

C-1

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

Title 20, Chapter 6, Article 16, Credit for Reinsurance

New Part: Part A, Part B

New Section: R20-6-B1601, R20-6-B1602, R20-6-B1603

New Exhibit: Exhibit E

Renumber: R20-6-1601, R20-6-A1601, R20-6-1602, R20-6-A1602, R20-6-1603,
R20-6-A1603, R20-6-1604, R20-6-A1604, R20-6-1605, R20-6-A1605,
R20-6-1606, R20-6-A1606, R20-6-1607, R20-6-A1607, R20-6-1608,
R20-6-A1608, R20-6-1610- R20-6-A1609

Amend: R20-6-A1601, R20-6-A1602, R20-6-A1603, R20-6-A1604,
R20-6-A1605, R20-6-A1606, R20-6-A1607, R20-6-A1608,
R20-6-A1609, Exhibit A

Repeal: R20-6-1609, R20-6-1611, R20-6-1612



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 10, 2022

SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6, Article 16, Credit for Reinsurance

New Part: Part A, Part B

New Section: R20-6-B1601, R20-6-B1602, R20-6-B1603

New Exhibit: Exhibit E

Renumber: R20-6-1601, R20-6-A1601, R20-6-1602, R20-6-A1602, R20-6-1603, R20-6-A1603, R20-6-1604, R20-6-A1604, R20-6-1605, R20-6-A1605, R20-6-1606, R20-6-A1606, R20-6-1607, R20-6-A1607, R20-6-1608, R20-6-A1608, R20-6-1610- R20-6-A1609

Amend: R20-6-A1601, R20-6-A1602, R20-6-A1603, R20-6-A1604, R20-6-A1605, R20-6-A1606, R20-6-A1607, R20-6-A1608, R20-6-A1609, Exhibit A

Repeal: R20-6-1609, R20-6-1611, R20-6-1612

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) relates to rules in Title 20, Chapter 6, Article 16, regarding Credit for Reinsurance. The Department states that in 2015, the then Department of Insurance (now Division of Insurance) conducted an exempt rulemaking to address amendments to A.R.S. § 20-261.01 and add new statutory sections A.R.S. §§ 20-261.05 through 261.08. The Department states that since 2015, the National Association of Insurance Commissioners (NAIC) made additional changes to the Credit for Reinsurance model law (MDL 785) and correlated model regulation (MDL 786). In the 2021 legislative session, the Legislature passed SB1044, which incorporated changes to the model law and created a new Chapter 30 to Title 20 (Laws 2021, Ch. 357). This rulemaking will incorporate changes made to the correlate model regulation and will add a new model regulation (MDL 787: Term and Universal Life Reserve Financing) to the administrative code.¹

The Department received approval to initiate this rulemaking on August 2, 2021 and final approval to submit this rulemaking to the Council on December 17, 2021.

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

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

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

No. 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 Department states that it did not review or rely on a study in conducting this rulemaking.

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

The Department is proposing to amend the Credit for Reinsurance rules to reflect current changes made in statute and to the NAIC model regulation governing credit for reinsurance. Stakeholders include the Department and insurance companies ceding insurance and assuming reinsurers. The Department anticipates a benefit to Arizona domestic insurers and no additional costs are anticipated with the implementation of the rules.

¹ More information about these changes can be found in the September 2020 NAIC State Legislative Brief: <https://content.naic.org/sites/default/files/inline-files/Credit%20for%20Reinsurance%20Model%20Brief%20-%20September%202020.pdf>. This document is also included in the final materials herein.

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

The Department indicates that the rulemaking provides a benefit to Arizona insurers by expanding the availability of reinsurers that they can cede liabilities to, and it is the least intrusive and least costly method of achieving the Department's regulatory objective.

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

The Department does not anticipate any costs or benefits in implementing and enforcing the rulemaking and no new full-time employees will be necessary. The Department further states that this rulemaking will not directly affect any political subdivisions of the state. Further, the Department does not anticipate any impact on the private employment of insurers or reinsurers. In addition, it anticipates no probable impact on small businesses and anticipates no impact on state revenues.

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

No. The Department states that it did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Department indicates that it received one comment from Lloyd's, London in favor of this rulemaking. The comment the Department received is included with these materials for the Council Members' review.

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

No. The Department indicates that these rules do not require a permit. The Department further states that the rules are designed to provide guidance to insurers on claiming credit for products they reinsure.

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

No. The Department indicates that no federal law is applicable to the subject of the rules.

11. **Conclusion**

In this regular rulemaking, the Department seeks to incorporate recent statutory and Model Law changes into rules regarding Credit for Reinsurance. This rulemaking would

align the Department's rules with these changes. The Department is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



Director's Office
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

Douglas A. Ducey, Governor
Evan G. Daniels, Director

December 21, 2021

VIA EMAIL: grrc@azdoa.gov
Connie Wilhelm, Acting Chairperson
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Credit for Reinsurance Final Rulemaking

Dear Chairperson Wilhelm:

Please find enclosed the Final Rulemaking for Credit for Reinsurance being submitted by the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The Department closed the record on this rulemaking on October 17, 2021.
- b. This rulemaking does not relate to a five-year review report. Instead, the Department initiated this rulemaking in response to changes to Title 20 (Laws 2021, Ch. 357) which adopted changes made by the National Association of Insurance Commissioners to the Credit for Reinsurance Model Law (MDL 785) and Model Regulation (MDL 786). Incorporating these changes is an accreditation standard for the Department.
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No additional full-time employees are necessary to implement and enforce the rule. Consequently, no notification has been made to the Joint Legislative Budget Committee.
- h. The following documents are also submitted to the Council with this cover letter:
 - i. The Notice of Final Rulemaking;
 - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;

- iii. The written comments received. The Department received one comment in support of the rulemaking. No testimony was received. Therefore no other written record, transcript, or minutes of any testimony is available.
- iv. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

A handwritten signature in blue ink that reads "Evan G. Daniels". The signature is written in a cursive style with a large, stylized "S" at the end.

Evan G. Daniels
Director

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

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Part A	New Part
R20-6-1601	Re-number
R20-6-A1601	Re-number
R20-6-A1601	Amend
R20-6-1602	Re-number
R20-6-A1602	Re-number
R20-6-A1602	Amend
R20-6-1603	Re-number
R20-6-A1603	Re-number
R20-6-A1603	Amend
R20-6-1604	Re-number
R20-6-A1604	Re-number
R20-6-A1604	Amend
R20-6-1605	Re-number
R20-6-A1605	Re-number
R20-6-A1605	Amend
R20-6-1606	Re-number
R20-6-A1606	Re-number
R20-6-A1606	Amend
R20-6-1607	Re-number
R20-6-A1607	Re-number
R20-6-A1607	Amend
R20-6-1608	Re-number
R20-6-A1608	Re-number

R20-6-A1608	Amend
R20-6-1609	Repeal
R20-6-1610	Renumber
R20-6-A1609	Renumber
R20-6-A1609	Amend
R20-6-1611	Repeal
R20-6-1612	Repeal
Exhibit A	Amend
Exhibit E	New Exhibit
Part B	New Part
R20-6-B1601	New Section
R20-6-B1602	New Section
R20-6-B1603	New Section

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. § 20-143

Implementing statute: A.R.S. § 20-261.08 (repealed after September 29, 2021); A.R.S. § 20-3604 (effective as of September 29, 2021)

3. The effective date of the rule:

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 1497, September 17, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 1465, September 17, 2021

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

Name: Mary E. Kosinski

Address: Department of Insurance and Financial Institutions

100 N. 15th Ave., Suite 261

Phoenix, Arizona 85007-2630

Telephone: (602)364-3476

E-mail: mary.kosinski@difi.az.gov

Web site: <https://difi.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:

In 2015, the Department of Insurance (now "Insurance Division" of the Department of Insurance and Financial Institutions) promulgated an exempt rulemaking to reflect statutory changes made to amend A.R.S. § 20-261.01 and add new statutory sections A.R.S. §§ 20-261.05 through 20-261.08. (Laws 2015, Ch. 119.) Since 2015, the National Association of Insurance Commissioners ("NAIC") has made additional changes to the Credit for Reinsurance model law (MDL 785) and its correlate model regulation (MDL 786). This legislative session, the Legislature passed SB1044 into law to incorporate changes made to the model law and create a new Chapter 30 to Title 20. (Laws 2021, Ch. 357) This rulemaking will incorporate the changes made to the correlate model regulation and will add a new model regulation (MDL 787: Term and Universal Life Reserve Financing) to the administrative code.

This rulemaking will amend A.A.C. Title 6, Article 16 existing rule sections. The Division will

renumber and consolidate the current sections into new Part A (Sections R20-6-A1601 through R20-6-A1609) and new Part B (Sections R20-6-B1601 through R20-6-B1603). Part A will be titled "Credit for Reinsurance" and will incorporate the current Credit for Reinsurance model regulation (MDL 786). Part B will be titled "Term and Universal Life Reserve Financing" and will incorporate the Term and Universal Life Reserve Financing model regulation (MDL 787). Part A will add a new Exhibit E: Form RJ-1. Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction. All statutory references will be to the new Chapter 30 of Title 20.

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 Department did not review any study relevant to 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:

The rulemaking addresses credit for reinsurance granted to insurance companies which is of statewide interest to insurers who reinsure policies. The rulemaking does not diminish a previous grant of authority granted to the Division.

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

Pursuant to A.R.S. § 41-1055(A):

- The rulemaking is not designed to change any conduct. Instead, it is designed to give guidance to insurers who seek credit for reinsuring policies.

- The potential harm to insurers who cannot claim these credits based on the current revision to the rules is monetary.
- Because this rulemaking is not made in response to a perceived problem, it is not intended to reduce the frequency of any potentially violative conduct.
- The costs incurred by insurers claiming these credits are not expected to impact revenues or payroll expenditures. Instead, the credits are expected to benefit insurers financially.
- The person listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

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

No changes have been made between the proposed rulemaking and the final rulemaking.

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

The Insurance Division received one comment from Lloyd's America Inc. supporting 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:

No other matters prescribed by statute are applicable to the Insurance Division or to any specific rule or class of rules.

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 and does not use a general permit. Instead, the rule is designed to provide guidance to insurers on claiming credit for products they reinsure.

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

No federal law is applicable to the subject of the rule.

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

No formal analysis has been submitted to the Insurance Division that compares the rule's impact of the competitiveness of business in this state to the impact of 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 rule:**

No reference material is incorporated by reference.

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

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

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

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 16. CREDIT FOR REINSURANCE

Part A. CREDIT FOR REINSURANCE

Section

~~R20-6-1601.~~ R20-6-A1601. Credit for Reinsurance - Reinsurer Licensed in Arizona

~~R20-6-1602.~~ R20-6-A1602. Credit for Reinsurance - Accredited Reinsurers

~~R20-6-1603.~~ R20-6-A1603. Credit for Reinsurance - Reinsurer Domiciled in Another State

~~R20-6-1604.~~ R20-6-A1604. Credit for Reinsurance - Reinsurers Maintaining Trust Funds

~~R20-6-1605.~~ R20-6-A1605. Credit for Reinsurance - Certified Reinsurers

~~R20-6-1606.~~ R20-6-A1606. Credit for Reinsurance - Reciprocal Jurisdictions; Credit for Reinsurance Required by Law

~~R20-6-1607.~~ R20-6-A1607. Asset or Reduction from Liability for Reinsurance Ceded to Unauthorized Assuming Insurer Not Meeting the Requirements of Sections ~~R20-6-1601~~ R20-6-A1601 through ~~R20-6-1606~~ R20-6-A1606

~~R20-6-1608.~~ R20-6-A1608. Trust Agreements Qualified Under Section ~~R20-6-1607~~ R20-6-A1607; Letters of Credit Qualified Under Section R20-6-A1607

~~R20-6-1609.~~ ~~Letters of Credit Qualified Under Section R20-6-1607~~ Repealed

~~R20-6-1610.~~ R20-6-A1609. Other Security; Reinsurance Contract; Contracts Affected

~~R20-6-1610.~~ Renumbered

~~R20-6-1611.~~ ~~Reinsurance Contract~~ Repealed

~~R20-6-1612.~~ ~~Contracts Affected~~ Repealed

Exhibit A. Form AR-1, Certificate of Assuming Insurer

Exhibit E. Form RJ-1, Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction

PART B. TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

~~R20-6-1610.~~ R20-6-B1601. Other Security Applicability; Exemptions; Definitions; Severability; Prohibition Against Avoidance

~~R20-6-1611.~~ R20-6-B1602. ~~Reinsurance Contract~~ The Actuarial Method

ARTICLE 16. CREDIT FOR REINSURANCE

PART A. CREDIT FOR REINSURANCE

~~R20-6-1601. R20-6-A1601.~~ R20-6-A1601. Credit for Reinsurance – Reinsurer Licensed in Arizona

Pursuant to ~~A.R.S. § 20-261.05(B)~~, A.R.S. § 20-3602(C) the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in Arizona as of any date on which statutory financial statement credit for reinsurance is claimed.

~~R20-6-1602. R20-6-A1602.~~ R20-6-A1602. Credit for Reinsurance – Accredited Reinsurers

- A. Pursuant to ~~A.R.S. § 20-261.05(C)~~, A.R.S. § 20-3602(D) the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Arizona as of the date on which statutory financial statement credit for reinsurance is claimed.
- B. An accredited reinsurer must:
1. File a properly executed Form AR-1, attached as Appendix A to this ~~Article, Part~~, as evidence of its submission to the Director's jurisdiction and to the Director's authority to examine its books and records;
 2. File with the Director a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 3. File annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
 4. Maintain a surplus as regards policyholders in an amount not less than \$20 million, or obtain the affirmative approval of the Director upon a finding that it has adequate financial capacity to meet

its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

C. If the Director determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Director may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this Section if the assuming insurer's accreditation has been revoked by the Director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Director.

~~R20-6-1603.~~ R20-6-A1603. Credit for Reinsurance – Reinsurer Domiciled in Another State

A. Pursuant to ~~A.R.S. § 20-261.05(D)~~, A.R.S. § 20-3602(E) the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial credit for reinsurance is claimed:

1. Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under ~~A.R.S. §§ 20-261.01 through 20-261.08~~ A.R.S. Title 20, Chapter 30 and this ~~Article; Part;~~
2. Maintains a surplus as regards policyholders in an amount not less than \$20 million; and
3. Files a properly executed Form AR-1 (Exhibit A) with the Director as evidence of the submission to the Director's authority to examine its books and records.

B. The provisions of this Section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this Section, "substantially similar" standards means credit for reinsurance standards that the Director determines equal or exceed the standards of ~~A.R.S. §§ 20-261.01 through 20-261.08~~ A.R.S. Title 20, Chapter 30 and this ~~Article; Part.~~

~~R20-6-1604.~~ R20-6-A1604. Credit for Reinsurance – Reinsurers Maintaining Trust Funds

A. Pursuant to ~~A.R.S. § 20-261.05(E)~~, A.R.S. § 20-3602(F) and (F)(1), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in ~~A.R.S. § 20-261.03~~, A.R.S. § 20-3601 for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming

insurer shall report annually to the Director substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20 million, except as provided in subsection (B)(2) of this Section.
2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities, attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.
3. The trust fund for a group including incorporated and individual unincorporated underwriters:
 - a. Shall consist of:
 - i. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;
 - ii. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this ~~Article~~ Part, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

- iii. In addition to these trusts, the group shall maintain a trusteed surplus of which \$100 million shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.
 - b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ~~ninety~~ 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Director:
 - i. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
 - ii. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.
 4. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10 billion (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:
 - a. Consist of funds in trust in an amount no less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;
 - b. Maintain a joint trusteed surplus of which \$100 million shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and
 - c. File a properly executed Form AR-1 (Exhibit A) as evidence of the submission to the Director's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.
 - d. Within ~~ninety~~ 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Director an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.
- C. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the

commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

1. The trust instrument shall provide that:

- a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied ~~thirty~~ 30 days after entry of the final order of any court of competent jurisdiction in the United States;
- b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;
- c. The trust shall be subject to examination as determined by the commissioner;
- d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
- e. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

2. Notwithstanding any other provisions in the trust instrument;

- a. If the trust fund is inadequate because it contains an amount less than the amount required by this Section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
- b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
- c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of

the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

- d. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

D. For purposes of this Section, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:
 - a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
 - b. Reserves for losses reported and outstanding;
 - c. Reserves for losses incurred but not reported;
 - d. Reserves for allocated loss expenses; and
 - e. Unearned premiums.
2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:
 - a. Aggregate reserves for life policies and contracts net of policy loans and net due, and deferred premiums;
 - b. Aggregate reserves for accident and health policies;
 - c. Deposit funds and other liabilities without life or disability contingencies; and
 - d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to ~~A.R.S. § 20-261.05~~ A.R.S. § 20-3602 and this Section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in ~~A.R.S. § 20-261.03~~, A.R.S. § 20-3601, clean, irrevocable, unconditional, and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution as defined in ~~A.R.S. § 20-261.03~~, A.R.S. § 20-3601, and investments of the type specified in this subsection (E), but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subsections (E)(1)(e), (E)(3), (E)(6)(b), or (E)(7) of this Section, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository

receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of ~~A.R.S. § 261-05~~ A.R.S. § 20-3602 shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest; that are valid and legally authorized and that are issued, assumed, or guaranteed by:
 - a. The United States or by any agency or instrumentality of the United States;
 - b. A state of the United States;
 - c. A territory, possession, or other governmental unit of the United States;
 - d. An agency or instrumentality of a governmental unit referred to in subsections (E)(1)(b) and (E)(1)(c) of this Section if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection (E)(1)(d) if payable solely out of special assessments on properties benefited by local improvements; or
 - e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:
 - a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
 - b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in Arizona and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
 - c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
4. An investment made pursuant to the provisions of subsections (E)(1), (E)(2), or (E)(3) of this Section shall be subject to the following additional limitations:
 - a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5% of the assets of the trust;
 - b. An investment in any one mortgage-related security shall not exceed 5% of the assets of the trust;
 - c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and
 - d. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under subsections (E)(2)(a) and (E)(2)(c) of this Section, but shall not exceed 2% of the assets of the trust.
5. As used in this Section:
 - a. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:
 - i. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that: (1) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and (2) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or

state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1703; or

ii. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subsection (E)(5)(a)(i) of this Section;

b. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity interests.

a. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

i. Its obligations and preferred shares, if any, are eligible as investments under this Section; and

ii. The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. 78a - 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this Section an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

i. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

ii. The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

- b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section ~~R20-6-1606~~ R20-6-A1607 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this Section.

~~R20-6-1605~~: R20-6-A1605. Credit for Reinsurance – Certified Reinsurers

A. Pursuant to ~~A.R.S. §§ 20-261.05(F), (G) and (H)~~, A.R.S. §§ 20-3602(G), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in Arizona at all times for which statutory financial statement credit for reinsurance is claimed under this Section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Director. The security shall be in a form consistent with the provisions of ~~A.R.S. §§ 20-261.05(F), (G) and (H), 20-261.06~~ A.R.S. §§ 20-3602(G), and 20-3603 and Sections ~~R20-6-1608, R20-6-1609 or R20-6-1610~~. R20-6-A1608 or R20-6-A1609(A). The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1. Ratings	Security Required
Secure-1	0%
Secure-2	10%
Secure-3	20%
Secure-4	50%
Secure-5	75%
Vulnerable-6	100%

- 2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The Director shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.
4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Director. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
 - a. Line 1: Fire
 - b. Line 2: Allied Lines
 - c. Line 3: Farmowners multiple peril
 - d. Line 4: Homeowners multiple peril
 - e. Line 5: Commercial multiple peril
 - f. Line 9: Inland Marine
 - g. Line 12: Earthquake
 - h. Line 21: Auto physical damage
5. Credit for reinsurance under this Section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this Section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
6. Nothing in this Section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.

B. Certification Procedure.

1. The Director shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to

the application. The Director may not take final action on the application until at least ~~thirty~~ 30 days after posting the notice required by this subsection (B)(1).

2. The Director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection ~~A(A)~~ of this Section. The Director shall publish a list of all certified reinsurers and their ratings.
3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - a. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Director pursuant to subsection ~~E(C)~~ of this Section.
 - b. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250 million calculated in accordance with subsection (B)(4)(h) of this Section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250 million and a central fund containing a balance of at least \$250 million.
 - c. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Director in determining the rating that is assigned to the assuming insurer.
Acceptable rating agencies include the following:
 - i. Standard & Poor's;
 - ii. Moody's Investors Service;
 - iii. Fitch Ratings;
 - iv. A.M. Best Company; or
 - v. Any other Nationally Recognized Statistical Rating Organization.
 - d. The certified reinsurer must comply with any other requirements reasonably imposed by the Director.
4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified

reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

- a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B- C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- c. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- d. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (instructions attached as Exhibit C) (for property/casualty reinsurers) or Form CR-S (instructions attached as Exhibit D) (for life and health reinsurers);

- e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ~~ninety~~ 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
 - f. Regulatory actions against the certified reinsurer;
 - g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(4)(h) below;
 - h. For certified reinsurers not domiciled in the U.S., audited financial statements (~~audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company~~), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor), with a translation into English. Upon the initial application for certification, the Director will consider audited financial statements for the last ~~three~~ two years filed with its non-U.S. jurisdiction supervisor;
 - i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - k. Any other information deemed relevant by the Director.
5. Based on the analysis conducted under subsection (B)(4)(e) of this Section of a certified reinsurer's reputation for prompt payment of claims, the Director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subsection (B)(4)(a) of this Section if the Director finds that:
- a. More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ~~ninety~~ 90 days or more which are not in dispute and which exceed \$100 thousand for each cedent; or

- b. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ~~ninety~~ 90 days or more exceeds \$50 million.
6. The assuming insurer must submit a properly executed Form CR-1 (attached as Exhibit B) as evidence of its submission to the jurisdiction of Arizona, appointment of the Director as an agent for service of process in Arizona, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Director shall not certify any assuming insurer that is domiciled in a jurisdiction that the Director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
 7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the Director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under A.R.S. § 20-158 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
 - a. Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
 - b. Annually, Form CR-F or CR-S, as applicable;
 - c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(7)(d) below;
 - d. Annually, the most recent audited financial statements (~~audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company~~), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor), with a translation into English. Upon the initial certification, audited financial statements for the last ~~three~~ two years filed with the certified reinsurer's supervisor;
 - e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
 - f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action

level; and

g. Any other information that the Director may reasonably require.

8. Change in Rating or Revocation of Certification.

- a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (B)(4)(a) of this Section.
- b. The Director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this Section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- c. If the rating of a certified reinsurer is upgraded by the Director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Director, the Director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- d. Upon revocation of the certification of a certified reinsurer by the Director, the assuming insurer shall be required to post security in accordance with Section ~~R20-6-1607~~ R20-6-A1607 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section ~~R20-6-1604~~, R20-6-A1604, the Director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Director to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

1. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Director shall publish notice and evidence of such recognition in an appropriate manner. The Director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
2. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Director shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the Director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Director, include but are not limited to the following:
 - a. The framework under which the assuming insurer is regulated.
 - b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Director in particular.
 - f. The history of performance by assuming insurers in the domiciliary jurisdiction.
 - g. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.
 - h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or

successor organization.

i. Any other matters deemed relevant by the Director.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Director shall consider this list in determining qualified jurisdictions. If the Director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Director shall provide thoroughly documented justification with respect to the criteria provided under subsections (C)(2)(a) through ~~(i)~~ (C)(2)(i) of this Section.
4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 (Exhibit B) and such additional information as the Director requires. The assuming insurer shall be considered to be a certified reinsurer in Arizona.
2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in Arizona as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Director of any change in its status or rating within ten days after receiving notice of the change.
3. The Director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (B)(8) of this Section.
4. The Director may withdraw recognition of the other jurisdiction's certification at any time; with written notice to the certified reinsurer. Unless the Director suspends or revokes the certified reinsurer's certification in accordance with subsection (B)(8) of this Section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in Arizona.

E. Mandatory Funding Clause. In addition to the clauses required under Section ~~R20-6-1611~~, R20-6-A1609(B), reinsurance contracts entered into or renewed under this Section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this Section for reinsurance ceded to the certified reinsurer.

F. The Director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

R20-6-1606. R20-6-A1606. Credit for Reinsurance Required by Law Credit for Reinsurance - Reciprocal Jurisdictions; Credit for Reinsurance Required by Law

~~Pursuant to A.R.S. § 20-261.05(I), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of A.R.S. §§ 20-261.05(B) through (H) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this Section, “jurisdiction” means state, district or territory of the United States and any lawful national government.~~

A. Credit for reinsurance to a reciprocal jurisdiction assuming insurer. Pursuant to A.R.S. § 20-3602(H), (I), (J), (K), (L), and (R), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this Part.

B. A “reciprocal jurisdiction” is a jurisdiction, as designated by the Director pursuant to subsection (D) of this Section that meets one of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection (B)(1), a “covered agreement” is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;
2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
3. A qualified jurisdiction, as determined by the Director pursuant to A.R.S. § 20-3602(G)(3) and subsection R20-6-A1605(C), which is not otherwise described in subsections (B)(1) or (B)(2) above and which the Director determines meets all of the following additional requirements:
 - a. Provides that an insurer who has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same

manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction:

- b. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;
- c. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups who are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the Director or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and
- d. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Director in accordance with a memorandum of understanding or similar document between the Director and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to a reciprocal jurisdiction assuming insurer meeting each of the conditions set forth below:

- 1. The assuming insurer must be licensed to transact insurance by, and have its head office or be domiciled in, a reciprocal jurisdiction;
- 2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subsection (C)(7) of this Section according to the methodology of its domiciliary jurisdiction, in the following amounts:
 - a. No less than \$250 million; or

- b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:_____
 - i. Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250 million; and
 - ii. A central fund containing a balance of the equivalent of at least \$250 million.
3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:
 - a. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subsection (B)(1) of this Section, the ratio specified in the applicable covered agreement;
 - b. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (B)(2) of this Section, a risk-based capital (RBC) ratio of 300% of the authorized control level, calculated in accordance with the formula developed by the NAIC; or
 - c. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (B)(3) of this Section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the Director determines to be an effective measure of solvency.
4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (Exhibit E), of its agreement to the following:
 - a. The assuming insurer must agree to provide prompt written notice and explanation to the Director if it falls below the minimum requirements set forth in subsections (C)(2) or (C)(3) of this Section, or if any regulatory action is taken against it for serious noncompliance with applicable law;
 - b. The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the Director as agent for service of process.
 - i. The Director may also require that such consent be provided and included in each reinsurance agreement under the Director's jurisdiction.
 - ii. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;
 - c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory

where the judgment was obtained:

- d. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable;
 - e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involved this state's ceding insurers, and agrees to notify the ceding insurer and the Director and to provide 100% security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of A.R.S. §§ 20-3602(G) and 20-3603, Section R20-6-A1608, or Section R20-6-A1609(A). For purposes of this Section, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed class members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction; and
 - f. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subsection (C)(5) of this Section.
5. The assuming insurer or its legal successor must provide, if requested by the Director, on behalf of itself and any legal predecessors, the following documentation to the Director:
- a. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;
 - b. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;
 - c. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more,

regarding reinsurance assumed from ceding insurers domiciled in the United States; and

d. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subsection (C)(6) of this Section.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

a. More than 15% of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported by the Director;

b. More than 15% of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100 thousand, or as otherwise specified in a covered agreement; or

c. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50 million, or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm to the Director on an annual basis that the assuming insurer complies with the requirements set forth in subsections (C)(2) and (C)(3) of this Section.

8. Nothing in this provision precludes an assuming insurer from providing the Director with information on a voluntary basis.

D. The Director shall timely create and publish a list of reciprocal jurisdictions.

1. A list of reciprocal jurisdictions is published through the NAIC committee process. The Director's list shall include any reciprocal jurisdiction as defined under subsections (B)(1) and (B)(2) of this Section, and shall consider any other reciprocal jurisdiction included on the NAIC list. The Director may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.

2. The Director may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal

jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC committee process, except that the Director shall not remove from the list a reciprocal jurisdiction as defined under subsections (B)(1) and (B)(2) of this Section. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to A.R.S. Title 20, Chapter 30 and this Part.

E. The Director shall timely create and publish a list of reciprocal jurisdiction assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this subsection (E).

1. If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (C) of this Section have been met, the Director has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection (E). The Director may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirement of subsection (C) of this Section.
2. When requesting that the Director defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 (Appendix E) and additional information as the Director may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

F. If the Director determines that a reciprocal jurisdiction assuming insurer no longer meets one or more of the requirements under this Section, the Director may revoke or suspend the eligibility of the reciprocal jurisdiction assuming insurer for recognition under this Section.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section R20-6-A1607.
2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Director and consistent with the provisions of Section R20-6-A1607.

G. Before denying statement credit or imposing a requirement to post security with respect to subsection (F) of this Section or adopting any similar requirement that will have substantially the same regulatory impact as security, the Director shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection (C) of this Section;
2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;
3. After the expiration of 90 days or less, as set out in subsection (G)(2) of this Section, if the Director determines that no or insufficient action was taken by the assuming insurer, the Director may impose any of the requirements as set out in this subsection (G); and
- d. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection (G).

H. If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring the reciprocal jurisdiction assuming insurer to post security for all outstanding liabilities.

I. Credit for reinsurance required by law. Pursuant to A.R.S. § 20-3602(M), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of A.R.S. §§ 20-3602(C) through (G) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this Section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

~~R20-6-1607. R20-6-A1607. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections ~~R20-6-1601 through R20-6-1606~~ R20-6-A1601 through R20-6-A1606~~

A. Pursuant to ~~A.R.S. § 20-261.06~~, A.R.S. § 20-3603, the Director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of ~~A.R.S. § 20-261.05~~ A.R.S. § 20-3602 in an amount not exceeding the liabilities carried by the ceding

insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in ~~A.R.S. § 20-261.03~~; A.R.S. § 20-3601. This security may be in the form of any of the following:

1. Cash;
 2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
 3. Clean, irrevocable, unconditional, and “evergreen” letters of credit issued or confirmed by a qualified United States institution, as defined in ~~A.R.S. § 20-261.03~~; A.R.S. § 20-3601, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or
 4. Any other form of security acceptable to the Director.
- B.** An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this Section shall be allowed only when the requirements of ~~Section R20-6-1611 subsection R20-6-A1609(B)~~ and the applicable portions of ~~Sections R20-6-1608, R20-6-1609 or R20-6-1610~~ Section R20-6-A1608 or subsection R20-6-A1609(A) have been satisfied.

**~~R20-6-1608~~; R20-6-A1608. Trust Agreements Qualified under Section ~~R20-6-1607~~ R20-6-A1607;
Letters of Credit Qualified under Section R20-6-A1607**

- A.** ~~As used in this Section:~~ Trust agreements - definitions. As used in subsections B through G of this Section:

1. "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver, or conservator.
2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
3. "Obligations," as used in subsection (B)(11) of this Section, means:
 - a. Reinsured losses and allocated loss expenses paid by the ceding company but not recovered from the assuming insurer;
 - b. Reserves for reinsured losses reported and outstanding;
 - c. Reserves for reinsured losses incurred but not reported; and
 - d. Reserves for allocated reinsured loss expenses and unearned premiums.

B. ~~Required conditions.~~ Trust agreements - required conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee, which shall be a qualified United States financial institution as defined in ~~A.R.S. § 20-261.03~~ A.R.S. § 20-3601.
2. The trust agreement shall create a trust account into which assets shall be deposited.
3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.
4. The trust agreement shall provide that:
 - a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
 - b. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
 - c. It is not subject to any conditions or qualifications outside of the trust agreement; and
 - d. It shall not contain references to any other agreements or documents except as provided for in subsections (B)(11) and ~~(12)~~ (B)(12) of this Section.
5. The trust agreement shall be established for the sole benefit of the beneficiary.
6. The trust agreement shall require the trustee to:
 - a. Receive assets and hold all assets in a safe place;
 - b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

- c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
 - d. Notify the grantor and the beneficiary within ten days, of any deposits to or withdrawals from the trust account;
 - e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
 - f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.
7. The trust agreement shall provide that at least ~~thirty~~ 30 days, but not more than ~~forty-five~~ 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.
 8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.
 9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
 10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.
 11. Notwithstanding other provisions of ~~this Section~~, subsections A through G of this Section, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
 - b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
 - c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in ~~A.R.S. § 20-261-03~~ A.R.S. § 20-3601 apart from its general assets, in trust for such uses and purposes specified in subsections (11)(a) and ~~(b)~~ (11)(b) above as may remain executory after such withdrawal and for any period after the termination date.
12. Notwithstanding other provisions of ~~this Section~~, subsections (A) through (G) of this Section, when a trust agreement is established to meet the requirements of Section ~~R20-6-1607~~ R20-6-A1607 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
- a. To pay or reimburse the ceding insurer for:
 - i. The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
 - ii. The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provision of the policies reinsured under the reinsurance agreement.
 - b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding

insurer, or

- c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in subsections (12)(a) and ~~(b)~~ (12)(b) above as may remain executory after withdrawal and for any period after the termination date.
13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code, or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this subsection must be included in the reinsurance agreement.

C. ~~Permitted conditions:~~ Trust agreements - permitted conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.
2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subsection (D)(1)(b) of this Section.
4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. ~~Additional conditions applicable to reinsurance agreements:~~ Trust agreements - additional conditions applicable to reinsurance agreements:

1. A reinsurance agreement may contain provisions that:
 - a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
 - b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;
 - c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
 - d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

- i. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; and
- ii. To pay or reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
- iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding reinsurer; or
- iv. To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement also may contain provisions that:

- a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
 - i. The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or
 - ii. After withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount.
- b. Provide for the return of any amount withdrawn in excess of the actual amounts required for subsection (D)(1)(d) of this Section, and for interest payments at a rate not in excess of the prime rate of interest on such amounts;
- c. Permit the award by any arbitration panel or court of competent jurisdiction of:
 - i. Interest at a rate different from that provided in subsection (D)(2)(b) of this Section;
 - ii. Court or arbitration costs;
 - iii. Attorney's fees; and
 - iv. Any other reasonable expenses.

E. ~~Financial reporting.~~ Trust agreements - financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Director in compliance with the provisions of this ~~Article~~ Part when

established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

- F. ~~Existing agreements.~~ Trust agreements - existing agreements.** Notwithstanding the effective date of this ~~Article Part~~, any trust agreement or underlying reinsurance agreement in existence and approved by the Director prior to the effective date of this ~~Article Part~~ will continue to be acceptable until December 31, 2016, at which time the agreements will have to fully comply with ~~this Section~~ subsections (A) through (G) of this Section for the trust agreement to be acceptable.
- G. Trust agreements - failure to identify beneficiary.** The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (A)(1) of this Section shall not be construed to affect any actions or rights that the Director may take or possess pursuant to the provisions of the laws of Arizona.
- H. Letters of credit.** The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined A.R.S. § 20-3601. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subsection (N)(1) of this Section. As used in this Section, “beneficiary” includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver, or conservator. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).
- I. Letters of credit - heading.** The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.
- J. Letters of credit - required statements and clauses.**

1. A letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
2. The letter of credit shall state whether it is subject to and governed by the laws of Arizona or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98). All drafts of letters of credit drawn according to UCP 600 or ISP98 shall be presentable at an office in the United States of a qualified United States financial institution.
3. The letter of credit shall contain an "evergreen clause" in compliance with subsection (K) of this Section.

K. Letters of credit - term of the letter of credit. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for no less than 30 days' notice prior to expiration date or nonrenewal.

L. Letters of credit made subject to UCP 600 or ISP98. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of UCP 600 occur.

M. Letters of credit - additional requirements. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (H) of this Section, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
2. The "evergreen clause" shall provide for 30 days' notice prior to expiration date or nonrenewal.

N. Letters of credit - reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

- i. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
- ii. To pay or reimburse the ceding insurer for the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
- iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;
- iv. Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subsections (N)(1)(b)(i), (N)(1)(b)(ii), and (N)(1)(b)(iii) of this Section as may remain after withdrawal and for any period after the termination date.

c. All of the provisions of subsections (N)(1)(a) and (N)(1)(b) of this Section shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in subsection (N)(1) of this Section shall preclude the ceding insurer and assuming insurer from providing for:

- a. An interest payment, at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (N)(1)(b) of this Section; or

- b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

~~R20-6-1609. R20-6-A1609. Letters of Credit Qualified under Section R20-6-1607 Other~~

Security; Reinsurance Contract; Contracts Affected

A. ~~The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined A.R.S. § 20-261.03. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subsection (H)(1) of this Section. As used in this Section, “beneficiary” includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).~~

Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

B. ~~The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.~~

Reinsurance Contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections R20-6-A1601 through R20-6-A1605 or Section R20-6-A1607 of this Article or otherwise in compliance with A.R.S. § 20-3602 after the adoption of this Part unless the reinsurance agreement:

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to A.R.S. § 20-261(C);
2. Includes a provision pursuant to A.R.S. § 20-3602 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply

with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and

3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

~~C. A letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto:~~

Contracts affected. All new and renewal reinsurance transactions entered into after the effective date of this Part shall conform to the requirements of A.R.S. Title 20, Chapter 30 and this Part if credit is to be given to the ceding insurer for such reinsurance.

~~D. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for no less than 30 days' notice prior to expiration date or nonrenewal.~~

~~E. The letter of credit shall state whether it is subject to and governed by the laws of Arizona or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98). All drafts of letters of credit drawn according to UCP 600 or ISP98 shall be presentable at an office in the United States of a qualified United States financial institution.~~

~~F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of UCP 600 occur.~~

~~G. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection A of this Section, then the following additional requirements shall be met:~~

~~1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and~~

~~2. The "evergreen clause" shall provide for 30 days' notice prior to expiration date or nonrenewal.~~

~~H. Reinsurance agreement provisions:~~

- ~~1.- The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:~~
- ~~a.- Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;~~
 - ~~b.- Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
 - ~~i.- To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;~~
 - ~~ii.- To pay or reimburse the ceding insurer for the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and~~
 - ~~iii.- To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;~~
 - ~~iv.- Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subsections (H)(1)(b)(i), (ii) and (iii) of this Section as may remain after withdrawal and for any period after the termination date.~~~~
 - ~~e.- All of the provisions of subsections (H)(1)(a) and (b) of this Section shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.~~

~~2.- Nothing contained in subsection (H)(1) of this Section shall preclude the ceding insurer and assuming insurer from providing for:~~

~~a.- An interest payment, at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (H)(1)(b) of this Section; or~~

~~b.- The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.~~

Exhibit A. Form AR-1, Certificate of Assuming Insurer

FORM AR-1, CERTIFICATE OF ASSUMING INSURER

I, _____,
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

_____, hereby certify that
(name of state)

_____, (“Assuming Insurer”):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

(ceding insurer’s state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should

be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Director ~~of Insurance of the State of Arizona~~ of the Arizona Department of Insurance and Financial Institutions ("Director") as its lawful attorney upon whom may be served any lawful process in any action, suit or legal proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the ~~Insurance Director of Arizona~~ to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in

_____ reinsured by Assuming Insurer (ceding insurer's state of domicile)

and undertakes to submit additions to or deletions from the list to the ~~Insurance~~ Director at least once per calendar quarter.

Dated: _____

(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

Exhibit E. Form RJ-1, Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction

FORM RJ-1,

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I _____,

(name of officer)

(title of officer)

of _____, the assuming insurer

(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____,
(name of state)

in order to be considered for approval in this state, hereby certify that

("Assuming Insurer"):

(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in Arizona for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the Director of the Arizona Department of Insurance and Financial Institutions ("Director"). Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
2. Designates the Director as its lawful attorney in and for the State of Arizona upon whom may be served any lawful process in any action, suit, or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that is it not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in Arizona. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the Director, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.
7. Agrees to provide the documentation in accordance with R20-6-A1606(C)(5), if requested by the Director.

Dated: _____

 (name of assuming insurer)

BY: _____

 (name of officer)

 (title of officer)

PART B. TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

R20-6-1610.R20-6-B1601. ~~Other Security~~Applicability; Exemptions; Definitions; Severability; Prohibition Against Avoidance

~~A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.~~

A. Applicability. Part B of this Article shall apply to reinsurance treaties that cede liabilities pertaining to Covered Policies, as that term is defined in subsection (C) of this Section, issued by any life insurance

insurer domiciled in this state. Parts A and B of this Article shall both apply to such reinsurance treaties provided, that in the event of a direct conflict between the provisions of Part B and Part A, the provisions of Part B shall apply but only to the extent of the conflict.

B. Exemptions. Part B of this Article does not apply to the following situations:

1. Reinsurance of:

a. Policies that satisfy the criteria for exemption set forth in A.R.S. § 20-510 and which are issued before the later of:

i. The effective date of this Part B; and

ii. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

b. Portions of policies that satisfy the criteria for exemption set forth in A.R.S. § 20-510 and which are issued before the later of:

i. The effective date of this Part B; and

ii. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

c. Any universal life policy that meets all of the following requirements:

i. Secondary guarantee period, if any, if five years or less;

ii. Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Director's Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy;
and

iii. The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period;

d. Credit life insurance;

e. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

f. Any group life insurance certificate unless the certificate provides for a stated and implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

2. Reinsurance ceded to an assuming insurer that meets the applicable requirements of A.R.S. § 20-3602(F); or

3. Reinsurance ceded to an assuming insurer that meets the applicable requirements of A.R.S. §§ 20-3602(C), (D), or (E), and that, in addition:
 - a. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to the Statement of Statutory Accounting Principles No. 1 ("SSAP 1"); and
 - b. Is not a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in A.R.S. § 20-488 when its Risk-Based Capital ("RBC") is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or
4. Reinsurance ceded to an assuming insurer that meets the applicable requirements of A.R.S. §§ 20-3602(C), (D), or (E), and that, in addition:
 - a. Is not an affiliate, as that term is defined in A.R.S. § 20-481, of:
 - i. The insurer ceding the business to the assuming insurer; or
 - ii. Any insurer that directly or indirectly ceded the business to that ceding insurer;
 - b. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;
 - c. Is both:
 - i. Licensed or accredited in at least ten states including its state of domicile; and
 - ii. Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and
 - d. Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in A.R.S. § 20-488 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

5. Reinsurance ceded to an assuming insurer that meets the requirements of A.R.S. § 20-3604(D)(2);
or
6. Reinsurance not otherwise exempt under subsections (B)(1) through (B)(5) of this Section if the Director, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:
 - a. The risks are clearly outside of the intent and purpose of this Part B;
 - b. The risks are included within the scope of this regulation only as a technicality; and
 - c. The application of this Part B to those risks is not necessary to provide appropriate protection to policyholders. The Director shall publicly disclose any decision made pursuant to this subsection (B)(6) to exempt a reinsurance treaty from this Part B, as well as the general basis for the decision including a summary of the treaty.

C. Part B Definitions:

1. “Actuarial Method” means the methodology used to determine the Required Level of Primary Security, as described in Section R20-6-B1602.
2. “Covered Policies” means policies, other than Grandfathered Policies and policies that are not exempt under subsection (B) of this Section, of the following policy types:
 - a. Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or
 - b. Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.
3. “Grandfathered Policies” means Covered Policies that were:
 - a. Issued prior to January 1, 2015; and
 - b. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in subsection (B) of this Section.
4. “Non-Covered Policies” means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.
5. “Other Security” means any security acceptable to the Director other than security meeting the definition of Primary Security.
6. “Primary Security” means the following forms of security:
 1. Cash meeting the requirements of A.R.S. § 20-3603(B)(1);

2. Securities listed by the Securities Valuation Office meeting the requirements of A.R.S. § 20-3603(B)(2), but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit excluding any securities issued by the ceding insurer or any of its affiliates; and
3. For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
 - i. Commercial loans in good standing of CM3 quality and higher;
 - ii. Policy loans; and
 - iii. Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
7. “Required Level of Primary Security” means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.
8. “Valuation Manual” means the Valuation Manual adopted by the NAIC as described in A.R.S. § 20-510, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.
9. “VM-20” means “Requirements for Principle-Based Reserves for Life Products” including all relevant definitions from the Valuation Manual.

D. Severability. If any provision of this Part B is held invalid, the remainder shall not be affected.

E. Prohibition against avoidance. No insurer that has Covered Policies to which this Part B applies, as set forth in subsection (A) of this Section, shall take any action or series of actions or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of the action, transaction, or arrangement or series is to avoid the requirements of this Part B or to circumvent its purpose and intent.

~~R20-6-1611, R20-6-B1602. Reinsurance Contract~~The Actuarial Method

~~Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections R20-6-1601 through R20-6-1605 or R20-6-1607 of this Article or otherwise in compliance with A.R.S. § 20-261.05 after the adoption of this Article unless the reinsurance agreement:~~

1. ~~Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company,~~

pursuant to A.R.S. § 20-261(C);

- ~~2. Includes a provision pursuant to A.R.S. § 20-261.05 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and~~
- ~~3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.~~

A. Actuarial Method. The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this Part B shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual then in effect, applied as follows:

1. For Covered Policies described in subsection R20-6-B1601(C)(2)(a), the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in subsection R20-6-B1601(C)(2)(b), the ceding insurer may elect to instead use subsection (A)(2) below as the Actuarial Method for the entire reinsurance agreement. Whether subsection (A)(1) or (A)(2) is used, the Actuarial Method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.
2. For Covered Policies described in subsection R20-6-B1601(C)(2)(b), the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR regardless of whether the criteria for exemption testing can be met.
3. Except as provided in subsection (A)(4) below, the Actuarial Method is to be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.
4. If the reinsurance treaty cedes less than 100% of the risk with respect to the Covered Policies, then the Required Level of Primary Security may be reduced as follows:

- a. If a reinsurance treaty cedes only a quota share of some of all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under subsection (A)(4)(c) below, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;
- b. If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cessation of mortality risk on a yearly renewable term basis in an exempt arrangement;
- c. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to January 1, 2017, this adjustment is not to exceed $[c_x / (2 * \text{number of reinsurance premiums per year})]$ where c_x is calculated using the same mortality table used in calculating the Net Premium Reserve; and
- d. For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss, and other non-proportional reinsurance treaties, there will be no reduction in the Required Level of Primary Security.

It is possible for any combination of subsections (A)(4)(a), (A)(4)(b), (A)(4)(c), and (A)(4)(d) to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than 100% of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

5. In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.
6. If the ceding insurer cedes risk with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Part B, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this Part B.
7. If a reinsurance treaty subject to this Part B cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:
 - a. The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and R20-6-B1603 shall be used to determine the reinsurance credit for the covered policy reserves; and
 - b. Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subsection (A)(7)(a), is held by or on behalf of the ceding insurer in accordance with A.R.S. §§ 20-3602 and 20-3603. Any Primary Security used to meet the requirements of this subsection (A)(7)(b) may not be used to satisfy the Required Level of Primary Security for the Covered Policies.

B. Valuation used for Purposes of Calculations. For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

1. For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and
2. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the Required Level of Primary Security is being

calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

R20-6-6012. R20-6-B1603. Contracts Affected. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation

All new and renewal reinsurance transactions entered into after the effective date of this Article shall conform to the requirements of A.R.S. §§ 20-261.01 through 20-261.08 and this Article if credit is to be given to the ceding insurer for such reinsurance.

A. Requirements. Subject to the exemptions described in Section R20-6-B1601(B) and the provisions of subsection (B) of this Section, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to A.R.S. §§ 20-3602 or 20-3603 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

1. The ceding insurer's statutory policy reserves with respect to the Covered Policies are established in full and in accordance with the applicable requirements of A.R.S. § 20-510 and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract; and
2. The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this Part B and provides support for its calculation as determined to be acceptable to the Director; and
3. Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of A.R.S. § 20-3603, on a funds withheld, trust, or modified coinsurance basis; and
4. Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to subsection (A)(3), are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of A.R.S. § 20-3603; and
5. Any trust used to satisfy the requirements of this Section shall comply with all of the conditions and qualifications of R20-6-A1608(A) through (G), except that:
 - a. Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in R20-6-B1602(B), be valued according to the valuation rules set forth in R20-6-

B1602(B), as applicable; and

- b. There are no affiliate investment limitations with respect to any security held in the trust if such security is not needed to satisfy the requirements of subsection (A)(3); and
 - c. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subsection (A)(3) below 102% of the level required by subsection (A)(3) at the time of the withdrawal or substitution; and
 - d. The determination of reserve credit under Section R20-6-A1608(E) shall be determined according to the valuation rules set forth in Section R20-6-B1602(B), as applicable; and
6. The reinsurance treaty has been approved by the Director.

B. Requirements at inception date and on an on-going basis; remediation:

- 1. The requirements of subsection (A) of this Section must be satisfied as of the date that risks under Covered Policies are ceded (if such date is on or after the effective date of this Part B) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subsections (A)(3) or (A)(4) of this Section with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.
- 2. Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection R20-6-B1601(A) shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of subsections (A)(3) and (A)(4) of this Section were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to subsection (A)(3) of this Section, unless either:
 - a. The requirements of subsections (A)(3) and (A)(4) of this Section were fully satisfied as of the valuation date as to the reinsurance treaty; or
 - b. Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the

requirements of subsections (A)(3) and (A)(4) of this Section to be fully satisfied as of the valuation date.

3. Nothing in subsection (B)(2) of this Section shall be construed to allow a ceding company to maintain any deficiency under subsection (A)(3) or (A)(4) of this Section for any period of time longer than is reasonably necessary to eliminate it.

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement

Title 20. Commerce, Financial Institutions and Insurance

Chapter 6. Department of Insurance

Article 16. Credit for Reinsurance

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The Arizona Department of Insurance and Financial Institutions (“Department”) is proposing to amend the Credit for Reinsurance article to reflect recent changes made to Arizona law (Laws 2021, Ch. 357) and to the National Association of Insurance Commissioners’ (“NAIC”) model regulation governing credit for reinsurance (MDL 786). These changes allow an expansion of the qualifying reinsurers to which an Arizona domestic insurer can cede liabilities. Under the revisions, liabilities can now be ceded to qualifying reinsurers in reciprocal jurisdictions. The Department will add a new exhibit that allows the Director of the Department (“Director”) to recognize these assuming insurers.

This proposed rulemaking also adds a new Part B which will incorporate the NAIC Term and Universal Life Reserve Financing model regulation (MDL 787). The purpose of Part B is to establish standards governing reserve financing arrangements pertaining to certain life insurance policies and to ensure that funds are held by or on behalf of ceding insurers in the amounts required.

Unless noted otherwise, responses apply to both Part A and Part B. Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Insurance companies ceding insurance and assuming reinsurers will directly be affected by, bear the costs of and benefit from the proposed rulemaking.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

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

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule.

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

No political subdivision of this state is 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.

Part A: Credit for Reinsurance

Allowing insurers to cede liabilities to qualifying reinsurers in reciprocal jurisdictions will expand the current reinsurance available to insurers and the possibility of credits they receive under those arrangements. This is a benefit to Arizona domestic insurers. However, the anticipated effect on revenues is unknown by the Department and no insurer provided that information.

Part B: Term and Universal Life Reserve Financing

No additional costs are anticipated with the implementation of this rule. Insurers, reinsurers, and policies subject to this rule will be limited to the use of certain assets to support the reinsurance reserves ceded to an applicable affiliated reinsurer.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not anticipate any impact on the private employment of insurers or reinsurers. Likewise, the Department does not anticipate any impact of public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

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

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

The proposed rulemaking has no probable impact on small business because it only applies to insurance and reinsurance companies.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A 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 nonselected alternatives.

Part A: Credit for Reinsurance

Because this rulemaking provides a benefit to Arizona insurers by expanding the availability of a greater number of reinsurers to which to cede liabilities, it is the least intrusive and least costly method of achieving the Department's regulatory objective.

Part B: Term and Universal Life Reserve Financing

Implementation of this rule subjects all applicable insurers, reinsurers, and policies to consistent and uniform provisions to prevent regulatory arbitrage thereby not giving one insurer a competitive advantage over another. It is the least intrusive and least costly method of achieving the Department's regulatory objective.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

This rulemaking is based on two Model Regulations which were developed by the NAIC Reinsurance Task Force to allow states to avoid federal preemption for reinsurance

agreements their domestic insurers seek to enter into with EU and UK (reciprocal jurisdictions) reinsurers. The task force worked with both regulators and insurers to develop the model regulations. The task force webpage can be found at:

https://content.naic.org/cmte_e_reinsurance.htm.

Sabrina Miesowitz
General Counsel

LLOYD'S

October 1, 2021

Mary Kosinski
Arizona Department of Insurance & Financial Institutions
Phoenix, Arizona

Re: Amendments to A.A.C. Title 6, Article 16 - Credit for Reinsurance

Dear Ms. Kosinski:

This letter is submitted on behalf of Underwriters at Lloyd's, London in response to the proposed amendments to Arizona's credit for reinsurance regulations. Lloyd's is one of the largest providers of reinsurance capacity in the world. In 2020, Lloyd's provided approximately \$54 million in reinsurance support for Arizona domiciled insurance companies

Lloyd's fully supports the proposed changes which track closely to the revisions to the NAIC Model Credit for Reinsurance Regulation that were unanimously adopted in June 2019 by state insurance regulators.

Reinsurance is a vital tool in helping to significantly reduce the economic impact of catastrophic events, such as natural disasters, both on those most immediately affected and for taxpayers at large. In the US, international reinsurers pay around 60% of total catastrophe losses and are therefore important to both the US insurance market and the overall economy. By diversifying US natural catastrophe risks to global markets, the US domestic insurance market is more likely to remain healthy and robust following even the most significant catastrophe losses.

The proposed updates are an important step in reinsurance collateral modernization which Lloyd's believes is critical in order for the US to maintain a competitive and secure insurance market. We commend the Department for advancing reinsurance regulation in Arizona.

Very truly yours,



STATE LEGISLATIVE BRIEF



The NAIC Credit for Reinsurance Model Law

- *The NAIC Credit for Reinsurance Model Law (#785) and Model Regulation (#786) strengthen state regulation, prevent regulatory arbitrage, protect U.S. policyholders, and reduce the uncertainty faced by insurers when planning for collateral liability.*
- *The 2019 revisions implement the reinsurance collateral provisions of the Covered Agreements that were entered into between the United States and the European Union and the United Kingdom, which require states to eliminate collateral requirements entirely within 5 years or be subject to federal preemption.*
- *The 2019 revisions are an accreditation requirement, effective September 1, 2022.*

Background

State insurance regulators have historically required non-U.S. reinsurers to hold 100% collateral within the U.S. for the risks they assume from U.S. insurers. Over the past decade, these collateral requirements have been a frequent subject of debate, with various groups calling for the elimination of collateral requirements for reinsurers licensed in well-regulated jurisdictions. In 2011, the NAIC adopted a revised Credit for Reinsurance model as part of a larger effort to modernize reinsurance regulation in the United States. These revisions allowed for non-U.S. reinsurers to post less than 100% collateral for U.S. claims, commensurate with the non-U.S. reinsurer's financial strength and the effectiveness of its home country regulator. In January 2016, the model was subsequently amended to provide the state insurance commissioner authority to issue regulations with respect to certain captive reinsurance transactions.

