutes, Title 42, Chapter 8, Article 2. A mail order retailer's transactions are substantial and recurring if the following conditions are satisfied:~~

- ~~1. The sale of tangible personal property would be subject to transaction privilege taxation if the transaction would have occurred in this state, and~~
- ~~2. During any 12-month period:~~
  - ~~a. The retailer's total sales in this state exceed \$100,000.00; or~~
  - ~~b. Two or more mailings, aggregating 5,000 or more solicitations, are made to points in this state.~~

**NOTICE OF EXEMPT RULEMAKING  
TITLE 15. REVENUE  
CHAPTER 10. DEPARTMENT OF REVENUE  
GENERAL ADMINISTRATION**

[R19-208]

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable)**

	<b><u>Rulemaking Action</u></b>
R15-10-301	Amend
R15-10-302	Amend
R15-10-501	Amend
R15-10-505	Amend
  
- 2. Citations to the agency's statutory rulemaking authority, including the authorizing state (general), the implementing statute (specific), and the statute or session law authorizing the exemption:**  
 Authorizing statute: A.R.S. §§ 42-1003(F), 42-1005(A)(1); Laws 2019, 1st Reg. Sess., Ch. 273, § 32.  
 Implementing statute: A.R.S. §§ 42-3004(1), 42-5009(C); Laws 2019, 1st Reg. Sess., Ch. 273, §§ 6, 32.  
 Statute or session law authorizing the exemption: Laws 2019, 1st Reg. Sess., Ch. 273, § 32.
  
- 3. Effective date of the rules and the agency's reason it selected the effective date:**  
 October 1, 2019  
  
 The effective date of the rules is October 1, 2019, which the Department has selected because it falls after the August 27, 2019, general effective date applicable to the underlying legislation and coincides with the start of the first filing period for affected taxpayers on October 1, 2019.
  
- 4. List of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**  
 None
  
- 5. Agency's contact person who can answer questions about the rulemaking:**  
 Name: Lisa Querard, Research and Policy Administrator  
 Address: Department of Revenue  
 1600 W. Monroe St., Mail Code 1300  
 Phoenix, AZ 85007  
  
 Telephone: (602) 716-6813  
 Fax: (602) 716-7996  
 Email: lquerard@azdor.gov  
 Web site: www.azdor.gov
  
- 6. Agency's justification and reason why rules should be made, amended, repealed, or renumbered, including an explanation about the rulemaking:**

This rulemaking amends existing rules and introduces new rules to accommodate the needs of remote sellers and marketplace facilitators who, beginning October 1, 2019, are required to become licensed with the Department and report and remit Arizona transaction privilege taxes if they meet the dollar thresholds in retail sales to Arizona consumers that are established by Laws 2019, 1st Reg. Sess., Ch. 273 (hereafter referred to in its entirety as "HB 2757"). Additionally, it repeals or updates outmoded, redundant, or potentially confusing language that diminishes the utility of rules that are applicable to remote sellers, marketplace facilitators, and other taxpayers.

Before the enactment of HB 2757, liability for state and local privilege taxes (collectively referred to as "TPT" in this Notice) was based on a taxpayer's physical presence in Arizona, rather than the level of gross sales with Arizona consumers. Consequently, in addition to introducing new provisions addressing the criteria for transaction privilege tax liability, liability relief provisions for remote sellers and marketplace facilitators and filing methodology, the Department reviewed its existing rules on retail sales and reporting and filing requirements and amended or repealed language to accurately reflect its current position vis-à-vis all taxpayers, including remote sellers and marketplace facilitators.

The Department received approval to engage in this rulemaking action as an exception to Executive Order 2019-01, 25 A.A.R. 131 (Jan. 9, 2019) on September 16, 2019. Aside from stylistic, grammatical, or technical corrections intended to be nonsubstantive in

42-1003. Department organization; director's staff; deputy director; assistant directors; fingerprinting; consumer reports; definition

- A. The department consists of such divisions as the director deems necessary to achieve maximum efficiency, economy and effectiveness in administering and collecting taxes. The departmental organization shall provide for administering taxes as prescribed by law and for administrative services to the department, including data processing, accounting, records management, publications, collection of delinquent accounts, personnel services and budget and property control.
- B. The director may divide the state into a reasonable number of districts and establish a full-time or part-time branch office or offices in each district as may be necessary. In establishing districts and branch offices, the director shall give due consideration to economy of administration and service to the taxpayers.
- C. The director may employ, appoint and remove, in the manner prescribed by law, such officers, agents, branch office deputies and other staff personnel as the director deems necessary to assist in administering the department. The director's staff may perform such functions as the director prescribes, including budget development, legal research and analysis, tax research, departmental audit and public relations.
- D. A deputy director of the department may be appointed by the director with the approval of the governor. The deputy director, if appointed, serves at the pleasure of the director with the approval of the governor. The deputy director shall assist the director in administering the department and has the duties and responsibilities as the director assigns.
- E. The director, with the approval of the governor, may appoint an assistant director to head each division of the department. Any assistant director appointed is directly responsible for the functions performed by the assistant director's division. Each assistant director serves at the pleasure of the director with the approval of the governor.
- F. The director may appoint other deputies or assistants to conduct hearings, prescribe administrative rules or perform any other duty prescribed for the department by law.
- G. The director may require officers, agents, deputies and other employees designated by the director to give bond for the faithful performance of their duties in such an amount and with such sureties as the director determines or as prescribed by statute. The department shall pay all premiums on the bonds out of monies appropriated for the administration of the department.
- H. The director and officers and employees designated by the director may administer an oath to any person or take the acknowledgement of any person in respect of any return or report required by law or the administrative rules of the department.
- I. The director may reassign the administration of taxes and may assign and delegate the duties, powers and functions of the department among its divisions in order to achieve maximum efficiency, economy and effectiveness. The director or the deputy director, if any, shall enforce cooperation among the divisions in the provision and integration of all functions at all levels of the department.
- J. The director may obtain a state and federal criminal records check for an applicant for employment for the purpose of hiring personnel or for any employee, contractor or temporary employee as required by internal revenue service guidelines or any other federal guidelines. Before making a final offer of employment or for purposes of screening an employee or contractor, the director shall require the preferred applicants, employees or contractors to submit a full set of fingerprints. The director shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The department of revenue may disclose information obtained pursuant to this subsection only to members of the department's staff solely for employment purposes. An applicant, employee, contractor or temporary employee is not disqualified from employment under this subsection except in accordance with section 13-904, subsection E.

K. The director may obtain a consumer report for an applicant for employment for the purpose of hiring personnel whose job duties include the distribution of tax revenues pursuant to this title and title 43. Consumer report information may be obtained and used only in accordance with the fair credit reporting act (P.L. 90-321; 84 Stat. 1128; 15 United States Code sections 1681 through 1681x). The consumer report information shall not be the sole reason for the disqualification of the applicant.

L. For the purposes of this section, "applicant" means any person who seeks employment as a new hire or any employee of the department who seeks a transfer, a reclassification or a reassignment to a different position.

#### 42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.
2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.
3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.
4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.
5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.
6. Provide such assistance to the governor and the legislature as they may require.
7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-5003. Administration and enforcement of article; employees; bonds

- A. The administration of this article is vested in and shall be exercised by the department of revenue according to chapter 1, articles 1 and 3 of this title and this article, and all payments required by this article shall be made to the department.
- B. The enforcement of this article in any court of the state shall be under the exclusive jurisdiction of the department and the attorney general.
- C. The department shall appoint, as necessary, such agents, clerks and stenographers as authorized by law, who shall perform such duties as may be required not inconsistent with this article, and who shall be authorized to act for the department as it prescribes and as provided by this article. Each agent shall execute a bond in the amount of five thousand dollars conditioned upon the faithful discharge of the agent's duties, but the department may, in its discretion, bond all or any of its agents by a multiple or joint bond. The agents, clerks and stenographers may be removed by the department for cause, and the department shall be the final judge of the sufficiency of the cause.

42-5042. Online lodging operators; requirements; definitions

A. An online lodging operator may not offer for rent or rent a lodging accommodation without a current transaction privilege tax license. The online lodging operator shall list the transaction privilege tax license number on each advertisement for each lodging accommodation the online lodging operator maintains, including online lodging marketplace postings.

B. For the purposes of this section:

1. "Lodging accommodation" has the same meaning prescribed in section 42-5076.
2. "Online lodging marketplace" has the same meaning prescribed in section 42-5076.
3. "Online lodging operator" has the same meaning prescribed in section 42-5076 and includes an owner of a vacation rental or short-term rental, as defined in section 9-500.39 or 11-269.17, that is not offered through an online lodging marketplace.

42-5043. Liability; marketplace facilitators; remote sellers; refund claims; audits; definition

A. A marketplace facilitator is not liable for failing to pay the correct amount of transaction privilege tax for a marketplace seller's sales through the marketplace facilitator's marketplace to the extent that the marketplace facilitator demonstrates any of the following to the satisfaction of the department:

1. The failure to pay the correct amount of tax was due to incorrect information given to the marketplace facilitator by the marketplace seller, and the marketplace facilitator and the marketplace seller are not affiliated persons.
2. The marketplace facilitator and the marketplace seller are not affiliated persons, and the failure to pay the correct amount of tax was due to an error other than an error in sourcing the sale under section 42-5040.

B. The liability relief provided in subsection A, paragraph 2 of this section may not exceed the following:

1. For calendar year 2019, five percent of the total tax due under this chapter on taxable sales facilitated by the marketplace facilitator on behalf of a marketplace seller and sourced to this state under section 42-5040 during the same calendar year.
2. For calendar year 2020, three percent of the total tax due under this chapter on taxable sales facilitated by the marketplace facilitator on behalf of a marketplace seller and sourced to this state under section 42-5040 during the same calendar year.
3. For calendar year 2021 and each calendar year thereafter, zero percent of the total tax due under this chapter on taxable sales facilitated by the marketplace facilitator on behalf of a marketplace seller and sourced to this state under section 42-5040 during the same calendar year.

C. A remote seller is not liable for failing to pay the correct amount of transaction privilege tax if failure to pay the correct amount of tax was due to an error other than an error in sourcing the sale under section 42-5040. The liability relief provided in this subsection may not exceed the following:

1. For calendar year 2019, five percent of the total tax due under this chapter on taxable sales sourced to this state under section 42-5040 during the same calendar year.
2. For calendar year 2020, three percent of the total tax due under this chapter on taxable sales sourced to this state under section 42-5040 during the same calendar year.
3. For calendar year 2021 and each calendar year thereafter, zero percent of the total tax due under this chapter on taxable sales sourced to this state under section 42-5040 during the same calendar year.

D. The department may waive penalties and interest if the marketplace facilitator or remote seller seeks liability relief, the department rules that reasonable cause exists and the marketplace facilitator paid tax on sales facilitated for a marketplace seller during the period for which relief is sought or the remote seller paid tax on sales during the period for which relief is sought.

E. The department may determine the manner in which a marketplace facilitator or remote seller may claim the liability relief provided for in this section.

F. Refund claims related to an overpayment of transaction privilege tax collected by a marketplace facilitator shall be filed as prescribed by section 42-1118. If a refund claim is denied, the claimant may appeal the denial pursuant to chapter 1, article 6 of this title.

G. An audit of a marketplace facilitator may not automatically cause an audit of a marketplace seller.

H. For the purposes of this section, "affiliated person" means a person that, with respect to another person, either:

1. Has an ownership interest of more than five percent, whether direct or indirect, in that other person.
2. Is related to the other person because a third person, or a group of third persons that are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

42-5044. Nexus; out-of-state businesses; threshold; applicability; rulemaking; reporting; definition

A. Notwithstanding any other law, any person that conducts business in an activity classified under section 42-5061 with purchasers in this state is engaging or continuing in business in this state, is subject to this article and shall pay the taxes levied under this article, section 42-5061 and chapter 6 of this title and any duly enacted special district transaction privilege taxes imposed under title 48 on retail sales of tangible personal property if the person meets either of the following criteria in the previous or current calendar year:

1. If the person is a remote seller, the gross proceeds of sales or gross income derived from the remote seller's business with customers in this state pursuant to section 42-5061 that is not facilitated by a marketplace facilitator is more than the following:

(a) For calendar year 2019, \$200,000.

(b) For calendar year 2020, \$150,000.

(c) For calendar year 2021 and for each calendar year thereafter, \$100,000.

2. If the person is a marketplace facilitator, the gross proceeds of sales or gross income derived from the marketplace facilitator's business on its own behalf or on behalf of at least one marketplace seller with customers in this state pursuant to section 42-5061 is more than \$100,000.

B. For the purpose of determining whether a person meets any of the criteria prescribed in subsection A of this section, all affiliated persons shall be aggregated.

C. If the threshold provided in subsection A of this section was not met in the previous calendar year and is met partway through the current calendar year, the person shall obtain a transaction privilege tax license from the department once the threshold is met and begin remitting the tax on the first day of the month that starts at least thirty days after the threshold is met for the remaining of the current year and the next calendar year. If the person does not meet the threshold in the next calendar year, the person is not required to remit the transaction privilege tax for the calendar year following that calendar year and may cancel the person's transaction privilege tax license. If the threshold is met in a subsequent calendar year, the person shall remit the transaction privilege tax pursuant to this section.

D. The department may adopt rules pursuant to title 41, chapter 6 to carry out this section.

E. A marketplace facilitator shall report the tax due under this section from transactions facilitated on behalf of marketplace sellers. A marketplace facilitator may report the tax due under this section with the tax collected from transactions made directly by the marketplace facilitator on a combined tax return or on a separate return.