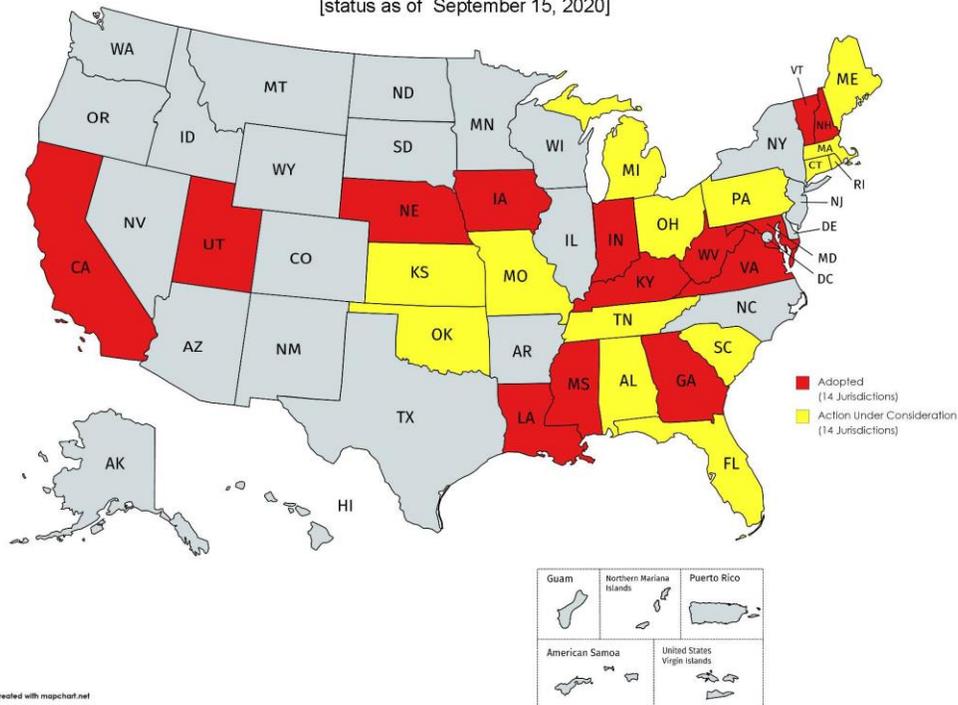
Significantly, in September 2017, the former administration's Treasury Department and the United States Trade Representative, utilizing their authorities under the Dodd-Frank Act, concluded negotiations on an agreement with the European Union that eliminates EU reinsurer collateral requirements provided certain regulatory criteria are met. In addition, the EU agreed to recognize the states' approach to group supervision, including group capital. States have five years to comply with the Agreement's reinsurer collateral requirements or face possible federal preemption. In December 2018, a separate Covered Agreement was signed between the U.S. and the UK, which mirrors the language from the agreement with the EU and has the same timing requirements for implementation.

In June 2019, the NAIC adopted revisions to the models that are intended to implement the reinsurance collateral provisions of the Covered Agreements. The revisions eliminate reinsurance collateral requirements for reinsurers that have their head office or are domiciled in any of the following "Reciprocal Jurisdictions": an EU-member country (or any other non-U.S. jurisdiction) that is subject to an in-force covered agreement, thereby addressing the elimination of reinsurance collateral requirements with U.S. ceding insurers; a U.S. jurisdiction (State) that meets the requirements for accreditation under the NAIC financial standards and accreditation program; and a non-U.S. jurisdiction recognized as a Qualified Jurisdiction that meets additional requirements consistent with the terms of a covered agreement. For reinsurers domiciled in Qualified Jurisdictions to obtain similar treatment as those jurisdictions subject to the Covered Agreements, they must provide to the states the same treatment and recognition afforded by EU countries pursuant to the EU/U.S. Covered Agreement. Therefore, our revisions include the requirement that the Qualified Jurisdiction must agree to recognize the states' approach to group supervision, including group capital.

Key Points

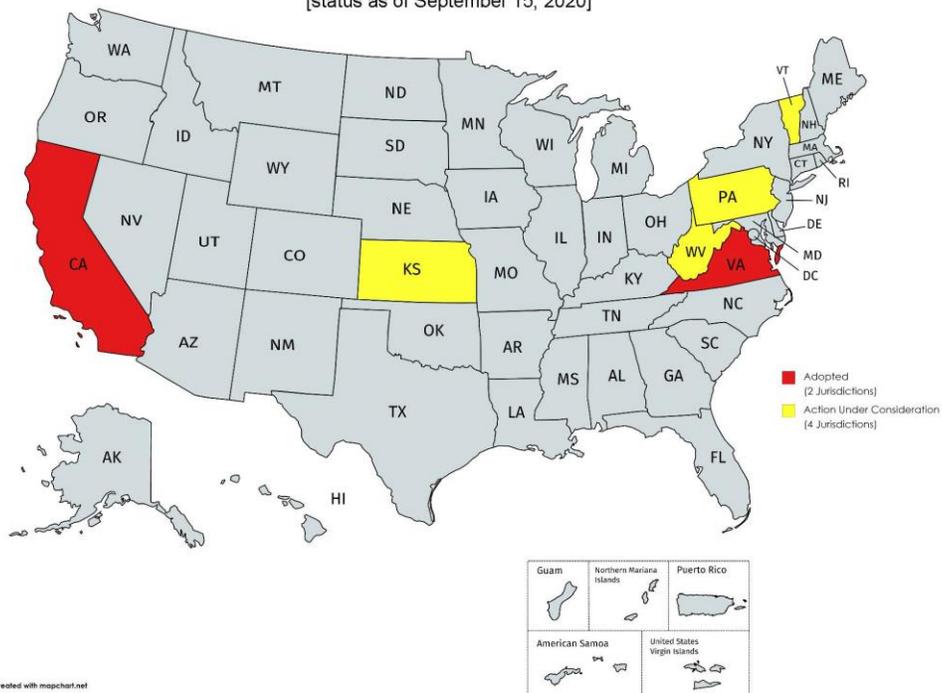
- ✓ To date, the 2019 revisions to the NAIC *Credit for Reinsurance Model Law* and *Model Regulation* (#785/#786) have been adopted in 16 jurisdictions (see attached maps). The 2011 revisions have been adopted in 50 jurisdictions.
- ✓ The 2019 revisions implement the reinsurance collateral provisions of the EU/U.S. and UK/U.S. Covered Agreements, which require states to eliminate collateral requirements entirely within 5 years or be subject to federal preemption.

Implementation of the 2019 Revisions to the
Credit for Reinsurance Model Law #785
[status as of September 15, 2020]



Disclaimer: This map represents state action or pending state action regarding NAIC amendments to the model(s). This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of NAIC amendments to the model(s) or whether a state meets any applicable accreditation standards.

Implementation of the 2019 Revisions to the
Credit for Reinsurance Model Regulation #786
[status as of September 15, 2020]



Disclaimer: This map represents state action or pending state action regarding NAIC amendments to the model(s). This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of NAIC amendments to the model(s) or whether a state meets any applicable accreditation standards.

20-143. Rule-making power

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

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

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

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

20-3604. Rules

- A. The director may adopt rules pursuant to title 41, chapter 6 to carry out this article.
- B. The rules may include regulation of reinsurance arrangements relating to any of the following:
1. Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits.
 2. Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.
 3. Variable annuities with guaranteed death or living benefits.
 4. Long-term care insurance policies.
 5. Any other life and health insurance and annuity products for which the national association of insurance commissioners adopts model regulatory requirements with respect to credit for reinsurance.
- C. Any rule adopted pursuant to subsection B, paragraph 1 or 2 of this section may apply to any treaty that contains either or both:
1. Policies issued on or after January 1, 2015.
 2. Policies issued before January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.
- D. Any rule adopted pursuant to subsection B of this section:
1. May require the ceding insurer, in calculating the amounts or forms of security required to be held pursuant to rules adopted by the department, to use the valuation manual adopted by the national association of insurance commissioners under section 11B(1) of the national association of insurance commissioners standard valuation law, including all amendments adopted by the national association of insurance commissioners and in effect on the date as of which the calculation is made, to the extent applicable.
 2. Does not apply to cessions to an assuming insurer that is licensed in at least twenty-six states or that is licensed in at least ten states and licensed or accredited in a total of at least thirty-five states and that either:
 - (a) Meets the conditions prescribed in section 20-3602, subsection H in this state.
 - (b) Is certified in this state.
 - (c) Maintains at least \$250,000,000 in capital and surplus as determined in accordance with the accounting practices and procedures manual and amendments adopted by the national association of insurance commissioners, excluding the impact of any allowed or prescribed practices.
- E. The authority to adopt rules pursuant to subsection B of this section does not limit the department's general authority to adopt rules pursuant to subsection A of this section.

C-2

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

Title 20, Chapter 6, Article 18, Prepaid Dental Plan Organizations

Amend: Article 18, R20-6-1801, R20-6-1802, R20-6-1804, R20-6-1805,
R20-6-1807, R20-6-1808, R20-6-1811, R20-6-1813



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 11, 2022

SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6, Article 18, Prepaid Dental Plan Organizations

Amend: Article 18, R20-6-1801, R20-6-1802, R20-6-1804, R20-6-1805,
R20-6-1807, R20-6-1808, R20-6-1811, R20-6-1813

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) relates to rules in Title 20, Chapter 6, Article 18, regarding Prepaid Dental Plan Organizations. In this rulemaking, the Department seeks to reduce the reporting burden placed on Prepaid Dental Plan Organizations. Specifically, the Department seeks to reduce the quarterly reporting requirement to annually. The Department states that when the rules were promulgated in 2002, Prepaid Dental Plan Organizations were new and the Department needed to determine what reporting was necessary to monitor such organizations. In this rulemaking, the Department states that it realized it can effectively regulate these organizations with less required reporting and reduced reporting frequency.

A "Prepaid dental plan organization" is defined in A.R.S. § 20-1001 (Definitions) as "any person who undertakes to conduct one or more prepaid dental plans providing only dental services." A "prepaid dental plan" is defined in the same statute as "any contractual arrangement whereby any prepaid dental plan organization undertakes to provide directly or to arrange for prepaid dental services and to pay or make reimbursement for any remaining portion of such prepaid dental services on a prepaid basis through insurance or otherwise."

The Department received approval to initiate this rulemaking on March 29, 2021 and final approval to submit it to the Council on December 17, 2021.

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

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

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

No. 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 Department did not review or rely on a study in conducting this regular rulemaking.

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

The rulemaking is not meant to change any conduct. Instead, it is intended to reduce the reporting requirements for Prepaid Dental Plan Organizations and thus reduce their regulatory compliance costs. Unfortunately, the Prepaid Dental Plan Organizations did not provide any cost savings data to the Department. Regardless, the Department assumes that reducing the frequency and number of reports due to it will decrease compliance costs for Prepaid Dental Plan Organizations.

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

The Department believes that the current rulemaking offers the least intrusive and least costly method to achieve the purpose of the proposed rulemaking, which is to reduce the reporting requirements for Prepaid Dental Organizations while retaining adequate regulatory oversight.

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

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule.

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

The Department anticipates that Prepaid Dental Plan Organizations Organizations will benefit from this rulemaking. It does not anticipate any effect on revenues or payroll

expenditures but it does anticipate overall cost savings in the form of reduced compliance costs.

The Department does not anticipate any impact on the private employment of Prepaid Dental Plan Organizations. Likewise, the Department does not anticipate any impact on public employment in the Department. The rulemaking has no probable impact on small businesses because it only applies to Prepaid Dental Plan Organizations which are a type of insurance company. No impact on state revenues is anticipated.

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

No. The Department did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. **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 rulemaking.

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

No. These rules do not require a permit. The rules govern the regulation of Prepaid Dental Plan Organizations.

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 Department states that there is no corresponding federal law to these rules.

11. **Conclusion**

In this regular rulemaking, the Department seeks to reduce regulatory burdens on Prepaid Dental Plan Organizations by reducing reporting requirements and reporting frequency. The Department seeks the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



Director's Office
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

Douglas A. Ducey, Governor
Evan G. Daniels, Director

December 21, 2021

VIA EMAIL: grrc@azdoa.gov
Connie Wilhelm, Acting Chairperson
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Prepaid Dental Plan Organizations

Dear Chairperson Wilhelm:

Please find enclosed the Final Rulemaking for Prepaid Dental Plan Organizations being submitted by the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The Department closed the record on this rulemaking on December 5, 2021.
- b. This rulemaking does not relate to a five-year review report. Instead, the Department initiated this rulemaking to reduce the regulatory burden on Prepaid Dental Plan Organizations by reducing the number and frequency of reports required by the Department.
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No additional full-time employees are necessary to implement and enforce the rule. Consequently, no notification has been made to the Joint Legislative Budget Committee.
- h. The following documents are also submitted to the Council with this cover letter:
 - i. The Notice of Final Rulemaking;
 - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
 - iii. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,



Evan G. Daniels
Director

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

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

Article 18	Amend
R20-6-1801	Amend
R20-6-1802	Amend
R20-6-1804	Amend
R20-6-1805	Amend
R20-6-1807	Amend
R20-6-1808	Amend
R20-6-1811	Amend
R20-6-1813	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. § 20-143

Implementing statute: A.R.S. §§ 20-106; 20-142; 20-1001 through 20-1019; and 20-2510

3. The effective date of the rule:

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 2611, November 5, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 2598, November 5, 2021

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

Name: Mary E. Kosinski

Address: Department of Insurance and Financial Institutions

100 N. 15th Ave., Suite 261

Phoenix, Arizona 85007-2630

Telephone: (602)364-3476

E-mail: mary.kosinski@difi.az.gov

Web site: <https://difi.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 primary purpose of this rulemaking is to reduce the reporting burden placed upon Prepaid Dental Plan Organizations (“Organizations”). In 2002, when the Arizona Department of Insurance (now Arizona Department of Insurance and Financial Institutions “Department”) first promulgated these rules, these Organizations were relatively new and the Department had to try to determine what reporting it needed in order to monitor these types of entities. As time has passed, the Department has realized that it can effectively regulate these entities with less required reporting and by reducing the frequency of the reporting. The impact to these Organizations should be to reduce their regulatory burden.

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 Department did not review any study relevant to 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:

The rulemaking does not diminish a previous grant of authority granted to the Division.

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

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to change any conduct. Instead, it is designed to reduce the reporting requirements for Prepaid Dental Plan Organizations (“Organizations”) and thus reduce their regulatory compliance costs.
- No potential harm is alleged.
- Because this rulemaking is not made response to a perceived problem, it is not intended to reduce the frequency of any potentially violative conduct.

Pursuant to A.R.S. § 41-1055(A)(2):

- The rulemaking seeks to reduce compliance costs imposed upon these Organizations. Unfortunately, the Organizations did not provide any cost savings data to the Department. Regardless, the Department assumes that reducing the frequency and number of reports due to it will cause compliance costs to lessen for these entities.

Pursuant to A.R.S. § 41-1055(A)(3):

- Not applicable. Questions about the economic impact statement may be submitted to the person listed in item #5.

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

No changes have been made between the proposed rulemaking and the final rulemaking.

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

The Insurance Division received no comments on 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:

No other matters prescribed by statute are applicable to the Insurance Division or to any specific rule or class of rules.

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 and does not use a general permit. Instead, the rules govern the regulation of Prepaid Dental Plan Organizations.

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

No federal law is applicable to the subject of the rule.

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

No formal analysis has been submitted to the Insurance Division that compares the rule's impact of the competitiveness of business in this state to the impact of 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 rule:

No reference material is incorporated by reference.

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

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

15. The full text of the rules follows:

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE
CHAPTER 6. DEPARTMENT OF INSURANCE
ARTICLE 18. PREPAID DENTAL PLAN ORGANIZATIONS**

Section

- R20-6-1801. Definitions
- R20-6-1802. Application for Certificate of Authority
- R20-6-1804. Dental Director
- R20-6-1805. Required Reporting
- R20-6-1807. System for Delivery of Services
- R20-6-1808. Geographic Areas
- R20-6-1811. Quality Improvement
- R20-6-1813. Assignment of Members

ARTICLE 18. PREPAID DENTAL PLAN ORGANIZATIONS

- R20-6-1801. Definitions**

In this ~~Chapter~~, Article the following definitions apply:

“Appointment” means a first-available, initial, non-emergent, diagnostic visit to a dentist.

“Board certified” means a dentist who is recognized by the appropriate specialty board of the Commission on Accreditation of Dental Education of the American Dental Association.

“Board eligible” means a dentist who successfully completes an approved training program in a specialty field recognized by the American Dental Association.

“BODEX” means the Arizona State Board of Dental Examiners.

“Chief executive officer” means the person who has the authority and responsibility for the operation of ~~a prepaid dental plan~~ an Organization according to applicable legal requirements and policies approved by the governing authority.

“Dental hygienist” means a person who is licensed to practice dental hygiene under A.R.S. § 32-1281 et seq.

“Dentist” means a person who is licensed to practice dentistry under A.R.S. § 32-1201 et seq.

“Department” means the Arizona Department of Insurance: and Financial Institutions.

“Diagnostic service” means a dental service intended to identify a dental abnormality, and includes a radiograph and a clinical exam.

“Director” ~~means the director of the Arizona Department of Insurance~~ has the meaning prescribed at A.R.S. § 20-102.

“Emergency dental service” means a dental service intended to evaluate and stabilize a dental condition of recent onset, control bleeding, and relieve pain, and includes the provision of local anesthesia, and elimination of acute infection, but does not mean a medication that is prescribed by the dentist.

“General dentist” means a dentist whose practice is not limited to a specific area and who is not board certified.

“Governing authority” means the persons, including a board of trustees or board of directors, who have the ultimate authority and responsibility for the direction of a prepaid dental plan Organization.

“Organization” means a prepaid dental plan organization as defined in A.R.S. § 20-1001.

“Patient” means a person who is being attended by a dentist or dental hygienist to receive an examination, diagnosis, or dental treatment, or a combination of an examination, diagnosis, and dental

treatment.

“Preventive service” means dental care intended to maintain dental health and prevent dental disease, including any combination of oral hygiene education, routine prophylaxis, and application of fluorides.

“Prophylaxis” means cleaning the teeth of a patient with healthy tissue using mild abrasives and dental instruments to remove plaque, calculus, and stains above the gum line.

“Provider directory” means an Organization’s published listing of all contracted network dentists.

“Radiograph” means a picture produced on a sensitive surface by a form of radiation other than light, including x-ray.

“Restorative service” means the use of a metal or composite filling or crown.

“Specialist” means a dentist whose practice is limited to one of the nine specialty categories recognized by the American Dental Association: endodontics, oral and maxillofacial surgery, oral and maxillofacial radiology, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral pathology, or dental public health.

“Treatment plan” means a statement of the services to be performed to eliminate or alleviate a patient’s symptoms or disease, based on a dentist’s assessment of the patient’s dental history, the clinical examination, and the dentist’s diagnosis.

R20-6-1802. Application for Certificate of Authority

- A.** A person who wishes to operate as prepaid dental plan organization in Arizona shall file an application for certificate of authority under A.R.S. § 20-1003 for the ~~director’s~~ Director’s review and approval under A.R.S. § 20-1004. The application shall contain all the information required in A.R.S. § 20-1003 and ~~R20-6-1802.~~ this Section.
- B.** An authorized insurer shall issue the fidelity bond required under A.R.S. § 20-1004(A)(4).
- C.** An Organization shall not commence operation of, or service under, a prepaid dental plan without approval of the ~~director~~ Director under A.R.S. § 20-1004.
- D.** An application is deemed filed with the ~~director~~ Director when the ~~director~~ Director receives it. ~~The applicant shall include fees under A.R.S. § 20-167 with the application.~~
- E.** An applicant not domiciled in this state shall file a power of attorney as required by A.R.S. § 20-1003(A)(11) on a Department-prescribed form, with the application.

~~F. Within 180 days after the director Director issues a certificate of authority to an Organization, the Organization shall notify the director Director in writing of each member appointed to the board of directors for the Organization under A.R.S. § 20-1003(A)(4).~~

~~G.~~ At the time it submits its application for certificate of authority, an Organization shall submit a written program of compliance with supporting documents that specify how the Organization will comply with the provisions of this Article. The written program of compliance shall contain the following:

1. The responsibilities of and qualifications for the following positions:
 - a. The Organization's chief executive officer, and
 - b. The Organization's dental director;
2. A plan for provision of basic dental services required under subsection R20-6-1806(A) and a copy of the schedule of benefits required under subsection R28-6-1806(B);
3. A description of the system for delivery of services under Section R20-6-1807;
4. A description of the geographic area designated under Section R20-6-1808;
5. A plan for compliance with contract requirements under Section R20-6-1809 and a copy of a contract with a general dentist and a specialist;
6. A plan for compliance with records requirements under Section R20-6-1810; and
7. The Organization's quality improvement plan under Section R20-6-1811.

~~H.~~ ~~G.~~ An application shall include the following information:

1. The proposed number of members, and
2. A copy of a letter from each network dentist that documents the dentist's intent to contract with the Organization to provide services to patients under the Organization's prepaid dental plan.

~~I.~~ ~~H.~~ The ~~director~~ Director may require that an applicant for a certificate of authority under A.R.S. § 20-1003(A)(14) submit information that discloses biographical, employment and business financial history, criminal activity, fingerprints, or any information that relates to the ability to operate a prepaid dental plan for principals, principal officers, controlling persons, and insurance producers of the applicant, if necessary for the protection of residents of this State.

R20-6-1804. Dental Director

A. The governing authority or CEO shall appoint as the Organization's dental director a dentist licensed to practice dentistry in any state or territory of the United States or the District of Columbia.

B. The dental director shall perform at least the following functions for the Organization's geographic area in Arizona:

1. Participate on the Organization's quality improvement committee required under Section R20-6-1811;
2. Oversee the Organization's program and processes for:
 - a. Maintaining and improving clinical quality of care, including continuity of care;
 - b. Provider relations;
 - c. Facility and dental record reviews; and
 - d. Provider credentialing and recredentialing;
3. Be knowledgeable about and participate in decisions regarding the Organization's operations;
4. Comply with A.R.S. § 20-2510(B) and (C) when directly denying, on the basis of medical necessity, a health care provider's request for prior authorization; and
5. Timely respond to matters within the Organization's Arizona geographic area that require personal onsite attention or ensure that a designee who meets the requirements specified in subsection (D) timely responds to those matters.

C. Matters that require personal onsite attention include:

1. Urgent patient care issues that require examination of dental records or X-rays;
2. Prompt personal discussion with a provider of urgent concerns relating to credentialing, disciplinary problems, access to care, or quality of care.

D. Any designee acting under subsection (B)(5) shall:

1. Be a dentist licensed to practice dentistry in any state or territory of the United States or the District of Columbia;
2. Have expedient access to the dental director, the CEO, and other organization management personnel as necessary to resolve any matter requiring personal onsite attention; and
3. Have the education, experience, and Organizational knowledge required to address the matter requiring personal onsite attention.

E. The Organization shall notify the Department in writing within ten days after the effective date of a change in the appointment of the dental director or any designee.

F. The requirements for a designee under subsections (B)(5), (D), and (E) shall not apply to an Organization with fewer than 2,000 members in Arizona.

R20-6-1805. Required Reporting

~~A. An Organization shall submit to the Department in writing for review any proposed change to the program of compliance. The Department shall notify the Organization in writing within 30 days of receipt of the proposed change whether the submission is administratively complete. The Department shall complete its substantive review and notify the Organization of approval or disapproval of the proposed change within 60 days of notification of administrative completeness.~~

On or before March 1 of each year, an Organization shall submit the following information to the Department for the previous calendar year:

1. Member satisfaction survey results and supporting data;
 2. A spreadsheet that lists the name, address, and telephone number of each provider and whether the provider: is accepting new members, is a general dentist or specialist, and has graduated from a specialty graduate program accredited by the American Dental Association;
 3. A list of all contracted network general dentists and specialists that have been added or deleted since the previous annual report;
 4. The total number of members and the number of members assigned to each general dentist's office;
 5. The average member wait time measured in weeks for an appointment for each network dentistry office; and
 6. A website link to its current provider directory.
- ~~B. An Organization shall provide the following information about the prepaid dental plan to the Department quarterly:~~
- ~~1. The total number of members and the number of members assigned to each general dentist's office;~~
 - ~~2. A list of all contracted network general dentists and specialists that notes those who have been added or deleted since the previous quarterly report;~~
 - ~~3. Verification that each specialist added to the network since the last quarterly report has graduated from a specialty graduate program accredited by the American Dental Association; Documentation of the Organization's quality improvement activities, including the number of providers who have been credentialed or re-credentialed since the last quarterly report, the number of facility reviews, and the number of chart reviews;~~
 - ~~4. The average wait time measured in weeks for an appointment for each network dentistry office;~~
 - ~~5. A copy of the current provider directory; and~~

~~6- A complaint log with a summary of Organization responses by complaint category.~~

If a network dental office that is open to new members has an appointment wait time of longer than nine weeks for three consecutive calendar quarters, the Organization shall report to the Director who may require the Organization to close the office to new members until the wait time is less than nine weeks.

~~C. An Organization shall submit the following information to the Department at least annually:~~

- ~~1- Member satisfaction survey results and supporting data;~~
- ~~2- Results of a survey of network general dentistry offices with supporting data confirming a recall system under R20-6-1809(B)(2);~~
- ~~3- An electronic database that lists the name, address, and telephone number of each provider and whether the provider is accepting new members. The Organization shall submit the database for general dentists and specialists separately. The Organization shall submit any changes to this database to the Department quarterly; and~~
- ~~4- A report that compiles all the copays listed in all the schedules of benefits offered by the Organization, with comparisons of the copays to the usual, customary, and reasonable fees, as determined by the Organization, for the procedures listed on the schedule of benefits.~~

R20-6-1807. System for Delivery of Services

A. An Organization shall have a system for delivery of services that includes:

1. An adequate network of general dentists. To determine network adequacy, the Department shall consider the following:
 - a. Geographic distribution of network general dentists' offices,
 - b. The number of dental offices accepting new members,
 - c. The percentage of all network members who are able to schedule an appointment within nine weeks,
 - d. The availability of trained clinical support staff in the Arizona geographic area,
 - e. The ratio of population growth to the increase or decrease in the number of dentists in the Arizona geographic area, and
 - f. Current availability for appointments in all general dentist practices in Arizona; and

2. Provision for using specialists for dental services that cannot be provided by the Organization's network of contracted specialists, if the services are covered benefits.
- ~~B. If a network dental office that is open to new members has an appointment wait time of longer than nine weeks, for three consecutive calendar quarters, the director may require the Organization to close the office to new members until the wait time is less than nine weeks.~~
- ~~C.~~ If more than 15% of the network offices that are open to new members have an appointment wait time of longer than nine weeks, the Organization shall submit a plan to the Department under which the Organization will, within 90 days, reduce the wait time to less than nine weeks. If the Organization does not reduce the wait time to less than nine weeks within the 90 day period the Organization shall refer the members who are waiting for an appointment to another network general dentist or a non-network general dentist who can schedule the member for an appointment in less than nine weeks. The member may choose to continue dental care under the prepaid dental plan with the referred dentist for the remainder of the member's enrollment period. The Organization shall provide the non-network services to the referred member at a cost that is no greater than if the services are provided by the member's assigned network dentist.
- ~~D.C.~~ An Organization shall pay for emergency dental services provided to a member by a dentist licensed in the jurisdiction where the services are provided, subject to plan limitations disclosed in the dental care plan, including emergency dental services that occur:
1. Within the geographic area served by the member's designated provider but the provider is unavailable, or
 2. Occurs outside of the member's designated geographic service area.

R20-6-1808. Geographic Areas

- A.** An Organization shall designate the geographic areas in Arizona in which the Organization intends to provide dental services that are reasonably convenient to the prospective members. The Organization shall provide a description of the geographic areas and locations of all facilities in which dental care will be provided under the prepaid dental plan. This information shall accompany or be included in any advertisements or sales materials provided to prospective employer groups and prospective members.
- B.** An Organization shall define its geographic areas by ~~citing at least one of the following:~~
- ~~1. Local local government jurisdictions, such as cities or counties;~~

- ~~2- Street boundaries; or~~
- ~~3- Area within a specified radius of an intersection.~~

R20-6-1811. Quality Improvement

- A.** An Organization shall have a governing authority.
- B.** The governing authority shall appoint a quality improvement committee that consists of the chief executive officer or designee, the dental director, the person who manages the Organization's quality improvement process, and at least one dental health professional. The committee may also include network allied health professionals and members of the plan.
- C.** The quality improvement committee shall:
 1. Meet at least quarterly,
 2. Review and evaluate dental services delivered under the Organization's plan, and
 3. Establish procedures for recordkeeping and distribution of committee reports.
- ~~**D.** An Organization shall provide the director with a copy of the minutes of each quality improvement committee meeting within 30 days of the quality improvement committee meeting.~~
- ~~**E.** An Organization shall maintain a written quality improvement plan that contains procedures for each of the following:
 1. Ensuring that a dentist licensed in any state or territory of the United States or District of Columbia reviews and evaluates dental care and services provided by each contracted general dentist at least once every three years;
 2. Allocation of the Organization's resources to analyze a problem or any identified deficiency;
 3. Implementing a corrective action plan and methods for monitoring improvement;
 4. Notifying a member in writing of the member's responsibility to cooperate with those providing dental care services and of the member's rights to:
 - a. Voice concerns about the Organization or care provided;
 - b. Be provided with information about the Organization, its services, providers, and member rights and responsibilities;
 - c. Participate in decisions about the member's dental care; and
 - d. Be treated with respect and have the right to privacy recognized;
 5. Monitoring and improving membership satisfaction;
 6. Maintaining an accurate provider directory that meets at least the following requirements:~~

- a. Lists only credentialed providers who are currently scheduling members for diagnosis and treatment; and
 - b. Clearly designates providers who are not accepting new members;
7. Review by the dental director of the following for initial credentialing of network providers:
- a. Query to the National Practitioner Data Bank;
 - b. Query to BODEX;
 - c. Valid United States Drug Enforcement Administration certificate, if applicable;
 - d. Evidence of current malpractice insurance; and
 - e. Documentation that each specialist has graduated from an accredited specialty graduate program as required by ~~BODEX~~; the Council on Dental Education and Licensure, American Dental Association; and
8. Recredentialing, at least every three years, that updates information obtained in subsections ~~(E)(7)~~ ~~(b) through (d)~~; (D)(7)(b) through (d), for the dental director's review.

R20-6-1813. Assignment of Members

- A.** Within 30 days of enrollment, an Organization shall assign a member to the provider the member chooses. The Organization, however, shall choose and assign a provider to a member within 30 days of any of the following:
1. Receipt of a member enrollment form that does not designate a provider, or receipt of a member enrollment form that designates a provider who is unavailable;
 2. The date of the notice that the member's assigned provider intends to cease providing services; or
 3. The date the member's assigned provider becomes unavailable, for any reason.
- B.** An Organization shall give each member the option of selecting a network provider other than the provider assigned by the Organization under subsection (A).
- C.** An Organization shall maintain a continuous assignment process in compliance with ~~subsection~~ subsections (A) and (B), allowing no more than 4% of members to be unassigned at any time.

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement
Title 20. Commerce, Financial Institutions and Insurance
Chapter 6. Department of Insurance
Article 18. Prepaid Dental Plan Organizations

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The primary purpose of this rulemaking is to reduce the reporting burden placed upon Prepaid Dental Plan Organizations (“Organizations”). In 2002, when the Arizona Department of Insurance (now Arizona Department of Insurance and Financial Institutions “Department”) first promulgated these rules, these Organizations were relatively new and the Department had to try to determine what reporting it needed in order to monitor these types of entities. As time has passed, the Department has realized that it can effectively regulate these entities with less required reporting and by reducing the frequency of the reporting. The impact to these Organizations should be to reduce their regulatory burden.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

This regulation applies to Prepaid Dental Plan Organizations that are subject to A.R.S. §§ 20-1001 through 20-1019 and A.A.C. R20-6-1801 through R20-6-1913.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and

consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule.

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

No political subdivision of this state is 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.

The Department anticipates that Prepaid Dental Plan Organizations (“Organizations”) will benefit from this rulemaking. It does not anticipate any effect on revenues or payroll expenditures but it does anticipate overall costs savings to the Organizations in reduced compliance costs.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not anticipate any impact on the private employment of Prepaid Dental Plan Organizations. Likewise, the Department does not anticipate any impact of public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

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

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

The proposed rulemaking has no probable impact on small business because it only applies to Prepaid Dental Plan Organizations which are a type of insurance company.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A 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 nonselected alternatives.

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking which is to reduce the reporting requirements for Prepaid Dental Organizations while retaining adequate regulatory oversight by the Department.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of

proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rule is not based on any data.

20-143. Rule-making power

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

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

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

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

20-106. Acts constituting the transaction of business; definition

A. "Transact" with respect to insurance includes any of the following:

1. Solicitation and inducement.
2. Preliminary negotiations.
3. Effectuation of a contract of insurance.
4. Transaction of matters subsequent to effectuation of the contract and arising out of it.

B. Any of the following acts in this state effected by mail or otherwise, by or on behalf of an unauthorized insurer, is deemed to constitute the transaction of an insurance business in this state:

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. The taking or receiving of any application for insurance.
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an insurance producer or agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this paragraph shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.
7. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance.
8. The transacting or proposing to transact any insurance business in substance equivalent to any provisions as provided in paragraphs 1 through 7 of this subsection in a manner designed to evade the laws of this state.

C. In this section, unless the context otherwise requires, "insurer" includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

20-142. Powers and duties of director; payment of examination and investigation costs; home health services

A. The director shall enforce this title.

B. The director shall have powers and authority expressly conferred by or reasonably implied from the provisions of this title.

C. The director may conduct examinations and investigations of insurance matters, including examinations and investigations of adjusters, producers and brokers and any other persons who are regulated under this title, in addition to examinations and investigations expressly authorized, as the director deems proper in determining whether a person has violated any provision of this title or for the purpose of securing information useful in the lawful administration of any provision of this title. The examined party shall pay the costs of examinations that are allowed pursuant to subsection D of this section and that are conducted pursuant to this subsection except for examinations of adjusters, producers and brokers. An examined adjuster, producer or broker shall pay the costs allowed pursuant to subsection D of this section only if the adjuster, producer or broker is found to have violated any provision of this title. This state shall pay the cost of any related investigation.

D. The department shall prepare detailed billing statements that provide reasonable specificity of the time and expenses billed in connection with an examination and that cite the statute or rule that authorizes the fees being charged. Notwithstanding any other law, from and after December 31, 2021, a person that is being examined pursuant to any section of this title is responsible for only the direct costs of an examination that are supported by a billing statement that complies with this subsection.

E. The director shall establish guidelines for insurers on home health services that shall be used by the director pursuant to sections 20-826, 20-1342, 20-1402 and 20-1404. The director may use home health services as defined in section 36-151. Guidelines shall include the following:

1. Home health services that are prescribed by a physician or a registered nurse practitioner.
2. Home health services that are determined to cost less if provided in the home than the average length of in-hospital service for the same service.
3. Skilled professional care in the home that is comparable to skilled professional care provided in-hospital and that is reviewed and approved at thirty-day intervals by a physician.

F. Pursuant to section 41-1750, subsection G, the director may receive criminal history record information in connection with the issuance, renewal, suspension or revocation of a license or certificate of authority or the consideration of a merger or acquisition. The director may require a person to submit a full set of fingerprints to the department. The department of insurance and financial institutions 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.

20-1001. Definitions

In this article, unless the context otherwise requires:

1. "Member" means an individual who is enrolled in a group prepaid dental plan as a principal subscriber together with such person's dependents who are entitled to dental care services under the plan solely because of their status as dependents of the principal subscriber.
2. "Membership coverage" means any certificate or contract issued to a member setting out the dental coverage to which such member is entitled.
3. "Prepaid dental plan" means any contractual arrangement whereby any prepaid dental plan organization undertakes to provide directly or to arrange for prepaid dental services and to pay or make reimbursement for any remaining portion of such prepaid dental services on a prepaid basis through insurance or otherwise.
4. "Prepaid dental plan organization" means any person who undertakes to conduct one or more prepaid dental plans providing only dental services.
5. "Prepaid dental services" means services included in the practice of dentistry as described in section 32-1202.
6. "Provider" means any person licensed or otherwise authorized to furnish prepaid dental services in this state.

20-1002. Establishment of prepaid dental plan organizations

A. No person, unless authorized pursuant to article 3 or article 9 of this chapter, may establish or operate a prepaid dental plan organization in this state, or sell or offer to sell, or solicit offers to purchase, or receive advance or periodic consideration in conjunction with a prepaid dental plan without obtaining and maintaining a certificate of authority pursuant to this article.

B. Within ninety days after the effective date of this article, every prepaid dental plan organization operating in this state shall submit an application for a certificate of authority to the director. Each such applicant may continue to operate as an organization until the director acts upon the application.

20-1003. Application for certificate of authority

A. An application for a certificate of authority to operate as a prepaid dental plan organization shall be filed with the director in a form prescribed by the director, shall be verified by an officer

or authorized representative of the applicant and shall set forth, or be accompanied by, the following:

1. A copy of any basic organizational document of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement or other applicable documents and all amendments to the documents.
2. A copy of any bylaws, rules and regulations or similar document regulating the conduct of the internal affairs of the applicant.
3. A list of the names, addresses and official positions of the persons who are responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee or other governing board or committee, the principal officers in the case of a corporation and the partners of members in the case of a partnership or association.
4. If the prepaid dental plan organization is a corporation, evidence that the board of directors of the corporation includes:
 - (a) Dentists who are duly licensed pursuant to title 32, chapter 11 and who have contracted with the corporation to render dental service to members.
 - (b) Members of the prepaid dental plan, who shall comprise at least one-third of the members of the board.
5. A copy of any contract made or to be made between any providers or persons listed in paragraph 3 and the applicant.
6. A statement generally describing the prepaid dental plan organization and its dental plan or plans, facilities and personnel, as approved by the director.
7. A copy of the form of membership coverage that is to be issued to the members.
8. A copy of the form of any group contract that is to be issued to employers, unions, trustees or other applicants.
9. Financial statements showing the applicant's assets, liabilities and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall satisfy this requirement unless the director determines that additional or more recent financial information is required for the proper administration of this article.
10. A description of the proposed method of marketing the plan, a financial plan that includes a three-year projection of the initial operating results anticipated and a statement as to the sources of working capital as well as any other sources of funding.
11. A power of attorney duly executed by the applicant, if not domiciled in this state, appointing the director, the director's successors in office and duly authorized deputies as the true and lawful attorney of the applicant in and for this state, on whom all lawful process in any legal action or proceeding against the prepaid dental plan organization on a cause of action arising in this state may be served.

12. A statement reasonably describing the geographic area or areas to be served, as approved by the director.

13. The fee prescribed in section 20-167 for issuance of a certificate of authority.

14. Any other information the director may require.

B. Within ten days after any significant modification of information previously furnished pursuant to subsection A of this section, a prepaid dental plan organization shall file notice of that modification with the director.

20-1004. Issuance of certificate of authority

Issuance of a certificate of authority shall be granted by the director if the director is satisfied that the following conditions are met:

1. The persons responsible for conducting the affairs of the prepaid dental plan organization are competent and trustworthy and are professionally capable of providing or arranging for the provision of services offered.

2. The prepaid dental plan organization constitutes an appropriate mechanism to achieve an effective prepaid dental plan, in accordance with regulations issued by the director, that shall include at least the basic dental services appropriate to that plan as determined by the director.

3. The prepaid dental plan organization is financially responsible and may reasonably be expected to meet its obligations to members and prospective members. In making this determination the director shall consider at least:

(a) The financial soundness of the prepaid dental plan's arrangements for services and the schedule of charges used.

(b) Any agreement with an insurer, a hospital or a medical service corporation, a government or any other organization for insuring the payment of the cost of prepaid dental services or the provisions for automatic applicability of an alternative coverage in the event of discontinuance of the plan.

(c) The sufficiency of an agreement with providers for the provision of prepaid dental services.

4. Each officer responsible for conducting the affairs of the prepaid dental plan organization has filed with the director, subject to the director's approval, a fidelity bond in the amount of fifty thousand dollars.

20-1005. Deposit requirement; exception

A. A prepaid dental plan organization shall maintain on deposit with the state treasurer through the director's office a surety bond, guaranteeing services under the plan, or cash or securities eligible for investment of capital funds, in the following amounts depending on the number of members entitled to dental care services pursuant to contracts issued by the plan:

Number of members Deposit

5,000 or less \$ 25,000

5,001 - 7,500 30,000

7,501 - 10,000 50,000

10,001 - 15,000 75,000

15,001 - 20,000 100,000

20,001 - 25,000 125,000

25,001 - 30,000 150,000

30,001 - 40,000 175,000

40,001 and above 200,000

B. The deposit prescribed by subsection A shall be held by the state treasurer in trust for the benefit and protection of persons covered by a prepaid dental plan.

C. Any securities within the description of subsection A, with the approval of the director, may be exchanged for similar securities or cash of equal amount. Interest on securities deposited shall be payable to the prepaid dental plan organization depositing such securities.

D. An unpaid final judgment arising upon a membership coverage shall be a lien on the deposit prescribed by subsection A, subject to execution after thirty days from the entry of final judgment. If the deposit is reduced, it shall be replenished within ninety days by the prepaid dental plan organization.

E. Upon liquidation or dissolution of a prepaid dental plan organization and the satisfaction of all its debts and liabilities, any balance remaining of the cash or securities deposit prescribed in subsection A together with any other assets of the prepaid dental plan organization shall be returned by the director to the prepaid dental plan organization.

F. The deposit prescribed by subsection A shall not apply with respect to a prepaid dental plan organization which is funded by the federal, state or a municipal government or any political subdivision or body to the extent and for such period of time that the prepaid dental plan organization can demonstrate to the director the presence of operational commitments from such sources equivalent to such deposit.

20-1006. Reserve requirement; exception

A. A prepaid dental plan organization at all times shall maintain for protection of members a financial reserve consisting of two per cent of prepaid charges collected from members for the plan, until such reserve totals five hundred thousand dollars. Such reserve shall be in addition to the deposit prescribed by section 20-1005.

B. The reserve prescribed by subsection A of this section shall not apply with respect to a prepaid dental plan organization which is funded by the federal, state or a municipal government or any political subdivision or body and meets the requirements of section 20-1005, subsection F.

20-1006.01. Risk-based capital requirements; minimum capital and surplus

A. A prepaid dental plan organization shall comply with chapter 2, article 12 of this title.

B. A prepaid dental plan organization that is exempt from the risk-based capital requirements prescribed in section 20-488.08 shall maintain unimpaired capital or surplus, or both, in an amount of at least twenty-five thousand dollars.

20-1007. Membership coverage by prepaid dental plan organizations

A. Every member in a prepaid dental plan shall be issued a membership coverage form by the prepaid dental plan organization.

B. Any contract applied for that provides family coverage shall, as to such coverage of individuals in the family, also provide that the benefits applicable for children shall be payable with respect to a newly born child of the insured from the instant of such child's birth, to a child adopted by the insured, regardless of the age at which the child was adopted, and to a child who has been placed for adoption with the insured and for whom the application and approval procedures for adoption pursuant to section 8-105 or 8-108 have been completed to the same extent that such coverage applies to other members in the family. If payment of a specific premium is required to provide coverage for a child, the contract may require that notification of birth, adoption or adoption placement of the child and payment of the required premium shall be furnished to the insurer within thirty-one days after the date of birth, adoption or adoption placement in order to have the coverage continue beyond the thirty-one day period.

C. No membership coverage or amendment shall be issued or delivered to any person in this state until a copy of the form of the membership coverage or amendment has been filed with and approved by the director.

D. A membership coverage shall contain a clear and complete statement of a contract, or a reasonably complete summary if it is a certificate of contract, of:

1. The prepaid dental services or other benefits to which the member is entitled under the prepaid dental plan.
2. Any limitations of the services, kind of services or benefits to be provided, including any deductible or co-payment feature.
3. Where and in what manner information is available as to how services may be obtained.
4. The member's obligation respecting charges for the prepaid dental plan.

E. A membership coverage and advertising and sales material shall contain no provisions or statements that are unjust, unfair, inequitable, misleading or deceptive or that encourage misrepresentation or that are untrue.

F. The director shall approve any form of membership coverage if the requirements of subsections D and E are met and the prepaid dental plan is able in the judgment of the director to meet its financial obligations under the membership coverage. It is unlawful to issue such form until approved. If the director does not disapprove any such form within thirty days after the filing, it shall be deemed approved. If the director disapproves a form of membership coverage, the director shall notify the prepaid dental plan organization, specifying the reasons for disapproval. The director shall grant a hearing on such disapproval within fifteen days after a request in writing is received from the prepaid dental plan organization.

G. As used in subsection B of this section, the term "child", for purposes of initial coverage of an adopted child or a child placed for adoption but not for purposes of termination of coverage of such child, means a person under the age of eighteen years.

20-1008. Examination of prepaid dental plan organization

A. The director may once in each six months for the first three years after organization and once each year thereafter, or more often if deemed necessary by the director, visit each prepaid dental plan organization organized under the laws of this state and examine its financial condition and its ability to meet its liabilities and its compliance with the laws of this state affecting the conduct of its business. The director may annually visit and examine each prepaid dental plan organization not organized under the laws of this state but authorized to transact business in this state.

B. The director may in like manner examine each prepaid dental plan organization applying for an initial certificate of authority to do business in this state.

C. In lieu of making an examination, the director may accept a full report of the most recent examination of a foreign or alien prepaid dental plan organization, certified to by the appropriate examining official of another state, territory, commonwealth or district of the United States.

D. On request by the director of the department of insurance and financial institutions, the director of the department of health services or another person the director of the department of insurance and financial institutions determines to be qualified may participate in the examinations and visits described in this section to verify the existence of an effective prepaid dental plan and to review the delivery of services by the prepaid dental plan organization.

20-1009. Annual report to director

A. Every prepaid dental plan organization annually on or before the first day of March shall file with the director a report of its financial condition, transactions and affairs as of the preceding

December 31 as prescribed in sections 20-223 and 20-234 and shall pay the annual renewal fee prescribed in section 20-167.

B. The prepaid dental plan organization shall also submit any reports required by chapter 2, article 12 of this title.

C. A prepaid dental plan organization that fails to timely file the annual report required under subsection A of this section is subject to the penalties prescribed in section 20-223.

20-1010. Taxes

A. On the tax payment dates prescribed in section 20-224, each prepaid dental plan organization shall pay to the director for deposit, pursuant to sections 35-146 and 35-147, in a form prescribed by the director a tax for transacting a prepaid dental plan in the amount of 2.0 percent of prepaid net charges received from members.

B. The failure by an organization to pay the tax imposed by this section results in a civil penalty determined pursuant to section 20-225.

C. A prepaid dental plan organization may claim a premium tax credit if the organization qualifies for a credit pursuant to section 20-224.03.

20-1011. Operational expenses

No more than thirty per cent of prepaid charges in the first year of operation, twenty-five per cent of prepaid charges in the second year of operation and twenty per cent of prepaid charges in any subsequent year shall be used for the marketing and administrative expenses of a prepaid dental plan organization, including all costs related to soliciting members and providers.

20-1012. Prohibited practices

Chapter 2, article 6 of this title, relating to unfair trade practices and frauds, shall apply to prepaid dental plan organizations, except to the extent the director determines that the nature of prepaid dental plan organizations render particular provisions inappropriate.

20-1013. Regulation of agents

The director shall, after notice and hearing, promulgate such rules and regulations as are necessary to provide for the licensing of agents which shall include provisions for examination, licensing, annual fees and disciplinary procedures similar to those provided in chapter 2, article 3 of this title.

20-1014. Examination

The director may conduct an examination of the affairs of any prepaid dental plan organization as often as the director deems it necessary for the protection of the interests of the people of this state.

20-1015. Suspension or revocation of certificate of authority; civil penalties

A. The director may suspend or revoke any certificate of authority issued to a prepaid dental plan organization pursuant to this article if the director finds that any of the following conditions exists:

1. The prepaid dental plan organization is operating significantly in contravention of its basic organizational documents or in a manner contrary to that described in, and reasonably inferred from, any other information submitted pursuant to section 20-1003.
2. The prepaid dental plan organization issued membership coverage that does not comply with the requirements of section 20-1007.
3. The prepaid dental plan does not provide or arrange for basic dental services appropriate to such plan as determined by the director.
4. The prepaid dental plan organization can no longer be expected to meet its obligations to members or prospective members.
5. The prepaid dental plan organization, or any authorized person on its behalf, has advertised or merchandised its services in a materially untrue, misleading, deceptive or unfair manner.
6. The prepaid dental plan organization has failed to substantially comply with this article or any rules adopted pursuant to this article.
7. The prepaid dental plan organization is in an unsound condition or in such a condition as to render its further transaction of business in this state hazardous to its members or to the residents of this state.

B. If the certificate of authority of a prepaid dental plan organization is suspended, the organization shall not accept, during the period of the suspension, any additional members except newborn children or other newly acquired dependents of existing members and shall not engage in any advertising or solicitation.

C. If the certificate of authority of a prepaid dental plan organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs and shall conduct no further business except as may be essential to the orderly conclusion of solicitation. The director, by written order, may permit such further operation of the organization as the director finds to be in the best interest of members to the end that members shall be afforded the greatest practical opportunity to obtain continuing prepaid dental plan coverage.

D. Notwithstanding subsections B and C of this section, a prepaid dental plan organization that has had its certificate of authority denied, suspended or revoked, or that is subject to an adverse action by the director, is entitled to a hearing pursuant to title 41, chapter 6, article 10 and, except

as provided in section 41-1092.08, subsection H, is entitled to judicial review pursuant to title 12, chapter 7, article 6.

E. If, after a hearing, the director finds grounds pursuant to subsection A of this section to suspend or revoke an organization's certificate of authority, the director may impose, in lieu of or in addition to that suspension or revocation, the following civil penalties that shall be remitted to the state treasurer for deposit, pursuant to sections 35-146 and 35-147, in the state general fund:

1. For an unintentional violation, not more than one thousand dollars for each violation and not more than an aggregate of ten thousand dollars in any six month period.
2. For an intentional violation, not more than five thousand dollars for each violation and not more than an aggregate of fifty thousand dollars in any six month period.

20-1016. Rehabilitation, liquidation or conservation of prepaid dental plan organization

Any rehabilitation, liquidation or conservation of a prepaid dental plan organization shall be deemed to be the rehabilitation, liquidation or conservation of an insurer and shall be conducted pursuant to chapter 3, article 4 of this title.

20-1018. Advertising matter or sales materials

A prepaid dental plan organization shall not issue or deliver any advertising matter or sales material to any person in this state until the prepaid dental plan organization files the advertising matter or sales material with the director. This section does not require a prepaid dental plan to have the prior approval of the director to issue or deliver the advertising matter or sale material. If the director finds that the advertising matter or sales material, in whole or in part, is false, deceptive or misleading, the director may issue an order disapproving the advertising matter or sales material, directing the prepaid dental plan organization to cease and desist from issuing, circulating, displaying or using the advertising matter or sales material within a period of time specified by the director but not less than ten days and imposing any penalties prescribed in this title. At least five days before issuing an order pursuant to this section, the director shall provide the prepaid dental plan organization with a written notice of the basis of the order to provide the prepaid dental plan organization with an opportunity to cure the alleged deficiency in the advertising matter or sales material within a single five day period for the particular advertising matter or sales material at issue. The prepaid dental plan organization may appeal the director's order pursuant to title 41, chapter 6, article 10. Except as otherwise provided in this section, a prepaid dental plan organization may obtain a stay of the effectiveness of the order as prescribed in section 20-162. If the director certifies in the order and provides a detailed explanation of the reasons in support of the certification that continued use of the advertising matter or sales material poses a threat to the health, safety or welfare of the public, the order may be entered immediately without opportunity for cure and the effectiveness of the order is not stayed pending the hearing on the notice of appeal but the hearing shall be promptly instituted and determined.

20-1019. Order of benefit determination for dental care

A. If a person receiving dental care is a member of a prepaid dental plan and is an insured or certificate holder under an indemnity health insurance policy which provides benefits for the same treatment as the person's prepaid dental plan, the indemnity health insurance policy, if issued after the effective date of this section, shall pay benefits to its insured or certificate holder or the assignee thereof without regard to the existence of the prepaid dental plan.

B. Notwithstanding subsection A, the indemnity plan insurer is not obligated to pay any amount for a procedure covered without charge to the member of the prepaid dental plan or to pay in excess of the amount of the member's obligation under the prepaid dental plan.

C. In the event that the member's copayment obligation under the prepaid dental plan has been met, then the indemnity insurer shall remit any payments due under this section directly to its insured or certificate holder.

D. The director may adopt rules to enforce this section.

20-2510. Health care insurers requirements: medical directors

A. A health care insurer that proposes to provide coverage of inpatient hospital and medical benefits, outpatient surgical benefits or any medical, surgical or health care service for residents of this state with utilization review of those benefits shall meet at least one of the following requirements:

1. Have a certificate issued pursuant to this chapter.
2. Be accredited by the utilization review accreditation commission, the national committee for quality assurance or any other nationally recognized accreditation process recognized by the director.
3. Contract with a utilization review agent that has a certificate issued pursuant to this chapter.
4. Contract with a utilization review agent that is accredited by the utilization review accreditation commission, the national committee for quality assurance or any other nationally recognized accreditation process recognized by the director.
5. Provide to the director a signed and notarized statement that the health care insurer has submitted an application for accreditation to the utilization review accreditation commission or the national committee for quality assurance and is awaiting completion of the accreditation review process. On completion of the accreditation review process, the insurer shall provide to the director adequate proof that the insurer has been accredited. If the insurer is denied accreditation, within sixty days after the denial the insurer shall meet at least one of the requirements set forth in paragraph 1, 2, 3 or 4 of this subsection.

B. Except as provided in subsections C, D and E of this section, any direct denial of prior authorization of a service requested by a health care provider on the basis of medical necessity

by a health care insurer shall be made in writing by a medical director who holds an active unrestricted license to practice medicine in this state pursuant to title 32, chapter 13 or 17. The written denial shall include an explanation of why the treatment was denied, and the medical director who made the denial shall sign the written denial. The health care insurer shall send a copy of the written denial to the health care provider who requested the treatment. Health care insurers shall maintain copies of all written denials and shall make the copies available to the department for inspection during regular business hours. The medical director is responsible for all direct denials that are made on the basis of medical necessity. Nothing in this section prohibits a health care insurer from consulting with a licensed physician whose scope of practice may provide the health care insurer with a more thorough review of the medical necessity.

C. For determinations made pursuant to subsection B of this section, a dental service corporation as defined in section 20-822 or a prepaid dental plan organization as defined in section 20-1001 may use as a medical director either:

1. An individual who holds an active unrestricted license to practice dentistry in this state pursuant to title 32, chapter 11.
2. A physician who holds an active unrestricted license to practice medicine in this state pursuant to title 32, chapter 13 or 17.

D. For determinations made pursuant to subsection B of this section, an optometric service corporation may use as a medical director either:

1. An individual who holds an active unrestricted license to practice optometry in this state pursuant to title 32, chapter 16.
2. A physician who holds an active unrestricted license to practice medicine in this state pursuant to title 32, chapter 13 or 17.

E. For determinations made pursuant to subsection B of this section, a health care insurer shall use a chiropractor licensed in this state pursuant to title 32, chapter 8 or by any regulatory board in another state to review any direct denial of prior authorization of a chiropractic service requested by a chiropractor on the basis of medical necessity.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

Title 20, Chapter 6, Article 22, Military Personnel

Amend: Article 22, R20-6-2201



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 11, 2022

SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6, Article 22, Military Personnel

Amend: Article 22, R20-6-2201

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions relates to rules in Title 20, Chapter 6, Article 22, regarding insurance producer interactions with military personnel. The Department indicates that the rulemaking sets forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair. The Department states that it previously incorporated the National Association of Insurance Commissioners Model Regulation 568: Military Sales Practices Model Regulation by reference. The Department now seeks to replace the incorporation by reference with the full text of Model Regulation 568. The Department further states that the rulemaking only applies to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member.

The Department received approval to initiate this rulemaking on March 29, 2021 and final approval to submit it to the Council on December 17, 2021.

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

Yes. The Department cites both general and specific statutory authority for this rule.

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 Department states that it did not review or rely on any study in conducting this rulemaking.

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

The rulemaking is not designed to change any conduct of insurance producers. This rulemaking replaces the materials incorporated by reference with the language of the model regulation. The purpose of including the direct language as opposed to keeping the incorporation by reference is to allow easier access of the regulation to consumers and industry members examining the rule.

This rulemaking does not incur any costs because it replaces the incorporation by reference in the current rule with the actual language of the model regulation. The Department adopted the original rule in 2008. No changes have been made to the model regulation since that time. Licensees have been subject to the rule since its adoption.

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?**

Since this rulemaking only adopts the language of an existing Model Regulation into the Administrative Code instead of incorporating it by reference, it is the least intrusive and least costly method of achieving the Department's regulatory objective.

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

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule.

The implementation and enforcement of the proposed rulemaking does not directly affect any political subdivision of this state.

This rulemaking is not expected to generate any additional costs or benefits for businesses because it is the same rule the Department adopted in 2001, except that it is no longer incorporated by reference.

The Department does not anticipate any impact on the private employment of insurers or insurance producers. Likewise, the Department does not anticipate any impact on public employment in the Department.

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

No. The Department did not make any changes to the rule between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. **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 rulemaking.

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

No. The rule does not require a permit. The rule addresses insurance producer interactions with military service members.

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 Department states that there is no corresponding federal law to this rule.

11. **Conclusion**

In this regular rulemaking, the Department seeks to amend one rule to address insurance producer interactions with military service members. The Department is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



Director's Office
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

Douglas A. Ducey, Governor
Evan G. Daniels, Director

December 21, 2021

VIA EMAIL: grrc@azdoa.gov
Connie Wilhelm, Acting Chairperson
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Military Personnel

Dear Chairperson Wilhelm:

Please find enclosed the Final Rulemaking for Military Personnel being submitted by the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The Department closed the record on this rulemaking on October 24, 2021.
- b. This rulemaking does not relate to a five-year review report. The Department originally initiated this rulemaking to update its physical address which was required for the incorporated by reference materials. However, it subsequently decided to incorporate the full text of the materials into the rule instead of incorporating them by reference. This makes access to the regulation easier for insurance producers and consumers.
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No additional full-time employees are necessary to implement and enforce the rule. Consequently, no notification has been made to the Joint Legislative Budget Committee.
- h. The following documents are also submitted to the Council with this cover letter:
 - i. The Notice of Final Rulemaking;
 - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
 - iii. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,



Evan G. Daniels
Director

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

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

Article 22	Amend
R20-6-2201	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. § 20-143

Implementing statute: A.R.S. § 20-106; A.R.S. § 20-142

3. The effective date of the rule:

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

Not applicable.

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

Not applicable.

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

to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 27 A.A.R. 1544, September 24, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 1523, September 24, 2021

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

Name: Mary E. Kosinski

Address: Department of Insurance and Financial Institutions

100 N. 15th Ave., Suite 261

Phoenix, Arizona 85007-2630

Telephone: (602)364-3476

E-mail: mary.kosinski@difi.az.gov

Web site: <https://difi.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 sets forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair. This rulemaking applies only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member.

Previously, Arizona Administrative Code Section R20-6-2201 incorporated National Association of Insurance Commissioners Model Regulation 568: Military Sales Practices Model Regulation ("Model Regulation 568") by reference. The Department seeks to replace the incorporation by reference with the full text of Model Regulation 568. The Department believes this action will make it easier for a consumer or regulated licensee to access the rule in the Administrative Code, rather than requiring the extra step of seeking out Model Regulation 568. Further, the new rule will make amendments to the model regulation to accommodate Arizona specifics.

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 Department did not review any study relevant to 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:

The rulemaking does not diminish a previous grant of authority granted to the Division.

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

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to change any conduct of insurance producers. This rulemaking replaces the incorporated by reference materials with the language of the model regulation. The purpose of including the direct language as opposed to keeping the incorporation by reference is to allow easier access of the regulation to consumers and industry members examining the rule.

Pursuant to A.R.S. § 41-1055(A)(2):

- The costs incurred are non-existent because the rulemaking merely replaces the incorporation by reference with the actual language of the model regulation. The Department adopted the original rule in 2008 (13 A.A.R. 4215, January 5, 2008). No changes have been made to the model regulation since that time. Licensees have been subject to the rule since its adoption.

Pursuant to A.R.S. § 41-1055(A)(3):

- Not applicable. Questions about the economic impact statement may be submitted to the person listed in item #5.

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

No changes have been made between the proposed rulemaking and the final rulemaking.

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

The Insurance Division received no comments on 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:

No other matters prescribed by statute are applicable to the Insurance Division or to any specific rule or class of rules.

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 and does not use a general permit. Instead, the rule governs insurance producer actions when dealing with military service members.

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

No federal law is applicable to the subject of the rule.

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

No formal analysis has been submitted to the Insurance Division that compares the rule's impact of the competitiveness of business in this state to the impact of 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 rule:**

No reference material is incorporated by reference.

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

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

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

TITLE 20. COMMERCE, FINANCIAL INSTITUTIOS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 22. MILITARY PERSONNEL

Section

R20-6-2201. Military Sales Practices

ARTICLE 22. MILITARY PERSONNEL

R20-6-2201. Military Sales Practices

A. ~~The Department incorporates by reference the National Association of Insurance Commissioners (NAIC) Military Sales Practices Model Regulation June 2007 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.~~

Definitions.

1. “Active duty” means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. “Active duty” does not include members of the reserve component who are performing active duty or active duty under military calls or orders specifying periods of less than 31 calendar days.
2. “Department of Defense (DoD) personnel” means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.
3. “Division” means the Division of Insurance of the Department of Insurance and Financial Institutions.
4. “Door-to-door” means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.
5. “ERISA” means the Employee Retirement and Income Security Act.
6. “Formal banking relationship” for purposes of subsection (D), means a relationship established between a service member and a depository institution which:
 - a. Provides the service member with a deposit agreement and periodic statements and makes disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301, et seq. and its accompanying regulations; and
 - b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.
7. “General advertisement” means an advertisement having as its sole purpose the promotion of the reader’s or viewer’s interest in the concept of insurance, or the promotion of the insurer, or the promotion of the insurance producer.

8. “Insurer” means an insurance company required to be licensed under the laws of Arizona to provide life insurance products, including annuities.
9. “Insurance producer” means a person required to be licensed pursuant to A.R.S. § 20-282.
10. “IRC” means Internal Revenue Code.
11. “Known” or “Knowingly” means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of, that depending on its use in this Section, the person solicited was either a service member or was a service member with a pay grade of E-4 or below.
12. “Life insurance” has the meaning defined at [A.R.S. § 20-254](#).
13. “Military installation” means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.
14. “MyPay” is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.
15. “Service member” means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.
16. “SGLI” means Servicemembers’ Group Life Insurance.
17. “Side fund” means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium, or deposits with interest, or by other means. “Side fund” does not include:
 - a. Accumulated value, or cash value, or secondary guarantees provided by an universal life insurance policy;
 - b. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
 - c. A premium deposit fund which:
 - i. Contains only premiums paid in advance which accumulate at interest;
 - ii. Imposes no penalty for withdrawal;
 - iii. Does not permit funding beyond future required premiums;
 - iv. Is not marketed or intended as an investment; and
 - v. Does not carry a commission, either paid or calculated.

18. “Specific appointment” means a prearranged appointment agreed upon by both parties and definite as to place and time.
19. “U.S.” means United States.
20. “U.S. Armed Forces” means all components of the Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.
21. “VGLI” means Veterans’ Group Life Insurance.

B. The Model Regulation is modified as follows:

~~1. In addition to the terms defined in the Model Regulation, the following definitions apply:~~

~~a. “Commissioner” means the Director of the Arizona Department of Insurance.~~

~~b. “Regulation” means Article.~~

~~2. Section 3 is modified to insert “A.R.S. § 20-106, 20-142 and 20-143” after “of.”~~

~~3. Section 7(E)(5)(b) is modified to insert “A.R.S. § 20-1241 et seq., R20-6-202, and R20-6-209” after “requirements of.”~~

~~4. Subsection 7(F)(5) of the Model Regulation is excluded from this Section.~~

Exemptions.

1. This Section shall not apply to solicitations or sales involving:

a. Credit insurance;

b. Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;

c. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Division; or, when a term conversion privilege is exercised among corporate affiliates;

d. Individual stand-alone health policies, including disability income policies;

e. Contracts offered by SGLI or VGLI, as authorized by 38 U.S.C. §§ 1965 et seq.;

f. Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501(c)(23) of the IRC, and which are not underwritten by an insurer; or

g. Contracts used to fund:

i. An employee pension or welfare benefit plan that is covered by ERISA;

ii. A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established and maintained by an employer;

- iii. A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC:
- iv. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor:
- v. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- vi. Prearranged funeral contracts.

2. Nothing in this Section shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the U.S. Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – Personal Commercial Solicitation on DoD Installations or any successor directive.

3. This purposes of this Section, the following do not constitute solicitation:

- a. General advertisements;
- b. Direct mail;
- c. Internet marketing; and
- d. Telephone marketing if the caller explicitly and conspicuously discloses that the product being marketed is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

4. Any in-person, face-to-face meeting resulting from an exempt type of solicitation listed in subsection (3) is not exempt and the insurer or insurance producer is subject to this Section.

5. The following subsections do not apply to individually issued annuities: (D)(3)(b), (D)(5)(c), (D)(5)(e), (D)(6)(a), (D)(6)(c) and (D)(6)(d).

C. Practices Declared False, Misleading, Deceptive, or Unfair on a Military Installation.

1. The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

- a. Knowingly soliciting the purchase of any life insurance product door-to-door or without first establishing a specific appointment for each meeting with a prospective purchaser.
- b. Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary.

- c. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.
 - d. Making appointments with or soliciting service members in barracks, day rooms, unit areas, transient personnel housing, or other areas where the installation commander has prohibited solicitation.
 - e. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.
 - f. Posting unauthorized bulletins, notices, or advertisements.
 - g. Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to solicited service members or discouraging solicited service members from completing or submitting a DD Form 2885.
 - h. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the U.S. Armed Forces without first obtaining a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the DoD or any branch of the U.S. Armed Forces for the insurer's files.
2. The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and are declared to be false, misleading, deceptive, or unfair:
- a. Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity, with or without compensation, with respect to the solicitation or sale of life insurance to service members.
 - b. Using an insurance producer to participate in any U.S. Armed Forces sponsored education or orientation program.

D. Practices declared false, misleading, deceptive, or unfair regardless of location.

1. The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive, or unfair:
- a. Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the U.S. Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. This includes, but is not limited to, using or assisting in using the service member's "MyPay" account or other similar internet or electronic medium.

This subsection does not prohibit an insurer or insurance producer assisting a service member by providing the insurer or premium information necessary to complete any allotment form.

- b. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship.
- c. Employing any device or method or entering into any agreement where funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's "Leave and Earnings Statement" or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship.
- d. Entering into any agreement with a depository institution for the purposes of receiving funds from a service member where the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.
- e. Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity, with or without compensation, with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade or to their family members.
- f. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to a service member.
- g. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for their attendance to any event where an application for life insurance is solicited.
- h. Advising a service member with a pay grade of E-4 or below to change their income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

2. The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair:

- a. Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliate, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government, the U.S. Armed Forces, or any state, federal agency, or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit

Insurance Advisor.” “Servicemen’s Group Life Insurance Conversion Consultant.” or “Veteran’s Benefits Counselor.” An insurance producer may use a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning including, but not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Masters of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

b. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the U.S. Armed Forces in a manner that has a tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government or the U.S. Armed Forces.

3. The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair:

a. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

b. Misrepresenting the mortality costs of a life insurance product, including a statement or implication that the product costs nothing or is free.

4. The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair:

a. Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, or deceptive.

b. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations of coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive.

c. Suggesting, recommending, or encouraging a service member to cancel or terminate their SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member’s separation from the U.S. Armed Forces.

5. The following acts or practices by an insurer or insurance producer regarding disclosure are declared to be false, misleading, deceptive, or unfair:
- a. Deploying, using, or contracting for any lead-generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.
 - b. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.
 - c. Failing to clearly and conspicuously disclose that fact that the product being sold is life insurance.
 - d. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, p. 16, 10 U.S.C. § 992 note.
 - e. When the sale is conducted in-person and face-to-face with an individual known to be a service member, failing at the time the application is taken to provide to the applicant:
 - i. An explanation of any applicable free look period with instructions on how to cancel if a policy is issued; and
 - ii. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of A.R.S. §§ 20-1241 through 20-1241.09, Section R20-6-202 and Section R20-6-209 shall be deemed sufficient to meet this requirement for a written disclosure.
6. The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive, or unfair:
- a. Recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.
 - b. Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and

investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

i. "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.

ii. "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

c. Offering for sale or selling any life insurance contract which includes a side fund:

i. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty:

ii. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from year one to year ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

iii. Which by default diverts or transfers funds accumulated to the side fund to pay, reduce, or offset any premiums due.

d. Offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement

Title 20. Commerce, Financial Institutions and Insurance

Chapter 6. Department of Insurance

Article 22. Military Personnel

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair. In 2008, the Arizona Department of Insurance (now Arizona Department of Insurance and Financial Institutions “Department”) adopted A.A.C. R20-6-2201 which adopted the National Association of Insurance Commissioners Model Regulation on Military Personnel (MDL 568) by incorporation (13 A.A.R. 4215, eff. January 5, 2008). Recently, the Department re-evaluated the rule when it had an address change and decided that adopting the entire Model Regulation into the rule would allow easier access to both insurance producers and military personnel. Therefore, the Model Regulation has been written into the rule with adjustments made specific to Arizona.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

This regulation applies to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the U.S. Armed Forces. No additional costs or benefits are anticipated to be generated by this rulemaking because it is the same rule the Department adopted in 2001 except that it is no longer incorporated by reference.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

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

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule.

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

No political subdivision of this state is 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.

No additional costs or benefits are anticipated to be generated by this rulemaking because it is the same rule the Department adopted in 2001 except that it is no longer incorporated by reference.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not anticipate any impact on the private employment of insurers or insurance producers. Likewise, the Department does not anticipate any impact of public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

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

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

The proposed rulemaking has no probable impact on small business because it only applies to insurance companies and insurance producers.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A 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 nonselected alternatives.

Because this rulemaking only adopts the language of an existing Model Regulation into the Administrative Code instead of incorporating it by reference, it is the least intrusive and least costly method of achieving the Department's regulatory objective.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rule is not based on any data.

20-143. Rule-making power

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

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

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

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

20-106. Acts constituting the transaction of business; definition

A. "Transact" with respect to insurance includes any of the following:

1. Solicitation and inducement.
2. Preliminary negotiations.
3. Effectuation of a contract of insurance.
4. Transaction of matters subsequent to effectuation of the contract and arising out of it.

B. Any of the following acts in this state effected by mail or otherwise, by or on behalf of an unauthorized insurer, is deemed to constitute the transaction of an insurance business in this state:

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. The taking or receiving of any application for insurance.
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an insurance producer or agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this paragraph shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.
7. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance.
8. The transacting or proposing to transact any insurance business in substance equivalent to any provisions as provided in paragraphs 1 through 7 of this subsection in a manner designed to evade the laws of this state.

C. In this section, unless the context otherwise requires, "insurer" includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

20-142. Powers and duties of director; payment of examination and investigation costs; home health services

A. The director shall enforce this title.

B. The director shall have powers and authority expressly conferred by or reasonably implied from the provisions of this title.

C. The director may conduct examinations and investigations of insurance matters, including examinations and investigations of adjusters, producers and brokers and any other persons who are regulated under this title, in addition to examinations and investigations expressly authorized, as the director deems proper in determining whether a person has violated any provision of this title or for the purpose of securing information useful in the lawful administration of any provision of this title. The examined party shall pay the costs of examinations that are allowed pursuant to subsection D of this section and that are conducted pursuant to this subsection except for examinations of adjusters, producers and brokers. An examined adjuster, producer or broker shall pay the costs allowed pursuant to subsection D of this section only if the adjuster, producer or broker is found to have violated any provision of this title. This state shall pay the cost of any related investigation.

D. The department shall prepare detailed billing statements that provide reasonable specificity of the time and expenses billed in connection with an examination and that cite the statute or rule that authorizes the fees being charged. Notwithstanding any other law, from and after December 31, 2021, a person that is being examined pursuant to any section of this title is responsible for only the direct costs of an examination that are supported by a billing statement that complies with this subsection.

E. The director shall establish guidelines for insurers on home health services that shall be used by the director pursuant to sections 20-826, 20-1342, 20-1402 and 20-1404. The director may use home health services as defined in section 36-151. Guidelines shall include the following:

1. Home health services that are prescribed by a physician or a registered nurse practitioner.
2. Home health services that are determined to cost less if provided in the home than the average length of in-hospital service for the same service.
3. Skilled professional care in the home that is comparable to skilled professional care provided in-hospital and that is reviewed and approved at thirty-day intervals by a physician.

F. Pursuant to section 41-1750, subsection G, the director may receive criminal history record information in connection with the issuance, renewal, suspension or revocation of a license or certificate of authority or the consideration of a merger or acquisition. The director may require a person to submit a full set of fingerprints to the department. The department of insurance and financial institutions 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.

C-4

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

Title 20, Chapter 6, Article 2, Transaction of Insurance

Amend: Article 2, R20-6-212, R20-6-212.01

New Section: R20-6-212.02



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 11, 2022

SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6, Article 2, Transaction of Insurance

Amend: Article 2, R20-6-212, R20-6-212.01

New Section: R20-6-212.02

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to amend two rules and add one new rule to Title 20, Chapter 6, Article 2 related to Transaction of Insurance. Specifically, the Department indicates this rulemaking seeks to update the addresses for both the Department and National Association of Insurance Commissioners ("NAIC"), update the versions of materials incorporated by reference in Section R20-6-212 (Forms for Replacement of Life Insurance Policies and Annuities) and Section R20-6-212.01 (Form for Buyer's Guide for Annuities), and fulfill the mandate of the legislature, pursuant to Laws 2019, Ch. 223, §1, to adopt the Annuity Disclosure Model Regulation (MDL-245) promulgated by the NAIC by rule.

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

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

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

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

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

The rulemaking is designed to enhance the tools available to insurers and producers when selling annuities and to provide information to consumers who wish to purchase annuities. Insurance companies ceding insurance and assuming reinsurers will directly be affected by, bear the costs of and benefit from the proposed rulemaking. The rulemaking is based on two Model Regulations developed by the National Association of Insurance Carriers to allow states to avoid federal preemption for reinsurance agreements their domestic insurers seek to enter into with EU and UK reinsurers.

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

The Department has determined that the rulemaking will impose the least intrusive and least costly method of achieving the Department's regulatory objective.

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

The Department does not anticipate any impact on the implementing agency, political subdivisions, small businesses, or the public. Insurers will be affected as allowing insurers to cede liabilities to qualifying reinsurers in reciprocal jurisdictions will expand the current reinsurance available to insurers and the possibility of credits they receive under those arrangements. Insurers, reinsurers, and policies subject to this rule will also be limited to the use of certain assets to support the reinsurance reserves ceded to an applicable affiliated reinsurer. Arizona domestic insurers are anticipated to benefit.

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

The Department indicates on July 30, 2021, it published the Notice of Proposed Rulemaking. On August 19, 2021, the Department states one commenter asked that the Department to incorporate recently adopted changes to the NAIC Model Regulation (MDL #245) into new Section R20-6-212.02. In response, the Department states it incorporated the requested changes into Section R20-6-212.02 and published a Notice of Supplemental Proposed

Rulemaking on October 8, 2021. The Department does not indicate any additional changes subsequent to the Notice of Supplemental Proposed Rulemaking.

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

After incorporating the changes to the NAIC Model Regulation (MDL #245) in response to the public comment outlined above, the Department did not receive any comments on the Notice of Supplemental Proposed Rulemaking during the 30-day public comment period.

9. 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 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?

Not applicable. The Department indicates no federal law is applicable to the subject of the rules.

11. Conclusion

The Department seeks to amend two rules to update the addresses for both the Department and National Association of Insurance Commissioners (“NAIC”) and update the versions of materials incorporated by reference in Section R20-6-212 (Forms for Replacement of Life Insurance Policies and Annuities) and Section R20-6-212.01 (Form for Buyer’s Guide for Annuities). The Department also seeks to add one new rule to adopt the Annuity Disclosure Model Regulation (MDL-245) promulgated by the NAIC by rule as mandated by the legislature pursuant to Laws 2019, Ch. 223, §1.

The Department is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.



Director's Office
Arizona Department of Insurance and Financial Institutions
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Douglas A. Ducey, Governor
Evan G. Daniels, Director

December 21, 2021

VIA EMAIL: grrc@azdoa.gov
Connie Wilhelm, Acting Chairperson
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Annuity Disclosure Final Rulemaking

Dear Chairperson Wilhelm:

Please find enclosed the Final Rulemaking for Annuity Disclosure being submitted by the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. This rulemaking had two close of record dates. The close of record date for the original Notice of Proposed Rulemaking was August 29, 2021. The close of record date for the Notice of Supplemental Proposed Rulemaking was November 7, 2021.
- b. This rulemaking does not relate to a five-year review report. Instead, the Department initiated this rulemaking to update physical addresses and references to the incorporated materials (A.A.C. R20-6-212 and R20-6-212.01) and to comply with the mandate of the legislature to adopt the Annuity Disclosure Model Regulation (MDL-245) promulgated by the National Association of Insurance Commissioners (Laws 2019, Ch. 223, § 1).
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No additional full-time employees are necessary to implement and enforce the rule. Consequently, no notification has been made to the Joint Legislative Budget Committee.
- h. The following documents are also submitted to the Council with this cover letter:

- i. The Notice of Final Rulemaking;
- ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
- iii. The written comments received. Two comments were received for the original Proposed Rulemaking which drove substantive changes that required a Supplemental Proposed Rulemaking. The Department received no comments on the Supplemental Proposed Rulemaking. No testimony was received. Therefore no other written record, transcript, or minutes of any testimony is available.
- iv. The materials incorporated by reference.
- v. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Evan G. Daniels
Director

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

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

Article 2	Amend
R20-6-212	Amend
R20-6-212.01	Amend
R20-6-212.02	New Section

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. § 20-143

Implementing statute: A.R.S. § 20-1241.09 (R20-6-212.01)

A.R.S. § 20-1242.05 (R20-6-212)

Laws 2019, Ch. 223, § 1 (R20-6-212.02)

3. The effective date of the rule:

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

Not applicable.

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

Not applicable.

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

to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 27 A.A.R. 1544, September 24, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 1523, September 24, 2021

Notice of Supplemental Proposed Rulemaking: 27 A.A.R. 1625, October 8, 2021

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

Name: Mary E. Kosinski

Address: Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, Arizona 85007-2630

Telephone: (602)364-3476

E-mail: mary.kosinski@difi.az.gov

Web site: <https://difi.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 has a two-fold purpose related to the regulation of annuities: to update the addresses and materials being incorporated by reference in two existing rules and to fulfill the mandate of the legislature to adopt the Annuity Disclosure Model Regulation (MDL-245) promulgated by the National Association of Insurance Commissioners ("NAIC") and effective as of the date of the act (Laws 2019, Ch. 223, § 1).

A.A.C. Title 20, Chapter 6, Article 2 governs the transaction of insurance, which includes Sections R20-6-212: Forms for Replacement of Life Insurance Policies and Annuities and R20-6-212.01: Form for Buyer's Guide for Annuities. The addresses for both the Arizona Department of Financial Institutions, Division of Insurance ("Division") and the NAIC have both changed since these rules were last amended in 2007. In addition, the materials incorporated by reference by these Sections have been updated or replaced with updated versions or other materials necessitating new incorporations by reference.

In 2019, the Legislature charged the Division with adopting the NAIC Annuity Disclosure Model Regulation and illustration requirements specific to participating immediate and deferred income annuities. SB1534 (L. 2019, Ch. 223, §1). Prior to the passage of SB1534, the Legislature had codified much of the Annuity Disclosure Model Regulation ("Model Regulation") at A.R.S. Title 20, Chapter 6, Article 1.2: Annuity Disclosure (A.R.S. §§ 20-1242 through 20-1242.05). However, Section 6 and the Annuity Illustrations of the Model Regulation promulgated in 2015 remained

uncodified. This rulemaking adopts this missing section and the recent updates to the Model Regulation adopted by the NAIC by rule in Section R20-6-212.02.

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 Department did not review any study relevant to 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:

The rulemaking does not diminish a previous grant of authority granted to the Division.

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

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to change any conduct. Instead, it is designed to enhance the tools available to insurers and producers when selling annuities and to provide information to consumers who wish to purchase annuities.
- The potential harm caused by an insured's lack of information to make a knowledgeable purchase of an annuity is monetary. However, the onus is still upon insureds to educate themselves about the purchase of these complicated financial products.
- Because this rulemaking is not made in response to a perceived problem, it is not intended to reduce the frequency of any potentially violative conduct.

Pursuant to A.R.S. § 41-1055(A)(2):

- The costs incurred by insurers selling annuity products are not expected to impact revenues or payroll expenditures. Instead, the costs incurred are compliance costs driven by the additional information an insurer or producer is required to provide to a person seeking to purchase an annuity.

Pursuant to A.R.S. § 41-1055(A)(3):

- The person listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

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

On July 30, 2021, the Division published the Notice of Proposed Rulemaking (27 A.A.R. 1131, July 30, 2021). On August 19, 2021, one commenter asked that the Division incorporate recently adopted changes to the NAIC Model Regulation (MDL #245) into new Section R20-6-212.02. The purpose of this revision is to address issues identified by the Annuity Disclosure Working Group ("Working Group") of the Life Insurance and Annuities Committee of the NAIC ("Committee") related to innovations in annuity products that are not addressed, or not addressed adequately, in the model regulation.

The Committee adopted revisions addressing participating income annuities during its July 19, 2018 meeting and held pending the resolution of the Working Group's discussions regarding illustrating indexes in existence for less than 10 years. The Working Group is no longer considering the index issue, and the 2018 revisions were adopted at the NAIC Summer Meeting held August 14 through 17, 2021.

This Supplemental Proposed Rulemaking adds a new subsection to new Section R20-6-212.02. Parties reviewing this change will find the new proposed language at subsection R20-6-212.02(G)(22). This language adopts the model regulation language found at MDL #245 Section 6F(22).

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

On July 30, 2021, the Division published the Notice of Proposed Rulemaking (27 A.A.R. 1131, July 30, 2021). On August 19, 2021, one commenter asked that the Division incorporate recently adopted changes to the NAIC Model Regulation (MDL #245) into new Section R20-6-212.02. In response, the Department incorporated the requested changes into Section R20-6-212.02 and published a Notice of Supplemental Proposed Rulemaking on October 8, 2021 (27 A.A.R. 1625, October 8, 2021).

The Department did not receive any comments on the Notice of Supplemental Proposed Rulemaking during the 30-day public comment period.

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

No other matters prescribed by statute are applicable to the Insurance Division or to any specific

rule or class of rules.

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 and does not use a general permit. The rule addresses the transaction of insurance business.

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

No federal law is applicable to the subject of the rule. Section R20-6-212.02(M) references Section 1053 of the Internal Revenue Code but only as a non-substantive change that would not trigger a revised illustration.

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 formal analysis has been submitted to the Insurance Division that compares the rule's impact of the competitiveness of business in this state to the impact of 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 rule:**

Section R20-6-212: NAIC Life Insurance and Annuities Replacement Model Regulation₇ (MDL 613), Appendices A, B, and C, 2015.

Section R20-6-212.01: NAIC Buyer's Guide to Deferred Annuities – *Fixed*, 2013.

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:**

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

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

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 2. TRANSACTION OF INSURANCE

Section

R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities

R20-6-212.01. ~~Forms for Buyer's Guide for Annuities~~

R20-6-212.02. Standards for Annuity Illustrations

ARTICLE 2. TRANSACTION OF INSURANCE

R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future editions or amendments), which are incorporated by reference and available at the Department of Insurance, ~~and Financial Institutions, Division of Insurance, 2910 N. 44th St., Phoenix, AZ 85018~~ 100 N. 15th Ave., Suite 261, Phoenix, AZ 85007-2630 and the National Association of Insurance Commissioners, Publications Department, ~~2301 McGee St., Suite 800, Kansas City, MO 64108~~ 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197:

1. For the purposes of meeting the requirements of A.R.S. § 20-1241.03(C): Life Insurance and Annuities Replacement Model Regulation, (MDL 613), Appendix A – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-11 through 613-12, July 2000. 2015, and no future editions.
2. For the purposes of meeting the requirements of A.R.S. § 20-1241.07(A): Life Insurance and Annuities Replacement Model Regulation, (MDL 613), Appendix B – Notice Regarding Replacing Your Life Insurance Policy or Annuity?, Volume III, pp. 613-13, July 2000. 2015, and no future editions.
3. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(B)(2): Life Insurance and Annuities Replacement Model Regulation, (MDL 613), Appendix C – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-14 through 613-15, 1998. 2015, and no future editions.

R20-6-212.01. ~~Forms for Buyer's Guide for Annuities~~

An insurer shall use the following ~~forms~~ publication of the National Association of Insurance Commissioners ~~Model Regulations~~ (and no future editions ~~or amendments~~), which are incorporated by reference and available at the Department of Insurance, and Financial Institutions, Division of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 ~~100 N. 15th Ave., Suite 261, Phoenix, AZ 85007-2630~~ and the National Association of Insurance Commissioners, Publications Department, ~~2301 McGee St., Suite 800, Kansas City, MO 64108~~ 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197:

For the purpose of meeting the requirements of A.R.S. § 20-1242.02 regarding a Buyer's Guide: ~~Annuity Disclosure Model Regulation, Appendix — Buyer's Guide to Fixed~~ for Deferred Annuities, — Fixed, Volume II, pp. 245-6 through 245-13, 1999, with attached Appendix I — Equity Indexed Annuities, Volume II, pp. 245-14 through 245-20, 1999. 2013, and no future editions.

R20-6-212.02. Standards for Annuity Illustrations

A. Definitions. The definitions in A.R.S. § 20-1242 and this Section apply to this Section.

“Illustration” means a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.

“Indexing Method” means point-to-point, dialing averaging or monthly averaging.

“Index Term” means the period over which indexed-based interest is calculated.

“Market Value Adjustment” or “MVA” means a feature that is a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company’s current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

“Registered product” means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

B. An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this Section and:

1. Is clearly labeled as an illustration;

2. Includes a statement referring customers to the disclosure document and buyer's guide provided to them at time of purchase for additional information about their annuity; and
 3. Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of the illustration.
- C.** An illustration furnished to an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.
- D.** The illustration shall not be provided unless accompanied by the disclosure document referenced in A.R.S. § 20-1242.02.
- E.** When using an illustration, the illustration shall not:
1. Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
 2. State or imply that the payment or amount of non-guaranteed elements is guaranteed; or
 3. Be incomplete.
- F.** Costs and fees of any type shall be individually noted and explained.
- G.** An illustration shall conform to the following requirements:
1. The illustration shall be labeled with the date on which it was prepared;
 2. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");
 3. The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;
 4. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue-age plus the number of years the contract is assumed to have been in force;
 5. The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;
 6. Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;
 7. Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;

8. Except as provided in subsection (G)(22) of this Section, the non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period:
9. In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent 10 calendar years; one to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the least index value growth (the “low scenario”); one to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the most index value growth (the “high scenario”). The following requirements apply:
 - a. The most recent 10 calendar years and the last 20 calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year:
 - b. If any index utilized in determination of an account value has not been in existence for at least 10 calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of these indexes has not been in existence for at least 10 calendar years, the allocation to such indexed account(s) shall be assumed to be zero:
 - c. If any index utilized in determination of an account value has been in existence for at least 10 calendar years but less than 20 calendar years, the 10 calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence:
 - d. The non-guaranteed element(s), such as caps, spreads, participation rates, or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element(s):
 - e. If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:

12. The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest, and application of any market value adjustment, as applicable;
13. Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;
14. Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
 - a. The benefits and values are not guaranteed;
 - b. The assumptions on which they are based are subject to change by the insurer; and
 - c. Actual results may be higher or lower;
15. Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps, or spreads for fixed indexed annuities;
16. The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;
17. Illustrations shall be concise and easy to read;
18. Key terms shall be defined and then used consistently throughout the illustration;
19. Illustrations shall not depict values beyond the maximum annuitization age or date;
20. Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and
21. Illustrations shall show both annuity income rates per \$1,000.00 and the dollar amounts of the periodic income payable.
22. For participating immediate and deferred income annuities:
 - a. Illustrations may not assume any future improvement in the applicable dividend scale (or scales, if more than one dividend scale applies, such as for a flexible premium annuity);
 - b. Illustrations must reflect the equitable apportionment of dividends, whether performance meets, exceeds, or falls short of expectations;
 - c. If the dividend scale is based on a portfolio rate method, the portfolio rate underlying the illustrated dividend scale shall not be assumed to increase;

- d. If the dividend scale is based on an investment cohort method, the illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, subject to the following conditions:
- i. Any assumptions as to future investment performance in the dividend formula must be consistent with assumptions that are reflected in the marketplace within the normal range of analyst forecasts and investor behavior; these assumptions may not be changed arbitrarily, notwithstanding changes in markets or economic conditions, and must be consistent with assumptions that the issuer uses with respect to other lines of business; and
 - ii. The illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, based on U.S. Treasury bonds. For the purposes of this grading, the assumed long-term rates should not exceed the rates calculated using the formula in subsection (G) (22)(d)(iii) below, based on the time to maturity or reinvestment (the "Tenor") of the investments supporting the cohort of policies.
 - iii. Maximum long-term interest rates should be calculated for tenors of three months (or less), five years, 10 years, and 20 years (or more), using U.S. Treasury rates. For each tenor, the maximum long-term interest rate will vary over time, based on historical interest rates as they emerge. The formula for the maximum long-term interest rate is the average of the median bond rate over the last 600 months and the average bond rate over the last 120 months, rounded to the nearest quarter of one percent (0.25%).
 - iv. The maximum long-term interest rate for a tenor should be recalculated once per year, in January, using historical rates as of December 31 of the calendar year two years prior to the calendar year of the calculation date. The historical rate for each month is the rate reported for the last business day of the month.
 - v. Grading to the maximum long-term interest rates should take place over no less than 20 years from issue if U.S. Treasury rates as of the illustration date are below the long-term rates, or, no more than 20 years from issue if U.S. Treasury rates as of the illustration date are above the long-term rates.
 - vi. When the 10-year U.S. Treasury rate is less than the 10-year maximum long-term interest rate, an additional illustrated dividend scale should be presented. This additional illustrated dividend scale shall assume that reinvestment U.S. Treasury rates do not exceed the initial investment U.S. Treasury rates and illustrate dividends no less than half of the dividends illustrated under the current dividend scales. If the assumption that reinvestment U.S.

Treasury rates do not exceed the initial investment U.S. Treasury rates conflicts with the illustration, i.e. half of the current dividends are greater than would be permitted by the assumption, then the reinvestment U.S. Treasury rates should equal the initial investment U.S. Treasury rates.

vii. The illustration should include a disclosure that is substantially similar to the following:

The illustrated current dividend scale is based on interest rates that are assumed to gradually [increase/decrease] from current rates to long-term interest rates, over a period of [20] years. By regulation, the long-term assumed interest rates cannot not and do not exceed the rates listed in column (c) of the table below.

viii. If the illustration contains an additional dividend scale pursuant to subsection (G)(22)(d)(vi) above, then the illustration should also include a disclosure that is substantially similar to the following:

The additional illustrated dividend scale is based on interest rates that are assumed not to increase and do not exceed the interest rates in column (b) of the table below.

Tenor	Current Interest Rate	Long Term
	Treasury Rate as of 12/31/2016	Mean Reversed Treasury Rate
3 Month (or less)	0.51%	3.00%
5 Year	1.93%	4.50%
10 Year	2.45%	5.00%
20 Years (or more)	3.06%	5.50%

H. An annuity illustration shall include a narrative summary that includes all the following unless provided at the same time in a disclosure statement:

1. A brief description of any contract features, riders or options, guaranteed and/or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

2. A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract:
3. Identification and a brief definition of column headings and key terms used in the illustration:
4. A statement containing in substance the following:
 - a. For other than fixed indexed annuities:

This illustration assumes the annuity's current non-guaranteed elements will not change. It is likely that they **will** change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information:
 - b. For fixed indexed annuities:

This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index **will not** repeat historical performance, the non-guaranteed elements **will** change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information:
5. Additional explanations as follows:
 - a. Minimum guarantees shall be clearly explained:
 - b. The effect on contract values of contract surrender prior to maturity shall be explained:
 - c. Any conditions on the payment of bonuses shall be explained:
 - d. For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained:
 - e. For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and
 - f. A brief description of the types of annuity income options available shall be explained, including:
 - i. The earliest or only maturity date for annuitization (as the term is defined in the contract):

- ii. For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age 70 or 10 years after issue, but in no case later than the maximum annuitization age or date in the contract;
- iii. For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and
- iv. The periodic income amount based on the currently available periodic income rates for the annuity income option in subsection (H)(5)(f)(ii) or in subsection (H)(5)(f)(iii), if desired.

I. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

- 1. The first 10 contract years or the surrender charge period if longer than 10 years, including any renewal surrender charge period(s);
- 2. Every tenth contact year up to the later of 30 years or age 70; and
- 3. Required annuitization age or required annuitization date.

J. If the annuity contains a market value adjustment (“MVA”), the following provisions apply to the illustration:

- 1. The MVA shall be referred to as such throughout the illustration;
- 2. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;
- 3. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;

4. A statement, containing in substance the following, shall be included:

When you make a withdrawal, the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If the interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.

5. Illustrations shall describe both the upside and the downside aspects of the contract features relating to the MVA;

6. The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;

7. Actual MVA floors and ceilings as listed in the contract shall be illustrated; and
8. If the MVA has significant characteristics not addressed by subsections (J)(1) through (J)(6), the effect of such characteristics shall be shown in the illustration.

K. A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time as the disclosure statement:

1. An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:
 - a. The index(es) which will be used to determine the index-based interest;
 - b. The Indexing Method;
 - c. The Index Term;
 - d. The participation rate, if applicable;
 - e. The cap, if applicable; and
 - f. The spread, if applicable;
2. The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;
3. The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and
4. If the product allows the contract holder to make allocations to a declared-rate segment, then the narrative shall include a brief description of:
 - a. Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the index-based segments; and
 - b. Differences in guarantees applicable to the declared-rate segment and the index-based segments.

L. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:

1. The assumed growth rate of the index in accordance with subsection (G)(9);
2. The assumed values for the participation rate, cap and spread, if applicable; and
3. The assumed allocation between index-based segments and the declared-rate segment, if applicable, in accordance with subsection (G)(9).

M. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including but not limited

to, changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1053 of the Internal Revenue Code, rollovers and transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.

N. Annuity Illustration Examples.

The following illustrations are examples only and do not reflect specific characteristics of any actual product for sale by any company.

ABC Life Insurance Company

Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

(Contact us at Policyownerservice@ABCLife.com or 555-555-5555)

<u>Sex: Male</u>	<u>Initial Premium Payment: \$100,000.00</u>
<u>Age at Issue: 54</u>	<u>Planned Annual Premium Payments: None</u>
<u>Annuitant: John Doe</u>	<u>Tax Status: Nonqualified</u>
<u>Oldest Age at Which Annuity Payments Can Begin: 95</u>	<u>Withdrawals: None Illustrated</u>

<u>Initial Interest Guarantee Period</u>	<u>5 Years</u>
<u>Initial Guaranteed Interest Crediting Rates</u>	
<u>First Year (reflects first year only interest bonus credit of 0.75%):</u>	<u>4.15%</u>
<u>Remainder of Initial Interest Guarantee Period:</u>	<u>3.40%</u>
<u>Market Value Adjustment Period:</u>	<u>5 Years</u>
<u>Minimum Guaranteed Interest Rate after Initial Interest Guarantee Period*:</u>	<u>3%</u>

* After the Initial Interest Guarantee Period, a new interest rate will be declared annually. This rate cannot be lower than the Minimum Guaranteed Interest Rate.

Annuity Income Options and Illustrated Monthly Income Values

This annuity is designed to pay an income that is guaranteed to last as long as the Annuitant lives. When annuity income payments are to begin, the income payment amounts will be determined by applying an annuity income rate to the annuity Account Value.

Annuity income options include the following:

- Periodic payments for Annuitant's life
- Periodic payments for Annuitant's life with payments guaranteed for a certain number of years
- Periodic payments for Annuitant's life with payments continuing for the life of a survivor annuitant

Illustrated Annuity Income Option: Monthly payments for annuitant's life with payments guaranteed for 10-year period.

Assumed Age When Payments Start: 70

	<u>Account Value</u>	<u>Monthly Annuity Income Rate/\$1,000 of Account Value*</u>	<u>Monthly Annuity Income</u>
<u>Based on Rates Guaranteed in the Contract</u>	\$164,798	\$5.00	\$823.99
<u>Based on Rates Currently Offered by the Company</u>	\$171,976	\$6.50	\$1,117.84

*If, at the time of annuitization, the annuity income rates currently offered by the company are higher than the annuity income rates guaranteed in the contract, the current rates will apply.

ABC Life Insurance Company

Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

Contact us at Policyownerservice@ABCLife.com or 555-555-5555

<u>Contract Year/Age</u>	<u>Premium Payment</u>	<u>Values Based on Guaranteed Rates</u>				<u>Value Based on Assumption that Initial Guaranteed Rates Continue</u>		
		<u>Interest Crediting Rate</u>	<u>Account Value</u>	<u>Cash Surrender Value Before MVA</u>	<u>Minimum Cash Surrender Value After MVA</u>	<u>Interest Crediting Rate</u>	<u>Account Value</u>	<u>Cash Surrender Value Before and After MVA</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

(1) (2) (3) (4) (5) (6) (7) (8) (9)

<u>1 / 55</u>	<u>\$100,000</u>	<u>4.15%</u>	<u>\$104,150</u>	<u>\$95,818</u>	<u>\$92,000</u>	<u>4.15%</u>	<u>\$104,150</u>	<u>\$95,818</u>
<u>2 / 56</u>	<u>0</u>	<u>3.40%</u>	<u>107,691</u>	<u>100,153</u>	<u>93,000</u>	<u>3.40%</u>	<u>107,691</u>	<u>100,153</u>
<u>3 / 57</u>	<u>0</u>	<u>3.40%</u>	<u>111,353</u>	<u>104,671</u>	<u>95,614</u>	<u>3.40%</u>	<u>111,353</u>	<u>104,671</u>
<u>4 / 58</u>	<u>0</u>	<u>3.40%</u>	<u>115,139</u>	<u>109,382</u>	<u>98,482</u>	<u>3.40%</u>	<u>115,139</u>	<u>109,382</u>
<u>5 / 59</u>	<u>0</u>	<u>3.40%</u>	<u>119,053</u>	<u>114,291</u>	<u>114,291</u>	<u>3.40%</u>	<u>119,053</u>	<u>114,291</u>
<u>6 / 60</u>	<u>0</u>	<u>3.00%</u>	<u>122,625</u>	<u>118,946</u>	<u>118,946</u>	<u>3.40%</u>	<u>123,101</u>	<u>119,408</u>
<u>7 / 61</u>	<u>0</u>	<u>3.00%</u>	<u>126,304</u>	<u>123,778</u>	<u>123,778</u>	<u>3.40%</u>	<u>127,287</u>	<u>124,741</u>
<u>8 / 62</u>	<u>0</u>	<u>3.00%</u>	<u>130,093</u>	<u>130,093</u>	<u>130,093</u>	<u>3.40%</u>	<u>131,614</u>	<u>131,614</u>
<u>9 / 63</u>	<u>0</u>	<u>3.00%</u>	<u>133,996</u>	<u>133,996</u>	<u>133,996</u>	<u>3.40%</u>	<u>136,089</u>	<u>136,089</u>
<u>10 / 64</u>	<u>0</u>	<u>3.00%</u>	<u>138,015</u>	<u>138,015</u>	<u>138,015</u>	<u>3.40%</u>	<u>140,716</u>	<u>140,716</u>
<u>11 / 65</u>	<u>0</u>	<u>3.00%</u>	<u>142,156</u>	<u>142,156</u>	<u>142,156</u>	<u>3.40%</u>	<u>145,501</u>	<u>145,501</u>
<u>16 / 70</u>	<u>0</u>	<u>3.00%</u>	<u>164,798</u>	<u>164,798</u>	<u>164,798</u>	<u>3.40%</u>	<u>171,976</u>	<u>171,976</u>
<u>21 / 75</u>	<u>0</u>	<u>3.00%</u>	<u>191,046</u>	<u>191,046</u>	<u>191,046</u>	<u>3.40%</u>	<u>203,268</u>	<u>203,268</u>
<u>26 / 80</u>	<u>0</u>	<u>3.00%</u>	<u>221,474</u>	<u>221,474</u>	<u>221,474</u>	<u>3.40%</u>	<u>240,255</u>	<u>240,255</u>
<u>31 / 85</u>	<u>0</u>	<u>3.00%</u>	<u>256,749</u>	<u>256,749</u>	<u>256,749</u>	<u>3.40%</u>	<u>283,972</u>	<u>283,972</u>
<u>36 / 90</u>	<u>0</u>	<u>3.00%</u>	<u>297,643</u>	<u>297,643</u>	<u>297,643</u>	<u>3.40%</u>	<u>335,643</u>	<u>335,643</u>
<u>41 / 95</u>	<u>0</u>	<u>3.00%</u>	<u>345,050</u>	<u>345,050</u>	<u>345,050</u>	<u>3.40%</u>	<u>396,717</u>	<u>396,717</u>

Column Descriptions

(1) **Ages** shown are measured from the Annuitant's age at issue.

(2) **Premium Payments** are assumed to be made at the beginning of the Contract Year shown.

Values Based on Guaranteed Rates

(3) **Interest Crediting Rates** shown are annual rates; however, interest is credited daily. During the Initial Interest Guarantee Period, values developed from the Initial Premium Payment are illustrated using the Initial Guaranteed Interest Rate(s) declared by the insurance company, which include an additional first year only interest bonus credit of 0.75%. The interest rates will be guaranteed for the Initial Interest Guarantee Period, subject to an MVA. After the Initial Interest

Guarantee Period, a new renewal interest rate will be declared annually, but can never be less than the Minimum Guaranteed Interest Rate shown.

(4) Account Value is the amount you have at the end of each year if you leave your money in the contract until you start receiving annuity payments. It is also the amount available upon the Annuitant's death if it occurs before annuity payments begin. The death benefit is not affected by surrender charges or the MVA.

(5) Cash Surrender Value Before MVA is the amount available at the end of each year if you surrender the contract (after deduction of any Surrender Charge) but before the application of any MVA. Surrender charges are applied to the Account Value according to the schedule below until the surrender charge period ends, which may be after the Initial Interest Guarantee Period has ended.

<u>Years Measured from Premium Payment:</u>	1	2	3	4	5	6	7	8+
<u>Surrender Charges:</u>	8%	7%	6%	5%	4%	3%	2%	0%

(6) Minimum Cash Surrender Value After MVA is the minimum amount available at the end of each year if you surrender your contract before the end of five years, no matter what the MVA is. The minimum is set by law. The amount you receive may be higher or lower than the cash surrender value due to the application of the MVA, but never lower than this minimum. Otherwise the MVA works as follows: If the interest rate available on new contracts offered by the company is LOWER than your Initial Guaranteed Interest Rate, the MVA will INCREASE the amount you receive. If the interest rate available on new contracts offered by the company is HIGHER than your initial guaranteed interest rate, the MVA will DECREASE the amount you receive. The charts below provide additional information concerning the MVA.

Values Based on Assumption that Initial Guaranteed Rates Continue

(7) Interest Crediting Rates are the same as in Column (3) for the Initial Interest Guarantee Period. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually. For the purposes of calculating the values in this column, it is assumed that the Initial Guaranteed Interest Rate (without the bonus) will continue as the new renewal interest rate in all years. The actual renewal interest rates are not subject to an MVA and will very likely NOT be the same as the illustrated renewal interest rates.

(8) Account Value is calculated the same way as column (4).

(9) Cash Surrender Value Before and after MVA is the Cash Surrender Value at the end of each year assuming that Initial Guaranteed Interest Rates continue, and that the continuing rates are the rates offered by the company on new contracts. In this case the MVA would be zero, and Cash Surrender Values before and after the MVA would be the same.

Important Note: This illustration assumes you will take **no** withdrawals from your annuity before you begin to receive periodic income payments. **Withdrawals will reduce both the annuity Account Value and the Cash Surrender Value.** You may make partial withdrawals of up to 10% of your account value each contract year without paying surrender charges. Excess withdrawals (above 10%) and full withdrawals will be subject to surrender charges.

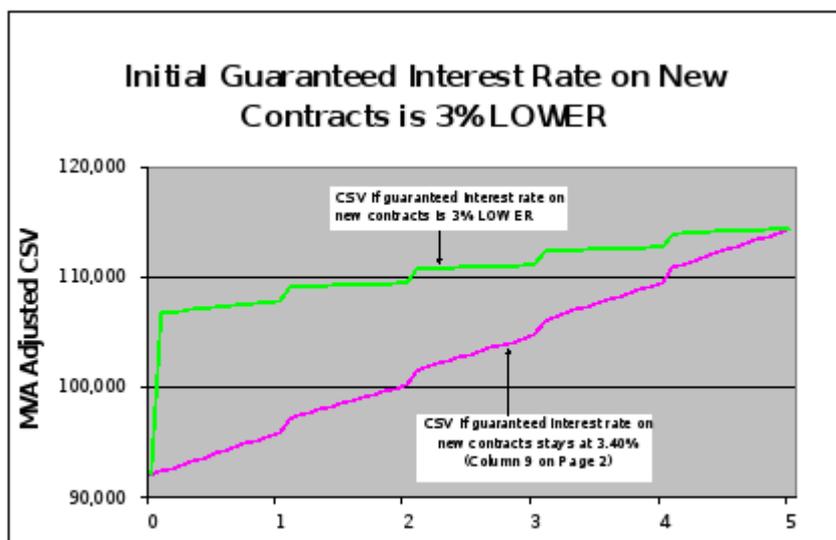
This illustration assumes the annuity's current interest crediting rates will not change. It is likely that they will change and actual values may be higher or lower than those in the illustrations.

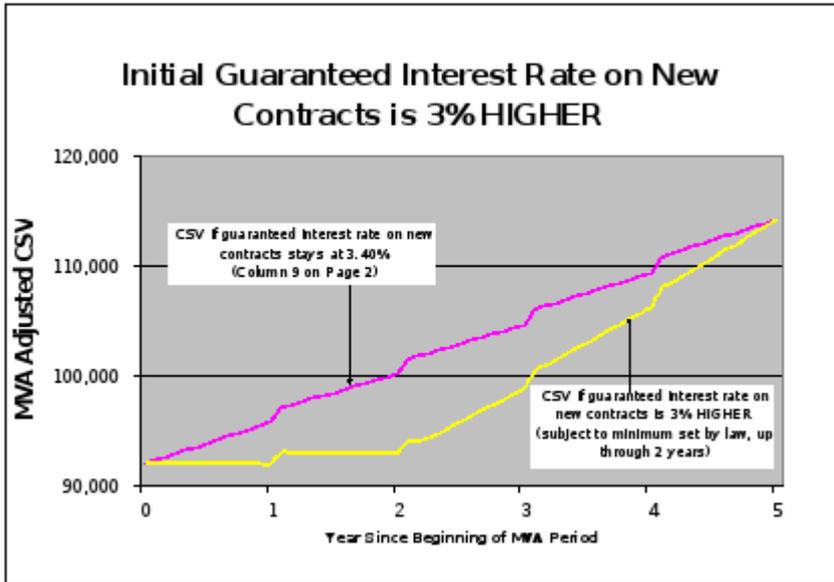
The values in this illustration are not guaranteed or even estimates of the amounts you can expect from your annuity. For more information, read the annuity disclosure and annuity buyer's guide.

MVA-adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

The graphs below show MVA-adjusted Cash Surrender Values (CSVs) during the first five years of the contract, as illustrated on the illustration spreadsheet above (\$100,000 single premium, a 5-year MVA Period) under two sample scenarios, as described below.

Graph #1 shows if the interest rate on new contracts is 3% LOWER than your Initial Guaranteed Interest Rate, the MVA will increase the amount you receive (upper line). The lower line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on the illustration spreadsheet above (referenced as Page 2 in the graph)).