F. For the purposes of this section, "affiliated person" means a person that, with respect to another person, either:

1. Has an ownership interest of more than five percent, whether direct or indirect, in that other person.

2. Is related to the other person because a third person, or a group of third persons that are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

## 42-5061. Retail classification; definitions

(L19, Ch. 273, sec. 7 & Ch. 288, sec. 1)

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

1. Professional or personal service occupations or businesses that involve sales or transfers of tangible personal property only as inconsequential elements.
2. Services rendered in addition to selling tangible personal property at retail.
3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under section 42-5156.
4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.
5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.
6. Business activity that is properly included in any other business classification that is taxable under this article.
7. The sale of stocks and bonds.
8. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.
9. Prosthetic appliances as defined in section 23-501 and as prescribed or recommended by a health professional who is licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.
10. Insulin, insulin syringes and glucose test strips.
11. Prescription eyeglasses or contact lenses.
12. Hearing aids as defined in section 36-1901.
13. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.
14. Sales of motor vehicles to nonresidents of this state for use outside this state if the motor vehicle dealer ships or delivers the motor vehicle to a destination out of this state.
15. Food, as provided in and subject to the conditions of article 3 of this chapter and sections 42-5074 and 42-6017.
16. Items purchased with United States department of agriculture coupons issued under the supplemental nutrition assistance program pursuant to the food and nutrition act of 2008 (P.L. 88-525; 78 Stat. 703; 7 United

States Code sections 2011 through 2036b) by the United States department of agriculture food and nutrition service or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; P.L. 111-296; 42 United States Code section 1786).

17. Textbooks by any bookstore that are required by any state university or community college.

18. Food and drink to a person that is engaged in a business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.

19. Articles of food, drink or condiment and accessory tangible personal property to a school district or charter school if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district or on the premises of the charter school during school hours.

20. Lottery tickets or shares pursuant to title 5, chapter 5.1, article 1.

21. The sale of cash equivalents and the sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is subject to the tax and the gross proceeds of sales or gross income derived from the redemption of any cash equivalent by the holder as a means of payment for goods or services that are taxable under this article is subject to the tax. For the purposes of this paragraph:

(a) "Cash equivalents" means items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift certificates, vouchers, traveler's checks, money orders or other instruments, orders or electronic mechanisms, such as an electronic code, personal identification number or digital payment mechanism, or any other prepaid intangible right to acquire tangible personal property, intangibles or services in the future, whether from the seller of the cash equivalent or from another person. Cash equivalents do not include either of the following:

(i) Items or intangibles that are sold to one or more persons, through which a value is not denominated in money.

(ii) Prepaid calling cards or prepaid authorization numbers for telecommunications services made taxable by subsection P of this section.

(b) "Monetized bullion" means coins and other forms of money that are manufactured from gold, silver or other metals and that have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

(c) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, that has been smelted or refined so that its value depends on its contents and not on its form.

22. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739, sales of aviation fuel that are subject to the tax imposed under section 28-8344 and sales of jet fuel that are subject to the tax imposed under article 8 of this chapter.

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

- (a) A qualifying hospital as defined in section 42-5001.
- (b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.
- (c) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind and visually impaired children and children with multiple disabilities from the time of birth to age twenty-one.
- (d) A qualifying community health center as defined in section 42-5001.
- (e) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.
- (f) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.
- (g) A qualifying health sciences educational institution as defined in section 42-5001.
- (h) Any person representing or working on behalf of another person described in subdivisions (a) through (g) of this paragraph if the tangible personal property is incorporated or fabricated into a project described in section 42-5075, subsection O.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

27. Tangible personal property sold to:

- (a) A person that is subject to tax under this article by reason of being engaged in business classified under section 42-5075 or to a subcontractor working under the control of a person engaged in business classified under section 42-5075, if the property so sold is any of the following:
  - (i) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.
  - (ii) Incorporated or fabricated by the person into any project described in section 42-5075, subsection O.
  - (iii) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.
- (b) A person that is not subject to tax under section 42-5075 and that has been provided a copy of a certificate under section 42-5009, subsection L, if the property so sold is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.

28. The sale of a motor vehicle to:

- (a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01.
- (b) An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.

29. Tangible personal property purchased in this state by a nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property

exclusively in programs for persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

30. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association or professional golfing association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from taxation under section 42-5073.

31. Sales of commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

32. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Sales of propagative materials to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state. For the purposes of this paragraph, "propagative materials":

(a) Includes seeds, seedlings, roots, bulbs, liners, transplants, cuttings, soil and plant additives, agricultural minerals, auxiliary soil and plant substances, micronutrients, fertilizers, insecticides, herbicides, fungicides, soil fumigants, desiccants, rodenticides, adjuvants, plant nutrients and plant growth regulators.

(b) Except for use in commercially producing industrial hemp as defined in section 3-311, does not include any propagative materials used in producing any part, including seeds, of any plant of the genus cannabis.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person with a physical disability as defined in section 46-191 or a person who has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

35. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

36. Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

37. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

38. Sales of liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any

deduction for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

39. Through December 31, 1994, personal property liquidation transactions, conducted by a personal property liquidator. From and after December 31, 1994, personal property liquidation transactions shall be taxable under this section provided that nothing in this subsection shall be construed to authorize the taxation of casual activities or transactions under this chapter. For the purposes of this paragraph:

(a) "Personal property liquidation transaction" means a sale of personal property made by a personal property liquidator acting solely on behalf of the owner of the personal property sold at the dwelling of the owner or on the death of any owner, on behalf of the surviving spouse, if any, any devisee or heir or the personal representative of the estate of the deceased, if one has been appointed.

(b) "Personal property liquidator" means a person who is retained to conduct a sale in a personal property liquidation transaction.

40. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

41. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing or renting such property.

42. Sales of:

(a) Livestock and poultry to persons engaging in the businesses of farming, ranching or producing livestock or poultry.

(b) Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons for use or consumption by their own livestock or poultry, for use or consumption in the businesses of farming, ranching and producing or feeding livestock, poultry, or livestock or poultry products or for use or consumption in noncommercial boarding of livestock. For the purposes of this paragraph, "poultry" includes ratites.

43. Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or poultry owned by or in possession of persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

44. Sales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.

45. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, that are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

46. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

47. Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or

municipal libraries for use by the public as follows:

(a) Printed or photographic materials, beginning August 7, 1985.

(b) Electronic or digital media materials, beginning July 17, 1994.

48. Tangible personal property sold to a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

49. Sales of alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

50. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.

51. Sales of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

52. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

53. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

54. Sales of motor vehicle fuel and use fuel to a qualified business under section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

55. Sales of repair parts installed in equipment used directly by a qualified business under section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

56. Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

57. Computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona commerce authority under section 41-1519 or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in the qualified computer data center. For the purposes of this paragraph, "computer data center", "computer data center equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

58. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.

59. Sales of tangible personal property incorporated or fabricated into a project described in section 42-5075, subsection O, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual Native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of the Indian tribe.

60. Sales of works of fine art, as defined in section 44-1771, at an art auction or gallery in this state to nonresidents of this state for use outside this state if the vendor ships or delivers the work of fine art to a destination outside this state.

61. Sales of tangible personal property by a marketplace seller that are facilitated by a marketplace facilitator in which the marketplace facilitator has remitted or will remit the applicable tax to the department pursuant to section 42-5014.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media that are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

6. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is

used in operating the pipes or valves.

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person:

(i) Holding, or exempted by federal law from obtaining, a federal certificate of public convenience and necessity for use as, in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.

(ii) That is certificated or licensed under federal aviation administration regulations (14 Code of Federal Regulations part 121 or 135) as a scheduled or unscheduled carrier of persons for hire for use as or in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.

(iii) Holding a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(iv) Operating an aircraft to transport persons in any manner for compensation or hire, or for use in a fractional ownership program that meets the requirements of federal aviation administration regulations (14 Code of Federal Regulations part 91, subpart K), including as an air carrier, a foreign air carrier or a commercial operator or under a restricted category, within the meaning of 14 Code of Federal Regulations, regardless of whether the operation or aircraft is regulated or certified under part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code of Federal Regulations.

(v) That will lease or otherwise transfer operational control, within the meaning of federal aviation administration operations specification A008, or its successor, of the aircraft, instruments or accessories to one or more persons described in item (i), (ii), (iii) or (iv) of this subdivision, subject to section 42-5009, subsection Q.

(b) Any foreign government.

(c) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.

8. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

9. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

10. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

11. Buses or other urban mass transit vehicles that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

12. Groundwater measuring devices required under section 45-604.

13. New machinery and equipment consisting of agricultural aircraft, tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:

(a) "New machinery and equipment" means machinery and equipment that have never been sold at retail except pursuant to leases or rentals that do not total two years or more.

(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

14. Machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

15. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.

(b) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services. For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

16. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 14 of this subsection, of semiconductor products. For the purposes of this paragraph, "clean room" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.

(b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.

17. Machinery and equipment used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

18. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

19. Machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

20. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

21. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this deduction, the qualified business at the time of purchase must present its certification approved by the department.

C. The deductions provided by subsection B of this section do not include sales of:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 15 of this section.

5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 11 of this section, without regard to the use of such motor vehicles.

6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

7. Motors and pumps used in drip irrigation systems.

8. Machinery and equipment or other tangible personal property used by a contractor in the performance of a contract.

D. In addition to the deductions from the tax base prescribed by subsection A of this section, there shall be deducted from the tax base the gross proceeds of sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in section 41-1514.02. This subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction.

E. In computing the tax base, gross proceeds of sales or gross income from retail sales of heavy trucks and trailers does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4051.

F. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.

G. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.

H. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to:

1. Agricultural producers who are owners, proprietors or tenants of agricultural lands, orchards, farms or gardens where agricultural products are grown, raised or prepared for market and who are marketing their own agricultural products.

2. Businesses classified under the:

(a) Transporting classification.

(b) Utilities classification.

(c) Telecommunications classification.

(d) Pipeline classification.

(e) Private car line classification.

(f) Publication classification.

(g) Job printing classification.

(h) Prime contracting classification.

(i) Restaurant classification.

I. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.
2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.
3. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.
4. Sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph 3 of this subsection.

J. There shall be deducted from the tax base fifty percent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies that is not deducted under subsection I of this section.

K. The department shall require every person claiming a deduction provided by subsection I or J of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.

L. In computing the tax base, gross proceeds of sales or gross income does not include:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.
2. The waste tire disposal fee imposed pursuant to section 44-1302.

M. There shall be deducted from the tax base the amount received from sales of solar energy devices. The retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

N. In computing the tax base in the case of the sale or transfer of wireless telecommunications equipment as an inducement to a customer to enter into or continue a contract for telecommunications services that are taxable under section 42-5064, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

O. For the purposes of this section, a sale of wireless telecommunications equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064 is considered to be a sale for resale in the regular course of business.

P. Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this section.

Q. For the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of:

1. Operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

2. Converting natural gas into liquefied natural gas, for the sole purpose of fueling compressor equipment used in the conversion process, is not a sale of gas to the operator of the compressor equipment.

R. For the purposes of this section, the transfer of title or possession of coal from an owner or operator of a power plant to a person in the business of refining coal is not a sale of coal if both of the following apply:

1. The transfer of title or possession of the coal is for the purpose of refining the coal.

2. The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this paragraph, "coal refining process" means the application of a coal additive system that aids in the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

S. If a seller is entitled to a deduction pursuant to subsection B, paragraph 15, subdivision (b) of this section, the department may require the purchaser to establish that the requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied. If the purchaser cannot establish that the requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under article 1 of this chapter if the seller had not made a deduction pursuant to subsection B, paragraph 15, subdivision (b) of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and related to the tangible personal property purchased. The amount shall be treated as transaction privilege tax to the purchaser and as tax revenues collected from the seller to designate the distribution base pursuant to section 42-5029.

T. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the retail classification from businesses selling tangible personal property at retail:

1. On the premises of a multipurpose facility that is owned, leased or operated by the tourism and sports authority pursuant to title 5, chapter 8.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

U. In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser's state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser's state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser's state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall be deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

V. For the purposes of this section:

1. "Agricultural aircraft" means an aircraft that is built for agricultural use for the aerial application of pesticides or fertilizer or for aerial seeding.

2. "Aircraft" includes:

(a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

3. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

4. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

W. For the purposes of subsection I of this section:

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

2. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

4. "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from that would otherwise be included in the retail classification, and that are used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.

5. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

6. "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

42-5155. Levy of tax; tax rate; purchaser's liability

(Caution: 1998 Prop. 105 applies)

A. There is levied and imposed an excise tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer or utility business, as a percentage of the sales price. A manufactured building purchased outside this state and set up in this state is subject to tax under this section and in this case the rate is a percentage of sixty-five percent of the sales price.

B. The tax imposed by this section applies to any purchaser that purchased tangible personal property for resale but subsequently uses or consumes the property.

C. The tax rate shall equal the rate of tax prescribed by section 42-5010, subsection A as applied to retailers and utility businesses according to the respective classification under articles 1 and 2 of this chapter for the same type of transaction or business activity.

D. In addition to the rate prescribed by subsection C of this section, if approved by the qualified electors voting at a statewide general election, an additional rate increment of six-tenths of one per cent is imposed and shall be collected through June 30, 2021. The taxpayer shall pay taxes pursuant to this subsection at the same time and in the same manner as under subsection C of this section. The department shall separately account for the revenues collected with respect to the rate imposed pursuant to this subsection, and the state treasurer shall pay all of those revenues in the manner prescribed by section 42-5029, subsection E.