Graph #2 shows if the interest rate on new contracts is 3% HIGHER than your Initial Guaranteed Interest Rate, the MVA will decrease the amount you receive, but not below the minimum set by law (Column (6) on the illustration spreadsheet above (referenced as Page 2 in the graph)), which in this scenario's limits the decrease for the first 2 years (lower line). The upper line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on the illustration spreadsheet above).

These graphs and the sample guaranteed interest rates on new contracts used are for demonstration purposes only and are not intended to be a projection of how guaranteed interest rates on new contracts are likely to behave.

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement
Title 20. Commerce, Financial Institutions and Insurance
Chapter 6. Department of Insurance

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Insurance companies ceding insurance and assuming reinsurers will directly be affected by, bear the costs of and benefit from the proposed rulemaking.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

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

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule.

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

No political subdivision of this state is 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.

Part A: Credit for Reinsurance

Allowing insurers to cede liabilities to qualifying reinsurers in reciprocal jurisdictions will expand the current reinsurance available to insurers and the possibility of credits they receive under those arrangements. This is a benefit to Arizona domestic insurers. However, the anticipated effect on revenues is unknown by the Department and no insurer provided that information.

Part B: Term and Universal Life Reserve Financing

No additional costs are anticipated with the implementation of this rule. Insurers, reinsurers, and policies subject to this rule will be limited to the use of certain assets to support the reinsurance reserves ceded to an applicable affiliated reinsurer.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not anticipate any impact on the private employment of insurers or reinsurers. Likewise, the Department does not anticipate any impact of public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

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

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

The proposed rulemaking has no probable impact on small business because it only applies to insurance and reinsurance companies.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A 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 nonselected alternatives.

Part A: Credit for Reinsurance

Because this rulemaking provides a benefit to Arizona insurers by expanding the availability of a greater number of reinsurers to which to cede liabilities, it is the least intrusive and least costly method of achieving the Department's regulatory objective.

Part B: Term and Universal Life Reserve Financing

Implementation of this rule subjects all applicable insurers, reinsurers, and policies to consistent and uniform provisions to prevent regulatory arbitrage thereby not giving an insurer a competitive advantage over another. It is the least intrusive and least costly method of achieving the Department's regulatory objective.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable

data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

This rulemaking is based on two Model Regulations which were developed by the NAIC Reinsurance Task Force to allow states to avoid federal preemption for reinsurance agreements their domestic insurers seek to enter into with EU and UK (reciprocal jurisdictions) reinsurers. The task force worked with both regulators and insurers to develop the model regulations. The task force webpage can be found at:

https://content.naic.org/cmte_e_reinsurance.htm.

CHAPTER 6. DEPARTMENT OF INSURANCE

3. Language usage. The insurer shall ensure that each policy:
 - a. Is written in everyday, conversational language;
 - b. Uses short, simple sentences and words in common usage;
 - c. Uses an easy-to-read style, personal pronouns, and present tense active verbs.

Historical Note

Adopted effective May 28, 1979 (Supp. 79-1). R20-6-210 recodified from R4-14-210 (Supp. 95-1). Former R20-6-210 renumbered to R20-6-208; new R20-6-210 renumbered from R20-6-212 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-211. Discrimination on the Basis of Blindness or Partial Blindness

- A. Definitions.** The following definitions apply in this Section:
1. "Policy" means a contract or agreement for or effecting insurance, or a certificate of insurance, regardless of the name used, and includes all clauses, riders, endorsements, and attached papers.
 2. "Person" has the same meaning prescribed in A.R.S. § 20-105.
- B. Scope.** This Section applies to all policies delivered or issued for delivery in this state.
- C. Prohibition.** An insurer shall not engage in the following prohibited acts or practices that constitute unfair discrimination between individuals of the same class:
1. Refusal to insure or refusal to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual solely because of blindness or partial blindness; or
 2. Charging an individual a different rate for the same coverage solely because of blindness or partial blindness.
- D.** In this subsection, "refusal to insure" includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed if the insured loses eyesight. An insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness if the insured was blind or partially blind when the policy was issued.
- E.** For all other conditions, including the underlying cause of the blindness or partial blindness, a person who is blind or partially blind is subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as a sighted person.

Historical Note

Adopted effective August 1, 1977 (Supp. 77-4). Amended effective March 27, 1976 (Supp. 78-2). Correction, Historical Note for Supp. 77-4 should read adopted effective January 1, 1979 filed August 1, 1977. Historical Note for Supp. 78-2 should read Appendix amended effective January 1, 1979 filed March 27, 1978 (Supp. 79-5). Editorial correction, (D)(7)(a), title now shown in italics (Supp. 81-1). R20-6-211 recodified from R4-14-211 (Supp. 95-1). Former R20-6-211 renumbered to R20-6-209; new R20-6-211 renumbered from R20-6-213 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future editions or amendments), which are incorporated by reference and

available at the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108:

1. For the purpose of meeting the requirements of A.R.S. § 20-1241.03(C): Life Insurance and Annuities Replacement Model Regulation, Appendix A – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-11 through 613-12, July 2000.
2. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(A): Life Insurance and Annuities Replacement Model Regulation, Appendix B – Notice Regarding Replacement: Replacing Your Life Insurance Policy or Annuity?, Volume III, pp. 613-13, July 2000.
3. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(B)(2): Life Insurance and Annuities Replacement Model Regulation, Appendix C – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-14 through 613-15, 1998.

Historical Note

Adopted effective March 27, 1978 (Supp. 78-2). Editorial correction see subsection (A) citation to A.R.S. (Supp. 78-4). Editorial correction see subsections (B) and (F) citation to A.R.S. (Supp. 78-6). R20-6-212 recodified from R4-14-212 (Supp. 95-1). Former R20-6-212 renumbered to R20-6-210; new R20-6-212 renumbered from R20-6-215 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-212.01. Forms for Buyer's Guide for Annuities

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future editions or amendments), which are incorporated by reference and available at the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108:

For the purpose of meeting the requirements of A.R.S. § 20-1242.02 regarding a Buyer's Guide: Annuity Disclosure Model Regulation, Appendix - Buyer's Guide to Fixed Deferred Annuities, Volume II, pp. 245-6 through 245-13, 1999, with attached Appendix I - Equity-Indexed Annuities, Volume II, pp. 245-14 through 245-20, 1999.

Historical Note

Section R20-6-212.01 renumbered from R20-6-215.01 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-213. Life and Disability Insurance Policy Language Simplification

- A. Definitions.** The following definitions apply in this Section:
1. "Company" or "insurer" means any life or disability insurance company, benefit insurer, benefit stock insurer, prepaid dental plan organizations, health care service organizations, and all similar type organizations.
 2. "Director" means the Director of Insurance of Arizona.
 3. "Policy" or "policy form" means any policy, contract, plan or agreement of life or disability insurance, including credit life insurance and credit disability insurance, delivered or issued for delivery in the state by any company subject to this rule; and any certificate issued under a group insurance policy delivered or issued for delivery in this state.
- B. Applicability.**

20-143. Rule-making power

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

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

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

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

20-1241.09. Rules; exemption from rule making procedures

A. The director may adopt rules necessary to implement the requirements of this article.

B. The department is exempt from title 41, chapter 6, articles 3 and 5 for the purposes of adopting rules that establish the form and content of any consumer notices, disclosure forms, buyer's guides and other forms required by this article. The requirements adopted by rule for any such notices, forms and guides shall substantially conform to those adopted in model regulations adopted by the national association of insurance commissioners.

20-1242.05. Rules; exemption from rule making procedures

A. The director may adopt rules that are necessary to implement the requirements of this article.

B. The department is exempt from title 41, chapter 6, articles 3 and 5 for the purposes of adopting rules that establish the form and content of any consumer notices, disclosure forms, buyer's guides and other forms required by this article. The requirements adopted by rule for any such notices, forms and guides shall substantially conform to those adopted in model regulations adopted by the national association of insurance commissioners.

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 223
SENATE BILL 1534

AN ACT

PROVIDING FOR THE ADOPTION OF RULES BY THE DEPARTMENT OF INSURANCE ON ANNUITY DISCLOSURE REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Annuity disclosure; illustration requirements;
3 rulemaking

4 Within one year after the effective date of this act, the department
5 of insurance shall adopt rules pursuant to title 41, chapter 6, Arizona
6 Revised Statutes, relating to:

7 1. The national association of insurance commissioners' annuity
8 disclosure model regulation that is in effect on the effective date of
9 this act.

10 2. Illustration requirements specific to participating immediate
11 and deferred income annuities.

APPROVED BY THE GOVERNOR MAY 13, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 13, 2019.



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Douglas A. Wheeler
Senior Vice President
Office of Governmental Affairs

August 25, 2021

Mary E. Kosinski
Arizona Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007

VIA Email: Mary.kosinski@difi.az.gov

RE: NAIC Annuity Disclosure Model Regulation

Dear Ms. Kosinski,

New York Life appreciates the opportunity to comment on the Department's proposed amendments to Section R20-6-212 that would add the NAIC Annuity Disclosure Model Regulation's illustration requirements.

On August 17, 2021, the NAIC Executive and Plenary Committee adopted amendments to the Annuity Disclosure Model Regulation (Model Regulation) to add illustration rules specific to participating income annuities. Attached please find the language that the NAIC adopted. We worked with the NAIC in developing these changes and fully support their inclusion in the Department's Proposed Rule. We currently offer two participating guaranteed income annuities in Arizona. A participating income annuity provides a guaranteed level of income, with the potential for more income through a non-guaranteed dividend, declared annually and payable beginning in the second policy year. These policies, which are offered on a 50 state basis, provide consumers with additional options in the annuity market.

The NAIC's latest changes are also consistent with legislation that was enacted in 2019 (SB 1534) that charged the Department with adopting the Model Regulation and illustration requirements specific to participating immediate and deferred income annuities.

We appreciate your consideration of our request.

Best regards,

A handwritten signature in blue ink that reads "Douglas A. Wheeler".

Douglas A. Wheeler
Senior Vice President

ANNUITY DISCLOSURE MODEL REGULATION

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Section 1. Purpose

The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed, the method for disclosing it and the use and content of illustrations, if used, in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

Section 2. Authority

This regulation is issued based upon the authority granted the commissioner under Section [cite any enabling legislation and state law corresponding to Section 4 of the NAIC Unfair Trade Practices Act].

Section 3. Applicability and Scope

This regulation applies to all group and individual annuity contracts and certificates except:

- A. Immediate and deferred annuities that contain no non-guaranteed elements;
- B. (1) Annuities used to fund:
 - (a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);
 - (b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,
 - (c) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or
 - (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- (2) Notwithstanding Paragraph (1), the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

- C. Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).
- D.
 - (1) Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, provided that compliance with Section 5 shall be required after January 1, 2014, unless, or until such time as, the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.
 - (2) Notwithstanding Subsection D(1), the delivery of the Buyer's Guide is required in sales of variable annuities, and when appropriate, in sales of other registered products.

Drafting Note: The requirement to provide a Buyer's Guide would not be appropriate for contingent deferred annuities unless, or until such time as, the NAIC adopts a Buyer's Guide that specifically addresses contingent deferred annuities.

- (3) Nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this regulation or to require additional disclosure.
- E. Structured settlement annuities;
- F. [Charitable gift annuities; and]
- G. [Funding agreements].

Drafting Note: States that regulate charitable gift annuities should exempt them from the requirements of this regulation. States that recognize or regulate funding agreements as annuities should exempt them from the requirements of this regulation.

Section 4. Definitions

For the purposes of this regulation:

- A. "Buyer's Guide" means the National Association of Insurance Commissioner's approved Annuity Buyer's Guide.
- B. ["Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes, but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.]
- C. "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.
- D. "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.
- E. ["Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.]

- F. “Generic name” means a short title descriptive of the annuity contract being applied for or illustrated such as “single premium deferred annuity.”
- G. “Guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed or have determinable elements at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.
- H. “Illustration” means a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.
- I. “Market Value Adjustment” or “MVA” feature is a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company’s current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.
- J. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- K. “Registered product” means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

Drafting Note: Registered products include, but are not limited to, contingent deferred annuities.

- L. “Structured settlement annuity” means a “qualified funding asset” as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

Section 5. Standards for the Disclosure Document and Buyer’s Guide

- A. (1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection B and the Buyer’s Guide, if any.
- (2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer’s Guide no later than five (5) business days after the completed application is received by the insurer.
 - (a) With respect to an application received as a result of a direct solicitation through the mail:
 - (i) Providing a Buyer’s Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer’s Guide be provided no later than five (5) business days after receipt of the application.
 - (ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

- (b) With respect to an application received via the Internet:
 - (i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business day of receipt of the application.
 - (ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.
 - (c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.
 - (d) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.
- B. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:
- (1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;
 - (2) The insurer's legal name, physical address, website address and telephone number;
 - (3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:
 - (a) The guaranteed and non-guaranteed elements of the contract, and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;
 - (b) An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
 - (c) Periodic income options both on a guaranteed and non-guaranteed basis;
 - (d) Any value reductions caused by withdrawals from or surrender of the contract;
 - (e) How values in the contract can be accessed;
 - (f) The death benefit, if available and how it will be calculated;
 - (g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and
 - (h) Impact of any rider, including, but not limited to, a guaranteed living benefit or long-term care rider;

- (4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and
 - (5) Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.
- C. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

Section 6. Standards for Annuity Illustrations

- A. An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this section and:
- (1) Clearly labeled as an illustration;
 - (2) Includes a statement referring consumers to the disclosure document and Buyer’s Guide provided to them at time of purchase for additional information about their annuity; and
 - (3) Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.
- B. An illustration furnished an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.
- C. The illustration shall not be provided unless accompanied by the disclosure document referenced in Section 5.
- D. When using an illustration, the illustration shall not:
- (1) Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
 - (2) State or imply that the payment or amount of non-guaranteed elements is guaranteed; or
 - (3) Be incomplete.
- E. Costs and fees of any type shall be individually noted and explained.
- F. An illustration shall conform to the following requirements:
- (1) The illustration shall be labeled with the date on which it was prepared;
 - (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled “page 4 of 7 pages”);
 - (3) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;
 - (4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;
 - (5) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;

- (6) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;
- (7) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;
- (8) Except as provided in Paragraph (22), the non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;
- (9) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent ten (10) calendar years; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the “low scenario”); one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth (the “high scenario”). The following requirements apply:
 - (a) The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;
 - (b) If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed account(s) shall be assumed to be zero;
 - (c) If any index utilized in determination of an account value has been in existence for at least ten (10) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;
 - (d) The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element(s);
 - (e) If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:
 - (i) The allocation used in the illustration shall be the same for all three scenarios; and
 - (ii) The ten (10) calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.
 - (f) The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period shall be shown for each scenario;

- (g) If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection H, the most recent ten (10) calendar year historical period experience of the index shall be used for each subsequent ten (10) calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;
 - (h) The low and high scenarios: (i) need not show surrender values (if different than account values); (ii) shall not extend beyond ten (10) calendar years (and therefore are not subject to the requirements of subsection H beyond subsection H(1)(a)); and (iii) may be shown on a separate page. A graphical presentation shall also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario; and
 - (i) The low and high scenarios should reflect the irregular nature of the index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;
- (10) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., “see page 1 for guaranteed elements”);
 - (11) The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;
 - (12) The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;
 - (13) Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;
 - (14) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
 - (a) The benefits and values are not guaranteed;
 - (b) The assumptions on which they are based are subject to change by the insurer; and
 - (c) Actual results may be higher or lower;
 - (15) Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;
 - (16) The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;
 - (17) Illustrations shall be concise and easy to read;
 - (18) Key terms shall be defined and then used consistently throughout the illustration;
 - (19) Illustrations shall not depict values beyond the maximum annuitization age or date;

- (20) Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and
- (21) Illustrations shall show both annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable.
- (22) For participating immediate and deferred income annuities:
 - (a) Illustrations may not assume any future improvement in the applicable dividend scale (or scales, if more than one dividend scale applies, such as for a flexible premium annuity);
 - (b) Illustrations must reflect the equitable apportionment of dividends, whether performance meets, exceeds or falls short of expectations;
 - (c) If the dividend scale is based on a portfolio rate method, the portfolio rate underlying the illustrated dividend scale shall not be assumed to increase;
 - (d) If the dividend scale is based on an investment cohort method, the illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, subject to the following conditions:
 - (i) Any assumptions as to future investment performance in the dividend formula must be consistent with assumptions that are reflected in the marketplace within the normal range of analyst forecasts and investor behavior; these assumptions may not be changed arbitrarily, notwithstanding changes in markets or economic conditions, and must be consistent with assumptions that the issuer uses with respect to other lines of business; and
 - (ii) The illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, based on U.S Treasury bonds. For the purposes of this grading, the assumed long-term rates should not exceed the rates calculated using the formula in subparagraph iii, below, based on the time to maturity or reinvestment (the “Tenor”) of the investments supporting the cohort of policies.
 - (iii) Maximum long-term interest rates should be calculated for tenors of 3 months (or less), 5 years, 10 years and 20 years (or more), using U.S. Treasury rates. For each tenor, the maximum long-term interest rate will vary over time, based on historical interest rates as they emerge. The formula for the maximum long-term interest rate is the average of the median bond rate over the last 600 months and the average bond rate over the last 120 months, rounded to the nearest quarter of one percent (0.25%).
 - (iv) The maximum long-term interest rate for a tenor should be recalculated once per year, in January, using historical rates as of December 31 of the calendar year two years prior to the calendar year of the calculation date. The historical rate for each month is the rate reported for the last business day of the month.
 - (v) Grading to the maximum long-term interest rates should take place over:
 - (I) No less than 20 years from issue if U.S. Treasury rates as of the illustration date are below the long-term rates; or
 - (II) No more than 20 years from the issue if the U.S. Treasury rates as of the illustration date are above the long-term rates.
 - (vi) When the 10-year U.S. Treasury rate is less than the 10-year maximum long-term interest rate, an additional illustrated dividend scale should be presented. This additional illustrated dividend scale shall satisfy the following conditions:

- (I) Assume that reinvestment U.S. Treasury rates do not exceed the initial investment U.S. Treasury rates, and
- (II) Illustrate dividends no less than half of the dividends illustrated under the current dividend scales.
- (III) If (a) and (b) above are in conflict—i.e., if half of the current dividends are greater than would be permitted by Condition (a)—then the reinvestment U.S. Treasury rates should equal the initial investment U.S. Treasury rates.

(vii) The illustration should include a disclosure that is substantially similar to the following:

The illustrated current dividend scale is based on interest rates that are assumed to gradually [increase/decrease] from current interest rates to long-term interest rates, over a period of [twenty] years. By regulation, the long-term assumed interest rates cannot and do not exceed the rates listed in column (c) of the table below.

(viii) If the illustration contains an additional dividend scale pursuant to subparagraph (vi) above, then the illustration should also include a disclosure that is substantially similar to the following:

The additional illustrated dividend scale is based on interest rates that are assumed no to increase and do not exceed the interest rates in column (b) of the table below.

Tenor	Current Interest Rate	Long Term
	Treasury Rate as of 12/31/2016	Mean Reversed Treasury Rate
3 Month (or less)	0.51%	3.00%
5 Year	1.93%	4.50%
10 Year	2.45%	5.00%
20 Years (or more)	3.06%	5.50%

- G. An annuity illustration shall include a narrative summary that includes the following unless provided at the same time in a disclosure document:
- (1) A brief description of any contract features, riders or options, guaranteed and/or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;
 - (2) A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;
 - (3) Identification and a brief definition of column headings and key terms used in the illustration;
 - (4) A statement containing in substance the following:

- (a) For other than fixed indexed annuities:

This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they **will** change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;

- (b) For fixed indexed annuities:

This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index **will not** repeat historical performance, the non-guaranteed elements **will** change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information; and

- (5) Additional explanations as follows:

- (a) Minimum guarantees shall be clearly explained;
- (b) The effect on contract values of contract surrender prior to maturity shall be explained;
- (c) Any conditions on the payment of bonuses shall be explained;
- (d) For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;
- (e) For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and
- (f) A brief description of the types of annuity income options available shall be explained, including:
- (i) The earliest or only maturity date for annuitization (as the term is defined in the contract);
- (ii) For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy (70) or ten (10) years after issue, but in no case later than the maximum annuitization age or date in the contract;
- (iii) For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and
- (iv) The periodic income amount based on the currently available periodic income rates for the annuity income option in item (ii) or item (iii), if desired.

- H. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:
- (1)
 - (a) First ten (10) contract years; or
 - (b) Surrender charge period if longer than ten (10) years, including any renewal surrender charge period(s);
 - (2) Every tenth contract year up to the later of thirty (30) years or age seventy (70); and
 - (3)
 - (a) Required annuitization age; or
 - (b) Required annuitization date.
- I. If the annuity contains a market value adjustment, hereafter MVA, the following provisions apply to the illustration:
- (1) The MVA shall be referred to as such throughout the illustration;
 - (2) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;
 - (3) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;
 - (4) A statement, containing in substance the following, shall be included:

When you make a withdrawal the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.
 - (5) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;
 - (6) The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;
 - (7) Actual MVA floors and ceilings as listed in the contract shall be illustrated; and
 - (8) If the MVA has significant characteristics not addressed by Paragraphs (1) – (6), the effect of such characteristics shall be shown in the illustration.

Drafting Note: Appendix A provides an example of an illustration of an annuity containing an MVA that addresses Paragraphs (1) – (6) above.

- J. A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:
- (1) An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:
 - (a) The Index(es) which will be used to determine the index-based interest;
 - (b) The Indexing Method – such as point-to-point, daily averaging, monthly averaging;
 - (c) The Index Term – the period over which indexed-based interest is calculated;
 - (d) The Participation Rate, if applicable;

- (e) The Cap, if applicable; and
- (f) The Spread, if applicable;
- (2) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;
- (3) The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and
- (4) If the product allows the contract holder to make allocations to declared-rate segment, then the narrative shall include a brief description of:
 - (a) Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and
 - (b) Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.
- K. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:
 - (1) The assumed growth rate of the index in accordance with Subsection F(9);
 - (2) The assumed values for the participation rate, cap and spread, if applicable; and
 - (3) The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with Subsection F(9).
- L. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including, but not limited to changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.

Section 7. Report to Contract Owners

For annuities in the payout period that include non-guaranteed elements, and for deferred annuities in the accumulation period, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- A. The beginning and end date of the current report period;
- B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
- D. The amount of outstanding loans, if any, as of the end of the current report period.

Section 8. Penalties

In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of Section [cite state's unfair trade practices act].

Section 9. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

Section 10. [Optional] Recordkeeping

- A. Insurers or insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information provided in the disclosure statement (including illustrations) for [insert number] years after the contract is delivered by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

Section 11. Effective Date

This regulation shall become effective [insert effective date] and shall apply to contracts sold on or after the effective date.

Annuity Illustration Example

[The following illustration is an example only
And does not reflect specific characteristics of any actual product for sale by any company]

ABC Life Insurance Company
Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)
An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy
(Contact us at Policyownerservice@ABCLife.com or 555-555-5555)

Sex: Male	Initial Premium Payment: \$100,000.00
Age at Issue: 54	Planned Annual Premium Payments: None
Annuitant: John Doe	Tax Status: Nonqualified
Oldest Age at Which Annuity Payments Can Begin: 95	Withdrawals: None Illustrated

Initial Interest Guarantee Period	5 Years
Initial Guaranteed Interest Crediting Rates	
First Year (reflects first year only interest bonus credit of 0.75%):	4.15%
Remainder of Initial Interest Guarantee Period:	3.40%
Market Value Adjustment Period:	5 Years
Minimum Guaranteed Interest Rate after Initial Interest Guarantee Period *:	3%

* After the Initial Interest Guarantee Period, a new interest rate will be declared annually. This rate cannot be lower than the Minimum Guaranteed Interest Rate.

Annuity Income Options and Illustrated Monthly Income Values

This annuity is designed to pay an income that is guaranteed to last as long as the Annuitant lives. When annuity income payments are to begin, the income payment amounts will be determined by applying an annuity income rate to the annuity Account Value.

Annuity income options include the following:

- Periodic payments for Annuitant’s life
- Periodic payments for Annuitant’s life with payments guaranteed for a certain number of years
- Periodic payments for Annuitant’s life with payments continuing for the life of a survivor annuitant

Illustrated Annuity Income Option: Monthly payments for annuitant’s life with payments guaranteed for 10-year period.
Assumed Age When Payments Start: 70

	Account Value	Monthly Annuity Income Rate/\$1,000 of Account Value *	Monthly Annuity Income
Based on Rates Guaranteed in the Contract	\$164,798	\$5.00	\$823.99
Based on Rates Currently Offered by the Company	\$171,976	\$6.50	\$1,117.84

* If, at the time of annuitization, the annuity income rates currently offered by the company are higher than the annuity income rates guaranteed in the contract, the current rates will apply.

ABC Life Insurance Company
Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)
 An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy
[Contact us at Policyownerservice@ABCLife.com](mailto:Policyownerservice@ABCLife.com) or 555-555-5555

Contract Year/Age	Premium Payment	Values Based on Guaranteed Rates				Values Based on Assumption that Initial Guaranteed Rates Continue		
		Interest Crediting Rate	Account Value	Cash Surrender Value Before MVA	Minimum Cash Surrender Value After MVA	Interest Crediting Rate	Account Value	Cash Surrender Value Before and After MVA
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1 / 55	\$ 100,000	4.15%	\$ 104,150	\$ 95,818	\$ 92,000	4.15%	\$ 104,150	\$ 95,818
2 / 56	0	3.40%	107,691	100,153	93,000	3.40%	107,691	100,153
3 / 57	0	3.40%	111,353	104,671	95,614	3.40%	111,353	104,671
4 / 58	0	3.40%	115,139	109,382	98,482	3.40%	115,139	109,382
5 / 59	0	3.40%	119,053	114,291	114,291	3.40%	119,053	114,291
6 / 60	0	3.00%	122,625	118,946	118,946	3.40%	123,101	119,408
7 / 61	0	3.00%	126,304	123,778	123,778	3.40%	127,287	124,741
8 / 62	0	3.00%	130,093	130,093	130,093	3.40%	131,614	131,614
9 / 63	0	3.00%	133,996	133,996	133,996	3.40%	136,089	136,089
10 / 64	0	3.00%	138,015	138,015	138,015	3.40%	140,716	140,716
11 / 65	0	3.00%	142,156	142,156	142,156	3.40%	145,501	145,501
16 / 70	0	3.00%	164,798	164,798	164,798	3.40%	171,976	171,976
21 / 75	0	3.00%	191,046	191,046	191,046	3.40%	203,268	203,268
26 / 80	0	3.00%	221,474	221,474	221,474	3.40%	240,255	240,255
31 / 85	0	3.00%	256,749	256,749	256,749	3.40%	283,972	283,972
36 / 90	0	3.00%	297,643	297,643	297,643	3.40%	335,643	335,643
41 / 95	0	3.00%	345,050	345,050	345,050	3.40%	396,717	396,717

For column descriptions, turn to page 245-14

Column Descriptions

- (1) **Ages** shown are measured from the Annuitant's age at issue
- (2) **Premium Payments** are assumed to be made at the beginning of the Contract Year shown

Values Based on Guaranteed Rates

- (3) **Interest Crediting Rates** shown are annual rates; however, interest is credited daily. During the Initial Interest Guarantee Period, values developed from the Initial Premium Payment are illustrated using the Initial Guaranteed Interest Rate(s) declared by the insurance company, which include an additional first year only interest bonus credit of 0.75%. The interest rates will be guaranteed for the Initial Interest Guarantee Period, subject to an MVA. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually, but can never be less than the Minimum Guaranteed Interest Rate shown.
- (4) **Account Value** is the amount you have at the end of each year if you leave your money in the contract until you start receiving annuity payments. It is also the amount available upon the Annuitant's death if it occurs before annuity payments begin. The death benefit is not affected by surrender charges or the MVA.
- (5) **Cash Surrender Value Before MVA** is the amount available at the end of each year if you surrender the contract (after deduction of any Surrender Charge) but before the application of any MVA. Surrender charges are applied to the Account Value according to the schedule below until the surrender charge period ends, which may be after the Initial Interest Guarantee Period has ended.

Years Measured from Premium Payment:	1	2	3	4	5	6	7	8+
Surrender Charges:	8%	7%	6%	5%	4%	3%	2%	0%

- (6) **Minimum Cash Surrender Value After MVA** is the minimum amount available at the end of each year if you surrender your contract before the end of five years, no matter what the MVA is. The minimum is set by law. The amount you receive may be higher or lower than the cash surrender value due to the application of the MVA, but never lower than this minimum. Otherwise the MVA works as follows: If the interest rate available on new contracts offered by the company is LOWER than your Initial Guaranteed Interest Rate, the MVA will INCREASE the amount you receive. If the interest rate available on new contracts offered by the company is HIGHER than your initial guaranteed interest rate, the MVA will DECREASE the amount you receive. Page 4 of this illustration provides additional information concerning the MVA.

Values Based on Assumption that Initial Guaranteed Rates Continue

- (7) **Interest Crediting Rates** are the same as in Column (3) for the Initial Interest Guarantee Period. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually. For the purposes of calculating the values in this column, it is assumed that the Initial Guaranteed Interest Rate (without the bonus) will continue as the new renewal interest rate in all years. The actual renewal interest rates are not subject to an MVA and will very likely NOT be the same as the illustrated renewal interest rates.
- (8) **Account Value** is calculated the same way as column (4).
- (9) **Cash Surrender Value Before and After MVA** is the Cash Surrender Value at the end of each year assuming that Initial Guaranteed Interest Rates continue, and that the continuing rates are the rates offered by the company on new contracts. In this case the MVA would be zero, and Cash Surrender Values before and after the MVA would be the same.

Important Note: This illustration assumes you will take **no** withdrawals from your annuity before you begin to receive periodic income payments. **Withdrawals will reduce both the annuity Account Value and the Cash Surrender Value.** You may make partial withdrawals of up to 10% of your account value each contract year without paying surrender charges. Excess withdrawals (above 10%) and full withdrawals will be subject to surrender charges.

This illustration assumes the annuity's current interest crediting rates will not change. It is likely that they will change and actual values may be higher or lower than those in the illustration.

The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. For more information, read the annuity disclosure and annuity buyer's guide.

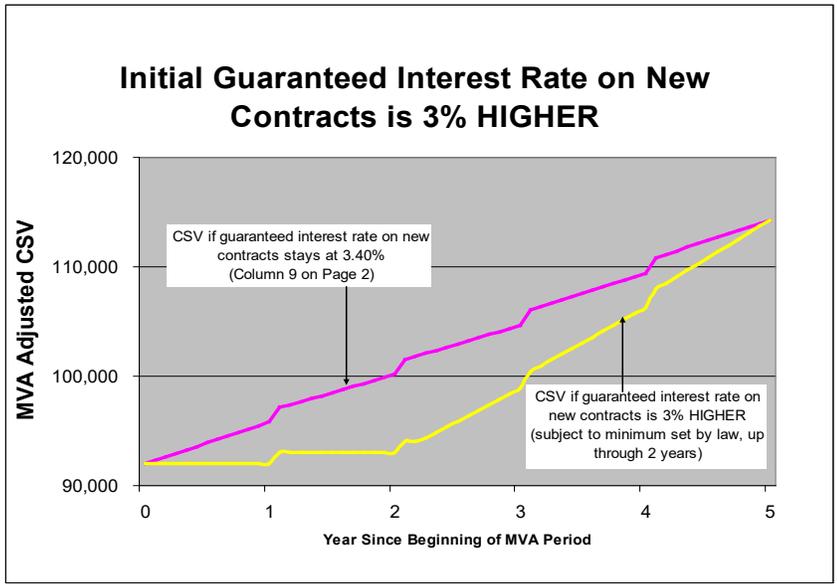
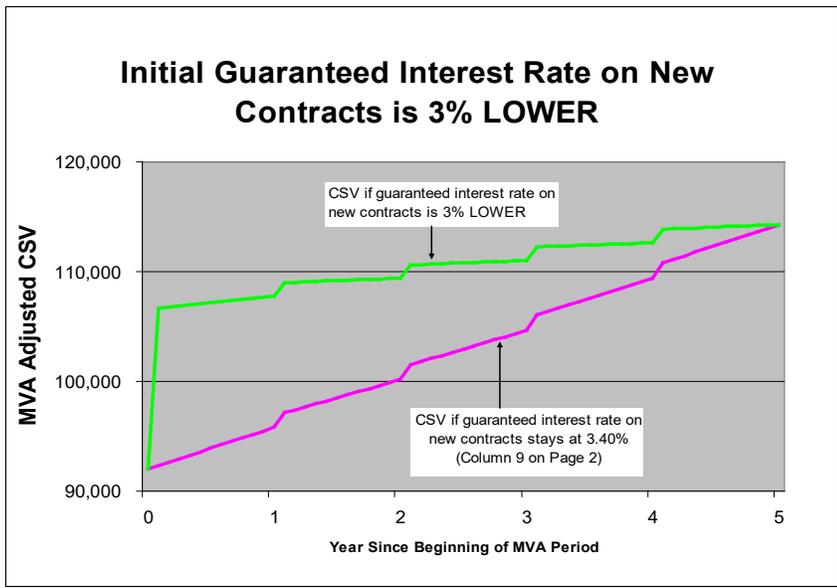
MVA-adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

The graphs below shows MVA-adjusted Cash Surrender Values (CSVs) during the first five years of the contract, as illustrated on page 2 (\$100,000 single premium, a 5-year MVA Period) under two sample scenarios, as described below.

Graph #1 shows if the interest rate on new contracts is 3% LOWER than your Initial Guaranteed Interest Rate, the MVA will increase the amount you receive (green line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

Graph #2 shows if the interest rate on new contracts is 3% HIGHER than your Initial Guaranteed Interest Rate, the MVA will decrease the amount you receive, but not below the minimum set by law (Column (6) on Page 2), which in this scenario limits the decrease for the first 2 years (yellow line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

These graphs and the sample guaranteed interest rates on new contracts used are for demonstration purposes only and are not intended to be a projection of how guaranteed interest rates on new contracts are likely to behave.



Annuity Disclosure Model Regulation

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1998 Proc. 4th Quarter 15, 17, 608, 628, 629-632 (adopted).
2011 Ex/Plenary Conference Call Oct 11, 2011 (amendments adopted)
2013 Proc. 3rd Quarter, Vol. I 121, 135, 138, 157, 225-319, 331, 500-512 (Guideline Amendments adopted).
2015 Proc. 1st Quarter, Vol. I 117-118, 131-134, 317-325, 431 (amended).
2021 Summer National Meeting (amended).

This model replaced an earlier version:

1978 Proc. II 31, 34, 295, 380, 382, 388-391 (adopted).
1980 Proc. I 34, 38, 406, 516, 518 (amended).
1982 Proc. II 505-512 (copy of most amendments adopted 1983 Proc. I).
1983 Proc. I 6, 35, 447, 569, 572-579 (amended; incorrectly reprinted).
1983 Proc. II 16, 22, 554, 613 (Buyer's Guide modified).
1988 Proc. I 9, 19-20, 601, 603-609 (adopted technical amendments; reprinted).
1988 Proc. II 5, 12, 478, 490-497 (amended and reprinted).
1998 Proc. 3rd Quarter 15, 518, 542, 545-553 (Buyer's Guide amended and reprinted).

LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

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Appendix C.	Important Notice Regarding Replacements for Direct Response Insurers

Section 1. Purpose and Scope

- A. The purpose of this regulation is:
- (1) To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
 - (2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:
 - (a) Assure that purchasers receive information with which a decision can be made in his or her own best interest;
 - (b) Reduce the opportunity for misrepresentation and incomplete disclosure; and
 - (c) Establish penalties for failure to comply with requirements of this regulation.
- B. Unless otherwise specifically included, this regulation shall not apply to transactions involving:
- (1) Credit life insurance;
 - (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section 7;
 - (3) Group life insurance and annuities used to fund prearranged funeral contracts;
 - (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
 - (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

- (6) (a) Policies or contracts used to fund (i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA); (ii) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer; (iii) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - (b) Notwithstanding Subparagraph (a), this regulation shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;
 - (7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
 - (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five (5) years or less and cannot be renewed;
 - (9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this regulation; or
 - (10) Structured settlements.
- C. Registered contracts shall be exempt from the requirements of Sections 5A(2) and 6B with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

Section 2. Definitions

- A. "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.
- B. "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."
- C. "Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.
- D. "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four (4) months before or thirteen (13) months after the effective date of the new policy, it will be deemed *prima facie* evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This *prima facie* standard is not intended to increase or decrease the monitoring obligations contained in Section 4A(5) of this regulation.

- E. “Illustration” means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in [insert reference to state law equivalent to the NAIC Life Insurance Illustrations Model Regulation].
- F. “Policy summary,” for the purposes of this regulation;
- (1) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.
 - (2) For universal life policies, means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.
- G. “Producer,” for the purpose of this regulation, shall be defined to include agents, brokers and producers.
- H. “Replacing insurer” means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.
- I. “Registered contract” means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

Drafting Note: Registered contracts include, but are not limited to, contingent deferred annuities.

- J. “Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 - (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
 - (4) Reissued with any reduction in cash value; or
 - (5) Used in a financed purchase.
- K. “Sales material” means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

Section 3. Duties of Producers

- A. A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is “no,” the producer’s duties with respect to replacement are complete.

- B. If the applicant answered “yes” to the question regarding existing coverage referred to in Subsection A, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.
- C. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
- D. In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.
- E. Except as provided in Section 5C, in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

Section 4. Duties of Insurers that Use Producers

Each insurer shall:

- A. Maintain a system of supervision and control to insure compliance with the requirements of this regulation that shall include at least the following:
 - (1) Inform its producers of the requirements of this regulation and incorporate the requirements of this regulation into all relevant producer training manuals prepared by the insurer;
 - (2) Provide to each producer a written statement of the company’s position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
 - (3) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Paragraph (2) above;
 - (4) Procedures to confirm that the requirements of this regulation have been met; and
 - (5) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this regulation may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;
- B. Have the capacity to monitor each producer’s life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Insurance Department. The capacity to monitor shall include the ability to produce records for each producer’s:
 - (1) Life replacements, including financed purchases, as a percentage of the producer’s total annual sales for life insurance;
 - (2) Number of lapses of policies by the producer as a percentage of the producer’s total annual sales for life insurance;

- (3) Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
 - (4) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection A(5) of this section; and
 - (5) Replacements, indexed by replacing producer and existing insurer;
- C. Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
 - D. Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A;
 - E. When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Section 3E, the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five (5) years after the termination or expiration of the proposed policy or contract;
 - F. Ascertain that the sales material and illustrations required by Section 3E of this regulation meet the requirements of this regulation and are complete and accurate for the proposed policy or contract;
 - G. If an application does not meet the requirements of this regulation, notify the producer and applicant and fulfill the outstanding requirements; and
 - H. Maintains records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Section 5. Duties of Replacing Insurers that Use Producers

- A. Where a replacement is involved in the transaction, the replacing insurer shall:
 - (1) Verify that the required forms are received and are in compliance with this regulation;
 - (2) Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;
 - (3) Be able to produce copies of the notification regarding replacement required in Section 3B, indexed by producer, for at least five (5) years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
 - (4) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract; such notice may be included in Appendix A or C.
- B. In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

- C. If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Section 3E, the insurer may:
- (1) Require with each application a statement signed by the producer that:
 - (a) Represents that the producer used only company-approved sales material; and
 - (b) States that copies of all sales material were left with the applicant in accordance with Section 3D; and
 - (2) Within ten (10) days of the issuance of the policy or contract:
 - (a) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Section 3D;
 - (b) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
 - (c) Stress the importance of retaining copies of the sales material for future reference; and
 - (3) Be able to produce a copy of the letter or other verification in the policy file for at least five (5) years after the termination or expiration of the policy or contract.

Section 6. Duties of the Existing Insurer

Where a replacement is involved in the transaction, the existing insurer shall:

- A. Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five (5) years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.
- B. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.
- C. Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

Section 7. Duties of Insurers with Respect to Direct Response Solicitations

- A. In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

- B. If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:
- (1) Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and
 - (2) Comply with the requirements of Section 5A(2), if the applicant furnishes the names of the existing insurers, and the requirements of Sections 5A(3), 5A(4) and 5B.

Section 8. Violations and Penalties

- A. Any failure to comply with this regulation shall be considered a violation of [cite twisting section of state's unfair trade practices act]. Examples of violations include:
- (1) Any deceptive or misleading information set forth in sales material;
 - (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
 - (3) The intentional incorrect recording of an answer;
 - (4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
 - (5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.
- B. Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed *prima facie* evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed *prima facie* evidence of the producer's intent to violate this regulation.
- C. Where it is determined that the requirements of this regulation have not been met the replacing insurer shall provide to the policy owner an in force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.
- D. Violations of this regulation shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at [insert reference to a rate set by an applicable statute or regulation] on the amount refunded in cash.

Drafting Note: States should consider whether they have the authority to adopt the provisions of Subsection D.

Section 9. Severability

If any section or portion of a section of this regulation, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this regulation, or the applicability of its provisions to other persons, shall not be affected.

Section 10. Effective Date

This regulation shall be effective [insert date].

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1970 Proc. I 301, 345-350, 379 (adopted).

1972 Proc. I 15, 16, 555, 606-607 (amended).

1979 Proc. I 44, 47, 373, 554-555, 557-569 (revised and reprinted).

1984 Proc. II 9, 19-20, 502, 502-506 (amended, renamed and reprinted).

1998 Proc. 2nd Quarter 10-11, 13, 654, 725, 726-735 (replaced with new regulation).

2000 Proc. 1st Quarter 9, 27, 59, 138-147 (amended and reprinted).

2006 Proc. 2nd Quarter 39, 51-54, 321 (amended).

2015 Proc. 1st Quarter, Vol. I 117-118, 131-134, 328, 344-350 (amended).

APPENDIX A

**IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

This document must be signed by the applicant and the producer, if there is one,
and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered “yes” to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because _____.

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant’s Signature and Printed Name _____
Date

Producer’s Signature and Printed Name _____
Date

I do not want this notice read aloud to me. ___ (Applicants must initial only if they do not want the notice read aloud.)
Life Insurance and Annuities Replacement Model Regulation

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

- PREMIUMS:** Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?
- POLICY VALUES:** New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?
- INSURABILITY:** If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

- How are premiums for both policies being paid?
- How will the premiums on your existing policy be affected?
- Will a loan be deducted from death benefits?
- What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

- Will you pay surrender charges on your old contract?
- What are the interest rate guarantees for the new contract?
- Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

- What are the tax consequences of buying the new policy?
- Is this a tax free exchange? (See your tax advisor.)
- Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
- Will the existing insurer be willing to modify the old policy?
- How does the quality and financial stability of the new company compare with your existing company?

APPENDIX B

**NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

APPENDIX C

**IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
 YES NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? YES NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name

Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

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LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

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LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

***Model Adoption refers to the 2000 version of the model. States that have citations identified in the Model Adoption column have laws substantially similar to the NAIC’s 2000 version of the model regulation.**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	ALA. ADMIN. CODE r. 482-1-133-.01 to 482-1-133-.11 (2005/2008).	
Alaska	ALASKA ADMIN. CODE tit. 3, §§ 26.790 to 26.819 (2008) (portions of model).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-1241 to 20-1241.09 (2003/2010); ARIZ. ADMIN. CODE § 20-6-212 (1983/2007) (adopted NAIC replacement forms by reference).	
Arkansas	054.00.97 ARK. CODE R. §§ 1 to 11; Apps. A to C (2010).	ARK. CODE ANN. § 23-66-307 (1987/2009); BULLETIN 8-2004 (2004); BULLETIN 8-2009 (2009); BULLETIN 1-2010 (2010).
California		CAL. INS. CODE §§ 10509 to 10509.9 (1990/2017) (previous version of model).
Colorado	3 COLO. CODE REGS. §§ 702-4:4-1-4; Apps. A to C (1972/2019).	
Connecticut	CONN. AGENCIES REGS. §§ 38A-435-1 to 435-8 (2013).	
Delaware		DEL. CODE REGS. tit. 18, § 1204 (1984/2003) (previous version of model).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. ADMIN. CODE ANN. r. §§ 69B-151.001 to 69B-151.202 (1981/2018) (portions of model) Memorandum 2010-007 (2010).
Georgia		GA. COMP. R. & REGS. 120-2-24 (1972/2007) (portions of previous version of model).
Guam	NO CURRENT ACTIVITY	
Hawaii	HAWAII REV. STAT. §§ 431:10D-501 to 431:10D-509 (2001/2008).	
Idaho		IDAHO ADMIN. CODE r.18.01.41 (1983/1993) (previous version of model).
Illinois		ILL. ADMIN. CODE tit. 50, §§ 917.20 to 917.110 (1970/2002) (portions of previous version of model).
Indiana		760 IND. ADMIN. CODE 1-16.1-1 to 1-16.1-13.5 (2007/2013) (previous version of model).
Iowa	IOWA ADMIN. CODE r. 191-16.21 to 191-16.30 (1983/2002).	BULLETIN 2009-4 (2009).
Kansas		KAN. ADMIN. REGS. § 40-2-12 (1971/1993) (previous version of model).
Kentucky	806 KY. ADMIN. REGS. 12:080 (1983/2005).	KY. REV. STAT. ANN. § 304.12-030 (1970/2010) (portions of model); Advisory Opinion 2014-2 (2014).
Louisiana	LA. ADMIN. CODE §§ 37:XIII.8901 to 37:XIII.8925 (Regulation 70) (2000/2002).	
Maine	02-031 ME. CODE R. ch. 919, §§ 1 to 10 (2007).	
Maryland	MD. CODE REGS. 31.09.05.01 to 31.09.05.12 (1962/2018).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Massachusetts		211 MASS. CODE REGS. 34.01 to 34.09 (1987) (previous version of model).
Michigan		MICH. ADMIN. CODE r. 500.601 to 500.606 (1971/1984) (previous version of model).
Minnesota		MINN. STAT. §§ 61A.53 to 61A.60 (1996/2009) (different replacement notice; previous version of model).
Mississippi	19-2:14 MISS. CODE R. §§ 01-13 (2012).	
Missouri	MO. CODE REGS. ANN. tit. 20, § 400-5.400 (1979/2016) (includes 2015 amendment).	
Montana	MONT. ADMIN. R. 6.6.301 to 6.6.313 (1978/2017).	MONT. ADMIN. R. 33-20-105 (1959/2005).
Nebraska	210 NEB. CODE R. § 19 (1984/2008).	BULLETIN CB-56 (Amended #2) (2010).
Nevada		NEV. ADMIN. CODE §§ 686A.510 to 686A.577 (1980/2006) (previous version of model); BULLETIN 2008-007 (2008).
New Hampshire	N.H. CODE R. INS. 302.01 to 302.10; Apps. A to C (2001/2017).	
New Jersey	N.J. ADMIN. CODE §§ 11:4-2.1 to 11:4-2.9; Apps. A to C (1972/2019).	
New Mexico	N.M. CODE R. §§ 13.9.6.1 to 13.9.6.16 (1997/2016).	
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 51.1 to 51.8; Apps. 10A, 10B, 10C and 11 (Regulation 60) (1998/2015) (some similarities to NAIC model); Gen. Counsel Opinion 5-30-2006 (2006).
North Carolina	11 N.C. ADMIN. CODE 12.0601 to 12.0612 (1985/2004).	
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	

LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Ohio	OHIO ADMIN. CODE § 3901-6-05 (1983/2019).	
Oklahoma		OKLA. STAT. ANN. tit. 36, §§ 4031 to 4038 (1983/1984).
Oregon	OR. ADMIN. R. 836-80-0001 to 836-80-0043 (1968/2008).	
Pennsylvania		31 PA. CODE §§ 81.1 to 81.9; Apps. A to B (1986) (previous version of model); 40 PA. STAT. ANN. § 625-9(1921/1996).
Puerto Rico		P.R. RULE XLII (1957).
Rhode Island	230 R.I. CODE R. §§ 20-25-4.1 to 20-25-4.11 (2018) (includes 2015 amendment).	
South Carolina	S.C. CODE ANN. REGS. 69-12.1 (1986/2009).	
South Dakota		S.D. ADMIN. R. 20:06:08:49 to 20:06:08:65 (1989/2012) (portions of previous version of model).
Tennessee		TENN. COMP. R. & REGS. 0780-1-24 (1985) (previous version of model).
Texas		TEX. INS. CODE ANN. §§ 1114.001 to 1114.007 (2007/2011) (portions of model); 28 TEX. ADMIN. CODE §§ 3.9501 to 3.9506 (2007) (notice).
Utah	UTAH ADMIN. CODE r. 590-93-1 to 590-93-12 (1984/2013).	
Vermont	VT. ADMIN. CODE §§ 4-3-43:1 to 4-3-43:10 (Regulation I-2001-03); Apps. A to C (1989/2002).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	14 VA. ADMIN. CODE §§ 5-30-10 to 5-30-90 (1982/2008).	
Washington		WASH. ADMIN. CODE 284-23-400 to 284-23-485 (1980/2010) (previous version of model).
West Virginia	W. VA. CODE R. §§ 114-8-1 to 114-8-9; Apps. A to C (1970/2008).	

LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Wisconsin	Wis. ADMIN. CODE INS. § 2.07 (1972/2009).	BULLETIN 9-29-2009 (2009).
Wyoming		

LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

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**LIFE INSURANCE AND ANNUITIES REPLACEMENT
MODEL REGULATION**

Proceeding Citations

Cited to the Proceedings of the NAIC

Section 1. Purpose and Scope

When the model was initially drafted it contained only provisions regarding replacement of life insurance. Comments from several insurance departments indicated that replacement of annuities and accident and health insurance should be included in discussions for possible inclusion in the regulation. **1969 Proc. II 825.**

A. The preamble to the first draft of the regulation indicated concern over the harmful and adverse effects upon policyholders and upon the life insurance industry generally, of the increasing replacement of existing policies of life insurance. While an individual replacement may not be contrary to public interest, it becomes so when it is accomplished improperly. Although in some instances it may be to the advantage of the policyholder to lapse or surrender an existing policy of permanent life insurance and replace it with new life insurance, ordinarily it is not in the interest of the insured. **1969 Proc. II 826.**

The three main objectives the drafters of this regulation tried to accomplish were: (1) Providing the policyholder with complete and accurate information concerning all aspects of the transaction, including a comparison statement and a notice to policyholders giving advice with respect to replacement, (2) Providing that the policyholder shall receive such information in the form of written documents, and (3) Placing on the insurer and its representatives the responsibility for ascertaining that the insurer does in fact receive such information in writing and that each insurer that has a policy in place which is to be affected is advised that a replacement is contemplated and has an opportunity to comment on all information pertinent to the sale of a replacement policy. **1969 Proc. II 826.**

By 1976 members of the life insurance subcommittee had some reservations about the replacement regulation and whether it was serving its purpose. Some even suggested eliminating the regulation because it may act as a “license to steal,” or at least drastically overhauling the model. The committee suggested it was used by the professional twister and provided him with a defense in case his sales techniques were questioned. **1976 Proc. II 544.**

By the end of that year a task force had been appointed to review the regulation and, if improvement was required, to draft a replacement. The newly drafted model emphasized disclosure. The task force goal was to require the disclosure of all pertinent facts concerning the sale of new life insurance including the status of the policy subject to replacement. Timely disclosure was also made a priority. The task force favored some type of cost disclosure, but was unable to develop any formula which would be appropriate for cost comparison in replacement situations. **1977 Proc. I 611.**

An industry advisory committee was appointed and at their organizational meeting they made two decisions: (1) Replacements cannot be prohibited because of such legal principles as freedom of contract and should not be prohibited in any event since there are instances where it would benefit an insured to replace an existing policy with a new one, and (2) Replacements should be subject to regulatory disclosure standards since the transaction can be complicated and unfair trade practice can arise, and the buyer should have the benefit of all relevant and useful information about the policies involved before making a decision. **1978 Proc. I 502.**

The revised regulation adopted in 1978 differed significantly from the earlier regulation. Its provisions focused on demanding that all pertinent information be fully disclosed to the buyer in a fair and accurate manner, and provided ample time to review the information before making a final decision. This purpose differed significantly from the original regulation, the purpose of which had been to establish minimum standards of conduct to be observed. **1978 Proc. I 502.**

In 1982 a committee was again charged with the task of evaluating the replacement regulation. Concern was expressed that the existing regulation did not meet the needs of the public. In addition none of the disclosure requirements properly or adequately handled annuity policies. **1982 Proc. II 357.**

In 1997 a working group began consideration of amendments to the model regulation. The chair drew up a list of proposed amendments, which were considered over the next months. The version adopted in 1998 made few changes to Section 1. **1997 Proc. 1st Quarter 679-680.**

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Section 1 (cont.)

B. Some in attendance when the model was adopted felt this model should also apply to variable contracts and other equity investments. The version adopted in December of 1970 did not. The drafters felt it advisable to temporarily exclude reference to variable annuities to get the initial regulation out, and then amend it to add reference to variable products and other situations as they developed in the future. **1971 Proc. I 344.**

The section adopted in 1978 was drafted to parallel as much as possible the exemptions included in the Model Solicitation Regulation (which later was called the Life Insurance Disclosure Regulation). One of the charges to the drafters had been to make the information required to be disclosed on replacement consistent with the information required upon solicitation. The 1978 model excluded annuities and variable life policies. The drafters considered this a temporary exclusion which would be changed once disclosure requirements for those products were finalized. **1978 Proc. I 504.**

An insurance association representing the industry recommended inclusion of a provision exempting replacements within the same company from being subject to the replacement regulations. The philosophy was that the company would normally closely control its agents to eliminate abuses of the insured, and that in some cases replacement would actually be good because of new products designed by the company to improve the position of the insured. **1983 Proc. II 604.**

One insurance department comment did not agree with the idea to exempt intracompany replacements. He felt the policyholder should receive the information whether the proposed replacement was with another company or with the same company. **1983 Proc. II 610.**

When redrafting the model in 1997, there was extensive discussion about the appropriate focus for the regulation. One thing upon which there was immediate agreement was to eliminate the exemption for internal replacements. **1997 Proc. 1st Quarter 679-680.**

There was discussion over the appropriate wording for the group exemption. An industry trade association said the phrase “where there is no direct solicitation” is vague and it is difficult to decide what is direct solicitation. The chair suggested adding language to clarify that direct solicitation did not include any meeting held by producers solely for the purpose of educating or enrolling individuals. **1997 Proc. 4th Quarter 794.**

Extensive discussion took place on the exemption for group policies. The draft under consideration included an exemption for policies marketed through direct solicitation. An insurer representative said direct response carriers had always been exempt from the replacement regulation. She predicted that a change to this section would put direct response companies out of business. The policies offered are typically low face amount policies with a narrow profit margin and little underwriting. To the extent there are more regulatory requirements, sales will not be profitable. The working group decided to say that direct response writers would be subject to the requirements of Section 8. **1998 Proc. 1st Quarter 688.**

An interested party said preneed coverage was very much like credit life and asked that it also be exempted from the regulation. A regulator suggested adding a drafting note to alert states to the possibility of exempting preneed coverage. **1998 Proc. 1st Quarter 684.**

The interested party presented draft language for the regulators’ consideration. The chair responded that the original request had been limited to group preneed plans. That led the chair to believe that these were covered under the group exemption, so a drafting note was appropriate. He expressed concern about making the exemption cover individual plans too. The chair modified the industry suggestion to a form acceptable to the working group. **1998 Proc. 1st Quarter 684.**

The parent committee asked for comment on the draft regulation. A discussion occurred relative to the inclusion of annuities within the scope of the regulation. A member of the drafting group pointed out that annuities were included in the predecessor model. She opined that it was important to provide consumers with these protections during an annuity accumulation phase. **1998 Proc. 2nd Quarter II 735-736.**

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Section 1B (cont.)