E. From and after June 30, 2021 through June 30, 2041, in addition to the rate prescribed by subsection C of this section, an additional rate increment of six-tenths of one percent is imposed and shall be collected. The taxpayer shall pay taxes pursuant to this subsection at the same time and in the same manner as under subsection C of this section. The department shall separately account for the revenues collected with respect to the rate imposed pursuant to this subsection, and the state treasurer shall pay all of those revenues in the manner prescribed by section 42-5029.02, subsection A.

F. Every person storing, using or consuming in this state tangible personal property purchased from a retailer or utility business is liable for the tax. The person's liability is not extinguished until the tax has been paid to this state.

G. A receipt from a retailer or utility business that maintains a place of business in this state or from a retailer or utility business that is authorized by the department to collect the tax, under such rules as it may prescribe, and that is for the purposes of this article regarded as a retailer or utility business maintaining a place of business in this state, given to the purchaser as provided in section 42-5161 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

### 42-5167. Use tax direct payment

A. A person may elect to pay use taxes directly to the department under this article if the person:

1. Applies to the department for a use tax direct payment permit. The application must be on a form prescribed by the department setting forth the name under which the applicant transacts or intends to transact business, the location of the place or places of business where the applicant intends to make direct payment of use taxes and any other information that the department may require. The application must be signed, in the case of:

(a) A natural person, by the owner.

(b) An association or partnership, by a member or partner.

(c) A corporation, by an executive officer or another person specifically authorized by the corporation to sign the application.

2. Agrees to self-assess and pay directly to the department any use tax liability incurred under this article.

3. Certifies to the department that the person purchased for the person's own use tangible personal property at a cost of five hundred thousand dollars or more, in the aggregate, during the immediately preceding calendar year.

B. The department shall issue a use tax direct payment permit to any applicant that meets the requirements of subsection A of this section.

C. If the department deems it necessary to protect the revenues to be collected under this section, it may require a person to file a bond to secure the payment of such amounts pursuant to section 42-1102.

D. A person who holds a valid use tax direct payment permit shall:

1. Self-assess and pay directly to the department use taxes due under this article for all tangible personal property subject to use tax.

2. Report the tax on a tax return prescribed by the department.

E. A holder of a use tax direct payment certificate may issue a use tax direct payment certificate to any retailer or seller, subject to all of the following:

1. The certificate shall be in a form prescribed by the department and must be signed by and bear the name, address and permit number of the holder of the use tax direct payment permit.

2. The certificate is effective until the permit holder revises or withdraws the certificate or until the retailer or seller receives actual notice that the department has revoked the permit.

3. The certificate relieves the retailer or seller of the duty to collect use tax only if taken in good faith from a person who holds a use tax direct payment permit. The department may periodically publish on its web site a list of taxpayers by name with tax identification numbers who have been issued direct payment permits. A purchaser holding a direct payment permit who issues a use tax direct payment certificate that is accepted in good faith by a retailer or seller of tangible personal property shall be liable for use tax and related interest and penalties with respect to any transaction that the department subsequently determines properly subjects the vendor to the transaction privilege tax and not use tax. The vendor shall be relieved of the duty to pay transaction privilege tax on such transactions.

4. In addition to any use tax liabilities, a holder of a use tax direct payment permit that gives a use tax direct payment certificate to a retailer or seller is subject to the same penalty provisions that apply to a retailer or seller.

**G.**

CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033 PETITION FROM WIRX PHARMACY,  
LLC



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - A.R.S. § 41-1033 Petition

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**MEETING DATE: DECEMBER 1, 2020**

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

**FROM:** Council Staff

**DATE:** November 2, 2020

**SUBJECT: A.R.S. § 41-1033 Petition from WIRX Pharmacy, LLC.**

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### I. STANDARD OF REVIEW

On September 30, 2020, Council staff received a Petition from Petitioner WIRX Pharmacy, LLC (WIRX) which was filed pursuant to A.R.S. § 41-1033. Under paragraph (H) of this statute:

If the council receives information that indicates an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section **and at least four council members request of the chairperson that the matter be heard in a public meeting....** (Emphasis added).

Therefore, as an initial matter, at least four Council Members must vote to request of the Chair that this Petition be heard in a public meeting in order for it to proceed. If the requisite number of Council Members do not make such a request, the Petition does not move forward before the Council.

## II. JURISDICTION

Another threshold matter the Council must determine is whether it has the statutory authority to hear petitions/appeals under A.R.S. § 41-1033 related to rules enacted through exempt rulemaking. ICA's fee schedule at issue in this matter was enacted by exempt rulemaking pursuant to A.R.S. § 41-1005(A)(25).

It is Council staff's position that the Council does have the statutory authority to hear petitions/appeals under A.R.S. § 41-1033 related to final rules enacted through exempt rulemaking pursuant to A.R.S. § 41-1005 for two main reasons.

First, petitions and appeals under A.R.S. § 41-1033 relate to "final rules." That term is defined in A.R.S. § 41-1001(10) and includes rules made pursuant to an exemption in A.R.S. § 41-1005(A). Therefore, A.R.S. § 41-1033, and the Council's review of petitions or appeals thereunder, expressly includes rules enacted by exempt rulemaking pursuant to A.R.S. § 41-1005(A).

Second, "rulemaking" is defined as "the process to make a new rule or amend, repeal or renumber a rule" under A.R.S. § 41-1001(20). It is understood that a rule made pursuant to an enumerated exemption in A.R.S. § 41-1005(A) is one that is made without following certain rulemaking procedures and requirements in A.R.S. Title 41, Chapter 6. However, once the rule is made, regardless of the process used to make it, it assumes the status of a "final rule" as confirmed in the definition of that term in A.R.S. § 41-1001(10). The scope of the A.R.S. § 41-1005(A) exemption from Title 41, Chapter 6 relates to the *rulemaking processes* outlined in Title 41, Chapter 6, rather than an exemption from the chapter as a whole. Relatedly, there are other provisions in Chapter 6 that bring into question such an expansive scope of the A.R.S. § 41-1005 exemption. *See also* A.R.S. § 41-1029(A).

While Council staff acknowledges there may be alternative interpretations of the relevant statutes, the law related to this issue is unsettled.

## III. FACTUAL BACKGROUND

WIRX, an independent pharmacy licensed in Arizona, filed this Petition with the Council to review an allegedly overreaching rulemaking by the Industrial Commission of Arizona (ICA). Specifically, WIRX is challenging ICA's alleged interpretation of its "General Guidelines for Billing and Reimbursement of Prescription Medications" found in Appendix A, the "Arizona Physicians' and Pharmaceutical Fee Schedule 2019/2020," of ICA's rules in Title 20, Chapter 5 of the Arizona Administrative Code.

In support of its petition, however, WIRX provides no correspondence, communication, or proof of official action from ICA itself related to the ICA's interpretation or application of the medication reimbursement guidelines as they relate to WIRX or any other pharmacy. Instead, WIRX provides a copy of an email correspondence from an employee of the Arizona Department of Administration (ADOA) interpreting the ICA's medication reimbursement guidelines as they relate to WIRX. *See* Petition Exhibit A. WIRX also provides a copy of a letter

from the Arizona Counties Insurance Pool (ACIP) to an alleged WIRX patient regarding ACIP's interpretation of the dispensed medication reimbursement guidelines as they relate to WIRX. *See* Petition Exhibit B.

Nevertheless, WIRX alleges on Pages 4 and 5 of its Petition:

The ICA's interpretation that the legislature intended a participating pharmacy must accept any fee schedule offered by any (and all?) third-party payor(s) is baseless and arbitrary. Absent legislation, the Commission is not permitted to enforce its *sua sponte* requirement that a pharmacy, otherwise open to the general public, must accept any specific third-party payor plan or fee schedule to be eligible for reimbursement of workers' compensation claims by the Commission. Therefore, by enacting this requirement, the ICA has exceeded its rulemaking authority under A.R.S. §§ 41-1030 and 41-1033(E-G).

In an informal response to WIRX's Petition, dated October 22, 2020, ICA states on Page 2 that:

[t]he ICA has never communicated directly with Petitioner and has not made any determinations about whether WIRX is or is not "accessible to the general public. (See Petition at 4.) To the extent those determinations or statements have been made in the context of specific workers' compensation cases, the decisions have been made by interested parties (including ADOA and ACIP) based on the interested parties' application of the Fee Schedule guidelines to relevant facts.

#### **IV. WIRX'S PETITION DOES NOT QUALIFY UNDER ANY OF THE THREE BASES IN A.R.S. § 41-1033 CITED IN ITS PETITION**

For the reasons that follow, Council staff does not believe WIRX's Petition qualifies under A.R.S. §§ 41-1033(E), (F), and/or (G). Therefore, Council staff recommends that Council Members not request that this petition be heard at a public meeting pursuant to A.R.S. § 41-1033(H).

##### **A. A.R.S. § 41-1033(E)**

In its Petition, WIRX cites A.R.S. § 41-1033(E) as a basis for the Petition. *See* Page 5 of WIRX Petition. A.R.S. § 41-1033(E) states, "[i]f an agency rejects a petition pursuant to [A.R.S. § 41-1033(C)], the petitioner has thirty days to appeal to the council...." WIRX provides no evidence that it filed a petition with ICA and that ICA rejected the petition. In the absence of supporting documentation that WIRX complied with the requirements in A.R.S. §§ 41-1033(A)-(C), Council staff does not believe WIRX has a basis to appeal to the Council pursuant to A.R.S. § 41-1033(E).

**B. A.R.S. § 41-1033(F)**

WIRX also cites A.R.S. § 41-1033(F) as a basis for the Petition. *See* Page 5 of WIRX Petition. Under this section, “[a] person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.”

WIRX’s petition argues that “[b]y enacting this requirement, the ICA has exceeded its rulemaking authority under A.R.S. §§ 41-1030 and 41-1033(E-G).” *See* Petition at 5. Under A.R.S. § 41-1030(C) (Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice):

[a]n agency shall not:

1. Make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.
2. Make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority.

As described above, while ICA has the authority to create a fee schedule through exempt rulemaking, and in fact did so, WIRX is not challenging ICA’s ability to create a fee schedule through exempt rulemaking in the instant petition, or the fee schedule itself. Instead, WIRX is challenging a third party’s interpretation of ICA’s fee schedule, and specifically, the meaning of “open to the general public,” and not any rulemaking action by ICA. The existing statutory framework of A.R.S. § 41-1033 does not provide a basis for a person or entity harmed by a third party’s interpretation of an agency’s rule to file a petition against the agency that adopted the rule. This is particularly true when the agency played no role in making or enforcing that interpretation, as appears to be the case here.

In the absence of supporting documentation to the contrary, Council staff does not believe there is a basis for the Council to hear this Petition under A.R.S. § 41-1033(F).

**C. A.R.S. § 41-1033(G)**

WIRX also cites A.R.S. § 41-1033(G) as a basis for the Petition. *See* Page 5 of WIRX Petition. Under this section:

[a] person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not

demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern....

This section does not apply to the instant Petition because WIRX is not requesting review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32. WIRX's petition is challenging a third party's interpretation of ICA's fee schedule, which is not adopted pursuant to Title 32 of the Arizona Revised Statutes, and not any conduct or rulemaking action by ICA. In the absence of supporting documentation to the contrary, Council staff does not believe there is a basis for the Council to hear this Petition under A.R.S. § 41-1033(G).

## **V. CONCLUSION**

In light of the above, Council staff recommends that Council Members not request that this matter be heard at a public meeting pursuant to A.R.S. § 41-1033(H).

1 Boesen & Snow LLC  
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3 Allyson L. Snow (SBN 031058/  
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9 asnow@bslawusa.com  
10 smiller@bslawusa.com  
11 Attorneys for Petitioner WIRX Pharmacy

8 **BEFORE THE ARIZONA GOVERNOR’S REGULATORY REVIEW COUNCIL**

9 In Re. the Matter of  
10 **WIRX Pharmacy, LLC,**  
11 **Petitioner, and the**  
12 **Industrial Commission of the State of**  
13 **Arizona**

**PETITION TO REQUEST REVIEW  
OF EXISTING AGENCY PRACTICE  
OR SUBSTANTIVE POLICY  
STATEMENT CONSTITUTING A  
RULE**

(A.R.S. §§ 41-1033(E), 1033(F), and  
1033(G) & 1033(H))

14  
15  
16 WIRX PHARMACY, LLC (“Petitioner,” “WIRX”) is the holder of Pharmacy  
17 Permit Number , by and through undersigned counsel, respectfully petitions the Arizona  
18 Governor’s Regulatory Review Council to review overreaching rulemaking by the  
19 Industrial Commission of Arizona relating to implementation of A.R.S. §§ 23-908 and  
20 23-1062.02.

21 **RELEVANT FACTS**

22 1. Petitioner is an independent pharmacy licensed by the Arizona State Board  
23 of Pharmacy Permit Number Y007485 to operate as an independent pharmacy. Petitioner  
24 is additionally licensed in Pennsylvania, New York, New Jersey, Delaware,  
25 Massachusetts, Florida, Georgia, , Minnesota, Nevada, Texas, Utah, and Wisconsin.  
26

1           2.     Petitioner WIRX has a primary place of business located at 540  
2 Pennsylvania Avenue, Fort Washington, Pennsylvania 19034.

3           3.     WIRX is a full-service retail pharmacy, open to the general public, and  
4 accepts all prescriptions in person at its Fort Washington location, or by fax, eSRCIBE,  
5 and email.

6           4.     Although WIRX markets its pharmacy services to patients receiving  
7 workman’s compensation insurance benefits, WIRX accepts and fills prescriptions  
8 written by providers not treating job-related injuries, for treatment of a range of medical  
9 conditions, and for patients not participating in any state workman’s compensation  
10 insurance program.

11          5.     On August 17, 2020, WIRX received an email from Sydney Standifird of  
12 the Arizona Department of Administration, advising:

13           (i)    A.R.S. § 23-908(B) requires the ICA to establish a fee schedule for  
14 providers treating—and prescribing medications to—injured employees.

15           (ii)   Proposed (2018) SB 1111 § 3 amending §§ 23-908 and 23-1062.02 to  
16 direct the Industrial Commission of Arizona (“ICA”) to “review  
17 information and data, consult with physician, employee, and business and  
18 industry stakeholders, and hold at least one public hearing in considering  
19 whether to adopt additional reimbursement guidelines for medications  
20 ***dispensed in settings that are not accessible to the general public.***”  
21 (Emphasis added.)

22           (iii)   As a consequence of (ii), the ICA has proposed additional amendments in  
23 the 2020/2021 legislative session, namely

24                   An insurance carrier, self-insured employer, or the Special Fund  
25                   of the Commission is responsible for the payment of prescription  
26                   medications that are dispensed by a medical practitioner ***or in a  
                          pharmacy not accessible to the general public*** if all of the

1 following apply: 1. The injured employee does not have access to  
2 a pharmacy accessible to the general public within 20 miles of  
3 the injured employee's home address, work address, or the  
4 address of the prescribing medical practitioner; 2. The injured  
5 employee cannot reasonably acquire the prescription medication  
6 from an online or mail order pharmacy accessible to the general  
7 public; and 3. The prescription medication conforms to dosages  
8 and formulations which are commercially available in  
9 pharmacies accessible to the general public. (Emphasis added.)

7 (iv) The ICA concluded that the legislature intended "open to the general  
8 public" to mean "anyone with a valid prescription could access the  
9 pharmacy *regardless of coverage, whether it was private pay,*  
10 *Medicare/Medicaid [sic], commercial, Tricare, Veterans*  
11 *Healthcare.*" (Emphasis added.)

12 (v) The ICA further concluded, based upon its review of language on  
13 the WIRX website, that WIRX is not accessible to the general public  
14 and advised the ICA would only cover WIRX invoices for  
15 compensable benefits through September 30, 2020.

16 6. Petitioner responded through undersigned counsel by email on  
17 September 16, 2020 asking the basis for ICA's belief that WIRX is not accessible  
18 to the general public. On September 18, Ms. Sandifird acknowledged receipt,  
19 indicating "I will research and get back to you within the next few days." WIRX  
20 repeated its request on September 24 and again on September 29. Do date, the ICA  
21 has not provided an explanation. Emails ref. herein are attached as "Exhibit A."

22 7. WIRX obtained a letter the ICA sent to a WIRX patient. This letter  
23 states "Due to recent changes in the Arizona Industrial Commission Fee Schedule,  
24 medications distributed through WIRX Pharmacy will no longer be accepted for  
25 payment after October 15, 2020." Letter is attached hereto as "Exhibit B."  
26



1 *sponte* requirement that a pharmacy, otherwise open to the general public, must accept  
2 any specific third-party payor plan or fee schedule to be eligible for reimbursement of  
3 workers' compensation claims by the Commission. Therefore, by enacting this  
4 requirement, the ICA has exceeded its rulemaking authority under A.R.S. §§ 41-1030 and  
5 41-1033(E-G).

6 For at least the foregoing reasons, Petitioner respectfully asks the GRRC hold the  
7 IAC (i) has exceeded its rulemaking authority; and (ii) must abandon any requirement  
8 that a pharmacy provider must accept a particular third-party payor fee schedule pursuant  
9 to A.R.S. § 23-908, § 23-1062.02 and (proposed) § 23-1062.04.

10 DATED this 30<sup>th</sup> day of September, 2019.

11 By: /s/ Mark D. Boesen

12 Mark D. Boesen, PharmD, J.D.  
13 Boesen & Snow LLC  
14 17797 N. Perimeter Dr, Ste D107  
15 Scottsdale, Arizona 85255  
16 Tel: (602) 900-4614  
17 mboesen@bslawusa.com

18 ATTORNEYS FOR PETITIONER

19 ORIGINAL OF THE FORGOING ELECTRONICALLY FILED  
20 this 30<sup>th</sup> day of September, 2020 with:

21 Arizona Governor's Regulatory Review Council  
22 100 N. 15<sup>th</sup> Avenue  
23 Phoenix, Arizona 85007

24 COPY OF THE FOEREGOING MAILED  
25 BY REGULAR US MAIL  
26 this 30<sup>th</sup> day of September, 2020 to:

Ms. Sydney Standifird  
Industrial Commission of Arizona  
800 W, Washington Street  
Phoenix, AZ 85007  
sydney.standifird@azdoa.gov

# EXHIBIT A

**From:** Sydney Standifird <[sydney.standifird@azdoa.gov](mailto:sydney.standifird@azdoa.gov)>  
**Sent:** Monday, August 17, 2020 4:21 PM  
**To:** Danielle Duross <[DDuross@wirxpharmacy.com](mailto:DDuross@wirxpharmacy.com)>; Chad Snow <[Chad@workinjuryaz.com](mailto:Chad@workinjuryaz.com)>  
**Cc:** ChristyL <[christi.lukaszkiwicz@azdoa.gov](mailto:christi.lukaszkiwicz@azdoa.gov)>; Kimberly Gorman <[kimberly.gorman@azdoa.gov](mailto:kimberly.gorman@azdoa.gov)>  
**Subject:** External: ARS 23-908(B)

Dear Danielle and Chad,

Under A.R.S. § 23-908(B), the Commission is required to establish a schedule of fees to be charged by physicians, physical therapists, or occupational therapists attending injured employees, and for prescription medicines required to treat an injured employee.

Laws 2018, Chapter 101, Senate Bill 1111, § 3 amending Sections 23-908 and 23-1062.02 specifically directed the Commission to "review information and data, consult with physician, employee, and business and industry stakeholders, and hold at least one public hearing in considering whether to adopt additional reimbursement guidelines for medications dispensed in settings that are not accessible to the general public." The Commission and agency staff diligently completed all requirements contained in the 2018 session law during its annual review of the fee schedule, including holding an initial public hearing on August 23, 2018.

The change that led to the ICAs newest proposed amendments 2020/2021 is quoted below:

"An insurance carrier, self-insured employer, or the Special Fund of the Commission is responsible for the payment of prescription medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public if all of the following apply: 1. The injured employee does not have access to a pharmacy accessible to the general public within 20 miles of the injured employee's home address, work address, or the address of the prescribing medical practitioner; 2. The injured employee cannot reasonably acquire the prescription medication from an online or mail order pharmacy accessible to the general public; and 3. The prescription medication conforms to dosages and formulations which are commercially available in pharmacies accessible to the general public.

Consistent with the intent of Senate Bill 1111, we have concluded that the scope of "open to the general public" does indeed mean that anyone with a valid prescription could access the pharmacy regardless of coverage, whether it was private pay, medicare/medicaid, commercial, Tricare, Veterans Healthcare.

Based on our review of the language and the WIRX website <https://wirxpharmacy.com/>, it appears that WIRX is not accessible to the general public. There are cases that may be eligible for services. Please see the below from the 2019/2020 ICA Pharmacy Fee Schedule.

An insurance carrier, self-insured employer, or the Special Fund of the Commission is responsible for the payment of prescription medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public if all of the following apply: 1. The injured employee does not have access to a pharmacy accessible to the general public within 20 miles of the injured employee's home address, work address, or the address of the prescribing medical practitioner; 2. The injured employee cannot reasonably acquire the prescription medication from an online or mail order pharmacy accessible to the general public; and 3. The prescription medication conforms to dosages and formulations which are commercially available in pharmacies accessible to the general public.

We will continue to cover the WIRX invoices for compensable benefits at the allowable rates for prescriptions filled through September 30, 2020. This will allow sufficient time to transition your clients and patients to a pharmacy accessible to the general public.

Please let me know if you have any questions.

Best regards,

Sydney Standifird

**From:** [Mark Boesen](#)  
**To:** [Sydney Standifird](#)  
**Cc:** [Steven Miller](#); [ChristyL](#); [Kimberly Gorman](#); [Allyson Snow](#)  
**Subject:** RE: Wirx Pharmacy  
**Date:** Tuesday, September 29, 2020 3:21:42 PM

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Ms. Standifird,

We have not heard from you despite our email and voicemails. At this point, we've learned that patients (and attorneys representing patients) of WIRX Pharmacy, Arizona License Number Y007485 (a full-service open door, Independent Pharmacy Permit), are receiving letters that WIRX is no longer able to care for patients next month.

Time is of the essence. Pursuant to the email below, we would like information to better understand why you believe WIRX is "not open to the public." Further, we've spoken with members of the Arizona Legislature who voted for the bill cited below and have suggested that the Department may be exceeding its authority under the law and have encouraged us to file a formal complaint and request for review of your actions with the Governor's Regulatory Review Council.

We request an immediate meeting via telephone or in person to discuss this matter. Our client reserves all remedies available under the rules to continue to provide pharmacy services to residents of Arizona.

Please contact us immediately.

Mark

**Mark Boesen, Pharm.D., J.D.**

*Boesen & Snow Law*  
(602) 900-8562 Office

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**From:** Sydney Standifird <[sydney.standifird@azdoa.gov](mailto:sydney.standifird@azdoa.gov)>  
**Sent:** Friday, September 18, 2020 10:33 AM  
**To:** Mark Boesen <[mboesen@bslawusa.com](mailto:mboesen@bslawusa.com)>  
**Cc:** ChristyL <[christi.lukaszkiwicz@azdoa.gov](mailto:christi.lukaszkiwicz@azdoa.gov)>; Kimberly Gorman <[kimberly.gorman@azdoa.gov](mailto:kimberly.gorman@azdoa.gov)>  
**Subject:** Re: Wirx Pharmacy

Hi Mark,

Thank you for reaching out to explain your client's position. I will research and get back to you within the next few days.

Thank you,

Sydney

On Wed, Sep 16, 2020 at 5:12 PM Mark Boesen <[mboesen@bslawusa.com](mailto:mboesen@bslawusa.com)> wrote:

Hello Ms. Standifird,

Our firm represents Wirx Pharmacy. I am reaching out with questions prompted by your email of August 17, 2020 (copy attached).

Specifically, we would like to understand the basis for your belief that WIRX is not accessible to the general public. Wirx is concerned that one would question the availability of its pharmacy services to any person and is eager to clear-up the Commission's misconception.

Your email references the legislative intent of Senate Bill 1111, concluding the scope of "open to the general public" means that any person with a valid prescription can access the pharmacy regardless of coverage.

Under Senate Bill 1111, A.R.S. § 23-1062.04 was proposed in 2018, including sub-section (A) which reads "[a]n insurance carrier, a self-insured employer *or the commission* is responsible for the payment for medications *only if the medications are dispensed by a licensed pharmacist in a pharmacy setting, including an online pharmacy, that is accessible to the general public.*" (Emphasis added.) The proposed legislation does not require the pharmacy, or any healthcare provider, to be registered with any particular insurance plan. An Arizona licensed pharmacy open to the general public is not required to register for any particular third-party payor's reimbursement schedule, under §§ 23-908 and 23-1062.02.

Conversely, a "closed-door pharmacy," under proposed § 23-1062.04 (C) (1) means "a pharmacy that provides pharmaceutical care to a defined and exclusive group of patients who have access to the services of the pharmacy *because they are treated by or have an affiliation with a specific entity or practitioner.*" 2018 Arizona Senate Bill No. 1111, Arizona Fifty-Third Legislature—Second Regular Session (January 11, 2018).

Wirx Pharmacy is a pharmacy licensed by Arizona to operate under an independent pharmacy permit. Any person may have their prescription filled by Wirx, whether by telephone, fax, electronic prescription order or walk-in for drop off and pickup. Wirx does not operate as a "closed-door" pharmacy. Indeed, as the holder of an independent pharmacy permit, Wirx is required to be open to the general public.

Absent legislation, the Commission is not permitted to enforce a requirement that a pharmacy otherwise open to the general public, must accept any specific scope of insurance plans to be eligible for reimbursement or workers' compensation claims by the Commission.

If we can provide you with any information to accurately clarify the status of Wirx as "accessible to the general public", kindly let us know.

Mark

**Mark D. Boesen, Pharm.D., J.D.**

*Attorney*

**Boesen & Snow Law**

17797 N Perimeter Dr, Ste D107

Scottsdale, AZ 85255

(602) 900-8562 Office

(602) 581-3146 Fax

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**From:** Sydney Standifird <[sydney.standifird@azdoa.gov](mailto:sydney.standifird@azdoa.gov)>

**Sent:** Monday, August 17, 2020 4:21 PM

**To:** Danielle Duross <[DDuross@wirxpharmacy.com](mailto:DDuross@wirxpharmacy.com)>; Chad Snow <[Chad@workinjuryaz.com](mailto:Chad@workinjuryaz.com)>

**Cc:** ChristyL <[christi.lukaszkiwicz@azdoa.gov](mailto:christi.lukaszkiwicz@azdoa.gov)>; Kimberly Gorman <[kimberly.gorman@azdoa.gov](mailto:kimberly.gorman@azdoa.gov)>

**Subject:** External: ARS 23-908(B)

Dear Danielle and Chad,

Under A.R.S. § 23-908(B), the Commission is required to establish a schedule of fees to be charged by physicians, physical therapists, or occupational therapists attending injured employees, and for prescription medicines required to treat an injured employee.