At the instruction of the parent committee, the working group spent more time considering the model's applicability to term insurance and annuities. The chair said the prior model included annuities and had served well over the years. He noted that term insurance could not be used for a financed purchase because there was no cash value, and recommended leaving the application to term insurance as drafted. The working group members agreed with this analysis. The chair recommended deletion of reference to annuities in the definition of financed purchase, but leaving the applicability of the rest of the regulation to annuities. **1998 Proc. 2nd Quarter II 735-736.**

An exemption for corporate owned life insurance was added with the 1998 amendments. **1997 Proc. 4th Quarter 794.**

A limited exemption for variable contracts was included in the redraft, similar to the exemption that had been included in earlier versions. **1997 Proc. 2nd Quarter 652.**

A regulator questioned whether the exemption for variable products should be broader. The draft being reviewed contained a sixty-day free look, and an interested party opined that the Securities and Exchange Commission did not look kindly toward that type of provision. Canceling the policy during the free look would have to include a market value adjustment in case the market had gone down during that period. **1997 Proc. 3rd Quarter 1257.**

An interested party noted that it is not possible to meet the requirements of Section 5B for variable life insurance, and asked that it be exempted in Section 1B. The working group agreed to the suggestion. **1998 Proc. 1st Quarter 683.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that needed to be addressed. **1999 Proc. 4th Quarter 14.**

The first issue discussed by the group appointed to review the regulation was a suggestion from one state to combine the purpose and scope sections. The scope had been a Section 3 entitled "Exceptions" in the previous version of the model. The regulators agreed the exceptions flowed more easily into the first section. **2000 Proc. 1st Quarter 148.**

A drafting note in the prior version that described prepaid funeral contracts was made part of the test of the regulation so that it would become part of a state's adopted language. The term was changed from "formal prepaid funeral contracts" to "prearranged funeral contracts" because that term was more meaningful to that segment of the industry. **2000 Proc. 1st Quarter 148.**

Paragraphs (9) and (10) were added during the redraft in 2000. **2000 Proc 1st Quarter 139.**

Section 2. Definitions

A. The working group reviewed a suggestion from an industry trade association to add a definition of "direct response solicitation." A regulator expressed concern that the definition was too broad because it referred to a solicitation individually through the mails. The chair suggested adding the word "solely" to narrow it. **1997 Proc. 4th Quarter 794.**

D. The new draft being considered in 1997 broke out financed purchases to address the use of any of the policy values to finance a new policy of life insurance or an annuity. The chair of the working group opined that the average person does not include in the term "replacement" using the value of an existing policy to pay the premium on a new policy. **1997 Proc. 2nd Quarter 652.**

The chair noted that the definition of financed purchase was broken out separately from the definition of replacement included in the prior version. A regulator asked about the significance of the 13-month period and the chair responded that, for those who paid through an annual payment, the financing aspect might not occur until the second payment was due. **1997 Proc. 2nd Quarter 652.**

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Section 2D (cont.)

An insurer trade association commented that it did not believe accumulated dividends should be included in the definition of a financed purchase. The chair responded by saying that he was aware of many cases where the cost of insurance came first from accumulated dividends, but soon the policyholder was taking policy loans on cash values, perhaps without even knowing it. He said it was important to include the use of accumulated dividends in the definition of replacement. The definition needed to be broad enough to include the use of any cash accumulation. **1997 Proc. 3rd Quarter 1256-1257.**

A regulator asked why 13 month was selected as an appropriate time for the definition of financed purchase. The chair explained that, if the individual had just made an annual payment, he might not see the effect of a loan until the next payment was due. Thirteen months covers the next payment's due date plus the grace period. **1998 Proc. 1st Quarter 686.**

The parent committee asked for comment on the draft regulation. A discussion occurred relative to the inclusion of annuities within the scope of the regulation. A member of the drafting group pointed out that annuities were included in the predecessor model. She opined that it was important to provide consumers with these protections during an annuity accumulation phase. A commissioner said she was sympathetic to arguments that it would be unduly burdensome to apply the 13-month "look back" and "look forward" to annuities. An interested party said there are few financed purchases involving annuities and suggested that annuities be excluded from the definition of financed purchase. **1998 Proc. 2nd Quarter II 747.**

The parent committee requested review on the issue of whether the insurer should track the policyholder or insured during the 13-month period. The chair noted that the phrase referring to the insured could be deleted from the draft, and each state could determine if the insurer should track the insured or the policyholder. Interested parties expressed concern that they would not know whether to track the insured or policyholder until a state acted, so would have to be prepared to go either way. An informal poll of insurers showed they used a variety of tracking methods. The working group decided to insert language to track by policyowners. **1998 Proc. 2nd Quarter II 736, 747.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that needed to be addressed. **1999 Proc. 4th Quarter 14.**

A considerable amount of time during the redraft was spent on discussion of the definition of financed purchase. One regulator suggested it should apply only to internal replacements because compliance with regard to external replacements was too difficult for insurers. Another regulator expressed disagreement with the limitation, but did agree it was appropriate to limit the *prima facie* test to internal replacements. Another regulator agreed, suggesting that limiting the definition to internal replacements would eviscerate the regulation. **2000 Proc. 1st Quarter 148.**

After soliciting comments on the revised draft, the working group discussed the definition again. One regulator said the first sentence of the definition should apply to internal and external replacements. The working group agreed to revised language that did not change the intent of the subsection adopted in 1998, but addressed the concerns of those who believed the language was broader than the working group had intended. **2000 Proc. 1st Quarter 137.**

F. The working group agreed to add a definition of policy summary based on a suggestion from an industry trade association. **1998 Proc. 1st Quarter 688.**

G. The producer definition was suggested by an industry trade association. The group also suggested adding "who represents the existing or replacement insurer" at the end. The working group decided not to add that phrase because it would eliminate a producer who had left the company. **1997 Proc. 4th Quarter 794.**

J. The definition of replacement that had been originally adopted was broadened when the 1978 amendments were adopted. The decision to include more transactions was based on the recognition of the need to require full disclosure whenever values in an existing policy were significantly affected by reason of the purchase of new insurance. **1978 Proc. I 503.**

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Section 2J (cont.)

The definition also added a tougher standard for compelling agents to comply with its provisions. The earlier model used a standard of application to situations when an agent *knew* replacement was to take place; the amendments provided for the regulation's application if the agent *knew* or *should have known*. This enabled the commissioner to objectively apply a standard of practice that a licensed agent must follow. Consideration was given to changing the language to make the standard one where the agent *knew* or *had reason to believe* a replacement would result. That text was rejected as being too subjective, one which might create the problem of proof of the agent's state of mind. **1978 Proc. I 503.**

The definition of replacement was modified somewhat when the model was amended in 1997. Part of the earlier definition defined a replacement as subjecting the policy to a single or systemized borrowing. The model, as adopted in 1998, included a definition of a financed purchase, so replaced that description with a simple reference to a financed purchase. **1998 Proc. 2nd Quarter II 726.**

K. The regulators agreed that agents did not need to send in sales material prepared by the company. An industry representative expressed concern that the definition of sales material was very broad and could sweep in more than intended. The chair suggested tweaking the definition to make clear that it is material created by the agent; not to include, for example, estate planning materials created by an attorney for the client. The interested party said she also assumed that only information for the policy actually selected would have to be submitted. **1998 Proc. 1st Quarter 689.**

During the limited redraft in 2000, one regulator suggested changing the definition of sales material from describing material "related to the policy or contract purchased" to instead say "and which describes the benefits, features and costs of the specific policy or contract that is purchased." Other regulators were concerned that the change narrowed the definition. One regulator said he did not want to be in the position of arguing with a company as to whether a document includes benefits, features and costs. **2000 Proc. 1st Quarter 148.**

A regulator asked if literature describing a policy that applied also to other policies would be included. One responded in the affirmative and another in the negative. If two experienced regulators disagree on interpretation, there is a problem with drafting. The regulator who drafted the alternative suggestion said it was intended to clarify the language. One working group member said the original intent was that it be related to the policy purchased and expressed concern about narrowing the definition more by limiting it to benefits, features and costs. **2000 Proc. 1st Quarter 137.**

An industry representative expressed concern about privacy because the model as drafted would require the producer to forward a needs analysis to the insurer. The regulator responded that this would not be required because it did not relate to the policy or contract. The working group noted that the language in the model was a compromise when it was drafted. The working group decided to retain the language as adopted in 1998. **2000 Proc. 1st Quarter 137-138.**

Section 3. Duties of Producers

A. An early draft of the revisions being developed in 1997 required a replacement notice for all sales. An industry trade group recommended that the replacement notice be required only where there is existing insurance. The chair noted that the applicant should be the one to say there is no other insurance. **1997 Proc 3rd Quarter 1257.**

The model originally drafted in 1969 required the agent to complete an extensive comparison statement showing the current and proposed policies side by side. **1970 Proc. I 348-350.** A study completed for one insurance department showed the data was often incorrect or incomplete. At one point the drafters considered the suggestion of interested parties to shift the disclosure requirements to the replacing insurer. **1978 Proc. I 504-505.** The version adopted contained a requirement that the agent present the comparative information form no later than the time of taking an application. The form for preparing the information (Appendix D of the 1978 version) was even more complete and detailed than the one adopted with the original version. **1979 Proc. I 567-569.**

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Section 3A (cont.)

When the model was being considered for revision in 1983, foremost on the list of proposals was elimination of the comparison information form. One department suggested that the form was so difficult that agents would risk violating the rule to avoid completing the form. In most cases, information provided was not effectively used by the insured. **1983 Proc. II 609**. The requirement for a comparison statement was deleted from the model in 1983. **1984 Proc. I 375**.

A regulator asked why the 1997 redraft did not include a comparison form. The chair responded that the form had been deleted from the NAIC model in the mid-1980s, but noted that some states still have the form. He opined that the form did not really help consumers because it was too confusing. **1997 Proc. 2nd Quarter 653**.

B. The working group received a suggestion that the applicant should be relied upon to identify the sale as a replacement. The chair responded that this was folly; only those trained in the insurance industry would be able to judge whether a sale was a replacement. **1997 Proc. 3rd Quarter 1257**.

A suggestion was made to the working group to eliminate the requirement to read the notice to the applicant. A regulator said it would not be helpful if the agent read the notice very quickly and suggested there should be an opportunity to waive the reading. The working group agreed to include waiver language. **1997 Proc. 4th Quarter 794-795**.

When preparing revisions in 2000, the working group considered adding an appendix that was specific to annuities. The working group needed to consider two issues: whether to include the appendix; and if so, whether to mandate its use. **2000 Proc. 1st Quarter 148**.

The working group concluded that a better alternative would be to allow insurers to delete references that were not applicable to the product being sold without getting approval from the department. This solution was simpler and allowed insurers selling life products to also delete references to annuities. **2000 Proc. 1st Quarter 137**.

C. The redraft begun in 1997 started out with a requirement to list all policies owned by the applicant. An industry association argued that there was no benefit to listing all policies if they were not being used as financing for the replacement. The working group decided to accept the suggestion. **1997 Proc. 4th Quarter 795**.

One regulator pointed out that Subsection C was not clear about whose duty it was to prepare the list. Another regulator responded that the previous rewrite of the model had purposely left it vague because it did not seem to matter who prepared the list. **2000 Proc. 1st Quarter. 148-149**

D. A regulator suggested it was appropriate to assume electronic presentations would increase in the future and spoke in favor of requiring delivery of material that had been presented electronically. The chair suggested amending the definition of sales material to include electronically presented material and to amend Section 3D to require electronically presented sales material to be provided in printed form no later than at the time of policy delivery. One company representative said her company's electronic presentation moved, and asked if it was necessary to give the applicant a diskette. A regulator responded that if the information that moves was just cute graphics, it did not need to be placed in printed form. **1998 Proc. 1st Quarter 683**.

E. One of the major areas for discussion when the model was being rewritten in 1997 was this subsection. Early versions of the draft contained a requirement that any written or printed sales material used in the presentation be submitted to the insurer. A compromise proposal was suggested: agents should identify on the application the materials used to eliminate the problem of storing all the documents. The group decided to require the producer to identify any company approved material and submit copies of individualized sales material used. **1997 Proc. 4th Quarter 795**.

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Section 3 (cont.)

A regulator said she was still troubled with how a company would track all the papers. She saw this as a particularly burdensome requirement. Another regulator responded that almost every complaint received in his state on life insurance revolved around a customized sales presentation. The chair agreed that it was the most critical information to have in determining the validity of a complaint. The working group agreed to retain the provision and review the definition of sales material. **1998 Proc. 1st Quarter 689.**

The chair of the parent committee asked if the purpose of collecting sales material was to catch agents who use inappropriate sales material. The chair of the drafting group said that was part of the reason; another was to give companies and regulators the ability to respond effectively to complaints raised subsequent to the sale. Several industry representatives expressed concern about physically managing such a large volume of paper. It was stated that the definition of sales material was extremely broad. The working group chair responded that the definition had been narrowed significantly, pursuant to the insurance industry's previous comments. **1998 Proc. 2nd Quarter II 736, 747-748.**

The working group chair proposed a new Section 5C in response to concerns raised about the amount of paper an insurer would be required to store. His proposal would eliminate the responsibility of an insurer to store material if the company prohibited the use of anything other than company-approved sales material. Otherwise the company would need to comply with the provisions of Section 3E. **1998 Proc. 2nd Quarter II 736, 748.**

Section 4. Duties of Insurers that Use Producers

In 1973 the NAIC voted to include in its revisions to the Examiners Handbook examination procedures for life insurance replacement. The procedures included review of the method used by the company to inform its representatives of the regulation's requirements, controls set up by the company to implement agent compliance, and review of application files for evidence of compliance. **1973 Proc. II 299.**

A. As discussion on model revisions began in 1997, some regulators expressed the opinion that agent compensation was a key factor in addressing the problems with replacements. Many companies did not give a full commission on internal replacements, so agents might be tempted to circumvent that procedure by not reporting the sale as a replacement. **1997 Proc. 1st Quarter 678.**

A regulator commented that the burden should be on the insurer to supervise its agents. He wondered if the draft should say more about the agent's obligation to determine the suitability of the replacement. He suggested adding language to specifically place the burden on the insurer to make sure suitability was considered. He noted that in his state regulators often found that consumers did not understand the suitability of a replacement and sometimes the agent did not understand what was a suitable replacement. **1997 Proc. 2nd Quarter 652-653.**

The regulators agreed to include language that required the company to have a method for determining suitability and appropriateness of the replacement rather than the specific procedures required in an earlier draft. **1997 Proc. 3rd Quarter 1258.**

An industry trade group asked that Subsection A(5) and Subsection B be eliminated from the draft. These sections ask the company to maintain procedures to effectively detect transactions that are replacements. A regulator said it had not occurred to him that this information would be hard to gather. He said he thought it was essential to the company to have information about the policies that were replacements. An association spokesperson said companies did not want to keep or accumulate this information because it could be misused in anticipation of a class action lawsuit. The working group declined to eliminate the requirement. **1997 Proc. 4th Quarter 795.**

The working group was asked to consider the effective date issue. The parent committee chair said she was hesitant to place any new systems burdens on companies, given the Year 2000 problems. She asked for working group deliberation on a delayed effective date for "look back" and "look forward" provisions. **1998 Proc. 2nd Quarter II 737, 748.**

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Section 4A (cont.)

The chair said his state might not enforce the record-keeping requirements of the model until the year 2001, but would impose the rest of the duties imposed by the regulation as soon as it was adopted. He suggested a recommendation that, if a state was going to delay the effective date, that should only be with respect to the record-keeping requirements of Sections 5A and B. **1998 Proc. 2nd Quarter II 737.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that need to be addressed. **1999 Proc. 4th Quarter 14.**

A regulator said she had added language to Paragraph (5) because the industry wanted guidance on what kind of action would be considered compliance. The working group agreed to the change. **2000 Proc. 1st Quarter 149.**

B. The chair suggested adding a drafting note where the first record-keeping requirements appear. The drafting note would explain the media that are appropriate to meet the record-keeping requirement. He noted that the language had been borrowed from the Market Conduct Record Retention Model Act. **1998 Proc. 1st Quarter 684.**

An early draft of the 1997 rewrite of the model contained a requirement to file information about replacement activity with the insurance department. The chair opined that such a requirement would create a stack of paperwork that he was not prepared to handle. He suggested it would be appropriate for the draft regulation to require companies to maintain a system to monitor agents' compliance with the regulation. Another regulator responded that she was comfortable with that approach, and thought market conduct examiners would look at what kind of system was in place and whether it was effective. **1997 Proc. 3rd Quarter 1258.**

An industry trade association submitted an alternative proposal for Subsection B. It addressed the industry's concern that compiling records of this type of information could easily be misused in litigation matters. **1998 Proc. 1st Quarter 691.**

C. It was suggested that Subsection C be revised to delete the requirement for a complete list of policies and to replace it with a signed statement as to whether the applicant had existing policies. **1997 Proc. 4th Quarter 795.**

E. When drafting the 2000 changes, one regulator suggested changing the provision that required records to be kept in the home office of the insurer. Instead it would obligate the insurer to produce the records. One regulator expressed concern that the insurer might rely on the producer to keep the records. Another drafter responded that a decision on the part of the insurer to allow its agents to retain the records would be misguided because the insurer was still required to produce the records. The person suggesting the change said the purpose was not to allow the agents to keep the records, but to allow the company to store the records electronically or in a storage facility. **2000 Proc. 1st Quarter 149.**

A regulator suggested combining Subsections E and F from the 1998 model because there was some overlap. In response to a question about the five-year retention for the records, the chair noted that is typically the period of time between market conduct examinations. **2000 Proc. 1st Quarter 149.**

G. The early drafts of this section required the producer to fulfill any outstanding requirements. Since it did not matter whether the insurer or the producer fulfilled the requirements, the working group agreed to make a change. **1997 Proc. 4th Quarter 795.**

The drafting group considered a requirement for companies to pay normal commissions on appropriate replacements. The chair opined that the company practice of reducing commissions on replacement sales was a huge disincentive for reporting replacements. An insurer representative asked if the chair was differentiating between internal and external replacements. He said it made sense to have a reduced commission for internal replacements because no new dollars were coming in to the company and costs on the original policy might not yet have been recovered. If the replacement came from outside, it was new business to the company and a full commission would be paid. The chair responded that regulators believed that

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Section 4G (cont.)

generation of large first-year commissions was a motivation for many replacements. The working group could end up recommending levelized commissions. The industry representative countered that requiring first-year commissions would encourage replacement. **1997 Proc. 3rd Quarter 1258.**

An interested party asked regulators to be very careful before mandating compensation structure. He said the last time the compensation structure had been discussed was in 1981, and at that time the regulators had agreed that the compensation structure was the company's business. A regulator responded that his recollection was that a compensation structure requirement was not double, but he favored level commissions then and still does. **1997 Proc. 3rd Quarter 1258.**

H. In the 1998 redraft, the language in this subsection was a drafting note. The 2000 group redrafting the model agreed it was a good idea to include the language in the text of the regulation. **2000 Proc. 1st Quarter 149.**

Section 5. Duties of Replacing Insurers that Use Producers

A. In the 1978 model each company was required to give the other a copy of the policy summary or comparative information form it furnished to the buyer. This allowed all parties involved with the transaction to have the same knowledge of the basic information disclosed. It also helped pave the way for the industry to better self-regulate replacement sales. **1979 Proc. I 573.**

An early draft of the Subsection A redraft in 1997 contained a requirement that the insurer provide a copy of all sales material to the existing insurer. A trade association suggested changing this to require the company to offer a policy illustration or policy summary. **1997 Proc. 4th Quarter 795.**

An interested party asked the working group to consider a longer time period for the existing insurer to furnish a copy of an available illustration. The chair responded that with a 30-day free look period, he did not want to consider lengthening that period of time. **1998 Proc. 1st Quarter 684.**

A significant regulatory tool added to the model in 1978 was the requirement that the replacing insurer must maintain a replacement register, cross indexed by replacing agent and replaced insurer. The maintenance of this register would give companies and regulators the means to review the activities of agents who replace a significant amount of business. Specifically, it should assist in detecting and preventing "churning" of existing insurance by agents who change companies. **1979 Proc. I 573.**

The first draft of the regulation produced in 1997 contained a 60-day free look period. A regulator asked whether it was fair to expect the replaced policy to be reinstated. The chair responded that this was no problem in the case of an internal replacement, but would pose a problem if a different company was involved. This burden would be particularly difficult if the policyholder died during the 60-day period. **1997 Proc. 2nd Quarter 653.**

An actuary noted that the 60-day free look period would have reserve implications so there would be complex questions to answer with regard to the Standard Valuation Law and the Standard Nonforfeiture Law. **1997 Proc. 2nd Quarter 653.**

The 60-day free look in the draft resulted in many comments, both pro and con. One interested party opined that this gave the consumer valuable extra time, and might increase conservation efforts by the company being replaced. Another interested party expressed concern about the applicability to registered products. She opined that a consumer does not really have a "free" look if the consumer bears the risk that the market will go down during the 60-day free look. The chair suggested changing to a 30-day free look so that as much of the rule as possible could apply to variable products. **1997 Proc. 3rd Quarter 1257.**

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Section 5 (cont.)

At one point the draft contained a provision requiring the company to hold the commission until the end of the free-look period. An interested party said this presented an administrative nightmare and would require major systems revisions because the commission check was prepared when the policy was issued. Another interested party said only a small percentage of policies were returned and it would be easier to do the paperwork on that than to hold the commission for the other 95% or more of the policies. **1997 Proc. 3rd Quarter 1259.**

In the next draft the free-look period was reduced from 60 to 30 days. That was done because of a potential conflict with Securities and Exchange Commission (SEC) requirements. Some regulators suggested alternatives to address the SEC issue and spoke in favor of returning to the 60-day free look. **1997 Proc. 3rd Quarter 1241.**

At the next working group meeting, the issue of a 30- versus 60-day free look was discussed again. An agent's association representative said the longer period would allow an individual to ask for assistance from an expert. Several state regulators spoke in favor of the longer period, which was included in a new state regulation just adopted. An interested party pointed out that the state regulation provided for 60 days after policy *issuance*, whereas the draft measured from policy *delivery*. The chair opined that 60 days from the date of issuance was worthless because the agent might not deliver the policy during that 60-day period. **1997 Proc. 4th Quarter 805.**

As a compromise a regulator suggested leaving the free-look period blank and including a drafting note recommending 30 to 60 days. An actuary said there are actuarial implications to a longer free look. A regulator said he has never received a complaint that an individual did not have a long enough free look. The working group decided to fix the free-look period at 30 days. **1997 Proc. 4th Quarter 796.**

B. The chair asked if the replacing insurer should be required to waive its suicide and incontestability periods with respect to the amount of the policy being replaced. He said many companies already followed that policy for internal replacements and suggested it should be the rule for external replacements also. A trade association commented this was not appropriate for external replacements because it forced the company to rely on another company's underwriting. The chair agreed this put a company at risk, but this meant the company would look at the replacement more closely. **1997 Proc. 3rd Quarter 1259.**

The regulators were not persuaded by the industry argument that the replacing insurer would be required to accept the underwriting standards of the company being replaced. One regulator suggested that this would spur companies to do better underwriting. **1997 Proc. 3rd Quarter 1241.**

Representatives from the insurance industry again asked the regulators to delete Subsection B regarding the suicide and incontestability clauses. One industry representative said a savvy consumer could make a material misrepresentation and get away with it. A regulator responded that he did not know why anyone would do so; he wouldn't get anything more that he already had in the previous policy. The regulators agreed to postpone a decision and listen to arguments as to how consumers could gain from gaming the system. **1997 Proc. 4th Quarter 796.**

The chair called on an actuary to explain the industry's reluctance to include a waiver of the suicide and incontestability clauses. The actuary gave several examples where a company might be harmed. He said the company presumes in its rate structures that it will have protection during the first two years, and this provision would require the company to raise its rates for all. The chair questioned the presumption that this waiver would allow people to game the system. **1998 Proc. 1st Quarter 681.**

A regulator questioned why someone who already had coverage would hide his condition to get different coverage. He opined that a provision such as being contemplated by the working group would have protected thousands of people who replaced their policies during the 1980s and early 1990s and later had the company underwrite the policy and rescind it. **1998 Proc. 1st Quarter 682.**

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Section 5B (cont.)

An industry representative said this was a public policy question and he did not think regulators should encourage or facilitate misrepresentation. A regulator responded that the charge to the working group was precipitated by a level of unnecessary replacements. This provision may make companies take a long hard look at an application and may actually reduce unnecessary replacements. An interested party responded that this provision could actually encourage replacement. The industry representative agreed she would be more comfortable with a rule limited to internal replacements. **1998 Proc. 1st Quarter 682.**

Another company representative expressed concern about how to interpret this provision if life insurance replaces an annuity or if the reverse is true. He noted that most annuity contracts do not contain a suicide or incontestability clause. The chair responded that if the annuity has a suicide or incontestability clause, to the extent it has been satisfied, credit will be given. If there was no clause, there would be no credit. **1998 Proc. 1st Quarter 682.**

The working group considered several alternatives: companies could be required to give credit for the suicide and incontestability provisions met by the replaced insurer; the draft could be changed to apply to internal placement only; or the provision could be removed altogether. The group voted to make the provision applicable to internal replacements only. **1998 Proc. 1st Quarter 682.**

C. The working group chair proposed a new Section 5C in response to concerns raised about the amount of paper an insurer would be required to store. His proposal would eliminate the responsibility of an insurer to store material if the company prohibited the use of anything other than company-approved sales material. Otherwise the company would need to comply with the provisions of Section 3E. **1998 Proc. 2nd Quarter II 736, 748.**

The chair's suggestion was adopted with some modifications. The chair suggested that the policyholder contact the compliance department at a toll-free number. He clarified that the letter did not need to state that the call would go to the compliance department. **1998 Proc. 2nd Quarter II 736.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that need to be addressed. **1999 Proc. 4th Quarter 14.**

The state taking the lead on adoption of the model deleted the requirement in Subsection C(1)(b) that the producer make a list of all the sales material used. She said this did not add much consumer protection and was burdensome for the company. Another regulator said it was his experience that review of sales material was very important in market conduct examinations. Regulators would not be able to determine which consumers saw offending materials without a list and he argued for leaving the provision in the model. **2000 Proc. 1st Quarter 149.**

The regulator who spoke in favor of including the list said he had decided to support removal of the provision. He said there was not a good reason to have these lists only for replacements because it was a concern for all sales. He planned to suggest inclusion of a requirement applicable to all sales. **2000 Proc. 1st Quarter 137.**

Section 6. Duties of the Existing Insurer

The working group considered adding a requirement that the existing insurer should be required to reinstate policies within the free-look period. The chair opined that the existing carrier may be the wrong company to place at risk, and suggested limiting it only to instances where the existing insurer had made no conservation efforts. **1997 Proc. 3rd Quarter 1260.**

The regulator decided to delete this provision from the draft. One opined that this was an attempt to insulate the consumer from the results of his own decision. An individual who did not want to go without insurance would not cancel the first policy until he was sure he wanted the second one. Another suggested it was backward to put the burden on the company being replaced. **1997 Proc. 4th Quarter 806.**

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Section 6 (cont.)

The chair commented on a recent study that showed companies make very little conservation effort. He suggested that regulators will not get a handle on the replacement problem until they encourage conversation, and that the model should include a requirement for some minimal conservation effort. **1997 Proc. 4th Quarter 805.**

B. The working group discussed whether the existing insurer should be required to supply an in force illustration when it received notice of a replacement or financed sale. An industry representative expressed concern about a requirement to attempt conservation. An interested party expressed concern that policyholders would expect an in force illustration, but these could only be produced for policies issued after the effective date of the Life Insurance Illustrations Regulation [see model 582]. **1997 Proc. 3rd Quarter 1259-1260.**

A regulator said only a small number of people will look at an illustration, let alone compare two illustrations. He opined that those who requested an illustration were more likely to look at it. Another regulator said an illustration should be provided and the insurer should follow up with a phone call to see if there were any questions. The response was that this was a private contract and, if the consumer was taking the initiative to replace the policy, perhaps regulators should not interfere. **1997 Proc. 4th Quarter 805.**

The chair suggested including in the model a provision requiring the existing insurer to send a letter offering an in force illustration and a visit by an agent. A regulator responded that this approach was superior to a requirement to send an in force illustration to every one replacing because it was not cost effective to send the material without a request. An insurer representative said her association was against mandatory conservation. She suggested that the notice include information that the consumer has the right to request an illustration. A regulator opined that the agent might contradict that language and suggested it was better to get a letter after the agent went home. **1997 Proc. 4th Quarter 805-806.**

C. The chair described a sales tool where the agent obtained a check for the cash value of the policy issued by another company and suggested to the prospect that this money could be used to buy new coverage. He asked if there was a way to prove the identify of the person making a request to withdraw policy values. An interested party responded that many companies have a procedure to send a separate notice that a policy loan has been made if there has been a recent change of address. Another added that companies also send notice if the check is going to an agent rather than the policy owner. A regulator said many people did not understand they had taken out a loan and suggested sending a letter explaining the effect of a policy loan. **1997 Proc. 3rd Quarter 1258-1259.**

A regulator suggested adding another sentence at the end of Section 6C to deal with the case where consecutive automatic premium loans were being taken from the account. Her suggestion would eliminate the obligation of the insurer to send a notice every month. An interested party asked if this would also be true of systematic withdrawals from an annuity. Another interested party suggested that a notice should not be required when an abbreviated payment plan was put into effect. The chair responded that this was exactly the situation where the individual should receive notice. **1998 Proc. 1st Quarter 685.**

The parent committee adopted an amendment to add a sentence to Section 6C to address this concern. **1998 Proc. 1st Quarter 677.**

Section 7. Duties of Insurers with Respect to Direct Response Sales

This section was added to the 1978 model to make the regulation responsive to this form of marketing. If the direct response solicitation material did not encourage buyers to replace existing insurance, the insurer needed only send an appropriate notice regarding replacement when it sent the policy. This approach was warranted since there was no pressure being put on the buyer to replace existing insurance, as might be the case when an agent was involved in the sale of the policy. However, if the direct response solicitation material illustrated the benefits of or encouraged the reader to replace existing insurance, the insurer would be required to follow the disclosure provisions required when an agent was involved. **1978 Proc. I 506.**

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Section 7 (cont.)

The section was completely redrafted in 1997. Near the end of the process, comments were submitted to the working group recommending deletion of the entire section and substitution of different language. The chair said he had worked very hard to create a level playing field and it appeared to him the suggestions did damage to that concept. **1997 Proc. 4th Quarter 796.**

Another redraft was submitted by an interested party and the chair praised this version, saying it was clearer and eliminated duplicative notices. The drafter also recommended the addition of an Appendix C. **1998 Proc. 2nd Quarter II 737.**

Section 8. Violations and Penalties

A. The examples in this subsection were a part of the 1997 drafting effort. An industry trade association suggested deleting the examples. One interested party said agents did not need the information and the language was superfluous. A regulator asked if any of the examples were things insurers would not discuss with their agents. The industry responded that these were all examples they would discuss. The working group decided to leave the examples as part of the regulation. **1997 Proc. 4th Quarter 797.**

B. This provision created the need to establish a pattern. Some who commented on the draft suggested this was undesirable because it jeopardized taking action on a case-by-case basis. **1983 Proc. II 610.**

D. Early drafts of this section included a 10% interest rate. Several comments questioned this amount. One commissioner suggested changing the language to incorporate the statutory rate. The group voted to change the reference to the statutory rate and to make provision for states that do not have a statutory rate. **1998 Proc. 1st Quarter 687.**

One state representative commented that she had to remove the last part of Subsection D because her commissioner did not have the authority to adopt its provisions. A drafting note was added to draw this to regulators' attention. **2000 Proc. 1st Quarter 149.**

Section 9. Severability

Section 10. Effective Date

The working group reviewed the issue of whether to propose a delayed effective date for the regulation. The chair said his state would impose the duties of the rest of the regulation and only delay the record-keeping requirements to respond to Year 2000 issues. He said he felt strongly that the consumer protection portions of the model needed to be in place long before 2001. The working group decided not to include specific language in the model, but to recommend delay of only Sections 4A and B if the parent committee asked for a recommendation. **1998 Proc. 2nd Quarter II 737.**

The parent committee chair said she did not have a strong feeling about including language in the model, but asked that the minutes reflect the regulators' preference that Section 4 not be effective until at least January 1, 2001. If a company has Year 2000 problems, consumers will be harmed, so regulators should not put additional burdens on companies unrelated to Year 2000 issues. **1998 Proc. 2nd Quarter II 737.**

Appendix A. Important Notice Regarding Replacements

The first notice adopted in 1969 contained an extensive list of pros and cons for replacing life insurance. **1970 Proc. I 350.**

In the first major revision of the model in 1978, the requirements for notice changed to require the use of one of three alternative forms. The forms were designed for different situations and gave specific advantages and disadvantages for each situation. **1979 Proc. I 564-567.**

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Appendix A (cont.)

The replacement notice adopted in 1984 was designed only to suggest the buyer seek information from his existing insurer. It replaced the three more complex notices. **1984 Proc. II 505**. The proceedings containing the adopted draft failed to include a copy of the notice form, but it was the same as that presented with the draft printed a year earlier. **1983 Proc. II 608**.

When drafting of the revised regulation was nearly complete, a regulator suggested technical changes. One was to change “agent” to “producer” throughout the draft. She also suggested changing the term in the Appendix, but a regulator said consumers would know this person as an agent so that was the term to use in consumer documents. The working group agreed. **1998 Proc. 1st Quarter 685**.

Appendix B

Appendix C

When redrafting Section 7, an interested party encouraged the addition of an Appendix C. He said much of the language in Appendix A refers to producers and would be confusing in a direct response setting. The drafter suggested deleting the questions, but the working group declined to follow that suggestion. **1998 Proc. 2nd Quarter**.

Chronological Summary of Actions

December 1969: Original model adopted.

December 1971: Technical amendment to section no longer contained in model

December 1978: Extensive revision of all parts of model.

December 1983: Voted to eliminate comparative information form.

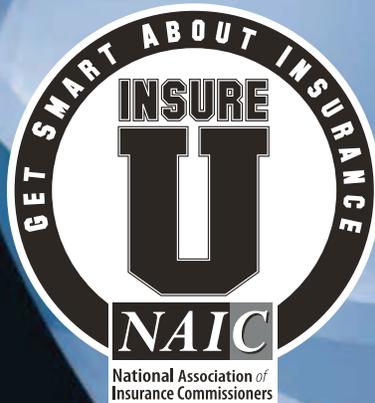
June 1984: Adopted revised model which included annuities.

September 1998: Adopted new model to replace earlier versions. The most significant change is coverage of internal replacements.

June 2000: Made a number of changes to the model to address concerns.

Buyer's Guide for Deferred Annuities

Fixed



Prepared by the

NAIC

National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

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NAIC Buyer's Guide for Fixed Deferred Annuities

It's important that you understand how annuities can be different from each other so you can choose the type of annuity that's best for you. The purpose of this Buyer's Guide is to help you do that. This Buyer's Guide isn't meant to offer legal, financial, or tax advice. You may want to consult independent advisors that specialize in these areas.

This Buyer's Guide is about fixed deferred annuities in general and some of their most common features. It's not about any particular annuity product. The annuity you select may have unique features this Guide doesn't describe. It's important for you to carefully read the material you're given or ask your annuity salesperson, especially if you're interested in a particular annuity or specific annuity features.

This Buyer's Guide includes questions you should ask the insurance company or the annuity salesperson (the agent, producer, broker, or advisor). Be sure you're satisfied with the answers before you buy an annuity.

Revised 2013

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What Is an Annuity?

An annuity is a contract with an insurance company. All annuities have one feature in common, and it makes annuities different from other financial products. *With an annuity, the insurance company promises to pay you income on a regular basis for a period of time you choose—including the rest of your life.*

When Annuities Start to Make Income Payments

Some annuities begin paying income to you soon after you buy it (an **immediate** annuity). Others begin at some later date you choose (a **deferred** annuity).

How Deferred Annuities Are Alike

There are ways that *most* deferred annuities are alike.

- They have an **accumulation** period and a **payout** period. During the accumulation period, the value of your annuity changes based on the type of annuity. During the payout period, the annuity makes income payments to you.
- They offer a basic death benefit. If you die during the accumulation period, a deferred annuity with a basic death benefit pays some or all of the annuity's value to your survivors (called beneficiaries) either in one payment or multiple payments over time. The amount is usually the greater of the annuity account value or the minimum guaranteed surrender value. If you die after you begin to receive income payments (**annuitize**), your chosen survivors may not receive anything *unless*: 1) your annuity guarantees to pay out at least as much as you paid into the annuity, or 2) you chose a payout option that continues to make payments after your death. For an extra cost, you may be able to choose enhanced death benefits that increase the value of the basic death benefit.

Sources of Information

Contract: *The legal document between you and the insurance company that binds both of you to the terms of the agreement.*

Disclosure: *A document that describes the key features of your annuity, including what is guaranteed and what isn't, and your annuity's fees and charges. If you buy a variable annuity, you'll receive a prospectus that includes detailed information about investment objectives, risks, charges, and expenses.*

Illustration: *A personalized document that shows how your annuity features might work. Ask what is guaranteed and what isn't and what assumptions were made to create the illustration.*

- You usually have to pay a charge (called a **surrender** or **withdrawal charge**) if you take some or all of your money out too early (usually before a set time period ends). Some annuities may not charge if you withdraw small amounts (for example, 10% or less of the account value) each year.
- Any money your annuity earns is **tax deferred**. That means you won't pay income tax on earnings until you take them out of the annuity.
- You can add features (called **riders**) to many annuities, usually at an extra cost.
- An annuity salesperson must be licensed by your state insurance department. A person selling a variable annuity also must be registered with FINRA¹ as a representative of a broker/dealer that's a FINRA member. In some states, the state securities department also must license a person selling a variable annuity.

1. FINRA (Financial Industry Regulatory Authority) regulates the companies and salespeople who sell variable annuities.

- Insurance companies sell annuities. You want to buy from an insurance company that's financially sound. There are various ways you can research an insurance company's financial strength. You can visit the insurance company's website or ask your annuity salesperson for more information. You also can review an insurance company's rating from an independent rating agency. Four main firms currently rate insurance companies. They are A.M. Best Company, Standard and Poor's Corporation, Moody's Investors Service, and Fitch Ratings. Your insurance department may have more information about insurance companies. An easy way to find contact information for your insurance department is to visit www.naic.org and click on "**States and Jurisdictions Map.**"
- Insurance companies usually pay the annuity salesperson after the sale, but the payment doesn't reduce the amount you pay into the annuity. You can ask your salesperson how they earn money from the sale.

How Deferred Annuities Are Different

There are differences among deferred annuities. Some of the differences are:

- Whether you pay for the annuity with one or more than one payment (called a **premium**).
- The types and amounts of the **fees, charges, and adjustments**. While almost all annuities have *some* fees and charges that could reduce your account value, the types and amounts can be different among annuities. *Read the Fees, Charges, and Adjustments section in this Buyer's Guide for more information.*
- Whether the annuity is a **fixed** annuity or a **variable** annuity. How the value of an annuity changes is different depending on whether the annuity is fixed or variable.

Fixed annuities guarantee your money will earn at least a minimum interest rate. Fixed annuities may earn interest at a rate higher than the minimum but only the minimum rate is guaranteed. The insurance company sets the rates.

Fixed indexed annuities are a type of fixed annuity that earns interest based on changes in a market index, which measures how the market or part of the market performs. The interest rate is guaranteed to never be less than zero, even if the market goes down.

Variable annuities earn investment returns based on the performance of the investment portfolios, known as "subaccounts," where you choose to put your money. The return earned in a variable annuity isn't guaranteed. The value of the subaccounts you choose could go up or down. If they go up, you could make money. But, if the value of these subaccounts goes down, you could lose money. Also, income payments to you could be less than you expected.

- Some annuities offer a **premium bonus**, which usually is a lump sum amount the insurance company adds to your annuity when you buy it or when you add money. It's usually a set percentage of the amount you put into the annuity. Other annuities offer an **interest bonus**, which is an amount the insurance company adds to your annuity when you earn interest. It's usually a set percentage of the interest earned. You may not be able to withdraw some or all of your premium bonus for a set period of time. *Also, you could lose the bonus if you take some or all of the money out of your annuity within a set period of time.*

How Does the Value of a Deferred Annuity Change?

Fixed Annuities

Money in a fixed deferred annuity earns interest at a rate the insurer sets. The rate is **fixed** (won't change) for some period, usually a year. After that rate period ends, the insurance company will set another fixed interest rate for the next rate period. *That rate could be higher or lower than the earlier rate.*

Fixed deferred annuities *do* have a guaranteed minimum interest rate—the lowest rate the annuity can earn. It's stated in your contract and disclosure and can't change as long as you own the annuity. Ask about:

- The *initial interest* rate – What is the rate? How long until it will change?
- The *renewal interest* rate – When will it be announced? How will the insurance company tell you what the new rate will be?

Fixed Indexed Annuities

Money in a fixed indexed annuity earns interest based on changes in an index. Some indexes are measures of how the overall financial markets perform (such as the S&P 500 Index or Dow Jones Industrial Average) during a set period of time (called the **index term**). Others measure how a specific financial market performs (such as the Nasdaq) during the term. The insurance company uses a formula to determine how a change in the index affects the amount of interest to add to your annuity at the *end of each index term*. Once interest is added to your annuity for an index term, those earnings usually are locked in and changes in the index in the next index term don't affect them. If you take money from an indexed annuity before an index term ends, *the annuity may not add all of the index-linked interest for that term to your account.*

Insurance companies use different formulas to calculate the interest to add to your annuity. They look at changes in the index over a period of time. See the box "*Fixed Deferred Indexed Formulas*" that describes how changes in an index are used to calculate interest.

The formulas insurance companies use often mean that interest added to your annuity is based on only *part* of a change in an index over a set period of time. **Participation rates, cap rates, and spread rates** (sometimes called margin or asset fees) all are terms that describe ways the amount of interest added to your annuity may not reflect the full change in the index. But *if the index goes down over that period, zero interest is added to your annuity.* Then your annuity value won't go down as long as you don't withdraw the money.

When you buy an indexed annuity, you aren't investing directly in the market or the index. Some indexed annuities offer you more than one index choice. Many indexed annuities also offer the choice to put part of your money in a fixed interest rate account, with a rate that won't change for a set period.

Fixed Deferred Indexed Formulas

Annual Point-to-Point – Change in index calculated using two dates one year apart.

Multi-Year Point-to-Point – Change in index calculated using two dates more than one year apart.

Monthly or Daily Averaging – Change in index calculated using multiple dates (one day of every month for monthly averaging, every day the market is open for daily averaging). The average of these values is compared with the index value at the start of the index term.

Monthly Point-to-Point – Change in index calculated for each month during the index term. Each monthly change is limited to the "cap rate" for positive changes, but not when the change is negative. At the end of the index term, all monthly changes (positive and negative) are added. If the result is positive, interest is added to the annuity. If the result is negative or zero, no interest (0%) is added.

What Other Information Should You Consider?

Fees, Charges, and Adjustments

Fees and charges reduce the value of your annuity. They help cover the insurer's costs to sell and manage the annuity and pay benefits. The insurer may subtract these costs directly from your annuity's value. Most annuities have fees and charges but they can be different for different annuities. Read the contract and disclosure or prospectus carefully and ask the annuity salesperson to describe these costs.

A **surrender or withdrawal charge** is a charge if you take part or all of the money out of your annuity during a set period of time. The charge is a percentage of the amount you take out of the annuity. The percentage usually goes down each year until the surrender charge period ends. Look at the contract and the disclosure or prospectus for details about the charge. Also look for any waivers for events (such as a death) or the right to take out a small amount (usually up to 10%) each year without paying the charge. If you take all of your money out of an annuity, you've surrendered it and no longer have any right to future income payments.

How Insurers Determine Indexed Interest

Participation Rate – *Determines how much of the increase in the index is used to calculate index-linked interest. A participation rate usually is for a set period. The period can be from one year to the entire term. Some companies guarantee the rate can never be lower (higher) than a set minimum (maximum). Participation rates are often less than 100%, particularly when there's no cap rate.*

Cap Rate – *Typically, the maximum rate of interest the annuity will earn during the index term. Some annuities guarantee that the cap rate will never be lower (higher) than a set minimum (maximum). Companies often use a cap rate, especially if the participation rate is 100%.*

Spread Rate – *A set percentage the insurer subtracts from any change in the index. Also called a "margin or asset fee." Companies may use this instead of or in addition to a participation or cap rate.*

Some annuities have a **Market Value Adjustment (MVA)**. An MVA could increase or decrease your annuity's account value, cash surrender value, and/or death benefit value if you withdraw money from your account. In general, if interest rates are *lower* when you withdraw money than they were when you bought the annuity, the MVA could *increase* the amount you could take from your annuity. If interest rates are *higher* than when you bought the annuity, the MVA could *reduce* the amount you could take from your annuity. Every MVA calculation is different. Check your contract and disclosure or prospectus for details.

How Annuities Make Payments

Annuitize

At some future time, you can choose to **annuitize** your annuity and start to receive guaranteed fixed income payments for life or a period of time you choose. After payments begin, you can't take any other money out of the annuity. You also usually can't change the amount of your payments. For more information, see "**Payout Options**" in this Buyer's Guide. If you die before the payment period ends, your survivors may not receive any payments, depending on the payout option you choose.

Full Withdrawal

You can withdraw the cash surrender value of the annuity in a lump sum payment and end your annuity. *You'll likely pay a charge to do this if it's during the surrender charge period.* If you withdraw your annuity's cash surrender value, your annuity is cancelled. Once that happens, you can't start or continue to receive regular income payments from the annuity.

Partial Withdrawal

You may be able to withdraw *some* of the money from the annuity's cash surrender value without ending the annuity. Most annuities with surrender charges let you take out a certain amount (usually up to 10%) each year without paying surrender charges on that amount. Check your contract and disclosure or prospectus. Ask your annuity salesperson about other ways you can take money from the annuity without paying charges.

Living Benefits for Fixed Annuities

Some fixed annuities, especially fixed indexed annuities, offer a **guaranteed living benefits** rider, usually at an extra cost. A common type is called a guaranteed lifetime withdrawal benefit that guarantees to make income payments you can't outlive. While you get payments, the money still in your annuity continues to earn interest. You can choose to stop and restart the payments or you might be able to take extra money from your annuity. Even if the payments reduce the annuity's value to zero at some point, you'll continue to get payments for the rest of your life. If you die while receiving payments, your survivors may get some or all of the money left in your annuity.

How Annuities Are Taxed

Ask a tax professional about your individual situation. The information below is general and should not be considered tax advice.

Current federal law gives annuities special tax treatment. Income tax on annuities is deferred. That means you aren't taxed on any interest or investment returns while your money is in the annuity. This isn't the same as tax-free. You'll pay ordinary income tax when you take a withdrawal, receive an income stream, or receive each annuity payment. When you die, your survivors will typically owe income taxes on any death benefit they receive from an annuity.

There are other ways to save that offer tax advantages, including Individual Retirement Accounts (IRAs). You can buy an annuity to fund an IRA, *but you also can fund your IRA other ways and get the same tax advantages.* When you take a withdrawal or receive payments, you'll pay ordinary income tax on all of the money you receive (not just the interest or the investment return). You also may have to pay a 10% tax penalty if you withdraw money before you're age 59½.

Annuity Fees and Charges

Contract fee – A flat dollar amount or percentage charged once or annually.

Percentage of purchase payment – A front-end sales load or other charge deducted from each premium paid. The percentage may vary over time.

Premium tax – A tax some states charge on annuities. The insurer may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments, or when it pays a death benefit to your beneficiary.

Transaction fee – A charge for certain transactions, such as transfers or withdrawals.

Payout Options

You'll have a choice about how to receive income payments. These choices usually include:

- For your lifetime
- For the longer of your lifetime or your spouse's lifetime
- For a set time period
- For the longer of your lifetime or a set time period

Finding an Annuity That's Right for You

An annuity salesperson who suggests an annuity must choose one that they think is right for you, based on information from you. They need complete information about your life and financial situation to make a suitable recommendation. Expect a salesperson to ask about your age; your financial situation (assets, debts, income, tax status, how you plan to pay for the annuity); your tolerance for risk; your financial objectives and experience; your family circumstances; and how you plan to use the annuity. If you aren't comfortable with the annuity, ask your annuity salesperson to explain why they recommended it. Don't buy an annuity you don't understand or that doesn't seem right for you.

Within each annuity, the insurer *may* guarantee some values but not others. Some guarantees may be only for a year or less while others could be longer. Ask about risks and decide if you can accept them. For example, it's possible you won't get all of your money back *or* the return on your annuity may be lower than you expected. It's also possible you won't be able to withdraw money you need from your annuity without paying fees *or* the annuity payments may not be as much as you need to reach your goals. These risks vary with the type of annuity you buy. All product guarantees depend on the insurance company's financial strength and claims-paying ability.

Questions You Should Ask

- Do I understand the risks of an annuity? Am I comfortable with them?
- How will this annuity help me meet my overall financial objectives and time horizon?
- Will I use the annuity for a long-term goal such as retirement? If so, how could I achieve that goal if the income from the annuity isn't as much as I expected it to be?
- What features and benefits in the annuity, other than tax deferral, make it appropriate for me?
- Does my annuity offer a guaranteed minimum interest rate? If so, what is it?
- If the annuity includes riders, do I understand how they work?
- Am I taking full advantage of all of my other tax-deferred opportunities, such as 401(k)s, 403(b)s, and IRAs?
- Do I understand all of the annuity's fees, charges, and adjustments?
- Is there a limit on how much I can take out of my annuity each year without paying a surrender charge? Is there a limit on the *total* amount I can withdraw during the surrender charge period?
- Do I intend to keep my money in the annuity long enough to avoid paying any surrender charges?
- Have I consulted a tax advisor and/or considered how buying an annuity will affect my tax liability?
- How do I make sure my chosen survivors (beneficiaries) will receive any payment from my annuity if I die?

If you don't know the answers or have other questions, ask your annuity salesperson for help.

When You Receive Your Annuity Contract

When you receive your annuity contract, carefully review it. Be sure it matches your understanding. Also, read the disclosure or prospectus and other materials from the insurance company. Ask your annuity salesperson to explain anything you don't understand. In many states, a law gives you a set number of days (usually 10 to 30 days) to change your mind about buying an annuity after you receive it. This often is called a **free look** or **right to return** period. Your contract and disclosure or prospectus should prominently state your free look period. If you decide during that time that you don't want the annuity, you can contact the insurance company and return the contract. Depending on the state, you'll either get back all of your money or your current account value.



C-5

DEPARTMENT OF AGRICULTURE

Title 4, Chapter 2, Articles 1-4, Agricultural Employment Relations Board

Amend: R4-2-101, R4-2-102, R4-2-103, R2-4-104, R2-4- 201, R2-4-202, R2-4-204, R2-4-205, R2-4-206, R4-2-207, R4-2-209, R4-2-210, R4-2-212, R4-2-213, R4-2-215, R4-2-216, R4-2-217, R4-2-218, R4-2-218, R4-2-302, R4-2-303, R4-2-304, R4-2-305, R4-2-407



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 11, 2022

SUBJECT: DEPARTMENT OF AGRICULTURE
Title 4, Chapter 2, Articles 1-4, Agricultural Employment Relations Board

Amend: R4-2-101, R4-2-102, R4-2-103, R2-4-104, R2-4-201, R2-4-202, R2-4-204, R2-4-205, R2-4-206, R4-2-207, R4-2-209, R4-2-210, R4-2-212, R4-2-213, R4-2-215, R4-2-216, R4-2-217, R4-2-218, R4-2-218, R4-2-302, R4-2-303, R4-2-304, R4-2-305, R4-2-407

Summary:

This regular rulemaking from the Department of Agriculture (Department) seeks to amend twenty-four (24) rules in Title 4, Chapter 2, Articles 1-4 related to the Agricultural Employment Relations Board (Board). The legislature established the Board to "provide a means to bargain collectively that is fair and equitable to agricultural employers, labor organizations and employees" and "resolve questions concerning representation of agricultural employees." Laws 1993, Ch. 139 § 1.

The legislature granted the Board statutory authority to "adopt rules pursuant to title 41, chapter 6 as may be necessary to carry out this article." See A.R.S. § 23-1387(B). Rules in Article 1 relate to general provisions for the Chapter, including definitions; conditions on picketing; procedural policies for notices of appearance, signing pleadings and documents, filing documents, and service of process for legal documents. Article 2 relates to rules regarding procedures for electing union representation. Article 3 relates to rules regarding procedures for

alleging unfair labor practices. Article 4 relates to rules regarding general provisions for hearings and hearing review.

The Department indicates this rulemaking is partially related to a Five-Year Review Report (5YRR) approved by the Council on May 2, 2017 and includes suggested changes made by the Council during the Board's previous rule review as well as updates to the rules to improve consistency and accuracy as necessary. Specifically, in the previous report, questions were raised regarding language in R4-2-102(A) stating, "[a] person shall not use a picket sign unless the sign clearly states the person against whom the employees or their representative are conducting the strike." It was discussed whether this restriction implicated any First Amendment concerns and whether it was more restrictive than federal law, given that the National Labor Relations Act (NLRA), the basis for Arizona's Agriculture Labor Relations Act, cited to as specific statutory authority for R4-2-102, does not place conditions on peaceful use of picket signs. In the current rulemaking the language in question has been struck from R4-2-102.