Laws 2018, Chapter 101, Senate Bill 1111, § 3 amending Sections 23-908 and 23-1062.02 specifically directed the Commission to "review information and data, consult with physician, employee, and business and industry stakeholders, and hold at least one public hearing in considering whether to adopt additional reimbursement guidelines for medications dispensed in settings that are not accessible to the general public." The Commission and agency staff diligently completed all requirements contained in the 2018 session law during its annual review of the fee schedule, including holding an initial public hearing on August 23, 2018.

The change that led to the ICAs newest proposed amendments 2020/2021 is quoted below:

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Based on our review of the language and the WIRX website <https://wirxpharmacy.com/>, it appears that WIRX is not accessible to the general public. There are cases that may be eligible for services. Please see the below from the 2019/2020 ICA Pharmacy Fee Schedule.

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**From:** [Mark Boesen](#)  
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**Cc:** [ChristyL](#); [Kimberly Gorman](#); [Allyson Snow](#); [Steven Miller](#)  
**Subject:** RE: Wirx Pharmacy  
**Date:** Friday, September 18, 2020 11:27:24 AM

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Thank you for your attention to this.

Mark

**Mark Boesen, Pharm.D., J.D.**

*Boesen & Snow Law*

(602) 900-8562 Office

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**To:** Mark Boesen <[mboesen@bslawusa.com](mailto:mboesen@bslawusa.com)>  
**Cc:** ChristyL <[christi.lukaszkiwicz@azdoa.gov](mailto:christi.lukaszkiwicz@azdoa.gov)>; Kimberly Gorman <[kimberly.gorman@azdoa.gov](mailto:kimberly.gorman@azdoa.gov)>  
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*Attorney*

**Boesen & Snow Law**

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**Sent:** Monday, August 17, 2020 4:21 PM

**To:** Danielle Duross <[DDuross@wirxpharmacy.com](mailto:DDuross@wirxpharmacy.com)>; Chad Snow <[Chad@workinjuryaz.com](mailto:Chad@workinjuryaz.com)>

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An insurance carrier, self-insured employer, or the Special Fund of the Commission is responsible for the payment of prescription medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public if all of the following apply: 1. The injured employee does not have access to a pharmacy

accessible to the general public within 20 miles of the injured employee's home address, work address, or the address of the prescribing medical practitioner; 2. The injured employee cannot reasonably acquire the prescription medication from an online or mail order pharmacy accessible to the general public; and 3. The prescription medication conforms to dosages and formulations which are commercially available in pharmacies accessible to the general public.

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Please let me know if you have any questions.

Best regards,

Sydney Standifird

# EXHIBIT B



# Arizona Counties Insurance Pool

1905 W. Washington St., Suite 200 • Phoenix, AZ 85009 • (602) 452-4528 • FAX (602) 252-1035

September 21, 2020

Temporary Prescription Form

[Redacted]

Counties Insurance Pool

SCANNED

RE: D/Injury: [Redacted]  
Our File: WC [Redacted]

Dear [Redacted]

Due to recent changes in the Arizona Industrial Commission Fee Schedule, medications distributed through WIRX Pharmacy will no longer be accepted for payment after October 15, 2020.

WIRX no longer meets the definition of a 'pharmacy accessible to the general public' since it is not accessible to all segments of the general public.<sup>1</sup>

Therefore, we have enclosed a copy of your pharmacy card. Please present this to a pharmacy (one that is accessible to the public) of your choice for the transition of these medications. If you prefer mail order, you can discuss this with the pharmacy or call the number on the enclosed pharmacy card and we will be happy to make those arrangements for you.

Please let me know if you have any questions.

Sincerely,

*Susan Strickler*

WC Claims Manager  
602-452-4528

Cc: [Redacted] MD

FOR ALL REJECTIONS OR QUESTIONS

RECEIVED  
SEP 28 2020  
BY: \_\_\_\_\_

# THE INDUSTRIAL COMMISSION OF ARIZONA



## LEGAL DIVISION

DALE L. SCHULTZ, CHAIRMAN  
JOSEPH M. HENNELLY, JR., VICE CHAIR  
SCOTT P. LEMARR, MEMBER  
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070  
Phoenix, Arizona 85005-9070

GAETANO TESTINI, CHIEF COUNSEL  
PHONE: (602) 542-5781  
FAX: (602) 542-6783

JAMES ASHLEY, DIRECTOR

October 22, 2020

Simon Larscheidt - [simon.larscheidt@azdoa.gov](mailto:simon.larscheidt@azdoa.gov)  
Nicole Sornsin - [Nicole.Sornsin@azdoa.gov](mailto:Nicole.Sornsin@azdoa.gov)

Re: GRRC Informal Response

Dear Mr. Larscheidt and Ms. Sornsin,

### Background

Under A.R.S. § 23-908(B), the Industrial Commission of Arizona (the “ICA”) is required to “fix a schedule of fees [(the “Fee Schedule”)] to be charged to physicians, physical therapists or occupational therapists attending injured employees and . . . for prescription medicines required to treat an injured employee.” The Arizona Legislature amended § 23-908 in 2018 to further provide that the Fee Schedule can include “reimbursement guidelines for medications dispensed in settings that are not accessible to the general public.”<sup>1</sup> *See* Laws 2018, Ch. 101, Senate Bill 1111, § 3.<sup>2</sup> The ICA is required to update the Fee Schedule annually. *See* A.R.S. § 23-908(B).

Although the ICA promulgates and annually updates the Fee Schedule, it is ultimately the responsibility of interested parties in workers’ compensation cases (such as insurance carriers, self-insured employers, and injured workers) to interpret and apply the guidelines. Where disputes arise between interested parties about the interpretation or application of particular Fee Schedule guidelines in workers’ compensation cases, requests for hearing may be filed before the ICA’s Administrative Law Judge (“ALJ”) Division, where the disputes will be resolved. *See generally*, A.R.S. §§ 23-941, 23-1061(J).

### The Petition Was Improperly Filed Against the Commission

Although WIRX’ Petition to Request Review states that it is seeking “review [of]

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<sup>1</sup> The phrase “accessible to the general public” was not defined in the enacted legislation.

<sup>2</sup> Petitioner’s argument appears to be largely premised upon proposed statutory language (A.R.S. § 23-1062.04) that *was not* enacted into law. (*See* Petition at 4.) As the Supreme Court has explained, however, “[r]ejection by the House or Senate, or both, of a proposed bill is an unsure and unreliable guide to statutory construction.” *City of Flagstaff v. Mangum*, 164 Ariz. 395 (Ariz. 1990). Petitioner’s assertion of legislative intent based upon proposed statutory language that was rejected should be viewed with extreme skepticism.

overreaching rulemaking by the Industrial Commission of Arizona relating to implementation of A.R.S. §§ 23-908 and 23-1062.02” (Petition at 1), nothing in the Petition actually applies to the ICA. Rather, WIRX is taking issue with how the Arizona Department of Administration (“ADOA”) – a self-insured employer – is interpreting and applying specific guidelines contained in the Fee Schedule in the context of workers’ compensation claims involving State employees. Specifically, the Petition is entirely premised upon communications between counsel for WIRX and ADOA regarding ADOA’s application of specific Fee Schedule guidelines. (See Petition at 2-4.) Counsel for WIRX appears to believe that ADOA and the ICA are one and the same. For example, in discussing communications between WIRX’s counsel and ADOA’s Sydney Standiford, Petitioner erroneously states that “*the ICA* further concluded, based on its review of language on the WIRX website, that WIRX is not accessible to the general public and advised *the ICA* would only cover WIRX invoices for compensable benefits through September 30, 2020.” (Petition at 3.) Similarly, Petitioner asserts that “WIRX obtained a letter *the ICA* sent to a WIRX patient” and that WIRX sent an email on September 16, 2020 “asking the basis for *the ICA*’s belief that WIRX is not accessible to the general public.” (Petition at 3 (emphasis added).) To be clear, it was not the ICA, but ADOA and the Arizona Counties Insurance Pool (“ACIP”) – as self-insured employers – that sent the referenced communications. (See Petition at Exhibit A (communications between WIRX counsel and ADOA); Exhibit B (letter from ACIP).) Given Petitioner’s confusion about the roles of ADOA (as a self-insured employer), ACIP (as a self-insured employer), and the ICA (as the administrator of Arizona’s workers’ compensation system), Petitioner erroneously filed the Petition against the ICA, concluding that “[*t*he ICA’s interpretation that the legislature intended a participating pharmacy must accept any fee schedule offered by any (and all?) third-party payor(s) is baseless and arbitrary.” (Petition at 4.)

The ICA has *never* communicated directly with Petitioner and has not made any determinations about whether WIRX is or is not “accessible to the general public.” (See Petition at 4.) To the extent those determinations or statements have been made in the context of specific workers’ compensation cases, the decisions have been made by interested parties (including ADOA and ACIP) based on the interested parties’ application of the Fee Schedule guidelines to relevant facts.<sup>3</sup> To suggest that agencies who promulgate rules or guidelines (such as the Fee Schedule) are ultimately responsible for every interpretation and application of those rules or guidelines by the regulated community – whether right or wrong – strains every reading of GRRC’s review powers under A.R.S. § 41-1033. Simply put, based on the arguments asserted in the Petition, the ICA is not a proper party to any review proceedings under A.R.S. § 41-1033(E),<sup>4</sup> (F), (G), or (H).

**Even if the Petition Asserted a Viable Complaint Against the ICA, Review Under A.R.S. § 41-1033 Would Be Improper Because the Fee Schedule is Statutorily Exempt from Title 41,**

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<sup>3</sup> Petitioner appears to take issue with ADOA’s factual conclusion that WIRX is not “accessible to the general public.” (Petition at 4.) Petitioner disputes this conclusion (without providing any support), stating that “[a]ny person may have their prescription filled by WIRX.” (*Id.*) Resolution of the factual dispute in the context of specific workers’ compensation claims, however, is not within GRRC’s jurisdiction.

<sup>4</sup> The Petition references A.R.S. § 41-1033(E), which first requires completion of the process set forth in A.R.S. § 41-1033(A)-(C). The § 41-1033(A)-(C) process, however, was never pursued by Petitioner and cannot be the basis for GRRC review.

## **Chapter 6.**

A.R.S. § 41-1005(A)(25) unambiguously states that A.R.S. Title 41, Chapter 6 (Administrative Procedure), which includes the GRRC review procedures is A.R.S. § 21-1033, “does not apply to . . . the [s]chedule of fees prescribed by section 23-908.” Reading A.R.S. § 41-1033 to permit GRRC review of the Fee Schedule would directly conflict with the plain language of § 41-1005(A)(25). Therefore, even if Petitioner had asserted a viable complaint against the ICA, review of the Fee Schedule under § 41-1033 is not permitted.

## **Conclusion**

For the foregoing reasons, GRRC should reject WIRX’ Petition to Request Review.

Sincerely,



Gaetano Testini  
Chief Legal Counsel

## CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

## APPENDIX A. ARIZONA PHYSICIANS' AND PHARMACEUTICAL FEE SCHEDULE 2019/2020

Adopted by The Industrial Commission of Arizona

Contact Medical Resource Office

Phone (602) 542-4308 / Fax (602) 542-4797 mro@azica.gov

The codes listed herein are CPT only copyright 2018 American Medical Association. All rights reserved.

**INTRODUCTION**

Since 1925, when the Arizona Legislature passed the state's first Workers' Compensation Act ("Act"), the Industrial Commission of Arizona ("Commission") has administered the workers' compensation laws of that Act. The Act includes the authority of the Commission to set a schedule of fees to be charged by physicians, physical therapists, and occupational therapists attending injured employees (also referred to in this Appendix as "injured worker" or "claimant." A.R.S. § 23-908(B). In 2004, the Act was amended to include the setting of fees for pre-prescription medicines required to treat an injured employee. A.R.S. § 23-908(C). This fee schedule is referred to as the Arizona Physicians' and Pharmaceutical Fee Schedule (Fee Schedule).

Any reference to "physicians" in the Fee Schedule is intended to include physical therapists, occupational therapists, certified registered nurse anesthetists, physician assistants and nurse practitioners. See also the definition of "physician" found under Introduction, Section E. Treatment of Industrial Injuries and Diseases. Physicians treating employees under industrial coverage are entitled by law to charge according to the schedule of fees adopted by the Commission. Accurate calculation of fees based upon this schedule, the monthly filing of reports and bills for payment, and the use of forms prescribed are essential to timely and correct payment for a physician's services and can be vital in the award of benefits to the injured worker and their dependents.

The Fee Schedule has been updated to incorporate by reference the 2019 Edition of the American Medical Association's Physicians' Current Procedural Terminology, Fourth Edition (CPT®-4), including the general guidelines, identifiers, modifiers, and terminology changes associated with the adopted codes. In the Fee Schedule CPT® codes that contain explanatory language specific to Arizona are preceded by Δ. Codes, however, that are unique to Arizona and not otherwise found in CPT®-4 are preceded by an AZ identifier and numbered in the following format: AZ0xx-xxx. To the extent that a conflict may exist between an adopted portion of the CPT®-4 and a code, guideline, identifier or modifier unique to Arizona, then the Arizona code, guideline, identifier or modifier shall control.

- a. The Commission has also adopted by reference: 1) The unit values and guidance for consultative, diagnostic and therapeutic services published in the most recent edition of Relative Value Guide, American Society of Anesthesiologists <https://www.asahq.org>; 2) The 1995 and 1997 Documentation Guidelines for Evaluation and Management Services, Centers for Medicare and Medicaid Services (CMS) <https://www.cms.gov>; 3) The 2019 Clinical Diagnostic Laboratory Fee Schedule, Centers for Medicare and Medicaid Services (CMS) Clinical Laboratory fee Schedule <https://www.cms.gov>; 4) The National Correct Coding Initiative Edits, CMS; <https://www.cms.gov/Medicare/Coding/NationalCorrectCodInitEd/index.html>; 5) 2019 Optum 360 The Essential RBRVS <https://www.optum360.com/>; and 6) Physicians as Assistants at Surgery: 2018 Update <https://www.facs.org/>. The RBRVS based fee schedule adopts surgical global periods published by CMS.

Except as otherwise noted, unit values assigned to the service codes listed in the Fee Schedule are the product of the Industrial Commission of Arizona and are not associated in any way with the American Medical Association or any other entity or organization.

**A. GENERAL GUIDANCE**

1. Reimbursements and billing associated with Pharmaceuticals are found in the Pharmaceutical Fee Schedule Section of Appendix A.
2. This Fee Schedule establishes the fees that can be charged by physicians for services performed for injured workers under the Arizona's workers' compensation law.
3. If a physician or insurance carrier is referring an injured worker to a medical specialist for evaluation and/or treatment, the medical specialist's diagnosis becomes the foundational diagnosis for billing purposes.
4. Routine progress and routine final reports filed by the attending physician do not ordinarily command a fee.
5. Payment will be made for only one professional visit in any one day except when the submitted report clearly demonstrates the need for the additional visit and fee.
6. Fees for hospital, office, or home visits, subsequent to the initial visit, are not to be added to coded surgical procedures performed in the same day.
7. Routine office treatment principally by injection of drugs, other than antibiotics, requires authorization by the carrier or self-insured employer for each series of 10 after the first series of 10.
8. Except in emergencies, a carrier must be given notice regarding a consultation and the consultant must provide his/her report to the carrier and the attending physician within a reasonable period of time to facilitate processing of the claim.
9. The Commission requests that carriers notify attending physicians at the same time the claimant is notified that their claim is closed with or without supportive care. If a claim is approved for reopening, the carrier should also notify the attending physician of that approval.
10. An attending physician may submit a claim for consultant's fee only when such service is requested by carrier or self-insured employer.
11. Missed individual appointments for consultants, without prior notification, will be compensated at 50% of consultation fee.
12. No fees may be charged for services not personally rendered by the physician, unless otherwise specified.
13. The Commission will investigate an injured workers' complaint of bad faith/unfair claims processing practices, and if appropriate, impose penalties under A.R.S. § 23-930, in those circumstances where a "peer to peer" review was not conducted by a physician with appropriate skill, training, and knowledge or where the individual performing the "peer to peer" review was not licensed. The Commission will also investigate an injured workers' complaint of bad faith/unfair claims processing practice, and if appropriate, impose penalties under A.R.S. § 23-930, for a denial of treatment based on the failure of the treating doctor to participate in a "peer

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to peer” review, when the treating doctor has not been given reasonable time or opportunity to participate in the “peer to peer” review.

14. As authorized under A.A.C. R20-5-128, the fee for the reproduction of medical records for workers’ compensation purposes shall be 25¢ per page and \$10.00 per hour per person for reasonable clerical costs associated with locating and reproducing the documents.

**B. PAYMENT AND REVIEW OF BILLINGS**

1. Under Arizona workers’ compensation law, an insurance carrier, self-insured employer or their representative is not responsible for payment of a billing for medical, surgical, and hospital benefits that the insurance carrier, employer or representative received more than 24 months from the date that the medical service was rendered, or from the date on which the provider knew or should have known that the service was rendered, whichever occurs later. A subsequent billing or corrective billing does not restart the limitations period. See A.R.S. § 23-1062.01.
2. It is incumbent upon the insurance carrier, self-insured employer and third party processing service to inform all parties, including the Commission, regarding changes in addresses for bill processing locations.
3. Under Arizona workers’ compensation law, a physician is entitled to timely payment for services rendered. An insurance carrier, self-insured employer or claims processing representative shall make a determination whether to deny or pay a medical bill on an accepted claim, in whole or in part, including the decision as to the amount to pay, within thirty days from the date the claim is accepted, if the billing is received before the date of acceptance, or within thirty days from the date of the receipt of the billing if the billing is received after the date of injury. To ensure timely payment of a medical billing, a billing must contain the information required under A.R.S. § 23-1062.01. A billing must contain at least the following information: Correct demographic patient information including claim number, if known; Correct provider information, including name, address, telephone number, and federal taxpayer identification number; Appropriate medical coding with dollar amounts and units clearly stated with all descriptions and dates of services clearly printed; and Legible medical reports required for each date of service if the billing is for direct treatment of the injured worker.
4. Payment of a workers’ compensation medical billing is governed by A.R.S. § 23-1062.01, which includes:
  - a. Timeframes for processing and payment of medical bills;
  - b. Criteria for billing denials;
  - c. A provision that the injured worker is not responsible for payment of any portion of a medical bill on an accepted claim or payment of any portion of a medical billing that is being disputed;
  - d. A provision that the insurance carrier or self-insured employer may establish an internal system for resolving payment disputes;
  - e. A provision that A.R.S. § 23-1062.01 does not apply to written contracts entered into between medical providers and insurance carriers and self-insured employers or their representatives that specify payment periods or contractual remedies for untimely payments; and
  - f. A provision that the Industrial Commission does not have jurisdiction over contract disputes between the parties.
5. “Reasonable justification” to deny a bill does not include that the payment/billing policies of another private or public entities (publications) do not allow it unless the publication has been adopted by reference in the Fee Schedule.
6. Excluding bundling and unbundling issues, it is not the Commission’s intent to restrict an insurance carrier’s, self-insured employers or third party processing service’s ability to address issues not addressed by the Fee Schedule. This includes evaluating unlisted procedures, establishment of values for unlisted procedures, establishment of values for codes that are listed as “BR” or “RNE”, new CPT® codes that have not been adopted by the Industrial Commission, or issues outside the jurisdiction of the Fee Schedule, such as hospital billings.
7. Physicians shall provide legible medical documentation and reports that are sufficient for insurance carriers/self-insured employers to determine if treatment is being directed towards injuries sustained in an industrial accident or incident. The physician shall ensure that their patients’ medical files include the information required by A.R.S. § 32-1401.2. The medical provider is not required to provide copies of documents or reports that they did not author and that are not in their possession (i.e. Employers’ First Report of Injury).
8. Treating physicians shall submit a narrative that justifies the billing of a level 4 or 5 E & M service.
9. The Commission has adopted by reference the 1995 and 1997 Documentation Guidelines for Evaluation and Management Services. Medical billings shall be prepared and reviewed consistent with how these guidelines are used and interpreted by CMS. Additionally, payers are required to disclose the guideline utilized in their Explanation of Reviews (or other similar document).
10. A payer’s Explanation of Review (or other similar document) shall contain sufficient information to allow the physician to determine whether the amount of payment is correct and whom to contact regarding any questions related to the payment. Information in the Explanation of Review (or other similar document) shall include the following:
  - a. The name of the injured worker;
  - b. The name of the payer and the name of the third party administrator (“TPA”), if applicable;
  - c. If applicable, the name, telephone number, and address of all entities that reviewed the medical billing on behalf of the payer;
  - d. If applicable, the name, telephone number and address of the party that has a written contract signed by the physician that allows the contracting party or other third party to access and pay rates that are different from those provided under this Fee Schedule;
  - e. The amount billed by the physician;
  - f. The amount of any reduction due to a written contract with the physician; and
  - g. The amount of payment.
11. Nothing in this Fee Schedule precludes a physician from entering into a separate contract that governs fees. In this instance, reimbursement shall be made according to the applicable contracted charge. In the absence of a separate contract that governs a physician’s fees, reimbursement shall be made according to this Fee Schedule. A payer shall demonstrate that it is entitled to pay the

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contracted rate in the event of a dispute. If a payer fails to provide evidence that it is entitled to pay a contracted rate, then the payer shall be required to make payment as provided in this Fee Schedule.

12. Billing for Pharmaceuticals is found in the Pharmaceutical Fee Schedule Section of this Appendix.

**C. REIMBURSEMENT OF MID-LEVEL PROVIDERS**

1. Certified Registered Nurse Anesthetists (“CRNA’s”) are reimbursed at 85% of the fee schedule.
2. Physician Assistants and Nurse Practitioners are reimbursed at 85% of the fee schedule *except* if services are provided “incident to” a physician’s professional services. In that instance, reimbursement is required to be at 100% of the fee schedule. The following criteria are identified as establishing the “incident to” exception:
  - a. The Physician Assistant and Nurse Practitioner must work under the direct supervision of a physician,
  - b. The Physician must initially see that patient and establish a plan of care for that patient (“treatment plan”),
  - c. Subsequent service provided by the Physician Assistant and Nurse Practitioner must be a part of the documented treatment plan, and
  - d. The Physician must always be involved in the patient’s treatment plan and see the patient often enough to demonstrate that the Physician is actively participating in and managing the patient’s care.
3. For purposes of the Fee Schedule, the Commission recognizes that direct supervision of a Physician Assistant or Nurse Practitioner by a Physician can be accomplished through the use modern technology and telecommunications (telemedicine) and may not require the on-site presence of the Physician when the Physician Assistant or Nurse Practitioner sees the patient. In all instances, however, and regardless of the extent to which telemedicine is used, the Physician must actively participate in and manage the patient’s care if services provided by a Physician Assistant or Nurse Practitioner are billed at 100% of the fee schedule under the “incident to” exception.
4. It is the responsibility of the Physician to document if the services provided by a Physician Assistant and Nurse Practitioner are “incident to” the Physician’s professional service. If either the incident to criteria is not met, or the documentation submitted fails to support the “incident to” criteria, the reimbursement should be made at 85% of the fee schedule.

**D. DIRECTED CARE AND USE OF NETWORKS**

The Arizona Workers’ Compensation Act only permits private self-insured employers to direct medical care. A.R.S. § 23-1070(A); See also *Southwest Gas Corp. v. Industrial Commission of Arizona*, 200 Ariz. 292, 25 P.3d 1164 (2001). This limitation on the scope of directed care means that employees of private self-insured employers do not have an unrestricted right to choose their own medical providers, while employees of all other employers do (including public self-insured employers).<sup>1</sup> Notwithstanding an employee’s right to choose, many workers’ compensation insurance carriers (“carriers”) and public self-insured employers (“employers”) have taken advantage of “networks” to reduce their costs. This is done by either creating their own network of “preferred providers” or by contracting with a third party to access private health-care networks.

<sup>1</sup> It should be noted that the law governing directed care is not limited to “medical doctors,” but instead applies to medical, surgical, and hospital benefits. See A.R.S. § 23-1070. The phrase, “medical, surgical, and hospital benefits” is defined in A.R.S. § 23-1062(A), which states: “Promptly, upon notice to the employer, every injured employee shall receive medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonable required at the time of the injury, and during the period of disability. Such benefits shall be termed ‘medical, surgical and hospital benefits.’”

Actions or conduct that impair or limit the right of an employee to choose their medical provider may rise to the level of bad faith and/or unfair claims processing practices under A.R.S. § 23-930. The Commission will investigate a complaint of bad faith/unfair claims processing practices, and if appropriate, impose penalties under A.R.S. § 23-930, in those circumstances where a carrier, employer, or TPA has engaged in conduct that results in directing a claimant to a “network” provider. The following are examples of conduct that the Commission would consider appropriate for investigation under A.R.S. § 23-930.

- A claimant is told that they must to see a physician (or other provider) that is “in the network;”
- A claimant is told that care from a “non-network” physician (or other provider) is not authorized;
- A “network” physician (or other provider) is told that referrals are required to be made to another “network” physician (or other provider);
- A “network” physician (or other provider) is told that they may not recommend a “non-network” provider to a patient;
- A “non-network” physician (or other provider) is told that care will only be authorized if provided by a “network” provider; and
- A “non-network” provider is told that reimbursement will be made according to “network” discounts.