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

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

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

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

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

This rulemaking is the result of suggested changes made by the Council during the Department's 5YRR in 2016, as well as an extensive review to update the rules for consistency and accuracy as necessary.

Based on a study conducted by the University of Arizona, the total contribution of Arizona's agribusiness system to the State's economy is \$23.3 billion. The perishable and seasonal nature of much of Arizona's agriculture industry makes it incredibly vulnerable to irreparable harm should a strike take place without the oversight of the Board. Arizona's agriculture industry will benefit by the clarification and simplification of the rules. There are no costs that will result from the proposed rulemaking.

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?**

According to the Department, there are no less intrusive or less costly alternatives for administering the rules. The benefits are that the rules are easier to understand, comply with, and enforce.

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

Stakeholders include the Board and individuals in the agriculture industry.

The effect of the rulemaking will not require any additional full-time employees to the Board and there will be no additional costs for the implementation of the rulemaking. Arizona's agriculture industry will benefit by the clarification and simplification of the rules.

There are no probable costs to businesses or anticipated effects on the revenue or payroll expenditures of employers. Private employment in the agriculture industry is protected by the implementation of these rules ensuring labor the right to organize and to be protected from potential unfair labor practices.

Consumers and the public are indirectly affected by the implementation and enforcement of this rulemaking. It is in the best interest of the consumer for food production to be uninterrupted by a prolonged and costly labor dispute. The benefits are that the rules are easier to understand, comply with, and enforce.

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

The Department indicates there were no changes between the Notice of Proposed Rulemaking and the final rules now before the Council.

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

The Department indicates the Board held an oral proceeding on Wednesday, December 1, 2021. The Department states there was only one stakeholder in attendance, Ms. Shelly Tunis, representing the Yuma Fresh Vegetable Association, who expressed support and appreciation for the rulemaking. The Department indicates Chairman Steve Barclay thanked Ms. Tunis for the comments. A transcript of the oral proceedings is included in the materials for the Council's reference. The Department indicates there were no other written public or stakeholder comments. Council staff believes the Department has adequately addressed comments on this rulemaking.

9. 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 that 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?

Not applicable. The Department indicates that there are no corresponding federal laws. While the Agriculture Labor Relations Act is modeled off the federal National Labor Relations Act (NLRA), the NLRA specifically excludes agricultural workers from its jurisdiction.. *See* 29 U.S.C. § 152 (“The term ‘employee’...shall not include any individual employed as an agricultural laborer....”).

11. Conclusion

The Department seeks to amend twenty-four (24) rules in Title 4, Chapter 2, Articles 1-4 related to the Agricultural Employment Relations Board (Board) to implement suggestions from a prior 5YRR approved by the Council on May 2, 2017 as well as updates to the rules to improve consistency and accuracy as necessary.

The Department is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.

Agricultural Employment Relations Board

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

December 20, 2021

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

RE: Request for Placement on Agenda - Final Rulemaking A.A.C. Title 4, Chapter 2

Dear Ms. Sornsin:

The Arizona Agricultural Employment Relations Board is requesting to place a final rulemaking on the Governor's Regulatory Review Council agenda for consideration and discussion. Enclosed with this letter you will find the Arizona Agricultural Employment Relations Board (Board) final rulemaking packet for A.A.C. Title 4, Chapter 2.

The close of record for the proposed rulemaking occurred on December 3, 2021 following a public hearing for oral comments on December 1, 2021. During the comment period, following the filing of the proposed rulemaking, one oral comment was received by the Board and the commenter was provided a response. No other comments were received regarding the proposed rulemaking during the comment period. This rulemaking activity is partially related to a five-year review report approved by the Council on May 2, 2017. The rulemaking does not establish any new fees. The rulemaking does not contain any fee increases. There were no studies conducted related to the rulemaking. No additional employees are necessary to implement and enforce the changes to the rules. There are no Federal laws or regulations referenced in the rulemaking.

Enclosed with this letter is:

1. Exemption Approval from Policy Advisor
2. Final Rule Approval from Policy Advisor
3. The Notice of Final Rulemaking
4. The Economic, Small Business, and Consumer Impact Statement

Request for Placement on Agenda

December 20, 2021

Page 2

5. The Authorizing statutes
6. A record of oral comment received and the response provided

Please contact Lisa James, AERB Administrator at (602) 361-8720 or ljames@azda.gov with any questions about this rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Barclay", written in a cursive style.

Steve Barclay

Chairman

Arizona Agricultural Employment Relations Board

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R4-2-101	Amend
R4-2-102	Amend
R4-2-103	Amend
R4-2-104	Amend
R4-2-201	Amend
R4-2-202	Amend
R4-2-204	Amend
R4-2-205	Amend
R4-2-206	Amend
R4-2-207	Amend
R4-2-209	Amend
R4-2-210	Amend
R4-2-212	Amend
R4-2-213	Amend
R4-2-215	ReNUMBER
R4-2-215	Amend
R4-2-216	ReNUMBER
R4-2-216	Amend

R4-2-217	Renumber
R4-2-217	Amend
R4-2-218	Renumber
R4-2-218	Amend
R4-2-302	Amend
R4-2-303	Amend
R4-2-304	Amend
R4-2-305	Amend
R4-2-407	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. § 23-1387(B)

Implementing statutes: A.R.S. §§ 23-1381 through 23-1395

3. The effective date of the rule:

The rules should be effective on _____ (to be filled in by editor), 60 days after filing of the rules with the Arizona 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. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 27 A.A.R. 2375, October, 22, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 2331, October, 22, 2021

Notice of Oral Proceeding on Proposed Rulemaking: 27 A.A.R. 2650, November 12, 2021

(The oral hearing date was also included in the two previous notices)

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

Name: Lisa James

Address: Arizona Department of Agriculture

1688 W. Adams Street

Phoenix, AZ 85007

Telephone: (602) 542-1164

Fax: (602) 364-0830

E-mail: ljames@azda.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 is the result of suggested changes made by the Governor's Regulatory Review Council during the Board's 5-year rule review in 2016, as well as an extensive review to update the rules for consistency and accuracy as necessary.

7. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to 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. 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 Agricultural Employment Relations Board was re-established by the Arizona State Legislature in 1993 as a result of Laws 1993, Chapter 139 to provide a means to collective-bargaining that is fair and equitable to agricultural employers, labor organizations, and employees. Further, the Board was established to provide orderly election procedures in order to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state.

By establishing the Board, the Legislature declared that the uninterrupted production, packing, processing, transporting, and marketing of agricultural products is vital to the public interest. Based on a study conducted by the University of Arizona (*Arizona's Agribusiness System: Contributions to the State Economy, An Economic Contribution Analysis for 2014*, Ashley Kerna Bickel, Dari Duval, George Frisvold, Department of Agricultural & Resource Economics, University of Arizona Cooperative Extension, November 2017), the total contribution of Arizona's agribusiness system to the State's economy is \$23.3 billion. The perishable and seasonal nature of much of Arizona's agriculture industry makes it incredibly

vulnerable to irreparable harm should a strike take place without the oversight of the Board.

Arizona's agriculture industry will benefit by the clarification and simplification of the rules.

There are no costs that will result from the proposed rulemaking.

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

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

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

The Board held an oral proceeding on Wednesday, December 1, 2021. There was only one stakeholder in attendance. Ms. Shelly Tunis, representing the Yuma Fresh Vegetable Association, expressed support and appreciation for the rulemaking. Chairman Steve Barclay thanked Ms. Tunis for the comments. There were no other written public or stakeholder comments made.

12. 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 Board, its rules, or its class of rules other than those matters listed below in this section #12.

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

A permit is not required for these rules.

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

exceed the requirements of federal law:

There are no federal laws applicable to the subject of these rules.

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 comparative analysis of competitiveness 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 rules do not include any incorporation by reference of materials as specified in statute.

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

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

R4-2-101. Definitions

R4-2-102. Strikes

R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents

R4-2-104. Service of Process and Legal Documents

ARTICLE 2. ELECTIONS

Section

R4-2-201. Contents of Petition for Election

R4-2-202. Withdrawal of Petition

R4-2-204. Investigation of Petition

R4-2-205. Time for Submission of Authorizations

R4-2-206. Form and Content of Authorizations

R4-2-207. Validity of Authorizations

R4-2-209. Showing of Interest Computation

R4-2-210. Existence of a Question of Representation

R4-2-212. Intervention by a Subsequent Labor Organization

R4-2-213. Peak Employment During Eligibility Period and Election

R4-2-215. Objections to Election; Investigation

~~R4-2-216. Investigation of Objections to Election~~

~~R4-2-217.~~R4-2-216. Run-off Elections

~~R4-2-218~~:R4-2-217. Consent-election Agreements

R4-2-218. Renumbered

ARTICLE 3. UNFAIR LABOR PRACTICES

Section

R4-2-302. Form and Contents of Charge

R4-2-303. Investigation of Charge

R4-2-304. Complaint

R4-2-305. Refusal to Issue Complaint

ARTICLE 4. HEARINGS

Section

R4-2-407. Rehearing or Review of Decision; Basis

ARTICLE 1. GENERAL PROVISIONS

R4-2-101. Definitions

In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

“Act” means the Agricultural Employment Relations Act, A.R.S. Title 23, Chapter 8, Article 5, § 23-1381, et seq.

“Administrative Law Judge” or “ALJ” means an individual, or the Board, who ~~sits as an administrative law judge, conducts an~~ and makes decisions regarding an administrative hearing in a contested case or an appealable agency action, ~~and makes decisions regarding the contested case or appealable agency decision~~ according to A.R.S. Title 23, Chapter 8, Article 5, and these rules adopted thereunder.

“Authorization period” means the four pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Bargaining unit” means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).

“Board agent” means any individual acting on behalf of the Board, including the Executive Secretary, the General Counsel, and investigators with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.

“Calendar year” means the period beginning January 1 and ending December 31.

“Complete contact information” means mailing address, email address, phone number, and in the case of an organization or corporation, the name of the contact individual.

“Consent election” means an election held following the Board’s approval of a voluntary and complete consent election agreement submitted to the Board.

“Eligibility period” means the three pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Executive Secretary” means the Executive Secretary appointed by the Board under A.R.S. § 23-1388.

“General Counsel” means the attorney representing the Board.

“Independent contractor” means an employer engaged in the business of supplying labor to a farm or ranch.

~~“Investigator” means a person with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.~~

“Leave of absence” means an employment status determined by the employer and the employee permitting the employee to cease work for that employer for a specified period of time.

“Pay period” means the seven-day period used by an agricultural employer for payroll purposes. If the agricultural employer does not use a seven-day pay period, pay period means a seven-day period, Sunday through Saturday.

“Respondent” means the employer in a certification election or current representative in a decertification election.

~~“Signature” means the name or mark of an individual, written by that individual to authenticate a writing.~~

R4-2-102. Strikes

~~A. A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch. A person shall not use a picket sign unless the sign clearly states the person against whom the employees or their representative are conducting the strike.~~

~~B. Employees or their representative may advertise their dispute with the agricultural employer and picket the employer. Employees or their representative shall not picket so as to interfere with the work of a neutral employer or supplier who is not involved in the dispute. A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch.~~

R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents

A. The attorney of a party to a proceeding under investigation by the Board shall promptly file a ~~Notice~~ notice of Appearance appearance with the Board. Once filed, the notice shall remain in effect for the duration of the proceeding, or until the Board is notified, in writing, that the attorney is not representing the party.

B. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.

~~C. A person shall file a document with the Board at its principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays or by mail. A document is considered filed on the date it is received by the Board.~~

R4-2-104. Service of Process and Legal Documents

- A. A person serving a petition for election, petition for decertification, objection to an election, or subpoena shall serve according to A.R.S. § 23-1391(C).
- B. Other than documents listed in subsection (A), or as provided in A.R.S. § 23-1391(C), documents may be filed with the Board electronically, by mail or personal delivery. Electronic document delivery to the Board shall be sent to the Executive Secretary e-mail address listed on the AERB website at: <https://agriculture.az.gov/boards-councils/agricultural-employment-relations-board>. Documents shall be personally delivered or mailed to the Board's principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays. A document is considered filed on the date its signed copy is received by the Board.
- ~~B.C.~~ C. If an attorney enters ~~an appearance~~ a notice of appearance in a proceeding, service of motions and papers upon the attorney ~~according to A.R.S. § 23-1391(C)~~ constitutes service upon the party.

ARTICLE 2. ELECTIONS

R4-2-201. Contents of Petition for Election

- A. A petition for certification election filed under A.R.S. § 23-1389(C) by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting on the employees' behalf, shall be signed under oath and shall contain the following information:
1. The name and complete contact information of the agricultural employer;
 - ~~2. The address of the agricultural employer;~~
 - ~~3.~~2. A description of the bargaining unit that the petitioner claims to be appropriate;
 - ~~4.~~3. The approximate number of employees in the alleged appropriate unit;

~~5.4.~~ A brief statement that the employer declines to recognize the petitioner as a bargaining representative ~~within the meaning of A.R.S. § 23-1382(10)~~, or that the petitioner is currently recognized but desires certification under the Act;

~~6.5.~~ The name, affiliation, if any, and ~~address~~ complete contact information of petitioner;

~~7.6.~~ The name and ~~address~~ complete contact information of any other person who claims to represent an employee in the alleged appropriate bargaining unit;

~~8.7.~~ Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating, and the date the strike or picketing commenced;

~~9.8.~~ A statement that the petition for election is supported by ~~30 percent~~ % or more of the agricultural employees in the bargaining unit; and

~~10.9.~~ Any other relevant fact.

B. A petition for decertification election filed under A.R.S. § 23-1389(J) by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting on the employees' behalf, shall be signed under oath and contain the following information:

1. The name and ~~address~~ complete contact information of the petitioner;

2. A statement that:

a. A representative other than petitioner has been certified, or is currently recognized by the employer;

b. Petitioner desires to rescind the certification; and

c. ~~The~~ Includes the unit claimed to be appropriate, a description of the unit, and the number of employees in the unit;

3. The name, affiliation, if any, and ~~address~~ complete contact information of the person whose recognition or certification the petitioner seeks to rescind;
 4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
 5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating, and the date the strike or picketing commenced;
 6. A statement that the petition for decertification election is supported by ~~30 percent~~ 30% or more of the agricultural employees in the bargaining unit; and
 7. Any other relevant fact.
- C. The Board shall not accept ~~for filing~~ a petition for election that is submitted for filing if it does not contain all the information required by subsections (A) or (B).
- D. The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, send a copy of the petition to the respondent named in the petition. If the Board certified a representative other than the petitioner, a copy of the petition shall also be sent to the certified representative.

R4-2-202. Withdrawal of Petition

~~The petitioner and respondent may stipulate to withdraw a petition for election that is filed with the Board.~~ A petition for election that is filed with the Board may not be withdrawn unless the petitioner and the respondent stipulate to the withdrawal.

R4-2-204. Investigation of Petition

- A. ~~The~~ In addition to the notice of a petition sent under R4-2-201(D), the Board or its agent shall ~~notify~~ contact the agricultural employer by ~~telephone~~ the most expeditious method within 10

days after a petition for election is filed; ~~and, Within~~ within seven days of notification, the agricultural employer shall furnish each employment record, payroll signature list, and other pertinent data requested by the Board or its agent to investigate the petition. The agricultural employer shall certify in writing and under oath that the information provided to the Board is true, complete, and accurate.

- B.** The Board shall review each authorization submitted under R4-2-205, as soon as practicable, to determine whether there is reasonable cause to believe a question of representation exists under A.R.S. § 23-1389 and R4-2-210.
- C.** The Board may conduct any investigation it deems necessary, following a review of the authorizations and pertinent employment data, to determine whether a question of representation exists including, but not limited to, a field investigation. In the event of any formal or informal interview during the investigation with an agricultural employee, the Board shall create and keep in its records a written investigative report, which shall include the name, affiliation, if any, complete contact information, and title of the agricultural employee interviewed and a summary of the agricultural employee's statements made during the interview. Any name, complete contact information, and statement recorded in such investigative report shall be subject to the confidentiality established under subsection (D) and (E) and R4-2-208.
- D.** The Board shall conduct an investigation in a manner that preserves the confidentiality of the identity of an agricultural employee ~~who does or does not sign an~~ and the employee's position regarding authorization. ~~The Board shall not disclose an investigative report or the identity of a person interviewed in conjunction with the investigation except as required by law.~~

E. ~~The~~ Except as required by law, the Board or its agent shall not disclose to any person or party the number of authorizations filed; an investigative report; the identity of a person interviewed in conjunction with the investigation; or any other information concerning the investigation, ~~except as required by law.~~

R4-2-205. Time for Submission of Authorizations

A. A petitioner shall submit every authorization with the petition for a certification ~~election~~ or decertification election. Except as provided in subsection (B), the Board shall not accept an authorization after the petition for certification-~~election~~ or decertification election is filed.

B. If the Board or its agent initially determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board shall notify the petitioner that additional authorizations may be filed with the Board within the next two business days. An additional authorization is not valid unless it is signed after the day the petition is filed ~~and~~; the individual signing the authorization ~~is~~ was an agricultural employee at the time the authorization ~~is~~ was signed; ~~and at any time~~ the signing employee was employed during the eligibility period.

R4-2-206. Form and Content of Authorizations

A. An individual can show interest by completing an authorization card or signing a petition.

B. An individual authorization card submitted to the Board as evidence of a showing of interest is not valid unless the card contains only one name, one signature, and the following legible information, ~~which is printed unless otherwise specified by the Board~~:

1. The employee's name, name of employer, and social security or employee identification number;
2. The signature of the employee and date in the employee's own handwriting; and

3. A statement that the employee is ~~authorizing~~ knowingly providing authorization that the petitioner ~~to~~ may represent that employee for the purpose of collective bargaining in ~~this~~ state Arizona only, and ~~to~~ authorization that the petitioner may file a petition for election under A.R.S. § 23-1389.

C. A signature petition submitted as authorization to evidence a showing of interest is not valid unless it contains:

1. The signature of the employee, social security or employee identification number, and date in the employee's own handwriting; and
2. The name of the employer and a statement that the employee is ~~authorizing~~ knowingly providing authorization that the petitioner ~~to~~ may represent that employee for the purpose of collective bargaining in ~~this~~ state Arizona only, and ~~to~~ authorization that the petitioner may file a petition for election under A.R.S. § 23-1389.

R4-2-207. Validity of Authorizations

A. ~~A valid~~ An authorization is ~~one that is~~ valid if signed at any time during the authorization period by an individual who is an agricultural employee at the time of signing the authorization, or ~~is~~ if signed as prescribed in R4-2-205(B).

B. An authorization is valid even if the agricultural employee who signed that authorization also signed an authorization for another labor organization.

C. An authorization signed by an agricultural employee hired after the date the petition is filed is not valid for the purpose of computing the showing of interest.

R4-2-209. Showing of Interest Computation

- A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period by taking the total number of agricultural employees employed in the bargaining unit during that pay period and determining how many of those employees signed a valid authorization as prescribed in this Article.
- B. To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. § 23-1382(1), six months means 132 work days.
- C. The Board shall not include ~~as an employee~~ in the bargaining unit for a pay period an agricultural employee who is eligible for unemployment benefits for the entire pay period.
- D. The Board shall not include in the bargaining unit for a pay period an agricultural employee who is on a leave of absence for the entire pay period unless the following conditions are met:
1. The employer produces a document, signed by the employee and notarized, stating that the employee was placed on leave of absence for a specified period of time;
 2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed; and
 3. ~~Substantial evidence does not exist establishing that the employee is not on a bona fide leave of absence or will not return from the leave of absence as scheduled. There is no~~ substantial evidence establishing that the employee's leave of absence is a pretense or that the employee will not return from the leave of absence as scheduled.
- E. The Board shall not include in the bargaining unit an agricultural employee who is placed on workers' compensation leave, unless the following conditions are met:
1. The employer produces a document signed by a licensed physician stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return;

2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed;² and
3. ~~Substantial evidence does not exist establishing that the employee is not on a bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled.~~ There is no substantial evidence establishing that the employee's workers' compensation leave is a pretense or that the employee will not return from the workers' compensation leave of absence as scheduled.

R4-2-210. Existence of a Question of Representation

A question of representation exists in the bargaining unit if there is a 30% showing of interest ~~of at least 30 percent is made~~ in the final pay period of the eligibility period and in either of the other two pay periods of the eligibility period.

R4-2-212. Intervention by a Subsequent Labor Organization

- ~~A.~~ The ALJ may allow a subsequent labor organization to intervene only at the initial session of the pre-election hearing on a petition filed by the first labor organization and may place the subsequent labor organization on an election ballot only if the ALJ finds:
1. The subsequent labor organization filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the 30 percent% showing of interest required to establish a question of representation under R4-2-210;² and
 2. The subsequent labor organization filed its petition and authorizations not later than seven days before the scheduled start of the initial session of the pre-election hearing.
- B.** In determining the validity of an authorization filed by a subsequent labor organization, the Board shall use the same authorization period as that of the original petitioner.

C. In determining the showing of interest for a subsequent labor organization, the Board shall use the same eligibility period as that of the original petitioner.

R4-2-213. Peak Employment During Eligibility Period and Election

A. The Board shall hold an election when the bargaining unit is at peak. A bargaining unit is at peak when the number of employees in the unit is not less than $66 \frac{2}{3}$ ~~percent~~% of the maximum number of employees who have been or will be employed in the bargaining unit during the current crop growing season. If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.

B. In determining the total number of bargaining unit employees who have been or will be employed at any one time during the current growing season, the ALJ shall consider:

1. The employer's prior peak employment figures;
2. The types of crops grown;
3. The past and present acreage for the crop or crops in question;
4. The number of employees at other farms with the same or similar crops and similar acreage; and
5. Any other relevant fact.

C. A question of representation exists in a bargaining unit only if the bargaining unit is at peak during the eligibility period ~~as required by R4-2-210~~. The respondent named in a petition has the burden to allege and prove that the bargaining unit is not at peak during a pay period in an eligibility period.

~~D. The Board shall hold an election when the bargaining unit is at peak. If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.~~

R4-2-215. Objections to Election; Investigation

A. Within seven days after the tally of the ballots by the Board, a party may file with the Board an objection to the conduct of the election or conduct affecting the results of the election. The party filing the objection shall specifically set forth each fact and allegation in support of the objection. The party filing the objection shall simultaneously serve a copy of the objection on all other parties and file a ~~statement~~ certificate of service with the Board. The party filing the objection shall not raise in the objection an issue that was or could have been raised in either a challenge to the petition or the pre-election hearing.

~~B. The Board shall not take further action if on an objection to the conduct of the election or conduct affecting the results of the election if the objection is not filed timely timely filed, or does not comply with subsection (A), or the number of challenged ballots is insufficient to affect the election results and a run-off election is not required under R4-2-217. The Board shall send a written notice to all parties that it will take no further action.~~

~~C. The Board shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate, if:~~

- ~~1. Objections are not filed within the time prescribed in subsection (A), or~~
- ~~2. The number of challenged ballots is insufficient to affect the election results, and~~
- ~~3. A run-off election is not required under R4-2-217.~~

If any objection meets the requirements of subsection (A), the Board shall investigate objections to the conduct of an election or conduct affecting the results of an election. If the

Board determines that the objection is valid, the Board shall decertify the election results. The Board shall dismiss the objection if the Board determines that the objection is invalid. Any action by the Board under this section shall comply with A.R.S. § 23-1387(C).

- D.** A party may appeal the Board's decision as prescribed in Title 41, Chapter 6, Article 10. If the Board decertifies the election results or dismisses the objection under subsections (B) or (C), the Board shall serve all the parties with its written decision. If the Board dismisses the objection, it shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate. An aggrieved party may appeal the Board's decision as prescribed in Article 4, within 30 days after the party receives the notice of the decision. The Board may extend the time for filing an appeal for good cause.
- E.** In investigating an objection, if the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing. Any hearing under this subsection and any objection to the resulting decision shall be initiated and conducted as prescribed by Article 4.

~~R4-2-216. Investigation of Objections to Election~~

- A.** ~~The Board shall investigate objections to the conduct of an election or conduct affecting the results of an election if the objections meet the requirements of R4-2-215(A). The Board shall dismiss the objections and certify the results of the election on the basis of an administrative investigation if the Board determines that the objections are invalid.~~
- B.** ~~An aggrieved party may appeal the Board's dismissal of the objections as prescribed in Article 4, within 30 days after the party receives the notice of dismissal of the objection. The Board may extend the time for filing an appeal for good cause.~~

~~C. If the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing.~~

~~D. Any hearing under this Section and any objection to the ALJ's decision shall be initiated and conducted as prescribed in Article 4.~~

~~R4-2-217.~~ R4-2-216. Run-off Elections

A. If an election ballot provides for a choice among at least two labor organizations and “no union,” and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.

B. In a run-off election, only an individual who is an agricultural employee in the appropriate bargaining unit on the date of the run-off election is eligible to vote.

C. The ballot in a run-off election shall provide for a selection between the labor organization receiving the highest number of votes in the original election and “no union.”

D. The Board shall administer a run-off election as prescribed in R4-2-214 through ~~R4-2-216.~~

~~R4-2-218.~~ R4-2-217. Consent-election Agreements

An agricultural employer may enter into a consent-election agreement with one or more individuals or labor organizations that present to the employer a claim to be recognized as the representative of a designated bargaining unit. The parties shall submit to the Board an agreement containing a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit are eligible to vote. The Board shall conduct a consent election if the Board finds that the consent-election agreement is fair and not collusive. ~~is fair and noneollusive~~ The Board shall conduct a consent election consistent with the methods followed by the Board in conducting elections.

R4-2-218. Renumbered

ARTICLE 3. UNFAIR LABOR PRACTICES

R4-2-302. Form and Contents of Charge

- A. A charging party shall include the following in the charge:
1. The full name, ~~address, and telephone number~~ and complete contact information of the individual, agricultural employer, or labor organization making the charge;
 2. If the charge is filed by a labor organization, the full name and ~~address~~ complete contact information of any national or international labor organization of which it is an affiliate or constituent unit;
 3. The full name and ~~address~~ complete contact information of the individual, agricultural employer, or labor organization against whom the charge is made; and
 4. A clear and concise statement of the facts constituting the alleged unfair labor practice.
- B. A charging party shall make the charge in writing, sign the charge, and declare under penalty of perjury that its contents are true and correct to the best of the charging party's knowledge, information, and belief.
- C. The Board shall not accept a charge ~~for filing unless it contains~~ that is submitted for filing if it does not contain all the information required in subsections (A) and (B).

R4-2-303. Investigation of Charge

- A. The Board shall, as directed by R4-2-104(A), serve a copy of a filed charge upon the individual, agricultural employer, or labor organization against whom the charge is made.
- B. The General Counsel ~~or designee~~ shall conduct a preliminary investigation of the charge under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may:
1. Refuse to issue a complaint; or

2. File a complaint against any individual, agricultural employer, or labor organization named in the charge that the General Counsel believes may have committed an unfair labor practice; and
3. ~~Seek~~ If directed by the Board, seek appropriate injunctive relief or a restraining order, as provided for in A.R.S. § 23-1390.

C. An investigative report, note, memorandum, oral or written statement, tape recording, and any other information or work product prepared or obtained by the General Counsel ~~or designee~~ during an investigation is not subject to subpoena powers of the Act and a person shall not disclose this information to any person without the consent of the General Counsel, unless otherwise provided by law.

R4-2-304. Complaint

- A. If the General Counsel decides after investigating a charge that a formal proceeding should be instituted, the General Counsel shall issue and serve, as directed by R4-2-104(A), on each party a complaint stating the alleged unfair labor practice. The General Counsel shall include in the complaint a clear and concise statement of the ~~facts upon which the assertion~~ legal and factual basis of the Board's jurisdiction ~~is based~~ and a clear and concise description of the act that is claimed to constitute an unfair labor practice. The General Counsel shall include a notice of hearing issued under Article 4 with the complaint.
- B. After the hearing date is set, the General Counsel shall not amend the complaint unless the General Counsel makes a motion to amend and the ALJ grants a the motion to amend made by ~~the General Counsel.~~

C. The General Counsel may withdraw a complaint before the hearing. After the opening of the hearing, the complaint may be withdrawn upon motion by the General Counsel with consent of the ALJ.

R4-2-305. Refusal to Issue Complaint

- A. If, after a charge is filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to reissue it, the General Counsel shall ~~advise~~ serve a written statement of the grounds for the action on each party ~~in writing, accompanied by a statement of the grounds for the action.~~ The charging party may file a request to reconsider the refusal to issue or reissue the complaint with the General Counsel within 10 days of receipt of notice of the refusal and shall simultaneously serve a copy on all other parties. The General Counsel shall file any response to the request within seven days of receiving it. The General Counsel shall ~~advise all parties of the decision,~~ serve the decision on each party in writing and within seven days of the date the decision is made.
- B. The charging party may file a request to reconsider with the General Counsel if, after the General Counsel refuses to issue or reissue a complaint, newly discovered material evidence is found that could not with reasonable diligence have been discovered at the time the original charge was filed. The request shall be filed ~~immediately upon~~ within 10 days after the discovery of the evidence.
- C. Nothing in this Section prohibits or limits the General Counsel from issuing or reissuing a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint, however, if a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint.

~~D. If a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint. Service under this section shall be as directed by R4-2-104(A).~~

ARTICLE 4. HEARINGS

R4-2-407. Rehearing or Review of Decision; Basis

- A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B. The Board shall grant a rehearing or review of a final administrative law decision for any of the following causes materially affecting the moving party's rights:
- ~~1. The decision is not justified by the evidence or is contrary to law;~~
 - ~~2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;~~
 - ~~3. One or more of the following has deprived the party of a fair hearing:
 - ~~a. Irregularity or abuse of discretion in the conduct of the proceeding;~~
 - ~~b. Misconduct of the Board, the ALJ, or the prevailing party; or~~
 - ~~c. Accident or surprise that could not have been prevented by ordinary prudence; or~~~~
 - ~~4. Excessive or insufficient sanction.~~
1. Irregularity in the administrative proceedings or abuse of discretion depriving the moving party of a fair hearing;
 2. Misconduct of the Board, ALJ, or the prevailing party;
 3. Accident or surprise that could not reasonably have been prevented;
 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.

C. The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

Summary

The Agricultural Employment Relations Board was re-established by the Arizona State Legislature in 1993 as a result of Laws 1993, Chapter 139 to provide a means to collective-bargaining that is fair and equitable to agricultural employers, labor organizations, and employees. Further, the Board was established to provide orderly election procedures in order to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state.

The Board's statutes are modeled after the National Labor Relations Act, which specifically excludes agricultural workers from its jurisdiction.

The Legislature recognized a balance between agricultural labor and employers was essential and thus created a Board with two labor representatives, two employer representatives, and three public representatives. The mandated balance of the Board precludes dominance by either labor or employers. The creation of the Board also declared that employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and the terms and conditions of employment.

The establishment of the Board recognized that, while the right to strike is a basic right of organized labor, "such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly." (A.R.S. § 23-

1381)

By establishing the Board, the Legislature declared that the uninterrupted production, packing, processing, transporting, and marketing of agricultural products is vital to the public interest. Based on a study conducted by the University of Arizona (*Arizona's Agribusiness System: Contributions to the State Economy, An Economic Contribution Analysis for 2014*, Ashley Kerna Bickel, Dari Duval, George Frisvold, Department of Agricultural & Resource Economics, University of Arizona Cooperative Extension, November 2017), the total contribution of Arizona's agribusiness system to the State's economy is \$23.3 billion. The perishable and seasonal nature of much of Arizona's agriculture industry makes it incredibly vulnerable to irreparable harm should a strike take place without the oversight of the Board.

1. Identification of the proposed rulemaking.

This rulemaking is the result of suggested changes made by the Governor's Regulatory Review Council during the Board's 5-year rule review in 2016, as well as an extensive review to update the rules for consistency and accuracy as necessary.

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

Arizona's agriculture industry will benefit by the clarification and simplification of the rules.

There are no costs that will result from the proposed rulemaking.

3. A cost benefit analysis of the following:

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

The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer

of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The effect of the rulemaking will not require any additional full-time employees to the Board and there will be no additional costs for the implementation of the rulemaking.

The benefits are that the rules are easier to understand, comply with, and enforce.

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

There is no political subdivision directly affected by the implementation and enforcement of the rules.

(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.

There are no probable costs to businesses or anticipated effect on the revenue or payroll expenditures of employers. The benefits are that the rules are easier to understand, comply with, and enforce.

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

Private employment in the agriculture industry is protected by the implementation of these rules ensuring labor the right to organize and to be protected from potential unfair labor practices.

Public employment is not directly affected by the implementation and enforcement of this

rulemaking.

5. A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

Small businesses could include a portion of agriculture producers with on-farm operations.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not impose additional administrative or other costs on small businesses.

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

Not applicable.

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

There are no costs resulting from the proposed rulemaking. Consumers and the public are indirectly affected by the implementation and enforcement of this rulemaking. It is in the best interest of the consumer for food production to be uninterrupted by a prolonged and costly labor dispute. Consumer pricing and the availability of food product is in part dependent upon peaceful labor and management relationships. The benefits are that the rules are easier to understand, comply with, and enforce.

6. A statement of the probable effect on state revenues.

The proposed rulemaking will have no impact on state revenue.

- 7. A 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 nonselected alternatives.**

There are no less intrusive or less costly alternatives for administering the rules.

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

There is no data upon which the rules are based.

**ORAL PROCEEDING for the
AGRICULTURAL EMPLOYMENT RELATIONS BOARD
December 1, 2021**

The Agricultural Employment Relations Board (AERB) held an oral hearing on December 1, 2021 @ 10:00 a.m. via Zoom and in person at 1688 West Adams Street, Phoenix, AZ 85007. Pursuant to Section A.R.S. § 38-431.02 notice of the meeting was duly posted and members of Arizona's agricultural and labor communities and the general public were advised of the meeting. In addition, notice of the oral hearing was provided in the following notices filed with the Secretary of State's office: Notice of Rulemaking Docket Opening: 27 A.A.R. 2375, October, 22, 2021, Notice of Proposed Rulemaking: 27 A.A.R. 2331, October, 22, 2021, Notice of Oral Proceeding on Proposed Rulemaking: 27 A.A.R. 2650, November 12, 2021 (The oral hearing date was also included in the two previous notices)

Members participated by Zoom and or by telephone. A dedicated conference room was used to provide access to all communications during the meeting. This record is not transcribed verbatim; however, an electronic recording is available at the office of the Agricultural Employment Relations Board, 1688 W. Adams, Phoenix, Arizona, 85007.

Board members present via Zoom: Steve Barclay, Ted Disbrow and Larry Nelson.

Board members present in person: None.

Board members absent: Terre Catanzaro.

Department staff present: Lisa James, Executive Secretary; Susan Chase, Assistant Director (via Zoom) and Deanie Reh, Assistant Attorney General (via Zoom).

Others present via Zoom: Shelly Tunis, Yuma Fresh Vegetable Association and Lilian Schmitt, Member of the Public.

Chairman Barclay began the oral hearing at 10:07 a.m.

Chairman Barclay asked for comments from the members of the public.

Ms. Lilian Schmitt stated that she would not wish to comment on the rules, she was only in attendance to observe the process.

Shelly Tunis, representing the Yuma Fresh Vegetable Association, thanked the members and staff for their effort in updating the rules. They are a lot easier to read with updated information. The Association appreciates the effort very much.

Chairman Barclay thanked Ms. Tunis for the comments.

Chairman Barclay adjourned the oral hearing at 10:13 a.m.

Prepared by Lisa James, Executive Secretary.

TITLE 4. PROFESSIONS AND OCCUPATIONS**CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD**

Authority: A.R.S. § 23-1381 et seq.

4 A.A.C. 2, consisting of Sections R4-2-101 thru R4-2-105, R4-2-201 thru R4-2-219, R4-2-301 thru R4-2-311, and R4-2-401 thru R4-2-407, adopted effective December 26, 1995 (Supp. 95-4).

ARTICLE 1. GENERAL PROVISIONS

Section	
R4-2-101.	Definitions
R4-2-102.	Strikes
R4-2-103.	Notice of Appearance; Signing Pleadings and Documents; Filing Documents
R4-2-104.	Service of Process and Legal Documents
R4-2-105.	Computation of Time

ARTICLE 2. ELECTIONS

Section	
R4-2-201.	Contents of Petition for Election
R4-2-202.	Withdrawal of Petition
R4-2-203.	Challenge to Petition; Waiver
R4-2-204.	Investigation of Petition
R4-2-205.	Time for Submission of Authorizations
R4-2-206.	Form and Content of Authorizations
R4-2-207.	Validity of Authorizations
R4-2-208.	Confidentiality of Authorizations
R4-2-209.	Showing of Interest Computation
R4-2-210.	Existence of a Question of Representation
R4-2-211.	Notice of Hearing
R4-2-212.	Intervention by a Subsequent Labor Organization
R4-2-213.	Peak Employment During Eligibility Period and Election
R4-2-214.	Election Procedures
R4-2-215.	Objections to Election
R4-2-216.	Investigation of Objections to Election
R4-2-217.	Run-off Elections
R4-2-218.	Consent-election Agreements
R4-2-219.	Repealed

ARTICLE 3. UNFAIR LABOR PRACTICES

Section	
R4-2-301.	Unfair Labor Practice Charges
R4-2-302.	Form and Contents of Charge
R4-2-303.	Investigation of Charge
R4-2-304.	Complaint
R4-2-305.	Refusal to Issue Complaint
R4-2-306.	Repealed
R4-2-307.	Repealed
R4-2-308.	Repealed
R4-2-309.	Repealed
R4-2-310.	Repealed
R4-2-311.	Repealed

ARTICLE 4. HEARINGS

Section	
R4-2-401.	Hearings
R4-2-402.	Repealed
R4-2-403.	Repealed
R4-2-404.	Repealed
R4-2-405.	Repealed
R4-2-406.	Repealed
R4-2-407.	Rehearing or Review of Decision; Basis

ARTICLE 1. GENERAL PROVISIONS**R4-2-101. Definitions**

In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

“Act” means the Agricultural Employment Relations Act, A.R.S. Title 23, Chapter 8, Article 5, § 23-1381 et seq.

“Administrative Law Judge” or “ALJ” means an individual, or the Board, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency decision.

“Authorization period” means the four pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Bargaining unit” means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).

“Board agent” means any individual acting on behalf of the Board, including the Executive Secretary, the General Counsel, and investigators.

“Calendar year” means the period beginning January 1 and ending December 31.

“Consent election” means an election held following the Board’s approval of a voluntary and complete consent election agreement submitted to the Board.

“Eligibility period” means the three pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Executive Secretary” means the Executive Secretary appointed by the Board under A.R.S. § 23-1388.

“General Counsel” means the attorney representing the Board.

“Independent contractor” means an employer engaged in the business of supplying labor to a farm or ranch.

“Investigator” means a person with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.

“Leave of absence” means an employment status determined by the employer and the employee permitting the employee to cease work for that employer for a specified period of time.

“Pay period” means the seven-day period used by an agricultural employer for payroll purposes. If the agricultural employer does not use a seven-day pay period, pay period means a seven-day period, Sunday through Saturday.

“Signature” means the name or mark of an individual, written by that individual to authenticate a writing.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-102. Strikes

- A.** A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch. A person shall not use a picket sign unless the sign clearly states the person against whom the employees or their representative are conducting the strike.
- B.** Employees or their representative may advertise their dispute with the agricultural employer and picket the employer. Employees or their representative shall not picket so as to interfere with the work of a neutral employer or supplier who is not involved in the dispute.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents

- A.** The attorney of a party to a proceeding under investigation by the Board shall promptly file a Notice of Appearance with the Board. Once filed, the notice shall remain in effect for the duration of the proceeding, or until the Board is notified, in writing, that the attorney is not representing the party.
- B.** A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- C.** A person shall file a document with the Board at its principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays or by mail. A document is considered filed on the date it is received by the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-104. Service of Process and Legal Documents

- A.** A person serving a petition for election, petition for decertification, or subpoena shall serve according to A.R.S. § 23-1391(C).
- B.** If an attorney enters an appearance in a proceeding, service of motions and papers upon the attorney according to A.R.S. § 23-1391(C) constitutes service upon the party.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-105. Computation of Time

In computing any period of time prescribed by this Chapter, by order of the Board, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not included. If the prescribed period of time is less than 11 days, intermediate Saturdays, Sundays, and Arizona legal holidays are not included in the computation. The last day of the period is included, unless it is a Saturday, Sunday, or Arizona legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Arizona legal holiday.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 2. ELECTIONS**R4-2-201. Contents of Petition for Election**

- A.** A petition for certification election filed under A.R.S. § 23-1389(C) by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting on the employees' behalf shall be signed under oath and shall contain the following information:
1. The name of the agricultural employer;
 2. The address of the agricultural employer;
 3. A description of the bargaining unit that the petitioner claims to be appropriate;
 4. The approximate number of employees in the alleged appropriate unit;
 5. A brief statement that the employer declines to recognize the petitioner as a bargaining representative within the meaning of A.R.S. § 23-1382(10) or that the petitioner is currently recognized but desires certification under the Act;
 6. The name, affiliation, if any, and address of petitioner;
 7. The name and address of any other person who claims to represent an employee in the alleged appropriate bargaining unit;
 8. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date the strike or picketing commenced;
 9. A statement that the petition for election is supported by 30 percent or more of the agricultural employees in the bargaining unit; and
 10. Any other relevant fact.
- B.** A petition for decertification election filed under A.R.S. § 23-1389(J) by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting on the employees' behalf shall be signed under oath and contain the following information:
1. The name and address of the petitioner;
 2. A statement that:
 - a. A representative other than petitioner has been certified, or is currently recognized by the employer;
 - b. Petitioner desires to rescind the certification; and
 - c. The unit claimed to be appropriate, a description of the unit, and the number of employees in the unit;
 3. The name, affiliation, if any, and address of the person whose recognition or certification the petitioner seeks to rescind;
 4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
 5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date the strike or picketing commenced;
 6. A statement that the petition for decertification election is supported by 30 percent or more of the agricultural employees in the bargaining unit; and
 7. Any other relevant fact.
- C.** The Board shall not accept for filing a petition for election that does not contain all the information required by subsections (A) or (B).
- D.** The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, send a copy of the petition to the respondent named in the petition. If the Board certified a representative other than the petitioner, a copy of the petition shall also be sent to the certified representative.

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Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-202. Withdrawal of Petition

The petitioner and respondent may stipulate to withdraw a petition for election that is filed with the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-203. Challenge to Petition; Waiver

- A. The Board is not required to investigate a challenge to a petition for election filed under A.R.S. § 23-1389(F).
- B. If a respondent fails to file a timely challenge to the petition for election under A.R.S. § 23-1389(F), the right to challenge is waived.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-204. Investigation of Petition

- A. The Board or its agent shall notify the agricultural employer by telephone within 10 days after a petition for election is filed. Within seven days of notification, the agricultural employer shall furnish each employment record, payroll signature list, and other pertinent data requested by the Board or its agent to investigate the petition. The agricultural employer shall certify in writing and under oath that the information provided to the Board is true, complete, and accurate.
- B. The Board shall review each authorization submitted under R4-2-205, as soon as practicable, to determine whether there is reasonable cause to believe a question of representation exists under A.R.S. § 23-1389 and R4-2-210.
- C. The Board may conduct any investigation it deems necessary, following a review of the authorizations and pertinent employment data, to determine whether a question of representation exists including, but not limited to, a field investigation.
- D. The Board shall conduct an investigation in a manner that preserves the confidentiality of the identity of an agricultural employee who does or does not sign an authorization. The Board shall not disclose an investigative report or the identity of a person interviewed in conjunction with the investigation except as required by law.
- E. The Board or its agent shall not disclose to any person or party the number of authorizations filed or any other information concerning the investigation, except as required by law.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-205. Time for Submission of Authorizations

- A. A petitioner shall submit every authorization with the petition for a certification election or decertification election. Except as provided in subsection (B), the Board shall not accept an authorization after the petition for certification election or decertification election is filed.
- B. If the Board or its agent initially determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board shall notify the petitioner that additional authorizations may be filed with the Board within the next two business days. An additional authorization is not valid unless it is signed after the day the petition is filed and the individual signing the

authorization is an agricultural employee at the time the authorization is signed and at any time during the eligibility period.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-206. Form and Content of Authorizations

- A. An individual can show interest by completing an authorization card or signing a petition.
- B. An individual authorization card submitted to the Board as evidence of a showing of interest is not valid unless the card contains only one name, one signature, and the following information, which is printed unless otherwise specified by the Board:
 1. The employee's name, name of employer, and social security or employee identification number;
 2. The signature of the employee and date in the employee's own handwriting; and
 3. A statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in this state only, and to file a petition for election under A.R.S. § 23-1389.
- C. A signature petition submitted as authorization to evidence a showing of interest is not valid unless it contains:
 1. The signature of the employee, social security or employee identification number, and date in the employee's own handwriting; and
 2. The name of the employer and a statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in the state of Arizona only, and to file a petition for election under A.R.S. § 23-1389.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-207. Validity of Authorizations

- A. A valid authorization is one that is signed at any time during the authorization period by an individual who is an agricultural employee at the time of signing the authorization, or is signed as prescribed in R4-2-205(B).
- B. An authorization is valid even if the agricultural employee who signed that authorization also signed an authorization for another labor organization.
- C. An authorization signed by an agricultural employee hired after the date the petition is filed is not valid for the purpose of computing the showing of interest.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-208. Confidentiality of Authorizations

An authorization and its contents are confidential except if subject to a lawful subpoena.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-209. Showing of Interest Computation

- A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period by taking the total number of agricultural employees employed in the bar-

gaining unit during that pay period and determining how many of those employees signed a valid authorization as prescribed in this Article.

- B. To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. § 23-1382(1), six months means 132 work days.
- C. The Board shall not include as an employee in the bargaining unit for a pay period an agricultural employee who is eligible for unemployment benefits for the entire pay period.
- D. The Board shall not include in the bargaining unit for a pay period an agricultural employee who is on a leave of absence for the entire pay period unless the following conditions are met:
 1. The employer produces a document, signed by the employee and notarized, stating that the employee was placed on leave of absence for a specified period of time;
 2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed; and
 3. Substantial evidence does not exist establishing that the employee is not on a bona fide leave of absence or will not return from the leave of absence as scheduled.
- E. The Board shall not include in the bargaining unit an agricultural employee who is placed on workers' compensation leave, unless the following conditions are met:
 1. The employer produces a document signed by a licensed physician stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return,
 2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed, and
 3. Substantial evidence does not exist establishing that the employee is not on a bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-210. Existence of a Question of Representation

A question of representation exists in the bargaining unit if a showing of interest of at least 30 percent is made in the final pay period of the eligibility period and in either of the other two pay periods of the eligibility period.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-211. Notice of Hearing

- A. The Board shall issue a Notice of Hearing as prescribed in Article 4 if a question of representation exists.
- B. A person may, by written request to the Board, receive notice of the filing of a petition for election and a related notice of hearing.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-212. Intervention by a Subsequent Labor Organization

- A. An ALJ may allow a subsequent labor organization to intervene only at the initial session of the pre-election hearing on a

petition filed by the first labor organization and may place the subsequent labor organization on an election ballot only if the ALJ finds:

1. The subsequent labor organization filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the 30 percent showing of interest required to establish a question of representation under R4-2-210, and
 2. The subsequent labor organization filed its petition and authorizations not later than seven days before the scheduled start of the initial session of the pre-election hearing.
- B. In determining the validity of an authorization filed by a subsequent labor organization, the Board shall use the same authorization period as that of the original petitioner.
 - C. In determining the showing of interest for a subsequent labor organization, the Board shall use the same eligibility period as that of the original petitioner.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-213. Peak Employment During Eligibility Period and Election

- A. A bargaining unit is at peak when the number of employees in the unit is not less than 66 2/3 percent of the maximum number of employees who have been or will be employed in the bargaining unit during the current crop growing season.
- B. In determining the total number of bargaining unit employees who have been or will be employed at any one time during the current growing season, the ALJ shall consider:
 1. The employer's prior peak employment figures,
 2. The types of crops grown,
 3. The past and present acreage for the crop or crops in question,
 4. The number of employees at other farms with the same or similar crops and similar acreage, and
 5. Any other relevant fact.
- C. A question of representation exists in a bargaining unit only if the bargaining unit is at peak during the eligibility period as required by R4-2-210. The respondent named in a petition has the burden to allege and prove that the bargaining unit is not at peak during a pay period in an eligibility period.
- D. The Board shall hold an election when the bargaining unit is at peak. If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-214. Election Procedures

- A. Only an individual who is an agricultural employee in the appropriate bargaining unit on the date of an election is eligible to vote in the election.
- B. A party may be represented by two observers of the party's selection, subject to the following limitations:
 1. A union shall not select as an observer an official of any labor organization, and
 2. An agricultural employer shall not select as an observer a supervisor or company official.
- C. A party or the Board's agent may challenge, for good cause, the eligibility of an individual to participate in an election. The Board shall impound the ballot of a challenged individual.

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- D. The Board shall issue a tally of the ballots upon the conclusion of the election.
- E. If there are enough challenged ballots to affect the results of the election, the Board shall, as soon as practicable, investigate the challenges, issue a revised tally, and serve the revised tally upon all parties.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-215. Objections to Election

- A. Within seven days after the tally of the ballots by the Board, a party may file with the Board an objection to the conduct of the election or conduct affecting the results of the election. The party filing the objection shall specifically set forth each fact and allegation in support of the objection. The party filing the objection shall simultaneously serve a copy of the objection on all other parties and file a statement of service with the Board. The party filing the objection shall not raise in the objection an issue that was or could have been raised in either a challenge to the petition or the pre-election hearing.
- B. The Board shall not take further action if an objection to the conduct of the election or conduct affecting the results of the election is not filed timely, or does not comply with subsection (A). The Board shall send a written notice to all parties that it will take no further action.
- C. The Board shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate, if:
 1. Objections are not filed within the time prescribed in subsection (A), or
 2. The number of challenged ballots is insufficient to affect the election results, and
 3. A run-off election is not required under R4-2-217.
- D. A party may appeal the Board's decision as prescribed in Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-216. Investigation of Objections to Election

- A. The Board shall investigate objections to the conduct of an election or conduct affecting the results of an election if the objections meet the requirements of R4-2-215(A). The Board shall dismiss the objections and certify the results of the election on the basis of an administrative investigation if the Board determines that the objections are invalid.
- B. An aggrieved party may appeal the Board's dismissal of the objections as prescribed in Article 4, within 30 days after the party receives the notice of dismissal of the objection. The Board may extend the time for filing an appeal for good cause.
- C. If the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing.
- D. Any hearing under this Section and any objection to the ALJ's decision shall be initiated and conducted as prescribed in Article 4.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-217. Run-off Elections

- A. If an election ballot provides for a choice among at least two labor organizations and "no union," and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.
- B. In a run-off election, only an individual who is an agricultural employee in the appropriate bargaining unit on the date of the run-off election is eligible to vote.
- C. The ballot in a run-off election shall provide for a selection between the labor organization receiving the highest number of votes in the original election and "no union."
- D. The Board shall administer a run-off election as prescribed in R4-2-214 through R4-2-216.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-218. Consent-election Agreements

An agricultural employer may enter into a consent-election agreement with one or more individuals or labor organizations that present to the employer a claim to be recognized as the representative of a designated bargaining unit. The parties shall submit to the Board an agreement containing a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit are eligible to vote. The Board shall conduct a consent election if the Board finds the consent-election agreement fair and noncollusive. The Board shall conduct a consent election consistent with the methods followed by the Board in conducting elections.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-219. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 3. UNFAIR LABOR PRACTICES**R4-2-301. Unfair Labor Practice Charges**

Any person may make a charge that a person has engaged in or is engaging in an unfair labor practice. The charge may be withdrawn by the charging party before the hearing and thereafter with the consent of the ALJ. If a complaint has issued under R4-2-304 and the charge is withdrawn, the Board may dismiss the complaint on the advice of the General Counsel.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-302. Form and Contents of Charge

- A. A charging party shall include the following in the charge:
 1. The full name, address, and telephone number of the individual, agricultural employer, or labor organization making the charge;
 2. If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit;
 3. The full name and address of the individual, agricultural employer, or labor organization against whom the charge is made; and

4. A clear and concise statement of the facts constituting the alleged unfair labor practice.
- B.** A charging party shall make the charge in writing, sign the charge, and declare under penalty of perjury that its contents are true and correct to the best of the charging party's knowledge, information, and belief.
- C.** The Board shall not accept a charge for filing unless it contains all the information required in subsections (A) and (B).

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-303. Investigation of Charge

- A.** The Board shall serve a copy of a filed charge upon the individual, agricultural employer, or labor organization against whom the charge is made.
- B.** The General Counsel or designee shall conduct a preliminary investigation of the charge under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may:
1. Refuse to issue a complaint; or
 2. File a complaint against any individual, agricultural employer, or labor organization named in the charge that the General Counsel believes may have committed an unfair labor practice; and
 3. Seek appropriate injunctive relief, as provided for in A.R.S. § 23-1390.
- C.** An investigative report, note, memorandum, oral or written statement, tape recording, and any other information or work product prepared or obtained by the General Counsel or designee during an investigation is not subject to subpoena powers of the Act and a person shall not disclose this information to any person without the consent of the General Counsel, unless otherwise provided by law.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-304. Complaint

- A.** If the General Counsel decides after investigating a charge that a formal proceeding should be instituted, the General Counsel shall issue and serve on each party a complaint stating the alleged unfair labor practice. The General Counsel shall include in the complaint a clear and concise statement of the facts upon which the assertion of the Board's jurisdiction is based and a clear and concise description of the act that is claimed to constitute an unfair labor practice. The General Counsel shall include a notice of hearing issued under Article 4 with the complaint.
- B.** After the hearing date is set, the General Counsel shall not amend the complaint unless the ALJ grants a motion to amend made by the General Counsel.
- C.** The General Counsel may withdraw a complaint before the hearing. After the opening of the hearing, the complaint may be withdrawn upon motion by the General Counsel with consent of the ALJ.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-305. Refusal to Issue Complaint

- A.** If, after a charge is filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to re-

sue it, the General Counsel shall advise each party in writing, accompanied by a statement of the grounds for the action. The charging party may file a request to reconsider the refusal to issue or reissue the complaint with the General Counsel within 10 days of receipt of notice of the refusal and shall simultaneously serve a copy on all other parties. The General Counsel shall file any response to the request within seven days of receiving it. The General Counsel shall advise all parties of the decision, in writing and within seven days of the date the decision is made.