**E. TREATMENT OF INDUSTRIAL INJURIES AND DISEASES**

1. The term “physician” in relation to workers’ compensation cases includes the following: doctors of medicine, doctors of osteopathy, doctors of chiropractic, doctors of naturopathic medicine, certified registered nurse anesthesiologists, physician assistants and nurse practitioners.
2. Only physicians and surgeons licensed in the State of Arizona are permitted to treat injured or disabled employees under the jurisdiction of the Commission, unless others are specifically authorized.
3. An employee who sustains an injury arising out of, or in the course of, employment is entitled, under Arizona law, to select a physician of his/her own choice unless that employee is employed by a private self-insured employer as described in A.R.S. § 23-1070. Employers described in A.R.S. § 23-1070, excluding the State or Political Subdivisions thereof, are allowed to direct medical care.
4. The attending physician’s promptness and professional exactness in the completion and filing of workers’ compensation forms are extremely important to the employee being treated. The injured or disabled employee’s claim to medical benefits and compensation can rest on the conscientious attention of the physician in processing the required reports. Rules addressing the completion of

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these forms are found in the Title 20, Chapter 5, Article 1 of the *Arizona Administrative Code*, which can be obtained at: [http://apps.azsos.gov/public\\_services/Title\\_20/20-05.pdf](http://apps.azsos.gov/public_services/Title_20/20-05.pdf)

5. The Commission, the employer and the insurance carrier may, at any time, designate a physician or physicians to examine an employee. Additionally, upon application of the employer, employee, or insurance carrier, the Commission may order a change of physician or a change of conditions of treatment when there are reasonable grounds for belief that the employee's health or progress can thus be improved.
6. A claimant may not change doctors without the written authorization of the insurance carrier, the Commission or the attending physician. A claimant may not transfer from one hospital to another without the written authorization of the insurance carrier or the Commission. If the patient's employment requires leaving the locale in which he/she is receiving treatment, the attending physician should arrange for continued treatment and notify the carrier of such arrangement. It is the responsibility of the physician or the hospital to which a patient has transferred to ascertain whether such a change has been authorized.
7. Treatment of conditions unrelated to the injuries sustained in the industrial accident may be denied as unauthorized if the treatment seems directed principally toward the non-industrial condition or if the treatment does not seem necessary for the patient's physical rehabilitation from the industrial injury.
8. If the patient refuses to submit to medical examination or to cooperate with the physician's treatments, the carrier or self-insured employer should be notified.
9. If an employee is capable of some form of gainful employment, it is proper for the physician to release the employee to light work and make a specific report to the carrier or self-insured employer as to the date of such release. It can be to the employee's economic advantage to be released to light work, since he/she can receive compensation based on 66 2/3% of the difference between one's earnings and one's established wage. On the other hand, it would not be to the employee's economic advantage to be released to light work if, in fact, the employee is not capable of performing such work. The physician's judgment in such matters is extremely important.
10. If the employee no longer requires active medical care for the industrial injury and is discharged from treatment, the physician is required to provide a signed report with the date of discharge to the carrier or self-insured employer, even if, as a private patient, the employee may require further medical care for conditions unrelated to the industrial accident. This final report and discharge date are necessary for closing the claim file.
11. When a physician discharges a claimant from treatment, the physician shall determine whether the employee has suffered any impairment of function, or disfigurement about the head or face, including injury to or loss of teeth, and include this information in the final signed report provided to the carrier or self-insured employer. The Rules of Procedure Before the Industrial Commission of Arizona require that any rating of the percentage of functional impairment should be made in accordance with the standards of evaluation published in the most recent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment.
12. Once an exposure to blood-borne pathogen occurs, the workers' compensation insurance carrier/self-insured employer is responsible for payment of the accepted treatment protocol which includes the HBIG vaccination (Hepatitis B Immune Globulin), and, if necessary, the three (3) Hepatitis B vaccinations.  
When a work-related incident occurs that may have exposed an employee to Hepatitis, the insurance carrier/self-insured employer is responsible for paying for the testing and/or treatment of Hepatitis B or C. As to treatment of HIV, if a bona fide claim exists under A.R.S. § 23-1043.02, then the insurance carrier/self-insured employer is responsible for paying for the treatment.
13. It is the employer's responsibility, in accordance with existing OSHA standards, to pay for HIV testing. The insurance carrier may seek reimbursement from the employer for the costs associated with providing the series of three (3) Hepatitis B vaccinations if the employer failed to provide them in violation of federal and state laws.

**F. REOPENING OF CLAIMS**

1. Whether or not the employee has suffered a permanent disability, on a claim that has been previously accepted, the claim may be reopened on the basis of a new, additional or previously undiscovered disability or condition, but:
  - a. The claimant should use the form of petition prescribed by the Commission;
  - b. The petition must be personally signed by the worker or his authorized representative and must be filed at any office of the Industrial Commission of Arizona;
  - c. The petition, in order to be considered, must be accompanied by the physician's medical report.
2. If the claim is reopened, the payment for such reasonable and necessary medical, hospital and laboratory work expenses shall be paid by the insurance carrier if such expenses are incurred within 15 days of the filing of the petition to reopen.
3. No monetary compensation is payable for any period prior to the date of filing of the petition to reopen. Surgical benefits are not payable for any period prior to the date of filing of a petition to reopen, except that surgical benefits are payable for a period prior to the date of filing not to exceed seven (7) days if a bona fide medical emergency precludes the employee from filing a petition to reopen prior to the surgery. Other information relative to reopening rights may be found at A.R.S. § 23-1061(H).
4. If a claim is approved for reopening, the carrier must notify the attending physician of that approval.

**G. NO-INSURANCE CLAIMS**

"No-Insurance" claims are workers' compensation claims involving injuries to employees of employers who do not have workers' compensation insurance coverage as required by Arizona law. In such cases, all claims and reports are to be addressed to the No-Insurance Section of the Special Fund of The Industrial Commission of Arizona.

**H. CONSULTATIONS**

Workers' compensation cases can present additional medical and legal problems that justify consultation sooner and more frequently than for the average private patient. In difficult problems and in cases requiring an estimate of general or unscheduled disability, consultation with

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specialists in the appropriate field may be requested by any interested party. The Industrial Commission continues to recognize the necessity for consultations in workers' compensation and establishes relative value units and rates for consultation codes.

**I. DEFINITIONS OF SELECT UNIT VALUES**

1. **BY REPORT "BR" ITEMS:** "BR" in the value column indicates that the value of this service is to be determined "by report", because the service is too unusual or variable to be assigned a unit relativity. Pertinent information concerning the nature, intent and need for the procedure or service, the time, the skill and equipment necessary, etc., is to be furnished. A detailed clinical record is not necessary.
2. **RELATIVITY NOT ESTABLISHED "RNE" ITEMS:** "RNE" in the value column indicates new or infrequently performed services for which sufficient data has not been collected to allow establishment of a relativity. "RNE" items are clearly definable and not inherently variable as are BR procedures. A report may be necessary.
3. **SERVICE "SV" ITEMS:** "SV" in the value column indicates the value is to be calculated as the sum of the various services rendered (e.g., office, home, nursing home or hospital visits, consultation or detention, etc.), according to the ground rules covering those services. Identify by using the code number of the "SV" item. The Value is established by identifying each individual service, listing the code number and its value.
4. **MATERIALS AND SUPPLIES:** A physician is not entitled to be reimbursed for supplies and materials normally necessary to perform the service. A physician may charge for other supplies and materials using code 99070<sup>2</sup>. A physician may use an applicable HCPCS code in lieu of code 99070 if the HCPCS code more accurately describes the materials and supplies provided by the physician; however, the Commission has not adopted the RVUs for HCPCS codes. Examples of those items that are and are not reimbursable are listed below. Documentation showing actual costs (i.e. manufacturer's current invoice) associated with providing supplies and materials plus fifteen percent (15%) to cover overhead costs will be adequate justification for payment. This provision does not apply to retail operations involving drugs or supplies. Administration of drugs to patients in a clinical setting is covered under code 99070. Prescription drugs provided to patients as a part of the overall treatment regimen but outside of the clinical setting are not included under this code.

<sup>2</sup> CPT only copyright 2018 American Medical Association. All rights reserved.

Examples of supplies that are usually not separately reimbursable include:

- Applied hot or cold packs
- Eye patches, injections or debridement trays
- Steristrips
- Needles
- Syringes
- Eye/ear trays
- Drapes
- Sterile gloves
- Applied eye wash or eye drops
- Creams (massage)
- Fluorescein
- Ultrasound pads and gel
- Tissues
- Urine collection kits
- Gauze
- Cotton balls/fluff
- Sterile water
- Band-Aids and dressings for simple wound occlusion
- Head sheets
- Aspiration trays
- Sterile trays for laceration repair and more complex surgeries
- Tape for dressings

Examples of material and supplies that are generally reimbursable include:

- Cast and strapping materials
- Applied dressings beyond simple wound occlusion
- Taping supplies for sprains
- Iontophoresis electrodes
- Reusable patient specific electrodes
- Dispensed items, including:
  - Canes
  - Braces
  - Slings
  - Ace wraps
  - TENS electrodes
  - Crutches
  - Splints
  - Back support
  - Dressings
  - Hot or cold packs

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5. “Modifiers: A two-digit (numeric or alpha) sequence that provides the means by which the reporting physician can specify that a procedure performed has been altered under a procedure performed has been altered under a special circumstance. This allows defining the modifying circumstance of the service or procedure without creating a separate procedure or listing.

Modifier Examples

*Professional Component (PC):* Certain procedures are a combination of a physician, or Professional component and a technical component. When modifier “-26” is added to an Appropriate code a PC allowable amount will be paid.

*Technical Component (TC):* The TC component reflects the technical portion of the procedure code. When the technical component is provided by a health care provider other than the one providing the professional component, the health care provider bills for the technical component by adding Modifier “-TC” to the applicable code.

**J. LIST OF ACRONYMS**

AMA	American Medical Association
AS	Assistant Surgeon
AWP	Average Wholesale Price
BR	By Report
CCI	Current Coding Initiative (National)
CF	Conversion Factor
CMS	Centers for Medicare & Medicaid Services
CPT	Current Procedural Terminology
CRNA	Certified Registered Nurse Anesthetist
DME	Durable Medical Equipment
E/M	Evaluation and management services
FCE	Functional Capacity Evaluation
FUD	Follow-up day(s)
HCPCS	Healthcare Common Procedure Coding System
ICD-10-CM	International Classification of Diseases, Tenth Revision, Clinical Modification
IME	Independent medical examination
MPFS	Medicare physician fee schedule
MRI	Magnetic resonance imaging
NCCI	(see CCI)
NP	Nurse practitioner
OTC	Over-the-counter
PA	Physician assistant
RBRVS	Resource based relative value scale
RVU	Relative value unit

**Historical Note**

New Appendix A, Introduction made by exempt rulemaking at 25 A.A.R. 2624, effective October 1, 2019; Appendix A, Introduction will remain in effect though September 30, 2020 (Supp. 19-3).

**PHARMACEUTICAL FEE SCHEDULE****I. GENERAL PROVISIONS AND APPLICABILITY OF THE PHARMACEUTICAL FEE SCHEDULE.**

- A.** The Pharmaceutical Fee Schedule (PFS) applies to prescription and over-the-counter (OTC) medications required to treat an injured employee, whether dispensed by a pharmacy (including online or mail order pharmacies) or by a medical practitioner.
- B.** Medications are not reimbursable unless “reasonably required” at the time of injury or during the period of disability. See A.R.S. § 23-1062(A); A.A.C. R20-5-1303(A). The Industrial Commission of Arizona has adopted the Official Disability Guidelines (ODG), including ODG’s Drug Formulary Appendix A (ODG Formulary), as the standard reference for evidence-based medicine used in treating injured employees within the context of Arizona’s workers’ compensation system. Effective October 1, 2018, ODG applies to all body parts and conditions. See A.A.C. R20-5-1301(B), (E). ODG is to be used as a tool to support clinical decision making and quality health care delivery to injured employees. The ODG Formulary sets forth pharmaceutical guidelines that are generally considered reasonable and are presumed correct if the guidelines provide recommendations related to a particular medication. See A.A.C. R20-5-1301(H). Medical practitioners are encouraged to consult the ODG Formulary before dispensing or prescribing medications to injured employees.
- C.** Generic drugs must be dispensed to injured employees when appropriate, consistent with A.R.S. § 32-1963.01(A),<sup>1</sup> (B), and (D) through (L).<sup>2</sup> See A.R.S. § 23-908(C). For purposes of this subsection, the definitions in A.R.S. § 32-1963.01(L) apply.<sup>3</sup> As a cost reducing measure, medical practitioners should prescribe less costly drugs whenever possible.

<sup>1</sup> A.R.S. § 32-1963.01(A) states: “If a medical practitioner prescribes a brand name drug and does not indicate an intent to prevent substitution as prescribed in subsection E of this section, a pharmacist may fill the prescription with a generic equivalent drug.”

<sup>2</sup> A.R.S. § 32-1963.01(E) states: “A prescription generated in this state must be dispensed as written only if the prescriber writes or clearly displays ‘DAW’, ‘dispense as written’, ‘do not substitute’ or ‘medically necessary’ or any statement by the prescriber that clearly indicates an intent to prevent substitution on the face of the prescription form. A prescription from out of state or from agencies of the United States government must be dispensed as written only if the prescriber writes or clearly displays ‘do not substitute’, ‘dispense as written’ or ‘medically necessary’ or any statement by the prescriber that clearly indicates an intent to prevent substitution on the face of the prescription form.”

<sup>3</sup> A.R.S. § 32-1963.01(L) states, in part:

2. “Brand name drug” means a drug with a proprietary name assigned to it by the manufacturer or distributor.

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4. "Generic equivalent" or "generically equivalent" means a drug that has an identical amount of the same active chemical ingredients in the same dosage form, that meets applicable standards of strength, quality and purity according to the United States pharmacopeia or other nationally recognized compendium and that, if administered in the same amounts, will provide comparable therapeutic effects. Generic equivalent or generically equivalent does not include a drug that is listed by the United States food and drug administration as having unresolved bioequivalence concerns according to the administration's most recent publication of approved drug products with therapeutic equivalence evaluations.

**II. DEFINITIONS.**

- A. "Administer" has the meaning set forth in A.R.S. § 32-1901(1).
- B. "Average Wholesale Price" or "AWP" means the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally-recognized drug pricing file.
- C. "Commercially available" means a drug product is widely available for purchase in pharmacies accessible to the general public, including in brick and mortar pharmacies accessible to the general public.
- D. "Compound medication" means a pharmaceutical product created by virtue of mixing or combining drugs and/or components to meet the unique needs of an individual patient when the finished product does not recreate a commercially-available product.
- E. "Dispense" or "dispensing" means to deliver to an ultimate user by or pursuant to the lawful order of a medical practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare for that delivery. See A.R.S. § 32-1901(27).
- F. "Drug" has the meaning set forth in A.R.S. § 32-1901(31).
- G. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by: (1) the Arizona Department of Health Services; or (2) an equivalent regulatory agency in another U.S. state, territory, or district. See A.R.S. § 32-1901(42).
- H. "Medical practitioner" means any person who is permitted/licensed and authorized by law to use and prescribe prescription medications, acting within the scope of such authority, for the treatment of sick and injured human beings or for the diagnosis or prevention of sickness in human beings in the State of Arizona or any U.S. state, territory or district. See A.R.S. § 32-1901(53).
- I. "Non-traditional strength" medication means a finished drug product in a strength (i.e. dosage) that is not commercially available in pharmacies accessible to the general public.
- J. "Over-the-counter medication" or "OTC medication" means a finished drug product, including label and container according to context, that does not require a prescription order.
- K. "Pharmacy" has the meaning set forth in A.R.S. § 32-1901(71).
- L. "Pharmacy accessible to the general public" means a pharmacy that is readily accessible and provides pharmaceutical services (including prescription medication services) to all segments of the general public without restricting services to a defined or exclusive group of consumers who have access to services because they are treated by or have an affiliation with a specific entity or medical practitioner.
- M. "Pharmacy not accessible to the general public" means a pharmacy that provides services only to a defined or exclusive group of consumers who have access to pharmaceutical services (including prescription medication services) because they are treated by or have an affiliation with a specific entity or medical practitioner. "Pharmacy not accessible to the general public" does not include a hospital pharmacy.
- N. "Prescription" means either a prescription order or a prescription medication. See A.R.S. § 32-1901(80).
- O. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order. See A.R.S. § 32-1901(81).
- P. "Prescription order" shall have the meaning set forth in A.R.S. § 32-1901(84).
- Q. "Repackaged medication" means a finished drug product removed from the container in which it was distributed by the original manufacturer and placed into a different container without further manipulation of the drug. The term also includes the act of placing the contents of multiple containers of the same finished drug product into one container. The term also includes "co-pack drug" products which contain two or more separate finished medications that are contained in a single package or unit. The term does not include a drug that is manipulated in any other way, including if the drug is reconstituted, diluted, mixed, or combined with another ingredient.
- R. "Traditional strength" medication means a finished drug product in a formulation that is commercially available in pharmacies accessible to the general public.
- S. "Ultimate user" means a person who lawfully possesses a prescription medication for that person's own use or for the use of a member of that person's household. See A.R.S. § 32-1901(95).

**III. GENERAL GUIDELINES FOR BILLING AND REIMBURSEMENT OF PRESCRIPTION MEDICATIONS.**

- A. Except as permitted in Section VII of the current PFS, an insurance carrier, self-insured employer, or the Special Fund of the Commission is responsible for the payment of prescription medications only if all of the following apply:
1. The prescription medication is dispensed by an individual who is currently licensed to practice the profession of pharmacy by either: (i) the Arizona State Board of Pharmacy; or (ii) an equivalent regulatory agency in another U.S. state, territory, or district; and
  2. The prescription medication is dispensed by a pharmacy accessible to the general public, including online or mail-order pharmacies that are accessible to the general public.
- B. Reimbursement for prescription medications shall be based on the actual medication dispensed, including a substituted medication that is dispensed pursuant to A.R.S. § 32-1963.01.
- C. Except as specified in Sections IV and V of the current PFS, a pharmaceutical bill submitted for a prescription medication must include the National Drug Code (NDC) of the original manufacturer registered with the U.S. Food & Drug Administration (FDA), the quantity dispensed, and the reimbursement value of the medication. Under no circumstance shall an NDC other than the original manufacturer's NDC be used.

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- D. The reimbursement value for prescription medications shall be based on the current PFS methodology in the absence of a contractual agreement between the pharmacy or medical practitioner and payer governing reimbursement. Network discounts may not be applied in the absence of a contractual agreement with the pharmacy or medical practitioner authorizing such discounts.
- E. The reimbursement value for a prescription medication shall be based on a discount from the applicable AWP, as determined by reference to the original manufacturer's NDC. AWP shall be determined on the date a drug is dispensed from pricing published in the most recent issue, as updated in the most recent update, of a nationally-recognized pharmaceutical publication designated by the Commission. For purposes of determining AWP, the Commission has selected Medi-span for the 2019/2020 PFS.
- F. The reimbursement value for a prescription medication shall be calculated on a per unit basis based on the applicable AWP per unit and the following methodology:
  - 1. Generic drugs: (85% of AWP per unit) x (number of units dispensed).
  - 2. Brand name drugs: (85% of AWP per unit) x (number of units dispensed).
- G. Reimbursement for non-traditional strength prescription medications shall be calculated on a per unit basis, as of the date of dispensing, based on the original manufacturer's NDC and corresponding AWP of the most therapeutically-similar traditional strength form of the same medication. Under no circumstance shall the NDC of the non-traditional strength medication be used.

**IV. BILLING AND REIMBURSEMENT FOR REPACKAGED MEDICATIONS.**

- A. A pharmaceutical bill submitted for a repackaged medication must identify the NDC of the repackaged medication, the NDC of the original manufacturer registered with the U.S. FDA, the quantity dispensed, and the reimbursement value of the repackaged medication. Under no circumstances shall the reimbursement value of a repackaged medication be based upon an NDC other than the original manufacturer's NDC. A repackaged NDC shall not be used for calculating the reimbursement value of a repackaged medication and shall not be considered the original manufacturer's NDC.
- B. If a pharmaceutical bill for a repackaged medication is submitted without the original manufacturer's NDC, the payer has the discretion to determine the appropriate NDC (and corresponding AWP) to use or, alternatively, may deny coverage until the appropriate NDC is furnished.
- C. The reimbursement value for a repackaged medication shall be based on the current PFS reimbursement methodology contained in Section III of the PFS, utilizing the NDC(s) and corresponding AWP(s) of the original manufacturer(s).
- D. Any component of a co-pack drug product for which there is no NDC shall not be reimbursed.

**V. BILLING AND REIMBURSEMENT FOR COMPOUND MEDICATIONS.**

- A. A pharmaceutical bill submitted for a compound medication must identify each reimbursable component ingredient, the applicable NDC of each reimbursable component ingredient, the corresponding quantity of each component ingredient, and the calculated reimbursement value of each component ingredient. All component ingredients of a compound medication must be billed on a single bill.
- B. The reimbursement value for a compound medication shall be calculated at the component ingredient level. The reimbursement value for a compound medication shall be based on the sum of the reimbursement values of each component ingredient and the corresponding component ingredient's NDC, based on the current PFS reimbursement methodology set forth in Section III.
- C. Any component ingredient in a compound medication for which there is no NDC shall not be reimbursed.
- D. Any component ingredient in a topical compound medication that is not FDA approved for topical use shall not be reimbursed.
- E. If any component ingredient in a compound medication is a repackaged medication, the reimbursement value for the repackaged medication ingredient shall be determined based on the current PFS reimbursement methodology set forth in Section III, using the AWP corresponding to the NDC of the original manufacturer. See Section IV.
- F. The maximum reimbursement value for a topical compound medication shall be the lesser of: (1) two hundred (\$200) for a thirty-day supply (or a pro-rated amount if the supply is greater or less than thirty days); or (2) the reimbursement value of the compound medication calculated under this section.

**VI. BILLING AND REIMBURSEMENT FOR MEDICATIONS ADMINISTERED BY A MEDICAL PRACTITIONER.**

- A. A pharmaceutical bill submitted for a medication administered by a medical practitioner must comply with billing procedures outlined in Sections III, IV, and V of the current PFS, as applicable.
- B. The reimbursement value for a medication administered by a medical practitioner shall be based on the current PFS reimbursement methodology contained in Sections III, IV, and V of the PFS, as applicable.

**VII. REIMBURSEMENT FOR MEDICATIONS DISPENSED BY A MEDICAL PRACTITIONER OR IN A PHARMACY NOT ACCESSIBLE TO THE GENERAL PUBLIC.<sup>4,5</sup>**

- A. An insurance carrier, self-insured employer, or the Special Fund of the Commission is responsible for the payment of prescription medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public if all of the following apply:
  - 1. The prescription medication is dispensed by a medical practitioner to the injured employee within seven days of the date of the industrial injury;
  - 2. The prescription medication is limited to no more than a one-time, ten-day supply;
  - 3. The prescription medication conforms to dosages and formulations that are commercially available in pharmacies accessible to the general public.
- B. An insurance carrier, self-insured employer, or the Special Fund of the Commission is responsible for the payment of prescription medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public if all of the following apply:
  - 1. The injured employee does not have access to a pharmacy accessible to the general public within 20 miles of the injured employee's home address, work address, or the address of the prescribing medical practitioner;
  - 2. The injured employee cannot reasonably acquire the prescription medication from an online or mail order pharmacy accessible to the general public; and

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- 3. The prescription medication conforms to dosages and formulations which are commercially available in pharmacies accessible to the general public.
- C. An insurance carrier, self-insured employer, or the Special Fund of the Commission is responsible for the payment of prescription medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public if the dispensing of a prescription medication for an individual claim and specified duration has been preapproved in writing by the insurance carrier, self-insured employer, or the Special Fund of the Commission. Nothing in this section requires an insurance carrier, self-insured employer, or the Special Fund of the Commission to preapprove the dispensing of prescription medications under this subsection.
- D. The guidelines in this section do not apply to prescription medications dispensed during in-patient hospital care or upon discharge from in-patient hospital care.
- E. The reimbursement value for OTC medications dispensed by a medical practitioner or in a pharmacy not accessible to the general public shall be calculated on a per unit basis, as of the date of dispensing, based on the retail price (per unit) of the OTC medication in settings where the medication is commercially available.
- F. The reimbursement value for OTC medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public and that are not commercially available in pharmacies accessible to the general public shall be calculated on a per unit basis, as of the date of dispensing, based on the retail price (per unit) of the most therapeutically-similar OTC medication commercially available in pharmacies accessible to the general public. Under no circumstance shall the NDC or AWP of the non-commercially-available OTC medication be used.
- G. Subject to the limitations in this section, medications that have been provided as free samples to a medical practitioner may be dispensed to an injured employee when appropriate, but are not reimbursable.

<sup>4</sup>Dispensing pursuant to Section VII is subject to the Arizona Opioid Epidemic Act, which imposes statutory limits on the prescribing and dispensing of schedule II opioids. For more information about the Arizona Opioid Epidemic Act, please see the FAQs published by the Arizona State Board of Pharmacy, available at <https://drive.google.com/file/d/1JClS8VwtdJ1T-DyGfJN3WWUm4KhDMXe/view>.

<sup>5</sup>Section VII sets forth reimbursement guidelines for medications dispensed in settings that are not accessible to the general public in Arizona's worker's compensation system and does not interfere with a medical practitioner's ability to dispense medications pursuant to A.R.S. § 32-1491 or seek payment from sources unrelated to workers' compensation.

**VIII. DISPENSING FEE.**

- A. If a prescription medication is dispensed by a pharmacy accessible to the general public pursuant to a prescription order, a dispensing fee of up to seven dollars (\$7.00) per prescription medication, repackaged medication, or compound medication may be charged. The dispensing fee does not apply to OTC medications that are not prescribed by a medical practitioner.
- B. If a prescription medication is dispensed by a medical practitioner or in a pharmacy not accessible to the general public pursuant to Section VII(A), (B), or (C), a dispensing fee of up to seven dollars (\$7.00) per prescription medication, repackaged medication, or compound medication may be charged. If an OTC medication is dispensed by a medical practitioner or by a pharmacy not accessible to the general public, a dispensing fee is not permitted.
- C. If a prescription or OTC medication is administered by a medical practitioner, a dispensing fee is not permitted.

**IX. ADDITIONAL BILLING GUIDELINES.**

- A. Paper billing by a medical practitioner:  
The following is an example of how to report both the repackaged NDC and original NDC on the CMS 1500 form using the shaded area of line 24. The information is reported in the following order: qualifier (N4), NDC code, one space, unit/basis of measurement qualifier, quantity, one space, ORIG, qualifier (N4), NDC code.”

III. A. DATES OF SERVICE		B. PLACE		C. D. PROCEDURES, SERVICES, OR SUPPLIES			E.	F.	G.	H.	I.	J.
From	To	MM	YY	MM	YY	EMG	EXPLAN (Explain Unusual Circumstances)	DIAGNOSIS	CHARGES	DATE OF SERVICE	UNIT	RENDERING PROVIDER ID #
MM	YY	MM	YY	MM	YY	MM	MOIFIER	PORTER		UNIT		
N4	55289047590	UN	30	ORIG	N4	0025152531						
10	01	05	10	01	05	11	J3490		A	500	00	30
												N
												G2
												12345678901
												0123456789

If a physician does not bill using the CMS 1500 form, or is not able to include all the required information on the CMS 1500 form (due to software/system limitations), then the physician may provide the required information (in the required order) separately or as an attachment to the CMS 1500 form.

- B. Paper billing by non-physician entities.  
A non-physician entity using paper billing to bill for medications shall use the most recent version of the Workers' Compensation/Property & Casualty Universal claim Form (WC/PC UCF) adopted by the National Council for Prescription Drug Programs.

**X. SEVERABILITY CLAUSE.**

If any provision of Pharmaceutical Fee Schedule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the Pharmaceutical Fee Schedule which can be given effect without the invalid provisions or application, and to this end the provisions of this Pharmaceutical Fee Schedule are severable.

**Historical Note**

New Appendix A, Pharmaceutical Fee Schedule made by exempt rulemaking at 25 A.A.R. 2624, effective October 1, 2019; Appendix A, Pharmaceutical Fee Schedule will remain in effect though September 30, 2020 (Supp. 19-3).