- B.** The charging party may file a request to reconsider with the General Counsel if, after the General Counsel refuses to issue or reissue a complaint, newly discovered material evidence is found that could not with reasonable diligence have been discovered at the time the original charge was filed. The request shall be filed immediately upon the discovery of the evidence.
- C.** Nothing in this Section prohibits or limits the General Counsel from issuing or reissuing a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint.
- D.** If a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-306. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-307. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-308. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-309. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-310. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-311. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 4. HEARINGS**R4-2-401. Hearings**

The Board shall use the uniform administrative hearing procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-402. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-403. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-404. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-405. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-406. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-407. Rehearing or Review of Decision; Basis

- A.** A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B.** The Board shall grant a rehearing or review of a final administrative law decision for any of the following causes materially affecting the moving party's rights:
1. The decision is not justified by the evidence or is contrary to law;
 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 3. One or more of the following has deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the Board, the ALJ, or the prevailing party; or
 - c. Accident or surprise that could not have been prevented by ordinary prudence; or
 4. Excessive or insufficient sanction.
- C.** The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

AGRICULTURAL EMPLOYMENT RELATIONS ACT

23-1381. Declaration of Policy

It is hereby declared to be the policy of this state that the uninterrupted production, packing, processing, transporting and marketing of agricultural products are vital to the public interest. It is also declared to be the policy of this state that agricultural employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and terms and conditions of employment or to refrain from engaging in any or all of these activities. It is further declared that there now exists an inequality of bargaining power between agricultural employers and labor unions, arising out of the seasonal character and perishable nature of such agricultural products, the mobility of agricultural labor and the fundamental differences between agriculture and industry. While the right to strike is a basic right of organized labor, such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly. It is the intent of the legislature to provide a means to bargain collectively that is fair and equitable to agricultural employers, labor organizations and employees, to provide orderly election procedures to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state. The overriding special interest of this state with respect to certain secondary boycott activities originating in this state, but extending across state lines and directed at employers in other states, must be recognized, and such acts must be made unlawful and subject to control by the police power of this state.

23-1382. Definitions

In this article, unless the context otherwise requires:

1. "Agricultural employee, permanent" means any employee who is over sixteen years of age, who has been employed by a particular agricultural employer for at least six months during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. "Agricultural employee, temporary" means any employee who is over sixteen years of age, who is employed by a particular agricultural employer, who has been so employed during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. If otherwise qualified, a person shall be considered an agricultural employee if an agricultural employer pays the wages of the employee for work performed for the employer's benefit or on his behalf, even though the supervision of the employee, the bookkeeping and the issuance of payroll checks are by a person other than the employer. In calculating a workday of an agricultural employee, one hour or more of employment in any one day shall be considered a workday. "Agricultural employee" also includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. "Agricultural employee" does not include any individual who:

(a) Is employed by his parent or spouse or by an immediate relative.

- (b) Has the status of an independent contractor.
- (c) Is employed as a supervisor or in a confidential capacity or as a clerical employee or a guard.
- (d) Is employed as an executive, professional or technical employee.
- (e) Has quit or has been discharged for cause.
- (f) Is a tenant or sharecropper and reasonably directs or shares in the management of an enterprise engaged in agriculture.
- (g) Is engaged in hauling or stitching functions.

2. "Agricultural employer" means any employer who is engaged in agriculture and who employed six or more agricultural employees for a period of thirty days during the preceding six month period and includes any person who provides labor and services on one or more farms as an independent contractor if such person, for a period of thirty days during the preceding six month period, employed six or more employees in such work. In calculating the number of agricultural employees employed by an agricultural employer or provided by an independent contractor, one hour or more of employment in any one day shall be considered a day of work. Agricultural employer also includes any employer who is engaged in agriculture with less than six agricultural employees and who voluntarily elects to be subject to this article by filing a request in writing with the board.

3. "Agriculture" means all services performed on a farm as defined in section 23-603, including but not limited to the recruiting, housing and feeding of persons employed or to be employed as agricultural employees by agricultural employers.

4. "Board" means the agricultural employment relations board.

5. "Farm" means any enterprise that is engaged in agriculture, that is operated from one headquarters where the utilization of labor and equipment is directed and whose tracts of land, if consisting of separate tracts of land, are located within a fifty mile radius of such headquarters.

6. "Labor dispute" means any controversy between an agricultural employer and his agricultural employees or their representative concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

7. "Labor organization" means any organization or any agency defined in sections 23-1301 and 23-1321.

8. "Person" means one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

9. "Professional employee" means:

- (a) Any employee engaged in agricultural work that either:

(i) Is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work.

(ii) Involves the consistent exercise of discretion and judgment in its performance.

(iii) Is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iv) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

(b) Any employee who has completed the course or courses of specialized intellectual instruction and study described in subdivision (a), item (iv) and is performing such work, or is performing such work or related work under the supervision of a professional person while acquiring specialized instruction.

10. "Representative" means any individual or labor organization.

11. "Supervisor" means any individual who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if such authority requires the use of independent judgment.

12. "Ultimate consumer" means the person who purchases an agricultural product for consumption.

13. "Unfair labor practice" means any unfair labor practice listed in section 23-1385.

23-1383. Rights of Employees

A. Agricultural employees have the right to self-organization, to bargain directly for themselves, and to form and join or assist labor organizations to bargain collectively through representatives of their own free choosing, or to engage in lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection, and each such employee has the right, without interference from any source, to refrain from any and all of these activities.

B. Agricultural employees also have those rights more particularly defined and described in articles 1 and 3 of this chapter and shall be protected from the practices described in article 4 of this chapter.

23-1384. Rights of Employer

An agricultural employer has the following management rights:

1. To manage, control and conduct his operations, including but not limited to the number of farms and their locations, methods of carrying on any operation or practices, kinds of crops, time of work, size and makeup of crews, assignment of work and places of work.

2. To hire, suspend, discharge or transfer employees in accordance with his judgment of their ability.
3. To determine the type of equipment or machinery to be used, the standards and quality of work, and the wages, hours and conditions of work. The terms of employment relating to wages, hours, conditions of work and matters of worker safety, sanitation, health and the establishment of grievance procedures directly relating to a job are subject to negotiation.
4. To work on his own farm in any capacity at any time.
5. To join or refuse to join any labor organization or employer organization.

23-1385. Unfair labor practices; definition

A. It is an unfair labor practice for an agricultural employer:

1. To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 23-1383 and articles 1 and 3 of this chapter or to violate the protection of employees from the practices described in article 4 of this chapter.
2. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. An agricultural employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.
3. To encourage or discourage membership in any labor organization by discrimination in regard to hiring or tenure of employment or any term or condition of employment.
4. To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this article.
5. To refuse to bargain collectively with the representatives of his employees, subject to section 23-1389. Nothing in this article shall be construed as requiring an agricultural employer to bargain collectively until a representative of his agricultural employees has been determined by means of a valid secret ballot election.
6. To discharge or otherwise discriminate against any person because he has filed charges or given testimony before the board or a court.
7. To threaten to have discharged any agricultural employee, or threaten to have wages of any agricultural employees reduced, solely because of any labor activity.

B. It is an unfair labor practice for a labor organization or its agents to:

1. Impose any economic sanction, to restrain or coerce agricultural employees in the exercise of their rights or to coerce or intimidate any employee in the enjoyment of his legal rights provided by this article, or to intimidate his family, picket his domicile or injure the person or property of any employee or his family. This paragraph does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

2. Threaten or impose any economic sanction or reprisal against any person who is not a member of the labor organization in the exercise of rights under this article, including but not limited to the right to refrain from any or all concerted activity, or against any person, who is not a member of the labor organization, who refrains from compliance with a union rule, policy or practice that establishes or affects wages, hours or working conditions at such person's place of employment.

3. Restrain, coerce, or threaten or impose any fine or other economic sanction against any person who invokes the processes of the board, or the court, or against an agricultural employer or employee in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

4. Refuse to bargain collectively with an agricultural employer, provided it is the majority representative of his agricultural employees as determined pursuant to section 23-1389.

5. Cause or attempt to cause an agricultural employer to:

(a) Pay or deliver or agree to pay or deliver any money or other thing of value for services that are not performed or that are not to be performed.

(b) Establish or alter the number of employees to be employed or the assignment of the employees.

(c) Assign work to the employees of a particular employer.

(d) Discriminate in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this subdivision prohibits agreements between labor organizations and agricultural employers that regulate hiring and tenure of employment on the basis of seniority, and the labor organization is not given power to determine seniority unilaterally.

6. Engage in a secondary boycott as defined in section 23-1321.

7. Induce or encourage or threaten, restrain or coerce any secondary employer or any executive or management employee of any secondary employer to make a management decision not to handle, transport, process, pack, sell or distribute any agricultural commodity of an agricultural employer with whom a labor dispute exists.

8. Induce or encourage the ultimate consumer of any agricultural product to refrain from purchasing, consuming or using such agricultural product by the use of dishonest, untruthful and deceptive publicity. Permissible inducement or encouragement within the meaning of this section means truthful, honest and nondeceptive publicity that identifies the agricultural product produced by an agricultural employer with whom the labor organization has a primary dispute. Permissible inducement or encouragement does not include publicity directed against any trademark, trade name or generic name that may include agricultural products of another producer or user of such trademark, trade name or generic name.

9. Restrain, coerce or threaten an ultimate consumer to prevent him from purchasing, consuming or using such agricultural product.

10. Threaten or engage in arson, libel, slander, injury to person or property or other violent conduct if the objective is to prevent the preparing for market, transporting, handling, displaying for sale, or selling of any agricultural product.

11. Intimidate, restrain or coerce agricultural employers in the exercise of the rights guaranteed by section 23-1384.

12. Picket or cause to be picketed, boycott or cause to be boycotted, or threaten to boycott or picket, or cause to be boycotted or picketed, any agricultural employer if the objective is to induce, encourage, force or require an agricultural employer to recognize or bargain with a labor organization as the representative of his agricultural employees, or the agricultural employees of an agricultural employer to accept or select such labor organization as their collective bargaining representative unless such labor organization is currently certified as the representative of such employees:

(a) If the agricultural employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under section 23-1389.

(b) If within the preceding twelve months a valid election under section 23-1389 has been conducted.

(c) If a petition has been filed under section 23-1389.

13. Call a strike unless a majority of the employees within the bargaining unit has first approved the calling of such a strike by secret ballot.

C. The expressing of any views, argument or opinion or the making of any statement, including expressions intended to influence the outcome of an organizing campaign, a bargaining controversy, a strike, lockout or other labor dispute, or the dissemination of such views whether in written, printed, graphic, visual or auditory form, if such expression contains no threat of reprisal or force or promise of benefit, does not constitute or is not evidence of an unfair labor practice or does not constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any of the provisions of this article. A statement of fact by either a labor organization or an agricultural employer relating to existing or proposed operations of the employer or to existing or proposed terms, tenure or conditions of employment with the employer shall not be considered to constitute a threat of reprisal or force or promise of benefit. An employer shall not be required to furnish or make available to a labor organization, and no labor organization shall be required to furnish or make available to an employer, materials, information, time or facilities to enable such employer or labor organization, as the case may be, to communicate with employees of the employer, members of the labor organization, its supporters or its adherents.

D. For the purposes of this section, "bargain collectively" means the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment that directly affect the work of employees, or the negotiation of an agreement, or to resolve any question arising thereunder. Bargain collectively includes the

furnishing of necessary and relevant information in connection with the negotiation of an agreement or any issue arising under such agreement, or requiring as a condition for entering into an agreement the execution of a written contract incorporating any agreement reached if requested by either party. The failure or refusal of either party to agree to a proposal, to the making, changing or withdrawing of a lawful proposal or to the making of a concession does not constitute, or is not evidence, direct or indirect, of, a breach of this obligation. The board in any remedial order shall not direct either party to make any concession, agree to any proposal or make any payment of money except to employees who are reinstated with back pay as provided in section 23-1390. This section does not require any agricultural employer to bargain collectively with respect to any management rights. "Management rights", as used in this subsection, includes but is not limited to the right to discontinue the entire farming operation or any part of the operation, to contract out any part of the work of the operation not covered by a labor contract, to sell or lease any of the real or personal property involved in the operation or to determine the methods, equipment and facilities to be used in producing agricultural products or the agricultural products to be produced.

E. If there is in effect a collective bargaining contract covering agricultural employees, the duty to bargain collectively also means that no party to the contract may terminate or modify the contract, unless the party desiring such termination or modification:

1. Serves a written notice on the other party to the contract of the proposed termination or modification not less than sixty days prior to the expiration date of the contract, or if such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification.
2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.
3. Continues the contract in full force and effect without resorting to a strike or lockout for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

F. The duties imposed on agricultural employers, agricultural employees and labor organizations become inapplicable on an intervening certification of the board, under which the labor organization or individual that is a party to the contract has been superseded as or ceased to be the representative of the employees subject to section 23-1389, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the sixty day period specified in this subsection loses his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute for the purposes of this section and sections 23-1389 and 23-1390, but such loss of status for such employee terminates when he is reemployed by such employer.

23-1386. Agricultural employment relations board; members; terms; appointment

A. An agricultural employment relations board is established that consists of seven members.

B. The governor shall appoint the members of the board. Two of the members shall be appointed as representatives of agriculture employers, two of the members appointed shall be representatives of organized agricultural labor and the three additional members, one of whom shall be the chairman of the board, shall be appointed as representatives of the general public. The term of office of the members is five years. On the initial appointment, one of the labor representatives shall be appointed for a term of one year, one of the representatives of the general public shall be appointed for a term of one year, one of the agricultural representatives shall be appointed for a term of two years, one of the representatives of the general public shall be appointed for a term of two years, one of the agricultural representatives shall be appointed for a term of three years, one of the labor representatives shall be appointed for a term of four years, and one of the public members of the board shall be appointed for a term of five years. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired portion of the term of the member he is succeeding. Members of the board may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office but for no other cause.

C. The governor shall appoint two alternate members. One of the alternates shall be appointed as a representative of organized agricultural labor and the other as a representative of agriculture. Alternates shall be appointed for terms of five years. Any individual appointed to fill a vacancy of any alternate shall be appointed only for the unexpired portion of the term of the alternate he is succeeding. Alternates may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office, but for no other cause. No alternate may participate in deliberations of the board except in the absence of a board member representing his area of interest.

D. The governor shall appoint a general counsel of the board. The general counsel is the exclusive legal representative of the board, has final authority, on behalf of the board, with respect to the investigation of charges and the issuance of complaints under section 23-1390 and with respect to the prosecution of such complaints by the board, and has such other duties as the board may prescribe or as may be provided by law. The general counsel shall appoint such assistants as needed to carry out the work of the office.

E. A vacancy on the board does not impair the right of the remaining members to exercise all of the powers of the board, and four members constitute a quorum of the board. The board shall have an official seal that is judicially recognized.

F. The principal office of the board shall be in the city of Phoenix, but it may meet and exercise any of its powers at any other place.

G. The board may meet in executive session on the decision of a majority of the members of the board.

H. Meetings of the board may be called by the chairman or by a majority of the members of the board by giving written notice to the chairman who shall notify all of the members of the board as to the time and place of the board meeting.

23-1387. Powers and duties

A. By one or more of its members or by such agents or agencies as it may designate, the board may prosecute any inquiry necessary to its functions in any part of this state. A member of the board who participates in any such inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case.

B. The board shall adopt rules pursuant to title 41, chapter 6 as may be necessary to carry out this article.

C. The board may also establish offices in such other cities as it deems necessary and shall determine the region to be served by such offices. The board may delegate to the heads of these offices as it deems appropriate its powers under section 23-1389 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists and to direct an election by a secret ballot and to certify, within a reasonable period of time, the results of such election. The board may review any action taken pursuant to the authority delegated under this subsection by any regional officer on a request for a review of such action filed with the board by any interested party. Any such review made by the board, unless specifically ordered by the board, does not operate as a stay of any action taken by the regional officer. The entire record considered by the board in considering or acting on any such request or review shall be made available to all parties before the consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

23-1388. Officers and employees of the board

A. The board may appoint an executive secretary and such attorneys and other employees as it may from time to time find necessary for the proper performance of its duties. Compensation for all such personnel shall be as determined pursuant to section 38-611.

B. The board may not employ any attorney for the purpose of reviewing transcripts of hearings or preparing drafts of opinions, except that any attorney employed for assignment as a legal assistant to any board member may review such transcripts and prepare such drafts for the board member.

C. No administrative law judge's report may be reviewed, either before or after its publication, by any person other than a member of the board or his legal assistant, and no administrative law judge may advise or consult with the board with respect to exceptions taken to his findings, rulings or recommendations.

D. At the discretion of the board, attorneys appointed under this section may appear for and represent the board in any case in court.

23-1389. Representatives and elections

A. Representatives selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in a unit appropriate for such purposes are the exclusive representatives of all of the agricultural employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. If ratification of any such contract is required, the right to vote in such ratification is limited to the employees in the bargaining unit. Any individual agricultural employee or a group of agricultural employees at any time may present grievances to their agricultural employer and have such grievances adjusted, without the intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative may be present at such adjustment.

B. The board shall decide in each case whether in order to ensure to employees the fullest freedom in exercising their rights the unit appropriate for the purposes of collective bargaining shall consist of either all temporary agricultural employees or all permanent agricultural employees of an agricultural employer working at the farm where such employer grows or produces agricultural products, or both. In making unit determinations the extent of a union's extent of organization shall not be controlling. Principal factors should be the community of interest between employees, the same hours, duties and compensation, the administrative structure of the employer and the control of labor relations policies.

C. The board shall investigate any petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing on due notice, if such petition has been filed in good faith in accordance with the rules that may be prescribed by the board:

1. By an agricultural employee or group of agricultural employees or any individual or labor organization acting in its behalf alleging that thirty per cent or more of the number of agricultural employees in the unit in question either wish to be represented for collective bargaining and that their employer declines to recognize their representative or assert that the individual or labor organization that has been certified or that is being currently recognized by their employer as the bargaining representative is no longer a representative.

2. By an agricultural employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative or that an individual or labor organization that has previously been certified as the bargaining representative is no longer a representative.

D. If the board finds on the record of such hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results. If a second labor organization files a petition for an election alleging that thirty per cent or more of the employees in the unit in question desire to be represented by that labor organization, the board shall require that the names of both labor organizations appear on the ballot. In any election the voters shall be afforded the choice of "no union". If in a representational election more than one union is on the ballot, and none of the choices receives a majority vote, a second election shall be held. The

second election shall be between the union receiving the highest number of votes and "no union". In any election a labor organization shall obtain a majority of all votes cast in that election in order to be certified as the bargaining representative of all of the employees in that unit.

E. In determining whether or not a question of representation exists, the same rules of decision apply irrespective of the identity of the persons filing the petition or the kind of relief sought. In no case may the board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 23-1390.

F. Within five days of receipt of such a petition, the agricultural employer may file a challenge to such petition on the ground that the authorization for the filing of such petition is not current or that such authorization has been obtained by fraud, misrepresentation or coercion. The petition shall not act to stay the election proceeding, but if it is thereafter determined that the authorizations are not current or are obtained by fraud, misrepresentation or coercion the petition will be dismissed.

G. No election may be directed or conducted in any bargaining unit or any subdivision of a bargaining unit within which, in the preceding twelve month period, a valid election has been held. Employees who are engaged in an economic strike and who are not entitled to reinstatement are eligible to vote under such rules as the board finds are consistent with the purposes and provisions of this article in any election conducted within three months after the commencement of the strike. Any agricultural employee who is found to have sought or accepted employment only for the purpose of affecting the outcome of an election is not eligible to vote in an election conducted pursuant to this article for a period of twelve months from the date of that election.

H. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with rules or decisions of the board.

I. Within ten days after an election is directed by the board or a consent election agreement is approved by the board and on request of the board, the agricultural employer shall furnish to the board a list of agricultural employees in the bargaining unit who are qualified to vote, and this list shall be made available to the organizations or other interested employees involved in the election.

J. On the filing with the board, by thirty per cent or more of the agricultural employees in a bargaining unit covered by a certification or by an agreement between their employer and a labor organization made pursuant to section 23-1385, of a petition alleging the desire that such representation authority be rescinded, the board shall conduct an election by secret ballot of the employees in such unit and shall certify the results to the labor organization and the employer.

23-1390. Prevention of unfair labor practices

A. The board, as provided in this section, may prevent any person from engaging in any unfair labor practice.

B. If it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, may issue and cause to be served on the person a complaint stating the charges in that respect and containing a notice of hearing before the board or a member of the board or an administrative law judge at least five days after the serving of the complaint. Hearings shall be conducted pursuant to title 41, chapter 6, article 10. No complaint may issue based on any unfair labor practice occurring more than six months before the filing of the charge with the board and the service of a copy of the complaint on the person against whom the charge is made, unless the person so aggrieved was prevented from filing the charge by reason of service in the armed forces, in which event the six month period shall be computed from the day of the person's discharge. Any such complaint may be amended by the member or administrative law judge conducting the hearing or the board in its discretion at any time before the issuance of an order based on the complaint. The person so complained of may file an answer to the original or amended complaint, may appear in person or otherwise and may give testimony at the place and time fixed in the complaint. In the discretion of the board or the member, agent or agency conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

C. The testimony taken by the board or such member or administrative law judge shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board on notice may take further testimony or hear argument. If on the preponderance of the testimony taken the board determines that any person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on the person an order requiring the person to cease and desist from the unfair labor practice and shall take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this article. If an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by the employee. The order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. If on the preponderance of the testimony taken the board determines that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner or examiners of the board, the member, or the examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, that shall be filed with the board, and if no exceptions are filed within ten days after service of the order on such parties, or within such further period as the board may authorize, such recommended order becomes the order of the board and is as prescribed in the order.

D. Until the record in a case is filed in a court, as provided in this section, the board at any time on reasonable notice and in a manner as it deems proper may modify or set aside, in whole or in part, any finding or order made or issued by it.

E. The board may petition the superior court in any county where the unfair labor practice in question occurred or where the person resides or transacts business for the enforcement of the

order and for appropriate temporary relief or a restraining order. On the filing of the petition the court shall cause notice to be served on the person, and thereupon has jurisdiction of the proceeding and of the question determined therein, and may grant such temporary relief or restraining order as it deems just and proper and may make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board.

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.

G. If an order of the board made pursuant to this section is based in whole or in part on facts certified following an investigation pursuant to section 23-1389 and there is a petition for the enforcement of the order, the certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection E of this section, and the decree of the court enforcing the order of the board shall be made and entered based on the pleadings, testimony and proceedings set forth in the transcript. The court shall not enforce any order of the board that rests, in whole or in part, on evidence adduced from witnesses who have not testified under oath and who have not been subject to cross-examination by opposing parties.

H. Unless specifically ordered by the court, the commencement of proceedings under subsection E or F of this section does not operate as a stay of the board's order.

I. Petitions filed under this article shall be heard expeditiously, and if possible within ten days after they have been docketed.

J. On issuance of a complaint as provided in subsection B of this section charging that any person has engaged in or is engaging in an unfair labor practice, the board may petition the superior court in any county where the unfair labor practice in question is alleged to have occurred or where the person resides or transacts business for appropriate temporary relief or a restraining order. On the filing of any such petition the court shall cause notice to be served on the person and thereupon has jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

K. If it is charged that any person has engaged in an unfair labor practice, the preliminary investigation of the charge shall be made immediately and shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer to whom the matter may be referred has reasonable cause to believe that the charge is true and that a complaint should issue, the officer shall petition, on behalf of the board, the superior court in the county where the unfair labor practice in question has occurred or is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. On the filing of any such petition the superior court has jurisdiction to grant any injunctive relief or temporary restraining order it deems just and proper, notwithstanding any other law, except that no temporary restraining order may be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and the temporary restraining order is effective for no longer than five days and will become void at the expiration of such period. On the filing of any

such petition the court shall cause notice to be served on any person complained against in the charge and the person, including the charging party, shall be given an opportunity to appear in person or by counsel and present any relevant testimony. For the purposes of this subsection, the superior court is deemed to have jurisdiction of a labor organization either in the county in which the organization maintains its principal office or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process on an officer or agent constitutes service on the labor organization and makes the organization a party to the suit.

23-1391. Investigatory powers

A. The board, or its duly authorized agent or agencies, shall have access to, at all reasonable times, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The board or any member of the board on application of any party to such proceedings forthwith shall issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the board to revoke, and the board shall revoke, the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. The attendance of witnesses and the production of the evidence may be required from any place in this state at any designated place of hearing.

B. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court in the county within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, on application by the board, has jurisdiction to issue to such person an order requiring the person to appear before the board, or a member, agent or agency of the board, to produce evidence if so ordered or to give testimony touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt.

C. Complaints, orders and other process and papers of the board, or a member, agent or agency of the board, may be served either personally, by registered or certified mail, by telegraph or by leaving a copy at the principal office, place of business or residence of the person required to be served. The verified return by the individual personally serving or leaving the copy, setting forth the manner of the service, and the return post office receipt, if registered or certified, or telegraph receipt and mailed or telegraphed as provided in this subsection, are proof of service. Witnesses summoned before the board or its members, agent or agency shall be paid the same fees and mileage that are paid witnesses in the superior court and witnesses whose depositions are taken, and the persons taking the depositions are entitled to the same fees as are paid for like services in the superior court.

D. The departments and agencies of this state, if directed by the governor, shall furnish the board, on its request, with all unprivileged records, papers and information in their possession relating to any matter before the board.

23-1392. Violation; classification

Any person who knowingly resists, prevents, impedes or interferes with any member of the board or any of its agents or agencies in the performance of duties pursuant to this article or who violates any provision of this article is guilty of a class 1 misdemeanor. This section does not apply to any activities carried on outside this state.

23-1393. Court jurisdiction

A. Any person who is aggrieved or is injured in his business or property by reason of any violation of this article, or a violation of an injunction issued as provided in this section, may sue in the superior court in the county having jurisdiction of the parties for recovery of any damages resulting from the unlawful action, regardless of where such unlawful action occurred and regardless of where such damage occurred, including costs of the suit and reasonable attorney fees. On the filing of the suit the court also has jurisdiction to grant injunctive relief or a temporary restraining order as it deems just and proper. Petitions for injunctive relief or temporary restraining orders shall be heard expeditiously. Petitions for temporary restraining orders alleging a violation of section 23-1385 shall be heard forthwith and if the petition alleges that substantial and irreparable injury to the petitioner is unavoidable such temporary restraining orders may be issued pursuant to rule 65 of the Arizona rules of civil procedure.

B. In the case of a strike or boycott, or threat of a strike or boycott, against an agricultural employer, the court may grant, and on proper application shall grant as provided in this section, a ten day restraining order enjoining such a strike or boycott, provided that if an agricultural employer invokes the court's jurisdiction to issue the ten day restraining order to enjoin a strike as provided by this subsection, the employer as a condition must agree to submit the dispute to binding arbitration as the means of settling the unresolved issues. If the parties cannot agree on an arbitrator within two days after the court awards a restraining order, the court shall appoint one to decide the unresolved issues. Any agricultural employer is entitled to injunctive relief accorded by rule 65 of the Arizona rules of civil procedure on the filing of a verified petition showing that his agricultural employees are unlawfully on strike or are unlawfully conducting a boycott, or are unlawfully threatening to strike or boycott, and that the resulting cessation of work or conduct of a boycott will result in the prevention of production or the loss, spoilage, deterioration or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption in commercial quantities. For the purpose of this subsection, an agricultural commodity or commodities for human consumption with a market value of five thousand dollars or more constitutes commercial quantities.

C. For the purpose of this article, the superior court has jurisdiction of a labor organization in this state if such organization maintains its principal office in this state, or if its duly authorized officers or agents are engaged in promoting or protecting the interests of agricultural employee members or in the solicitation of such prospective members in this state.

D. The service of any summons, subpoena or other legal process of the superior court on an officer or agent of a labor organization, in his capacity as such, constitutes service on the labor organization.

E. Any labor organization that represents employees as defined in this article, and any agricultural employer, are bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of this state.

F. For the purposes of this article, in determining whether any person is acting as an agent of another person in order to make the other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling. Nothing in this section shall be deemed to preclude an agent being sued both in his capacity as an agent and as an individual.

23-1394. Scope of article

This article applies only to such persons, labor organizations or activities as are not within the jurisdiction of the national labor relations act or the jurisdictional guidelines established by the national labor relations board.

23-1395. Limitations

A. Nothing in this article, except as otherwise specifically provided, shall be construed as to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

B. Nothing in this article prohibits any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this article may be compelled to deem such supervisors as agricultural employees for the purpose of any law, either national or local, relating to collective bargaining.

ARIZONA LOTTERY

Title 19, Chapter 3, Article 2, Retailers

Amend: R19-3-201, R19-3-202, R19-3-202.01, R19-3-202.02, R19-3-202.03, R19-3-202.04, R19-3-202.06, R19-3-203, R19-3-204, R19-3-204.01, R19-3-204.02, R19-3-204.04, R19-3-205, R19-3-206, R19-3-209, R19-3-210, R19-3-211, R19-3-212, R19-3-213, R19-3-214, R19-3-215, R19-3-216, R19-3-217



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 11, 2022

SUBJECT: ARIZONA LOTTERY
Title 19, Chapter 3, Article 2, Retailers

Amend: R19-3-201, R19-3-202, R19-3-202.01, R19-3-202.02,
R19-3-202.03, R19-3-202.04, R19-3-202.06, R19-3-203,
R19-3-204, R19-3-204.01, R19-3-204.02, R19-3-204.04,
R19-3-205, R19-3-206, R19-3-209, R19-3-210, R19-3-211,
R19-3-212, R19-3-213, R19-3-214, R19-3-215, R19-3-216,
R19-3-217

Summary:

This regular rulemaking from the Arizona Lottery (Lottery) seeks to amend twenty-three (23) rules in Title 19, Chapter 3, Article 2 related to retailers. Specifically, the rules related to retailers prescribe the requirements and procedures for Arizona retail businesses that sell Lottery game products

The Lottery seeks to amend these rules to implement improvements in Lottery business processes and recent changes to Lottery statutes. Laws 2021, Chapter 234 (HB2772) permits the Lottery to develop a Keno game for distribution by certain qualified retailers. The Lottery indicates these rule amendments include the licensing requirements for Keno. Additionally, the Lottery indicates the retailer rules are being amended to include flexible sales and licensing models for qualified retailers interested in selling only some specific Lottery products. The

Lottery indicates amendments have also been made where necessary to tighten compliance provisions with respect to inventory and stolen ticket reporting procedures, and to improve the clarity and understandability of the rules.

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

The Lottery cites both general and specific authority for these rules.

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

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

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

The rules for Article 2 describe various requirements and procedures for retail businesses that sell Lottery game products. The Governor's Office approved an exception from the rulemaking moratorium on June 7, 2021. Without this rulemaking, Lottery retailer rules will limit licensing and sales flexibility, and the State will lose revenue-sharing funds generated from non-licensed lottery activities. The Lottery expects to cut staff time dealing with these issues by 50% and anticipates this rulemaking will primarily impact the agency and Lottery retailers.

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 agency is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. To the extent feasible, the Lottery will use existing staff in order to incur the least cost possible to fulfill the new mandate and work collaboratively with other agencies if needed for assistance.

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

The rulemaking is not anticipated to have any identifiable impact on political subdivisions, or on private or public employment.

The Lottery anticipates costs to the agency including administration expenses associated with application/ licensing, compliance, and customer service. The Retailer Rules permit a license fee that allows the Lottery to recover costs related to licensing. The Lottery will benefit from the potential to generate additional revenue for the state from increased licensing and sales options.

Businesses impacted by these rules are qualified retail establishments that apply for a license to sell Lottery products. Lottery retailers are the only small businesses impacted by the rulemaking. The rules are expected to benefit large and small retailers, while having little or no negative impact on the Lottery's traditional retailer base. There are currently more than 3,300 licensed Lottery retailers. The Lottery generated a total of \$1.43 billion in sales for FY 21, which equates to approximately \$98 million in retailer commissions statewide and \$280 million to Lottery beneficiaries. There are no additional costs to retailers as a result of this rulemaking and license fees remain unchanged for all license applicants.

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

The Lottery indicates that there were no substantive changes between the proposed rules and the final rules. The Lottery states that corrections were made to maintain consistent terms throughout the rule and to references to other rules in Chapter 3 to ensure accuracy. Council staff does not believe these changes rise to the level of substantial differences 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 Lottery indicates no oral or written comments were received regarding this rulemaking.

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

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, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Lottery indicates its implementing statutes outline the licensing process rather than utilizing a general permit. Therefore, the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute and a general permit is not required pursuant to A.R.S. § 41-1037(A)(2).

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 Lottery indicates there is no corresponding federal law that is applicable to the subject matter of these rules. The Lottery states the rules are based on state law.

11. Conclusion

This regular rulemaking from the Arizona Lottery (Lottery) seeks to amend twenty-three (23) rules in Title 19, Chapter 3, Article 2 to implement licensing requirements for Keno and to include flexible sales and licensing models for qualified retailers interested in selling only some specific Lottery products. The Lottery also indicates amendments have been made where necessary to tighten compliance provisions with respect to inventory and stolen ticket reporting procedures, and to improve the clarity and understandability of the rules.

The Lottery is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.



Douglas A. Ducey
Governor

Gregory R. Edgar
Executive Director

December 21, 2021

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

**Re: A.A.C. Title 19. Alcohol, Horse and Dog Racing, Lottery, and Gaming
Chapter 3. Arizona State Lottery Commission
Article 2: Retailers**

Dear Ms. Sornsins:

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

1. Close of record date: The proposed rule was adopted by the agency and the rulemaking record was closed on December 6, 2021, following a period for public comment and an oral proceeding.
2. Relation of rulemaking to a five-year review: This rulemaking is not related to a five-year review report, however comments made in the last report were included where applicable. .
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the preamble accurately discloses all studies relating to the rule that were either reviewed and relied on or not relied on in the agency's evaluation of or justification for the rules.
6. JLBC notification regarding new full-time employees. Not applicable; at this time the agency is expecting to use existing staff.
7. Comments regarding proposed rule: A public meeting regarding the proposed rulemaking was conducted on December 6, 2021. At that time, interested persons were afforded the opportunity to comment on the rules. No oral or written comments from the public were received. The Lottery Commission authorized the Director to adopt the rules on December 17, 2021.

8. List of documents enclosed:
- a. Cover letter signed by the Director of the Arizona Lottery;
 - b. Documentation from the Office of the Governor providing authorization to proceed with the rulemaking;
 - c. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 - d. Economic, Small Business, and Consumer Impact Statement; and
 - e. Minutes from oral proceeding held on December 6, 2021.

Please contact Sherri Zendri at (480) 921-4401 if I may be of further assistance.

Sincerely,



Gregg Edgar,
Executive Director

Enclosures

9.6806

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R19-3-201	Amend
R19-3-202	Amend
R19-3-202.01	Amend
R19-3-202.02	Amend
R19-3-202.03	Amend
R19-3-202.04	Amend
R19-3-202.06	Amend
R19-3-203	Amend
R19-3-204	Amend
R19-3-204.01	Amend
R19-3-204.02	Amend
R19-3-204.04	Amend
R19-3-205	Amend
R19-3-206	Amend
R19-3-209	Amend
R19-3-210	Amend
R19-3-211	Amend

R19-3-212	Amend
R19-3-213	Amend
R19-3-214	Amend
R19-3-215	Amend
R19-3-216	Amend
R19-3-217	Amend

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

Authorizing statute: A.R.S. § 5-554(B)

Implementing statute: A.R.S. §§ 5-554(H) and 5-562

3. The effective date of the rules:

Sixty days after filing with the Secretary of State

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 2610, November 5, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 2581, November 5, 2021

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

Name: Sherri Zendri, Director of Legal Services

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4401

Fax: (480) 921-4512

E-mail: SZendri@azlottery.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 Retailer Rules prescribe the requirements and procedures for Arizona retail businesses that sell Lottery game products. These rules are being amended to implement improvements in Lottery business processes and recent changes to Lottery statutes. Laws 2021, Chapter 234 (HB2772) permits the Lottery to develop a Keno game for distribution by certain qualified retailers. These rules include the licensing requirements for Keno. Additionally, the retailer rules are being amended to include flexible sales and licensing models for qualified retailers interested in selling only some specific Lottery products. Amendments have also been made where necessary to tighten compliance provisions with respect to inventory and stolen ticket reporting procedures, and to improve the clarity and understandability of the rules.

An exception from the rulemaking moratorium outlined in Executive Order 2021-02 was received from the Governor's Office on June 7, 2021.

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

None.

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

Not applicable

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

1. Identification of the proposed rulemaking.

The rules for Article 2, Retailers, describe various requirements and procedures for retail businesses that sell Lottery game products. The rules explain common retailer provisions such as: licensure requirements; retailer conduct including the revocation or suspension of retailer licenses; ticket sales and prize redemptions; retailer compensation; hearing procedures; stolen ticket procedures; and Lottery-conducted compliance investigations. The rules are being amended to include the addition of license “endorsements” for specialty products to simplify the licensing process and allow retailers the flexibility to sell the products most profitable to their particular customers. This rulemaking also makes the revisions necessary to implement the statutory changes approved in Laws 2021, Chapter 234 (HB2772) permitting the Lottery to develop a Keno game for distribution by certain qualified retailers. Finally, the rulemaking strengthens certain compliance provisions to better protect the integrity of the Lottery. The Governor’s Office approved an exception from the rulemaking moratorium on June 7, 2021.

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

This rulemaking is primarily designed to allow for increased licensing and sales flexibility. However the rule does tighten a few compliance provision to better address retailers in arrears, non-licensed retailers, and illegal gambling kiosks (“gray machines”). The Lottery has modified internal processes to identify these behaviors as soon as they occur, thus limiting the overall time spent on these challenges. However, it is estimated that staff collectively spend 2-4 hours per week on these issues.

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:

The harm without this rulemaking is that Lottery retailer rules will limit licensing and sales flexibility, and the State will lose revenue-sharing funds generated from non-licensed lottery activities.

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

The Lottery expects to cut staff time dealing with these issues by 50%.

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

The Lottery anticipates this rulemaking will primarily impact the agency and Lottery retailers.

3. *Cost-benefit Analysis:*

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed

rulemaking, including the number of new full-time employees necessary to implement and enforce the proposed rules.

As a result of HB2772 that was passed in the 2021 Legislative Session, Arizona Lottery may issue a Keno license to fraternal or veterans' organizations or off-track betting locations that are located at least five (5) miles from an Indian gaming facility in Arizona. Currently the Lottery licenses about 120 fraternal or veterans' organizations and there are approximately 60 off-track betting locations licensed by the Arizona Department of Gaming. Costs to the Lottery related to this rulemaking include administration expenses associated with application/licensing, compliance, and customer service. The Retailer Rules permit a license fee that allows the Lottery to recover costs related to licensing. No fee changes are requested as a result of these rules and retailers will not pay any additional fees for specific license endorsements.

The Lottery recognizes there is the potential for additional personnel expenses in licensing and compliance as a result of Keno. Total lead time to issue a license is currently about 15 days and the Lottery will closely monitor workloads to ensure the ability to continue meeting this service level. At this time the Lottery does not intend to add additional compliance and security staff and instead will work collaboratively with other Arizona state agencies should the need for additional compliance staff arise. Typical security and investigative responsibilities include retailer compliance monitoring, background checks, criminal investigations regarding theft of Lottery tickets, and investigations regarding complaints from

retailers and the public. Lottery conducted more than 3,100 investigation cases for the Lottery's 3300+ retailers in FY2021.

The Lottery will benefit from the potential to generate additional revenue for the state from increased licensing and sales options. Under a pilot project with 73 stores that would otherwise not find Lottery sales profitable, leased vending machine space to the Lottery yielded \$1.4 million in revenue for the Lottery and over \$52,000 to the retailer.

Impact on Other Agencies: The rules have no identifiable impact on other agencies.

FTE Requirements: The Lottery anticipates the need for no new positions to implement and enforce the proposed rules.

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

This rulemaking will not have any identifiable impact on political subdivisions of the state, other than providing funding for designated state programs.

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

Businesses impacted by these rules are qualified retail establishments that apply for a license to sell Lottery products. Lottery retailers are also the only small businesses impacted by this rulemaking. The rules are expected to benefit

retailers, both large and small, while having little or no negative impact on the Lottery's traditional retailer base.

There are currently greater than 3,300 licensed Lottery retailers. Costs to retailers include application/licensing fees and any administrative costs associated with selling Lottery products. These costs are recovered by the commission retailers earn on each sale. Retailers receive a commission of 6.5% for each transaction. Qualified fraternal or veterans organizations and off-track betting locations that chose to apply for a Keno license will benefit by being able to offer a lottery product not available in other locations. Each retailer will be able to realize a positive net income with a 6.5% sales commission. Additionally, increased licensing options for retailers who otherwise may not have found the commission profitable, may lease space to the Lottery for a vending machine. In FY2021 73 retailers earned \$52,000+ renting space to the Lottery as part of a 12-month pilot program. The Lottery generated a total of \$1.43 billion in sales for FY21, which equates to approximately \$98 million in retailer commissions statewide and \$280 million to Lottery beneficiaries, including the General Fund. There are no additional costs to retailers as a result of this rulemaking and license fees remain unchanged for all license applicants.

4. Probable impact on private and public employment in businesses, agencies, and political subdivisions of the state directly affected by the proposed rulemaking.

This rulemaking is not expected to have any identifiable impact on private and public employment. However, as flexible licensing models and new product offerings

generate more opportunities for social retailers such as bars and restaurants, an increase in customer occupancy in these locations may also increase employment needs.

5. *Probable impact of the rulemaking on small business.*

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

Small businesses most impacted by these rules include qualified fraternal or veterans organizations and off-track betting locations that chose to apply for a Keno license. The impact on these businesses will be positive. Although all retailers will benefit from the expanded licensing and sales opportunities, the financial benefit may be even more important for smaller retailers. The potential to sell Lottery products using a ticket vending machine with little to no effort on the part of the retailer will especially benefit small businesses that are more likely to have limited personnel resources.

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

Licensing and other administrative costs incurred to comply with application requirements will apply to all businesses, including small businesses. However, as described earlier, any administrative costs should be offset by commissions earned.

c. A description of methods that may be used to reduce the impact on small businesses and reasons for the agency's decision to use or not use each method.

Not applicable to this rulemaking; the rules are expected to have a positive impact on small businesses.

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

There are no direct costs to consumers or the general public associated with this rulemaking. Consumers who are also Lottery players will potentially benefit from new retail locations offering Lottery products, and current retailers offering new products.

6. *Probable effect on state revenues.*

A percentage of Lottery game revenue is returned to the state to fund various beneficiary programs as specified in A.R.S. § 5-572. In FY 21, the Lottery generated a total of \$1.43 billion in sales and provided \$280 million to Lottery beneficiaries, including the General Fund.

7. *Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.*

The Lottery is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. Statute requires the Lottery to license all retailers, including newly permitted Keno retailers. To implement this requirement, the Lottery will leverage existing processes for licensing. These costs can be absorbed within the existing appropriated budget. However, the agency may require additional licensing and investigator positions in order to maintain adequate customer service levels and ensure the continued integrity of the Lottery. To the extent feasible, the Lottery will use existing staff in order to incur the least cost possible to fulfill the new mandate and work collaboratively with other agencies if needed for assistance.

8. Description of any data on which the rule is based.

Not applicable to this rulemaking.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Sherri Zendri
Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034
Telephone: (480) 921-4410
Fax: (480) 921-4512
E-mail: SZendri@azlottery.gov

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

There are no substantive changes between the proposed rules and the final rules. Corrections were made to maintain consistent terms throughout the rule and to references to other rules in Chapter 3 to ensure accuracy.

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

No oral or written comments were received regarding the rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to

Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

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

The implementing statutes of the Lottery require a licensing process rather than a general permit.

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

There is no corresponding federal law that is applicable to the subject matter. 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:

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 rules:

None

14. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 2. RETAILERS

Section

- R19-3-201. Definitions
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- R19-3-216. Distribution and Return of Instant Tickets
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R19-3-201. Definitions

In this Article, unless the context otherwise requires:

1. “Act” means A.R.S. Title 5, Chapter 5.1, Article 2.
2. “Activated” means the process taken by retailers to make a pack of instant scratch tickets valid for sale to the general public.
3. “Age-restricted retailer” means a licensed provider of sales and redemptions services for Lottery products that also holds a series 06 or 14 liquor license issued by the Arizona Department of Liquor Licenses and Control.
4. “Chapter” means Arizona Administrative Code, Title 19, Chapter 3.
5. “Charitable Organization” means an organization including not more than one auxiliary, to which the United States Internal Revenue Service has issued a letter of determination of the organization’s tax-exempt status, and the organization has operated for charitable purposes in Arizona for at least two years.
6. “Controlling agent” means a stockholder, director, officer, managerial employee, or other person directly or indirectly controlling or operating the retailer’s business.
7. “Controlling person” means a person at least 21 years of age accountable for the Lottery license.
8. “~~Corporate~~ Chain account retailer” means a group of stores in a retail chain utilizing one central bank account.
9. “Debit card” means an open loop bank card backed by a national financial entity with no diminishing value over time and that shall be honored by any retailer or bank with no fees to the card holder.

10. “Draw game ticket” or “On-line ticket” means a ticket purchased through a network of Lottery-authorized equipment linked to a central computer that records the wagers.
11. “Endorsement” means written approval and certification by the Lottery for a retailer with a general product license to provide additional games or services in accordance with specialized requirements.
912. “Flare” means the board or placard that accompanies each package of instant tab tickets and that has printed on or affixed to it the following information:
- a. Game name,
 - b. Serial number,
 - c. Ticket count,
 - d. Prize structure, and
 - e. Cost per play.
13. “Fraternal Organization” means any organization within this state, except college and high school fraternities, not for pecuniary profit, which is a branch or lodge or chapter of a national or state organization and exists for the common business, brotherhood or other interests of its members and which national or state organization has so existed for two years in Arizona prior to making application for a license under this article. Fraternal organization shall also include not more than one auxiliary of such organization.
14. “Guarantor” means a person who promises to pay the Licensee's debt to the Arizona Lottery in the event that the Licensee defaults on any payment obligation. A Licensee may act as their own guarantors, by pledging personal assets to ensure payment of debts.

105. “Instant scratch ticket” or “Scratchers[®]” means an instant game ticket where the protective covering is made of latex or another substance that is scratched off.
146. “Instant tab ticket” or “instant pull tab” means an instant game ticket where the protective covering is a perforated paper tab that is opened. Instant tab ticket is the brand name for Arizona Lottery pull tabs.
127. ~~“License” means:~~
- a. ~~“Full product license” means a license to sell the products authorized by the Lottery.~~
 - b. ~~“Charitable organization license” means a license issued to a qualified charitable organization to sell only instant tab tickets.~~
 - c. ~~“Instant tab license” means a license to sell only instant tab tickets.~~
 - d. ~~“Limited license” means a license issued by the Lottery that restricts the duration of the license, the type of Lottery products sold, methods of selling, methods of validating Lottery products, or the type of applicant that qualifies for a Lottery license.~~
138. “Local premise manager” means a person who resides in Arizona that manages or is responsible for the operation of a premise or a number of premises.
149. “Minor” means an individual under the age of 18.
15. ~~“On-line ticket” means a ticket purchased through a network of Lottery-authorized equipment linked to a central computer that records the wagers.~~
1620. “Partial pack of tickets” means less than a complete pack of consecutively numbered and connected instant scratch tickets.

~~17~~22. "Premise manager" means the contact representative for a specific premise of a business or charitable organization.

~~18.~~ "Pull tab" means ~~an instant game ticket where the protective covering is a perforated paper tab that is opened to reveal the predetermined winning and non-winning symbols.~~

~~23.~~ "Person" means an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee or referee, any other person acting in a fiduciary or representative capacity who is appointed by a court, or any combination of individuals. Person includes any department, commission, agency or instrumentality of this state, including any county, city or town and any agency or instrumentality of this state or of a county, city or town.

~~19~~24. "Raffle" means the selling of numbered tickets, where each ticket has an equal chance of winning a prize in a random drawing held after the completion of all ticket sales.

~~25.~~ "Redemption Agent" means a retailer licensed to sell Lottery products in accordance with this Article and provide prize redemption services up to \$4,999 as authorized by Arizona Revised Statutes 5-569.

~~20~~6. "Retailer" means ~~a licensed provider of sales and a person licensed to sell Lottery products in accordance with this Article and provides prize redemptions services up to \$599 for Lottery products. A retailer may hold a full product license, a charitable organization license, an instant tab license, a limited license, or a combination of licenses.~~

~~21~~7. "Retailer bonus" means a sum of money credited to the retailer in addition to the retailer commission for specific actions or efforts in selling or validating Lottery products.

- ~~228~~. “Retailer commission” means a retailer incentive designed to maximize the sale of Lottery products by establishing a specific percent of the sales price of each ticket sold as payment for services in selling Lottery tickets.
- ~~239~~. “Retailer compensation” means all types of cash and noncash compensation to the retailer for selling Lottery tickets.
- ~~2430~~. “Retailer compensation profile” means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all the fundamentals required by these rules for retailer compensation including commission, bonus, and incentive compensation to be credited to Lottery retailers.
- ~~2531~~. “Retailer incentive” means cash and non-cash methods to motivate action by the Lottery retailer to stimulate sales.
- ~~2632~~. “Sales benchmark” means sales objectives established by the Lottery based upon previous performance.
- ~~2733~~. “Ticket” means one or more Lottery game plays.
- ~~2834~~. “Validation” means confirmation of a winning Lottery ticket.
35. "Veterans' Organization" means any congressionally chartered organization within this state, or any branch, lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, which has been in existence for two years prior to making application for a license under this article. Veterans' organization shall also include not more than one auxiliary of such organization.

R19-3-202. General Requirements for All Retailer's License Applications ~~for License~~

A. Only retailers licensed in accordance with this article may sell Lottery products.

B. All applicants shall provide the Director with the following to apply for a license to sell Lottery tickets:

1. A verified application on forms prescribed by the Director containing the following information:
 - a. The applicant's name, and if different, the trade name of the business premise, address of the physical location of the place of business, the mailing address if different, email address, primary phone number, and secondary phone number;
 - b. The applicant's current transaction privilege tax license number issued under A.R.S. § 42-5005 and federal taxpayer identification number issued by the Internal Revenue Service and recorded on Form W-9;
 - c. Certification that access to the applicant's business complies with the Americans with Disabilities Act;
 - d. Marketing and sales information on the forms provided by the Lottery. The information required includes the number of cash registers, hours of operation, products presently offered for sale, and the approximate daily volume of customers entering the place of business;
 - e. Evidence the applicant operates a business with other products or services unrelated to lottery products or services concerning lotteries;
 - f. Financial relationship and any outstanding debt owed to the state of Arizona, any of its political subdivisions, or the United States government;

- g. Evidence the applicant for a license other than a charitable organization license is financially solvent. The evidence may include either of the following:
 - i. Evidence the applicant has established business credit, has a record of meeting its business debts as they became due for the three years immediately preceding the date of application, and does not have outstanding legal actions, judgments, or tax liens; or
 - ii. Personal guarantee, in writing, of applicant's Lottery account signed by a guarantor and the guarantor's spouse, if community property is being used to guarantee the account, or by the guarantor only, if guarantor provides proof that the guarantee is based on sole and separate property. The guarantor shall provide a written authorization to perform a credit check. If the guarantee is based on community property, the guarantor and guarantor's spouse shall provide written authorization for the Lottery to perform a credit check.
- h. An Electronic Funds Transfer Authorization agreement showing a valid bank account number for the full product applicant from which the Lottery will withdraw any amounts due.
 - i. Government-issued current Pproof of identification including a photo.
- 2. If the applicant does business as a sole proprietorship or partnership:
 - a. The name, home address, and home phone number of each owner or partner, including spouse if community property owner, unless applicant provides proof that the business is sole property separate from the community; and

- b. Written authorization and tax identification number for the business entity and Social Security number of each applicant in order to obtain a credit check from a credit reporting agency.
3. If the applicant does business as a limited liability partnership (“LLP”) or a limited liability company (“LLC”):
 - a. The name, home address, email address, primary phone number, and ~~home~~-secondary phone number of each partner or member, or the local premise manager if the partners or members are out of state; and
 - b. Written authorization and a tax identification number to perform a credit check.
4. If the applicant does business as a corporation:
 - a. The name, corporate address, and corporate phone number of each officer and director, and the name, home address email address, primary phone number, and ~~home~~-secondary phone number of the responsible local premise manager who is the contact representative for the applicant’s corporate location in Arizona; and
 - b. Written authorization and a tax identification number to perform a credit check.
5. If the applicant does business as a charitable organization:
 - a. A copy of the organization charter or formation, documentation of current membership status in the organization, and if applicable, the authorization of the auxiliary;
 - b. The name, home address, email address, primary phone number, and ~~home~~-secondary phone number of each officer and local premise manager, or if an auxiliary, of each officer and local premise manager of the auxiliary;

- c. A letter of determination issued in the organization's name by the United States Internal Revenue Service verifying the organization's tax-exempt status; and
 - d. Evidence the charitable organization has maintained a premise within the state of Arizona for the two years immediately preceding the date of application.
- ~~6. If the Lottery licenses an applicant under subsection (1)(g)(ii), the guarantor shall provide a written authorization to perform a credit check. If the guarantee is based on community property, the guarantor and guarantor's spouse shall provide written authorization for the Lottery to perform a credit check.~~
- 7. An application fee of \$45.00, or if the applicant does business as a corporation, limited liability company, limited liability partnership, or partnership, an application fee of \$67 which includes a credit check fee.
 - 8. If the applicant is a business with more than one currently licensed location, the application fee for the new location shall be pro-rated at \$1.25 per month from the application date until the date the other licenses are due for renewal under R19-3-202.04(B)(3).
 - 9. If the applicant's personal information shows no history through a public records criminal background check, the Lottery may require a completed authorized fingerprint card and fee per A.R.S. § 41-1750(G)(2) and (J).
- BC.** Applicants must demonstrate good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines the person has committed any act which, if committed by a licensed retailer, would be grounds for suspension or revocation of a license granted by the state of Arizona pursuant to R-19-3-204(B).

CD. An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization has not had a business license required by statute in Arizona or any other state suspended or revoked within the last 12 months.

DE. An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization has not had a Lottery license denied or revoked at the address and location of the applicant's place of business, and/or has not sold Lottery products without being licensed within the twelve (12) months preceding the person's application.

F. An applicant must demonstrate financial solvency based on the information obtained through the application, credit check, or pending litigation, if any, or tax liens, if any.

G. An applicant must be one of the following to fulfill residency requirements:

1. A resident of Arizona;

2. A corporation incorporated in Arizona or authorized to do business in Arizona;

3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona, or if none of the members or managers resides in Arizona, the applicant shall provide a personal guarantor who is an Arizona resident;

4. A partnership in which at least one of the general partners resides in Arizona;

5. A limited liability partnership in which at least one of the partners resides in Arizona;

or

6. A charitable organization authorized to do business in Arizona.

R19-3-202.01. ~~Prerequisites to Issue or Renew a License Endorsement Types;~~
Specific Requirements

- ~~A. Evidence the applicant is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines the person has committed any act which, if committed by a licensed retailer, would be grounds for suspension or revocation of a license granted by the state of Arizona.~~
- ~~B. An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization shall not have had a business license required by statute in Arizona or any other state suspended or revoked within the last 12 months.~~
- ~~C. An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than noncompliance with the Americans with Disabilities Act, and shall not have sold Lottery products without being licensed within one year of the person's date of application.~~
- ~~D. An applicant for a license other than an instant tab license or charitable organization license shall have demonstrated financial solvency based on the information obtained through the application, credit check, or pending litigation, if any, or tax liens, if any.~~
- ~~E. An applicant shall be one of the following to fulfill residency requirements:~~
- ~~1. A resident of Arizona;~~
 - ~~2. A corporation incorporated in Arizona or authorized to do business in Arizona;~~

- ~~3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona, or if none of the members or managers resides in Arizona, the applicant shall provide a personal guarantor who is an Arizona resident;~~
- ~~4. A partnership in which at least one of the general partners resides in Arizona;~~
- ~~5. A limited liability partnership in which at least one of the partners resides in Arizona; or~~
- ~~6. A charitable organization authorized to do business in Arizona.~~

~~F. As a condition of licensure, each retailer shall agree to release, indemnify, defend, and hold harmless, the Lottery, its commissioners, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery equipment, or terminal operations. This should not be construed in any way to affect the rights of the retailer to recover for losses caused by any third party.~~

A. Lottery retailers shall hold a general product license in addition to any qualifying endorsements. Retailers who qualify for specific license endorsements may submit the additional required information when applying for a general product license, or at a later date.

B. A retailer with a license endorsement may voluntarily relinquish the endorsement in writing at any time. Relinquishment of an endorsement will not automatically terminate the general product license.

C. General Product License

1. A general product license permits a retailer to sell all Lottery products that do not

- require a specific license endorsement under this section.
2. Retailers selling Lottery products or providing Lottery services prior to receiving applicable license endorsements are in violation of this article.
 3. Retailers with a general product license shall refer prizewinners of prizes greater than \$599 to an official Lottery office for validation and redemption.

D. Charitable

A charitable endorsement permits the licensed retailer to sell Lottery products in accordance with A.R.S. §5-554(H). Applicants for a charitable endorsement must provide documentation of the following:

1. Recognition by the United States Internal Revenue Service of the licensee's tax-exempt status.
2. Operation within the state of Arizona for at least 2 years.

E. Keno

1 A Keno endorsement permits the licensed retailer to offer Keno in accordance with A.R.S. §§5-554(J) and (K). Applicants for a Keno endorsement must provide documentation of one of the following:

- a. Fraternal organization auxiliary location,
 - b. Veterans' organization auxiliary location, or
 - c. Racetrack enclosure or additional wagering facility where pari-mutuel wagering on horse races is conducted
1. Applicants for a Keno endorsement must demonstrate to the Lottery that the physical location of the retail facility is located at least five miles from an Indian gaming

facility.

F. Redemption Agent

1. A Redemption Agent endorsement permits the licensed retailer to validate and pay winning Lottery tickets up to \$4,999.
2. Applicants for a Redemption Agent endorsement must demonstrate the ability to pay prizes up to \$4,999 in accordance with this article.
3. A retailer with a Redemption Agent endorsement shall provide a separate accounting of Lottery monies upon request by the Lottery.
4. A retailer with a Redemption Agent endorsement is responsible for verification of identity and social security number and shall require prizewinners to provide acceptable identification and documentation.
5. Payment for any prizewinners who cannot provide required documentation shall be referred to an official Lottery office.
6. The confidentiality of all player data shall be maintained at all times. Disclosing any personal information to anyone other than the Lottery or as required by law is prohibited. Any known or suspected loss of protected data must be reported to Lottery within one hour.
7. For prizes over \$599, retailers with a Redemption Agent endorsement shall determine, through the Lottery provided terminal and prior to paying the prize, whether the holder of a winning lottery ticket is subject to Arizona debt set-off requirements under A.R.S. § 5-575. Prizewinners shall be referred to an official Lottery office if Retailer is notified as such through the claim redemption process.

8. Retailers with a Redemption Agent endorsement shall provide claim documentation and original tickets for each validation to Lottery at the end of each week.

G. Route Services

1. Applicants for a Route Services endorsement must have sufficient space for installation of Lottery equipment as close to the front of the store as reasonably possible. Equipment shall be close to the checkout area and/or entry/exit door and in regular view of retail staff.
2. Retailer shall deposit Lottery cash receipts on behalf of the Lottery and timely return any adjustment forms and/or request for credit.
3. Lottery may compensate a retailer with a Route Services endorsement with a periodic rental fee for the space occupied by each vending machine.

H. The Lottery may issue a limited license with regard to duration, type of products, methods of selling or validating products, or qualification requirements.

R19-3-202.02. Time-frame for Licensure

- A.** For the purpose of A.R.S. §§ 41-1072 through 41-1079, the Director establishes the time-frames for a license to sell Lottery tickets:
1. Administrative completeness review time-frame: 15 days.
 2. Substantive review time-frame: 75 days.
 3. Overall time-frame: 90 days.
- B.** The Director shall finish an administrative completeness review within 15 days from the date of receipt of the application and fees prescribed in R19-3-202(B).

- ~~1. The Director shall issue a notice of administrative completeness to the applicant if no deficiencies are found in the application.~~
 - ~~21.~~ If the application is incomplete or the fee is not submitted, the Director shall provide the applicant with a written notice that includes a comprehensive list of the missing or deficient information.
 - ~~32.~~ The 15-day time-frame for the administrative completeness review is suspended from the date the notice of incompleteness is sent until the applicant provides the Director with all missing information.
 - ~~43.~~ If the Director does not provide the applicant with notice regarding administrative completeness, the application shall be deemed complete 15 days after receipt by the Director.
- C.** An applicant shall respond to a request for missing information within 20 days of notice of incompleteness.
- D.** If an applicant fails to submit a complete application within the time allowed, the Director may close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to R19-3-202(B).
- E.** From the date on which the administrative completeness review of an application is finished, the Director shall complete a substantive review of the applicant's qualifications in no more than 75 days.
1. If an applicant is found to be ineligible, the Director shall issue a written notice of denial to the applicant.

2. If an applicant is found to be eligible for a license, the Director shall issue a license to the applicant permitting the applicant to engage in business as a retailer under the terms of this Chapter.
 3. If the Director finds deficiencies during the substantive review of an application, the Director shall issue a written request to the applicant for additional information.
 4. The 75-day time-frame for substantive review is suspended from the date of a written request for additional information until the date that all information is received.
 5. If the applicant and the Director mutually agree in writing, the 75-day substantive review time-frame may be extended ~~once for no more than 18 days.~~
- F. If the Director does not provide the applicant with written notice granting or denying a license within the overall time-frame, the Director shall refund the applicant's application fee within 30 days after the expiration of the overall time-frame or the time-frame extension.

R19-3-202.03. ~~Denial of License Application Indemnification~~

The Lottery shall not issue a license to an applicant if any of the following applies:

- ~~1. The applicant is a minor, a partnership or LLP in which one of the partners is a minor, an LLC in which one of the members or managers is a minor, or a corporation in which a corporate officer, director, or manager of Lottery sales is a minor;~~
- ~~2. The organization is an adult-oriented business as defined in A.R.S. § 13-1422 or displays sexually explicit material in violation of A.R.S. § 13-3507;~~
- ~~3. The applicant has sold a Lottery product without a license, or operated gaming machines or equipment that are required to be licensed, without a license, or~~

- ~~4. The applicant fails to have a controlling person at least 21 years of age; or~~
- ~~5. The organization is an age-restricted business that does not have a valid series 06 or 14 liquor license issued by the Arizona Department of Liquor Licenses and Control.~~

As a condition of licensure, each retailer shall agree to release, indemnify, defend, and hold harmless, the Lottery, its commissioners, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery systems, equipment, or terminal operations. This should not be construed in any way to affect the rights of the retailer to recover for losses caused by any third party.

R19-3-202.04. Duration and Renewal of License

- A. Any license issued under this Chapter shall expire three years from the license issuance date by operation of law.
- B. A retailer may renew a license to sell Lottery tickets by submitting to the Director a verified application for license renewal on forms prescribed by the Director containing the information required in R19-3-202(B) and R19-3-202.01. By filing an application for renewal, a retailer holding a full product license or limited license authorizes the Lottery to collect a \$45.00 renewal fee by an electronic transfer of funds from the bank account from which the Lottery regularly bills the retailer. A retailer holding a charitable organization license or instant tab license shall submit cash, check, or a money order for \$45 with its renewal application.

1. An application for renewal of a Lottery license received by the Director or deposited in the United States mail postage prepaid on or before the renewal date shall authorize the retailer to continue to operate until actual issuance of the renewal license.
 2. The Director may refuse to renew a license according to the provisions of R19-3-204.
 3. A retailer holding more than one license may elect to renew all licenses on the same date. If more than one license is renewed under this subsection, the application fee shall be pro-rated at \$1.25 per month from the license expiration date until the next renewal date of the other licenses held by the same retailer.
- C. A license issued under this Chapter is subject to termination by the Director according to the provisions of this Chapter.
- D. A retailer may voluntarily surrender a license unless an investigation or action has been initiated against the retailer.
- ~~E. The Lottery may issue a license which is limited with regard to duration, type of products, methods of selling or validating products, or qualification requirements.~~

R19-3-202.06. Use of Lottery Logo and Trademark

- A. ~~A~~ Only a licensed retailer may ~~not~~ use the logos, trademarks, or other advertising materials of the Lottery:
1. ~~With~~ without prior written permission or authorization ~~of~~ from the Lottery;
 2. ~~e~~Except for materials provided ~~to the retailer~~ by the Lottery.
- B. A retailer shall not display or publish on the licensed premises material which may be considered derogatory or adverse to the operation or dignity of the Lottery or the state of

Arizona. A retailer shall remove any such materials from the licensed premise upon request of the Lottery.

R19-3-203. Direct and Promotional Sales

- A. The Lottery may sell Lottery tickets at its main office or any branch it establishes in the state.
- B. The Lottery may sell Lottery tickets at any promotional event.
- C. The Lottery may temporarily authorize a licensed retailer to sell Lottery tickets at ~~an auxiliary premise~~ a secondary location for a promotional event.

R19-3-204. ~~Denial, Revocation, or Suspension, or Renewal Denial~~ of Retailer's License

- A. The Lottery shall not issue or renew a license to an applicant if any of the following applies:
 - 1. The applicant is a minor, a partnership or LLP in which one of the partners is a minor, an LLC in which one of the members or managers is a minor, or a corporation in which a corporate officer, director, or manager of Lottery sales is a minor;
 - 2. The organization is an adult-oriented business as defined in A.R.S. § 13-1422 or displays sexually explicit material in violation of A.R.S. § 13-3507;
 - 3. The applicant has sold a Lottery product without a license, or operated gaming machines or equipment that are required to be licensed, without a license, within one year of the person's date of application; or
 - 4. The applicant fails to have a controlling person at least 21 years of age
 - 5. The applicant fails to meet all the application requirements of R19-3-202(B) and R19-3-201.01.

AB. A license may be revoked, suspended, or denied renewal by the Director for any of the following reasons:

1. The retailer violates a provision of the criminal laws of the state of Arizona or the United States, which could be punished by jail time or imprisonment;
2. The retailer offers to sell a Lottery ticket, sells a Lottery ticket, or pays a prize on any winning Lottery ticket to a person under 21 years of age;
3. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
4. The retailer fails to maintain minimum sales requirements or does not follow the guidelines established by the Lottery. The Lottery shall provide minimum sales requirements to retailers at least 30 days prior to the effective change date;
5. The retailer commits an act that impairs the retailer's reputation for honesty and integrity;
6. The retailer sells a ticket at a price greater than face value;
7. The retailer pays less than the full prize value of the ticket at validation;
8. The retailer advises a player that a winning ticket presented for validation was not a prize winner;
9. The retailer sells tickets not activated for sale on three or more occasions within any 12-month period;
10. The retailer sells a ticket while license is suspended for insufficient funds;
11. The retailer does not make purchase or redemption of Lottery tickets convenient and readily accessible to the public;

12. The retailer provides to the Lottery a statement, representation, warranty, or certificate that the Lottery determines is false, incorrect, incomplete, or omits relevant information;
13. The retailer's actions cause two or more payments to be returned to the Lottery for insufficient funds ~~in a 12-month period~~;
14. The retailer becomes insolvent, unable or unwilling to pay debts, or is declared bankrupt;
15. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager of the retailer:
 - a. Is convicted of a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices; or
 - b. Is the subject of a civil order, judgment, or decree of a federal or state authority for misrepresentation, consumer fraud, or any other fraud.
16. Facts are discovered which, if known at the time the retailer's license was issued or renewed, would have been grounds to deny licensure;
17. The retailer adds a minor as an owner, partner, ~~or~~ officer, or controlling agent of the business;
18. The retailer, or an officer, employee, or agent of the retailer does any of the following:
 - a. Plays any Lottery game while working,
 - b. Fails to purchase or validate the ticket from another on-duty employee or through a Lottery product vending machine, or
 - c. Fails to pay for the ticket prior to playing the Lottery game.

19. The retailer, or an officer, employee, or agent of the retailer sells any Lottery product for consideration other than U.S. currency, check, credit card, debit card or, if a player requests, the exchange of a winning Lottery ticket;
20. The retailer, or an officer, employee, or agent of the retailer sells a Lottery ticket by telephone, mail, fax, on the internet, or on premises not authorized by the Lottery;
21. The retailer, or an officer, employee, or agent of the retailer sells an altered Lottery ticket, an expired Lottery ticket, or a Lottery ticket after the announced end of the game;
22. The retailer fails to display the Authorized Retailer Notice, which includes the Americans with Disabilities Act Notice and Arizona Problem Gambling Helpline toll-free telephone number;
23. The retailer fails to report a change event defined in R19-3-210;
24. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws, Lottery regulations, or denies access to Lottery personnel;
25. The retailer ~~holding a charitable organization license or~~ selling instant tab license tickets fails to prominently display the flare for each instant tab game currently on sale within public view near the point of sale;
26. The retailer holding a charitable organization license no longer qualifies as a charitable organization or its letter of determination of tax-exempt status is suspended or revoked;
27. The retailer fails to comply with the rules governing its license; or
28. ~~The age-restricted~~ A retailer violates a provision of the state of Arizona liquor laws under A.R.S. § ~~4-101, et. seq~~ Title 4.

29. A retailer violates a provision of the state of Arizona gaming laws under A.R.S. Title 5, Chapters 1 through 4.

30. A retailer harasses or displays violence towards any Lottery player, employee, vendor, or subcontractor.

BC. An investigation of a violation of Lottery rules may be initiated by action of the Director or by a written complaint of any person.

1. An investigation initiated by a written complaint shall be investigated within 30 days of receiving the complaint.
2. During an investigation the Director may temporarily suspend a license under an emergency action, or impose specific conditions on a retailer.

CD. An action to suspend or revoke a license shall be initiated by a notice of action to the retailer. Notice may be made by mail, hand-delivery, or electronic mail with a copy by regular mail.

1. Notice to the retailer is effective notice if it is sent to the address in the application or the last address provided under R19-3-210.
2. A hard copy of the notice is not required if the retailer has consented in writing to receive notices via electronic mail.

R19-3-204.01. Procedure for Requesting a Hearing

A. A retailer may request a hearing on any notice to deny, revoke, or suspend a Lottery license.

- B. The hearing shall be held before the Office of Administrative Hearings. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- C. The Director may accept, modify, reject, or allow the recommended decision of the Administrative Law Judge to become final by expiration of time. This is a final administrative decision of the Lottery.

R19-3-204.02. Lottery Determination of Need for Emergency Action

- A. The Director may determine the need for emergency action to disable a retailer's Lottery-issued equipment, suspend sales of Lottery games, or remove tickets if the public welfare is threatened pending a proceeding for revocation, suspension, or denial of renewal, in the following circumstances:
 1. ~~The retailer's bank account has insufficient funds when the Lottery's regularly-scheduled electronic transfer of the retailer's bank account is returned by the bank as insufficient funds or closed account and the retailer does not immediately pay the insufficiency~~ unsuccessful;
 2. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws or Lottery regulations;
 3. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager is charged with a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices;

4. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
5. The retailer, or an officer, employee, or agent of the retailer sells an altered or expired Lottery ticket, or a Lottery ticket after the announced end of the game;
6. The retailer sells a ticket at a price greater than face value, including adding debit card fees to Lottery purchases;
7. The retailer pays less than the full prize value of the ticket at validation;
8. ~~The age-restricted~~ A retailer violates a provision of the state of Arizona liquor laws under A.R.S. § 4-101 ~~et. seq~~ Title 4.
9. A retailer violates a provision of the state of Arizona gaming laws under A.R.S. Title 5, Chapters 1 through 4
10. The retailer offers to sell a Lottery ticket, sells a Lottery ticket, or pays a prize on any winning Lottery ticket to a person under 21 years of age;
11. The retailer advises a player that a winning ticket presented for validation was not a prize winner;
12. The retailer, or an officer, employee, or agent of the retailer sells any Lottery product for consideration other than U.S. currency, check, credit card, debit card or, if a player requests, the exchange of a winning Lottery ticket;
13. The retailer, or an officer, employee, or agent of the retailer sells a Lottery ticket by telephone, mail, fax, on the internet, or on premises not authorized by the Lottery;

- B.** A retailer who receives a Notice of Intent to Revoke a Retailer’s License with a finding of emergency action shall:
1. Immediately cease all sales of Lottery products, and
 2. Surrender the license and all other Lottery property and products upon request by the Director’s representative.
 3. Immediately settle all financial accounts with the Lottery.
- C.** The Director shall notify the retailer in writing within five days of taking an emergency action that an expedited hearing or informal conference may be obtained before the Office of Administrative Hearings under A.A.C. R2-19-103 and A.A.C. R2-19-110.
- D.** If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take steps allowed by law to secure payment and return of Lottery property and products.

R19-3-204.04. Surrender of Lottery Equipment and Property Upon Revocation

- A.** A retailer who discontinues their license or receives a final administrative decision revoking the license shall:
1. Immediately cease all sales of Lottery products; and
 2. Surrender the license and all other Lottery equipment, property, and products upon request of the Director’s representative.
 3. Immediately settle all financial accounts with the Lottery.

- B.** If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take all steps allowed by law to secure payment and the return of Lottery property and products.

R19-3-205. Lottery-issued Equipment

- A.** Retailers ~~holding only a charitable organization license or~~ selling only instant tab ~~license~~ products shall not be issued Lottery terminal equipment to sell or validate Lottery products, but may use an authorized Lottery product vending machine in accordance with subsection (C).
- B.** Retailers ~~holding a full product or limited license~~ shall only sell or validate Lottery products using authorized Lottery-issued equipment.
1. A retailer shall locate the equipment at a site approved by the Lottery and shall not move the equipment from that site without prior approval from the Lottery.
 2. A retailer shall ensure electrical service to the equipment location is installed according to the specifications established by the Lottery. The cost of electrical service shall be the responsibility of the retailer.
 3. A retailer shall cooperate with the Lottery to the extent reasonable and practicable to accomplish any modifications to the equipment or systems in a timely and economical fashion.
 4. The Lottery shall not be liable for damages of any kind due to interruption or failure of any Lottery-issued or authorized equipment.

5. A retailer shall operate the Lottery-issued equipment and accessories only in the ordinary course of its Lottery business and only according to the requirements established by the Lottery.
 6. A retailer shall exercise diligence and care to prevent damage to the Lottery-issued equipment and other property of the Lottery, or property of Lottery contractors.
 7. A retailer shall maintain the Lottery-issued equipment and accessories in a clean and orderly condition.
 8. A retailer shall minimize equipment downtime by notifying the Lottery or its contractor immediately of any equipment failure, malfunction, damage, or accident.
 9. A retailer shall make the equipment available for repair, adjustment, or replacement at all times during the retailer's regular business hours.
 10. A retailer shall order and use equipment supplies exclusively from the Lottery or its designated contractor. The Lottery shall furnish equipment supplies, at no cost, to the retailer.
 11. A retailer shall install and use only approved Lottery paper stock, for Lottery-issued equipment, specifically assigned to ~~the~~ that retailer and location.
- C. Retailers may sell tickets using ~~an~~ the appropriate authorized Lottery product vending machine in accordance with the Act and this Chapter.
1. A retailer shall establish loss prevention policies to ensure Lottery product vending machines are not operated by persons under 21 years of age to purchase Lottery tickets.

2. The Lottery product vending machine shall remain operational during the retailer's regular business hours and be placed in an area visible to retail personnel and easily accessible to players.
3. A retailer shall maintain an adequate supply of ~~instant scratch or instant tab~~ tickets and paperstock for in the Lottery product vending machine.

D. All Lottery licensed retailers shall provide an accessible path of travel to, and sufficient clear floor space at, all Lottery equipment and other areas where Lottery products are sold, and any associated Lottery materials and redemption areas. Should individuals with disabilities request assistance in accessing Lottery programs, services or activities and in purchasing and redeeming Lottery tickets and products, any licensed retailers shall provide assistance.

E. "Authorized Lottery-issued equipment" may include Lottery-owned or rented equipment, or equipment provided to a retailer by a Lottery approved and authorized third-party vendor in accordance with an appropriate Lottery-vendor contract

R19-3-206. Retailer Training

- A. A licensed retailer ~~holding a full product license~~ shall participate in training provided by the Lottery in the operation of Lottery equipment and sale of Lottery products. Training may take place at a retailer's place of business.
- B. A licensed retailer ~~holding a full product license~~ shall ensure all employees selling Lottery products or operating Lottery equipment are:
 1. Properly trained in these areas prior to actually selling any Lottery products; and

2. Ensure all employees have access to all materials and videos provided by the Lottery relating to the sales and promotion of Lottery products and the operation of Lottery equipment.

C. A licensed retailer ~~holding a full product license~~ shall be responsible for any compensation and other associated costs payable to employees for participation in Lottery training courses and instruction.

D. A retailer ~~holding a full product license~~ shall provide all employees operating Lottery equipment with copies of the procedures manual, bulletins, and technical materials furnished to the retailer by the Lottery or its contractors.

~~E. A retailer holding a charitable organization license or instant tab license shall ensure all employees or volunteers selling instant tab tickets are properly trained.~~

R19-3-209. Notice and Service

A. Service of process shall be deemed made by the Lottery for any notice, decision, order, subpoena, or other process when the document or a copy is delivered to the retailer, premise manager, guarantor, or the attorney of record, or is deposited as certified mail in the United States Postal Service, addressed to the retailer or guarantor at the address listed on the application for license or as reported as a change event under R19-3-210.

B. All other notices shall be made as stated in 204 (D)

R19-3-210. Reportable Events

A. A retailer shall report the following events to the Lottery in writing a minimum of 10 business days before the event:

1. Change in business location of the licensed premise;
2. Sale of ownership, merger, or acquisition of the licensed entity;
3. Addition, removal, or change of address, email address, or primary phone number of the following persons:
 - a. A partner in a partnership or a limited liability partnership;
 - b. A member or manager in a limited liability company;
 - c. An officer holding the position or functional equivalent of president, secretary, or treasurer of a corporation; or
 - d. A controlling agent, local premise manager, or designated corporate contact representative.
- ~~4. A charge of felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices that is brought against any person listed in subsection (3);~~
- ~~5. Divorce or legal separation action filed by a sole proprietor or partner licensed as a retailer, or retailer's spouse;~~
- ~~6. Retailer or guarantor becomes insolvent, files bankruptcy, or a receivership is ordered;~~
- ~~7. Change in bank account from which the Lottery's electronic funds transfers are made;~~
- ~~8. Revocation, suspension, or other action against a charitable organization's letter of determination of tax-exempt status; or~~
- ~~9. Change in the status of liquor license issued by the Arizona Department of Liquor Licenses and Control.~~

B. A retailer shall report the following events to the Lottery ~~in writing the death of a sole proprietor or partner licensed as a retailer~~ within 10 business days after the ~~death event~~ occurs.

1. The death of a sole proprietor or partner licensed as a retailer;
2. A charge of felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices that is brought against any person listed in R19-3-210(A)(3);
3. Divorce or legal separation action filed by a sole proprietor or partner licensed as a retailer, or retailer's spouse;
4. Revocation, suspension, or other action against a charitable organization's letter of determination of tax-exempt status; or
5. Change in the status of liquor license issued by the Arizona Department of Liquor Licenses and Control.

R19-3-211. Change of Ownership or Business Location

A license is not assignable or transferable. A license authorizes the entity described in the application to sell Lottery tickets only at the specific premise authorized by the Lottery.

1. If there is a change of business location or ownership as reportable in R19-3-210(A)(1) through (3) or R19-3-210(B), a criminal charge as reportable in R19-3-210(~~AB~~)(~~42~~), or a change in liquor license status as reportable in R19-3-210(~~B~~)(~~95~~), the retailer shall:
 - a. Surrender the license to the Director on the date of the event,
 - b. Not sell any additional Lottery tickets, and

- c. Not allow the sale of Lottery products under a subcontract to avoid the repercussions of a change of status under this section.
2. ~~If~~ ~~†~~ The retailer ~~does not~~ must notify the Lottery of a change in ownership or business location at least 10 business days before the change to receive appropriate credit for applicable inventory; ~~the retailer may not receive credit for any activated partial packs of tickets.~~
3. The new owner shall apply for a license according to R19-3-202.

R19-3-212. Retailer Compensation

- A. Retailer compensation shall be set within the statutory limits by a retailer compensation profile ordered by the Lottery Commission. Each retail compensation profile shall contain the following information:
1. Retailer compensation profile number;
 2. Specific type of retailer compensation: commission, bonus, or other incentive;
 3. The retailer group to which the retailer commission, bonus, or other incentive applies;
 4. Criteria required to qualify for the commission, bonus, or other incentive;
 5. Duration of the retailer commission, bonus, or other incentive;
 6. Targeted games, if any; and
 7. Special features, if any.
- B. The category of retailer commissions, bonuses, or other incentives shall be one or more of the following:
1. ~~Full~~ General product license basic commission rate,

2. Limited license basic commission rate,
3. Sales benchmark rate,
4. Game product rate,
5. Promotional incentive or bonus rate,
6. Temporary incentive or bonus rate, or
7. Alternate incentive or bonus rate.

C. More than one retailer commission, bonus, or other incentive may run concurrently.

D. Promotion bonuses or incentives may be held during a designated period, specific days of the week, specific hours of the day, or a combination thereof.

E. The Commission shall approve and the Director shall distribute a schedule of available retailer compensation to licensed retailers at least 30 days prior to its effective date and shall post it on the Lottery web site. A technological problem or failure that either prevents the posting of the retailer commission, bonus, or other incentive on the Lottery web site or that temporarily or permanently prevents the use of all or part of the web site does not preclude the authorization of the retailer compensation.

R19-3-213. Ticket Sales to Players

A. A retailer shall sell only the type of Lottery products authorized by its Lottery-issued license and any approved license endorsements.

B. The Director may require a retailer to sell any one or combination of Lottery game products based on the retailer's license.

C. A retailer shall not make any representation to a player regarding a likelihood to win, a guaranteed return on a percentage of purchases, or better chances or odds of winning.

D. ~~On-line~~ Draw Game tickets.

1. All ~~on-line~~ draw game ticket sales are final. If a retailer ~~holding a full product license~~ accepts a returned ~~on-line~~ draw game ticket from a player or generates an ~~on-line~~ draw game ticket refused by the player and the retailer does not resell the ticket, the Lottery shall deem the ~~on-line~~ draw game ticket to be owned by the retailer.
2. A retailer ~~holding a full product license~~ shall not devote more than 15 consecutive minutes of sales to ~~an on-line~~ draw game purchase by any single player if other customers are waiting to make a purchase.
3. A retailer ~~holding a full product license~~ shall only use selection slips, materials, or methods authorized by the Lottery to generate plays selected by the player.

E. Instant scratch tickets.

1. All instant scratch ticket sales are final.
2. A retailer ~~holding a full product license~~ shall sell instant scratch tickets within each pack in sequential order.
3. A retailer ~~holding a full product license~~ shall not sell an instant scratch ticket after the announced end of game.

F. All instant tab ticket sales are final.

G. Keno

1. All keno game ticket sales are final.
2. A retailer selling Keno games shall only use selection slips, materials, equipment, or methods authorized by the Lottery to generate plays selected by the player.

R19-3-214. Payments to Lottery

- A. Money collected from the sale of Lottery tickets by retailers are trust monies required to be collected for the benefit of the state and shall be paid to the Lottery according to subsections (B) and (C).
- B. Except for instant tab tickets, a ~~A retailer holding a full product license or limited license~~ shall pay for ticket sales in the following manner:
1. Pay to the Lottery ~~each Friday, by an electronic funds transfer weekly,~~ the amount due from the sale of its Lottery tickets for the ~~seven-day period ending at the close of business on the previous Saturday one week previous,~~ or as otherwise agreed upon in writing.
 2. Unless otherwise agreed upon according to D of this section, the ~~The~~ amount due for ~~on-line draw game~~ tickets means the retailer's gross ~~on-line draw game~~ sales revenue, minus any promotional tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments.
 3. Unless otherwise agreed upon according to D of this section, the ~~The~~ amount due for instant scratch tickets is based on billing for instant ticket packs issued to a retailer with billing occurring 45 days after a pack is activated, or after 85% of winning tickets in the pack are validated, whichever occurs first, minus any promotional tickets, returned tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments. Corporate account retailers may elect to settle in 21 days with no associated validation percentage.
 4. The retailer shall deposit funds in a timely manner into a bank account from which the electronic funds transfer will be made to the Lottery.

- a. The retailer shall provide the Lottery with an electronic funds transfer authorization showing a valid bank account number from which the amounts due to the Lottery will be transferred, and
 - b. The retailer shall notify the Lottery of any bank account changes a minimum of 10 business days before the effective date of the change.
5. If the electronic funds transfer ~~a retailer's payment~~ is returned to the Lottery for any reason, the retailer shall ~~deliver a certified check, cashier's check, money order, or make a direct deposit for the amount due to the Lottery's bank account within 24 hours of notification~~ immediately make arrangements to become current on the amount owed. Additionally, if the retailer's payment is returned to the Lottery:
- a. The Director may require that the retailer's Lottery-issued equipment be disabled;
 - b. The Director may revoke, suspend, or deny renewal of the retailer's license according to R19-3-204;
 - c. The Director may require payment for instant scratch tickets upon activating the pack for sale; ~~and~~
 - d. The Director may require the return of the retailer's current inventory of instant scratch tickets and suspend further delivery of instant scratch tickets; and
 - e. The Director may charge a processing fee.
- C. A retailer ~~holding a charitable organization license or selling instant tab license tickets~~ shall pay the Lottery's authorized representative for instant tab tickets.
- D. The Lottery may agree in writing to an alternative payment arrangement if such arrangement is in the best interest of the Lottery.

DE. If the retailer owes money to the Lottery, the Lottery may offset that debt with any monies that are owed to the retailer by the Lottery.

R19-3-215. Prize Validation and Payment

A. Licensed General Products Retailer

1. A licensed retailer ~~holding a full product license~~ shall provide prize validation and payment services for instant scratch tickets or on-line tickets to any Lottery claimant regardless of where the ticket was purchased to be eligible for the highest sales commission compensation rate.

B.2. A licensed retailer ~~holding a full product license~~ shall pay all winning prizes for instant scratch tickets or ~~on-line~~ draw game tickets up to and including \$100, and may pay all winning prizes from \$101 up to and including \$599.

~~1.a.~~ A winning instant scratch ticket shall satisfy the validation criteria in R19-3-705 and R19-3-706 and have a proper validation receipt issued by the Lottery-authorized equipment.

~~2.b.~~ A winning on-line ticket shall satisfy the validation criteria in R19-3-406 and R19-3-407 and have a proper validation receipt issued by the Lottery-authorized equipment.

c. Tickets that are damaged, torn in half, or have questionable information shall be referred to an official Lottery office.

B. Licensed Redemption Agent Endorsement

1. To be eligible for the highest sales commission compensation rate, a licensed retailers with a Redemption Agent endorsement shall provide prize validation and payment services for

all Lottery products, to any Lottery claimant, regardless of where the ticket was purchased.

2. A licensed retailer with a Redemption Agent endorsement shall pay winning prizes for instant scratch tickets or draw game tickets up to and including \$4,999.

a. A winning instant scratch ticket shall satisfy the validation criteria in ~~R19-3-705 and R19-3-706~~ article 7 of this chapter and have a proper validation receipt issued by the Lottery-authorized equipment.

b. A winning draw game ticket shall satisfy the validation criteria in ~~R19-3-406 and R19-3-407~~ article 4 of this chapter and have a proper validation receipt issued by the Lottery-authorized equipment.

c. For prizes over \$600, a licensed retailer with a Redemption Agent endorsement shall determine, through the Lottery provided equipment, and prior to paying the prize, whether the holder of a winning lottery ticket is subject to Arizona debt set-off requirements under A.R.S. § 5-575.

3. A licensed retailer with a Redemption Agent endorsement shall be responsible for verification of identity and social security number and shall require prizewinners to provide acceptable identification and documentation.

a. Prizewinners who cannot provide a licensed retailer with a Redemption Agent endorsement the documentation as required shall be referred to Lottery for prize payment.

b. Tickets that are damaged, torn in half, or have questionable information shall be referred to an official Lottery office.

C. A retailer selling instant tab tickets shall pay all winning prizes for tickets sold at its location.

1. A winning instant tab ticket shall satisfy the validation criteria in ~~R19-3-705(A) and (B)(1) through (8)~~ article 7 of this chapter, and contain the necessary play, prize, and win symbol captions that enable visual confirmation of a prize.

2. Prizes shall not be paid by the Lottery or by another retailer.

D. Prizes paid by any retailer or licensed retailer with a Redemption Agent endorsement shall be paid by cash, check, money order, prepaid debit card, or if requested by the player, by Lottery tickets.

1. If a retailer pays a prize with a money order, any associated fees will be paid by the retailer.

2. If a retailer pays a prize with a prepaid debit card, the retailer will be responsible for providing any customer service associated with faulty or lost cards.

R19-3-216. Distribution and Return of Instant Tickets

A. The Lottery or its authorized representative shall distribute instant scratch tickets and accept returned instant scratch tickets as follows:

1. Distribute to each retailer holding a ~~full~~ general product license the quantity of tickets on which the Lottery and the retailer agree, based on the retailer's anticipated sales volume.

2. Collect full and partial packs of tickets during a game if the Lottery and ~~at~~ the retailer holding a ~~full~~ general product license determine the retailer's sales for a specific game are minimal.

3. Collect full and partial packs of tickets when a game is ended. The Lottery shall announce the ending date of a game and communicate this information to all retailers holding a ~~full~~general product license in a timely manner.
4. Credit to a retailer-holding a ~~full~~general product license in the billing period following the receipt of the Lottery-authorized returned tickets, the net dollar value of any unopened full packs and any partial packs of tickets, subject to R19-3-211(2).

B. The Lottery or its authorized representative shall distribute instant tab tickets to retailers licensed to sell instant tab tickets as follows; ~~and shall not accept returns of instant tab tickets~~.

1. Retailers shall order instant tab tickets only from authorized Lottery vendors.
2. Instant tab tickets shall become the property of the retailer.
3. Lottery shall not accept returns of instant tab tickets or reimburse for any unsold tickets.

R19-3-217. Unaccounted for and Stolen Instant Scratch Tickets

A. All Lottery tickets issued to a retailer holding a full product license or limited license shall be the property of the retailer until their return is acknowledged by the Lottery. The Lottery is not responsible for lost or stolen tickets.

B. A licensed retailer ~~holding a full product license or limited license~~ authorized to sell instant scratch tickets may be eligible for reimbursement of all or some stolen inventory if:

1. ~~The retailer shall~~ reports the stolen Lottery tickets to the local law enforcement agency and the Lottery Investigations unit within one hour from the time the theft occurs or the theft first could have been discovered; ~~The retailer shall:~~

~~12. The retailer P~~ provides a copy of the written police report to the Lottery;

~~23. The retailer C~~ cooperates in any investigation and prosecution of the theft;

~~3. Sign an affidavit providing the details as known by the retailer, and~~

~~4. Maintain and report current~~ The retailer provides accurate game, pack, and ticket information for the stolen inventory;

~~5. The retailer provides documentation a claim for the stolen inventory has been made to the retailer's insurance company and the claim was denied or if the retailer is self-insured, documentation of self-insurance; and~~

~~6. The stolen inventory had not been validated at the time it was reported stolen.~~

~~C. If a retailer holding a full product license or limited license sustains a loss from stolen tickets, the retailer's insurance is the loss payee.~~

~~DC.~~ If a retailer ~~holding a full product license or limited license~~ licensed to sell instant scratch tickets has insufficient insurance to pay for the retailer's loss and the retailer complies with subsection (B), the Lottery ~~will~~ may credit the retailer's account for stolen instant tickets as follows:

1. The Lottery ~~shall~~ may credit all charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from a source not associated with the retailer or by an unknown party.

2. The Lottery ~~shall~~ may credit 50% of the charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from an employee, manager, officer, director, or a relative with access to Lottery tickets.

3. Each retailer is limited to no more than two stolen ticket credit requests within any 12-month period.

ED. The Lottery shall not issue a credit for stolen tickets if the Lottery finds a retailer holding a full product license or limited license was negligent or did not enforce reasonable loss-prevention procedures to protect tickets, ticket processing, and ticket accounting.

FE. If a prize claim is made against a ticket that has been reported as stolen or a ticket unaccounted for by the retailer holding a full product license or limited license, the Lottery shall hold the prize money in trust pending the findings of an investigation by an appropriate law enforcement agency.

GF. The loss of instant tab tickets is the responsibility of the retailer.



**PUBLIC MEETING OF THE ARIZONA
LOTTERY MINUTES DECEMBER 6,
2021**

PRESIDING Sherri Zendri, Director of Legal Services

LOTTERY Gregg Edgar, Executive Director
John Gilliland, Public Information Officer
Luanne Mansanares, Administrative Assistant

GUESTS Attorney General Representative: Pamela Peiser

Call to Order. Pursuant to the Public Notice posted January 19, 2016, the Public Meeting of the Arizona State Lottery was called to order at 10:11 a.m. by Sherri Zendri.

Call to the Public. Ms. Zendri provided brief introductory comments and hearing procedures, an overview of amendments, and an opportunity for questions and answers followed by a call to the public for formal comments regarding the Arizona Lottery's proposed rules concerning Retailers, Title 19, Chapter 3, Article 2. No one from the public appeared or requested to speak. A transcript of the meeting as well as the agenda are attached.

Adjournment. Meeting adjourned at 10:18 a.m.

**Proposed Retailer Rule Amendments
Oral Proceeding Hearing Officer Script
December 6, 2021**

Good afternoon, and welcome to this Arizona Lottery Commission hearing on proposed amendments to Arizona Administrative Code Title 19, Chapter 3, Article 2 rules – the Arizona Lottery’s Retailer Rules. Today is Monday, December 6, 2021, at 10:11 a.m. This hearing is being held at the Arizona Lottery main office at 4740 E University Drive, Phoenix, AZ 85034. Participants may also attend this hearing virtually with Google Meeting as posted in the Hearing agenda.

My name is Sherri Zendri and I have been appointed by the Executive Director of the Arizona Lottery Commission to preside at this proceeding and answer any questions.

The Lottery published a Notice of Docket Opening and a Notice of Proposed Rulemaking for these amendments in the November 5, 2021 Arizona Administrative Register. Notice of this hearing, or oral proceeding as it is called in statute, was published along with the proposed rule text beginning at page 2581. This hearing is being held pursuant to Arizona Revised Statutes Section 41-1023, and is being **recorded digitally**.

The purposes of this proceeding are to provide the public an opportunity

- (1) to hear about the substance of the proposed Retailer Rule amendments;
- (2) to ask any questions regarding the proposed amendments, and
- (3) to present oral argument, data and views regarding the proposed rule in the form of oral comments on the record.

Here is the procedure for making a comment on the record. I will announce that the formal comment period is open, and you should raise your hand, either in person or on your dashboard, and keep it raised. I will recognize you so that you can present your comments.

You may also submit written comments to the Lottery by U.S. mail, fax, or email by the end of the written comment period, which ends today, December 6, 2021 at 5:00 p.m.

Comments can be sent to:

Name: Sherri Zendri

*Address: Arizona Lottery
4740 E University Dr.
Phoenix, Arizona 85034*

Fax: (480) 921-4512

Email: szendri@azlottery.gov

Comments made during the formal comment period are required by law to be considered by the Agency in the Notice of Final Rulemaking. This is done in the preamble where the agency summarizes the comments made regarding the rule and publishes the agency response to them.

Here is the overall agenda for the rest of this hearing. First, I will read a brief overview of the proposed rule.

Next, we will pause for a brief question and answer period, which is not the formal comment period. but to provide last minute information that you may need in making your oral comments on the proposed rules.

After the brief question and answer period, I will conduct the formal oral comment period at which time you can make your oral comments at this hearing and simultaneously into the record. I will ask you to state your name first and to speak clearly and slowly. We request that you also email any comments you read so that we can be sure we understood every word. During the formal comment period, I will call for speakers one by one until we are finished.

Please be aware that any comments you make that you want the Department to formally consider must have been given either in writing or on the record during the oral comment portion of this proceeding. If you had a question from the question and answer period that you would like in the record, you will need to repeat the question during the formal comment portion of this proceeding.

At this time, I will give a brief overview of the proposed rules.

(Explanation of Proposed Retailer Rule Amendments)

The Retailer Rules prescribe the requirements and procedures for Arizona retail businesses that sell Lottery game products. The rules are being amended to implement improvements in Lottery business processes and recent changes to Lottery statutes. Laws 2021, Chapter 234 (HB2772) permits the Lottery to develop a Keno game for distribution by certain qualified retailers. These rules include the licensing requirements for Keno. Additionally, the retailer rules are being amended to include flexible sales and licensing models for qualified retailers interested in selling only some specific Lottery products. Amendments have also been made where necessary to tighten compliance provisions with respect to inventory and stolen ticket reporting procedures, and to improve the clarity and understandability

of the rules.

These proposed amendments will be effective 60 days after approval by Governor's Regulatory Review Council, also known as GRRC. Using at a normal timeframe to process your comments, ADEQ expects that these rules will be heard at the February 1st, 2021, GRRC meeting with a January 25th study session.

This concludes the explanation period of this oral proceeding on Lottery's Retailer Rules amendments.

This brings us to the Brief Question and Answer Period

Are there any questions? Before we move to the oral comment period?

["Hearing none,"]

This concludes the question and answer period of this hearing on the proposed rule. Again, if you have a question from the question and answer period that you would like on the record, you will need to repeat the question during the next formal comment portion of this proceeding.

* * * * *

I now open the oral comment portion of this hearing. Please raise your hand and I will recognize you and unmute you, if necessary, so that you can present your comments. You may raise your hand on Google Meets using the center icon at the bottom of your screen. If, for some reason, you are unable to raise your hand or we are unable to recognize your request through your microphone, please indicate your

request through the attendee chat function which is the center icon at the lower right of your screen.

Please identify yourself for the record.

First, GoToMeeting attendees.

Any chat commenters?

(No Phone-in)

This concludes the oral comment period of this hearing.

* * * * *

Thank you all for attending and making your comments known. Your participation was an essential part of the rulemaking process.

The time is now _10:18____. I now close this oral proceeding.

ARTICLE 1. EXPIRED**R19-3-101. Expired****Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-101 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-3-101 recodified from R4-37-101 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 354, effective March 11, 2006 (Supp. 06-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 300, effective January 31, 2011 (Supp. 11-1).

ARTICLE 2. RETAILERS**R19-3-201. Definitions**

In this Article, unless the context otherwise requires:

1. "Act" means A.R.S. Title 5, Chapter 5.1, Article 2.
2. "Activated" means the process taken by retailers to make a pack of instant scratch tickets valid for sale to the general public.
3. "Age-restricted retailer" means a licensed provider of sales and redemptions services for Lottery products that also holds a series 06 or 14 liquor license issued by the Arizona Department of Liquor Licenses and Control.
4. "Chapter" means Arizona Administrative Code, Title 19, Chapter 3.
5. "Charitable Organization" means an organization including not more than one auxiliary, to which the United States Internal Revenue Service has issued a letter of determination of the organization's tax-exempt status, and the organization has operated for charitable purposes in Arizona for at least two years.
6. "Controlling agent" means a stockholder, director, officer, managerial employee, or other person directly or indirectly controlling or operating the retailer's business.
7. "Controlling person" means a person at least 21 years of age accountable for the Lottery license.
8. "Corporate account retailer" means a group of stores in a retail chain utilizing one central bank account.
9. "Flare" means the board or placard that accompanies each package of instant tab tickets and that has printed on or affixed to it the following information:
 - a. Game name,
 - b. Serial number,
 - c. Ticket count,
 - d. Prize structure, and
 - e. Cost per play.
10. "Instant scratch ticket" means an instant game ticket where the protective covering is made of latex or another substance that is scratched off.
11. "Instant tab ticket" means an instant game ticket where the protective covering is a perforated paper tab that is opened. Instant tab ticket is the brand name for Arizona Lottery pull tabs.
12. "License" means:
 - a. "Full product license" means a license to sell the products authorized by the Lottery.
 - b. "Charitable organization license" means a license issued to a qualified charitable organization to sell only instant tab tickets.
 - c. "Instant tab license" means a license to sell only instant tab tickets.
 - d. "Limited license" means a license issued by the Lottery that restricts the duration of the license, the type of Lottery products sold, methods of selling, methods of validating Lottery products, or the type of applicant that qualifies for a Lottery license.
13. "Local premise manager" means a person who resides in Arizona that manages or is responsible for the operation of a premise or a number of premises.
14. "Minor" means an individual under the age of 18.
15. "On-line ticket" means a ticket purchased through a network of Lottery-authorized equipment linked to a central computer that records the wagers.
16. "Partial pack of tickets" means less than a complete pack of consecutively numbered and connected tickets.
17. "Premise manager" means the contact representative for a specific premise of a business or charitable organization.
18. "Pull tab" means an instant game ticket where the protective covering is a perforated paper tab that is opened to reveal the predetermined winning and non-winning symbols.
19. "Raffle" means the selling of numbered tickets, where each ticket has an equal chance of winning a prize in a random drawing held after the completion of all ticket sales.
20. "Retailer" means a licensed provider of sales and redemptions services for Lottery products. A retailer may hold a full product license, a charitable organization license, an instant tab license, a limited license, or a combination of licenses.
21. "Retailer bonus" means a sum of money credited to the retailer in addition to the retailer commission for specific actions or efforts in selling or validating Lottery products.
22. "Retailer commission" means a retailer incentive designed to maximize the sale of Lottery products by establishing a specific percent of the sales price of each ticket sold as payment for services in selling Lottery tickets.
23. "Retailer compensation" means all types of cash and non-cash compensation to the retailer for selling Lottery tickets.
24. "Retailer compensation profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all the fundamentals required by these rules for retailer compensation including commission, bonus, and incentive compensation to be credited to Lottery retailers.
25. "Retailer incentive" means cash and non-cash methods to motivate action by the Lottery retailer to stimulate sales.
26. "Sales benchmark" means sales objectives established by the Lottery based upon previous performance.
27. "Ticket" means one or more Lottery game plays.
28. "Validation" means confirmation of a winning Lottery ticket.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-201 adopted effective August 17, 1981 (Supp. 81-4). Amended subsection (A) effective September 14, 1983 (Supp. 83-5). Amended subsection (E) and added subsection (F) effective January 6, 1987 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-201 recodified from R4-37-201 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-201 renumbered to R19-3-202; new R19-3-201 made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp.

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10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-202. Retailer's Application for License

All applicants shall provide the Director with the following to apply for a license to sell Lottery tickets:

1. A verified application on forms prescribed by the Director containing the following information:
 - a. The applicant's name, and if different, the trade name of the business premise, address of the physical location of the place of business, the mailing address if different, and phone number;
 - b. The applicant's current transaction privilege tax license number issued under A.R.S. § 42-5005 and federal taxpayer identification number issued by the Internal Revenue Service and recorded on Form W-9;
 - c. Certification that access to the applicant's business complies with the Americans with Disabilities Act;
 - d. Marketing and sales information on the forms provided by the Lottery. The information required includes the number of cash registers, hours of operation, products presently offered for sale, and the approximate daily volume of customers entering the place of business;
 - e. Evidence the applicant operates a business with other products or services unrelated to lottery products or services concerning lotteries;
 - f. Financial relationship and any outstanding debt owed to the state of Arizona, any of its political subdivisions, or the United States government;
 - g. Evidence the applicant for a license other than an instant tab license or charitable organization license is financially solvent. The evidence may include either of the following:
 - i. Evidence the applicant has established business credit, has a record of meeting its business debts as they became due for the three years immediately preceding the date of application, and does not have outstanding legal actions, judgments, or tax liens; or
 - ii. Personal guarantee, in writing, of applicant's Lottery account signed by a guarantor and the guarantor's spouse, if community property is being used to guarantee the account, or by the guarantor only, if guarantor provides proof that the guarantee is based on sole and separate property.
 - h. An Electronic Funds Transfer Authorization agreement showing a valid bank account number for the full product applicant from which the Lottery will withdraw any amounts due.
 - i. Proof of identification.
2. If the applicant does business as a sole proprietorship or partnership:
 - a. The name, home address, and home phone number of each owner or partner, including spouse if community property owner, unless applicant provides proof that the business is sole property separate from the community; and
 - b. Written authorization and tax identification number for the business entity and Social Security number of each applicant in order to obtain a credit check from a credit reporting agency.
3. If the applicant does business as a limited liability partnership ("LLP") or a limited liability company ("LLC"):
 - a. The name, home address, and home phone number of each partner or member, or the local premise manager if the partners or members are out of state; and
 - b. Written authorization and a tax identification number to perform a credit check.
4. If the applicant does business as a corporation:
 - a. The name, corporate address, and corporate phone number of each officer and director, and the name, home address, and home phone number of the responsible local premise manager who is the contact representative for the applicant's corporate location in Arizona; and
 - b. Written authorization and a tax identification number to perform a credit check.
5. If the applicant does business as a charitable organization:
 - a. A copy of the organization charter or formation, documentation of current membership status in the organization, and if applicable, the authorization of the auxiliary;
 - b. The name, home address, and home phone number of each officer and local premise manager, or if an auxiliary, of each officer and local premise manager of the auxiliary;
 - c. A letter of determination issued in the organization's name by the United States Internal Revenue Service verifying the organization's tax-exempt status; and
 - d. Evidence the charitable organization has maintained a premise within the state of Arizona for the two years immediately preceding the date of application.
6. If the Lottery licenses an applicant under subsection (1)(g)(ii), the guarantor shall provide a written authorization to perform a credit check. If the guarantee is based on community property, the guarantor and guarantor's spouse shall provide written authorization for the Lottery to perform a credit check.
7. An application fee of \$45.00, or if the applicant does business as a corporation, limited liability company, limited liability partnership, or partnership, an application fee of \$67 which includes a credit check fee.
8. If the applicant is a business with more than one currently licensed location, the application fee for the new location shall be pro-rated at \$1.25 per month from the application date until the date the other licenses are due for renewal under R19-3-202.04(B)(3).
9. If the applicant's personal information shows no history through a public records criminal background check, the Lottery may require a completed authorized fingerprint card and fee per A.R.S. § 41-1750(G)(2) and (J).

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-202 adopted effective August 17, 1981 (Supp. 81-4). Spelling correction, subsection (A) to adoption effective August 17, 1981 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-202 recodified from R4-37-202 (Supp. 95-1). Section repealed; new Section R19-3-202 renumbered from R19-3-203 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-202 renumbered to R19-3-203; new R19-3-202 renumbered from R19-3-201 and amended by final

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rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 20 A.A.R. 964, effective June 1, 2014 (Supp. 14-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-202.01. Prerequisites to Issue or Renew a License

- A. Evidence the applicant is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines the person has committed any act which, if committed by a licensed retailer, would be grounds for suspension or revocation of a license granted by the state of Arizona.
- B. An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization shall not have had a business license required by statute in Arizona or any other state suspended or revoked within the last 12 months.
- C. An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than noncompliance with the Americans with Disabilities Act, and shall not have sold Lottery products without being licensed within one year of the person's date of application.
- D. An applicant for a license other than an instant tab license or charitable organization license shall have demonstrated financial solvency based on the information obtained through the application, credit check, or pending litigation, if any, or tax liens, if any.
- E. An applicant shall be one of the following to fulfill residency requirements:
 1. A resident of Arizona;
 2. A corporation incorporated in Arizona or authorized to do business in Arizona;
 3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona, or if none of the members or managers resides in Arizona, the applicant shall provide a personal guarantor who is an Arizona resident;
 4. A partnership in which at least one of the general partners resides in Arizona;
 5. A limited liability partnership in which at least one of the partners resides in Arizona; or
 6. A charitable organization authorized to do business in Arizona.
- F. As a condition of licensure, each retailer shall agree to release, indemnify, defend, and hold harmless, the Lottery, its commissioners, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery equipment, or terminal operations. This should not be construed in any way to affect the rights of the retailer to recover for losses caused by any third party.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-202.02. Time-frame for Licensure

- A. For the purpose of A.R.S. §§ 41-1072 through 41-1079, the Director establishes the time-frames for a license to sell Lottery tickets:
 1. Administrative completeness review time-frame: 15 days.
 2. Substantive review time-frame: 75 days.
 3. Overall time-frame: 90 days.
- B. The Director shall finish an administrative completeness review within 15 days from the date of receipt of the application and fees prescribed in R19-3-202.
 1. The Director shall issue a notice of administrative completeness to the applicant if no deficiencies are found in the application.
 2. If the application is incomplete or the fee is not submitted, the Director shall provide the applicant with a written notice that includes a comprehensive list of the missing or deficient information.
 3. The 15-day time-frame for the administrative completeness review is suspended from the date the notice of incompleteness is sent until the applicant provides the Director with all missing information.
 4. If the Director does not provide the applicant with notice regarding administrative completeness, the application shall be deemed complete 15 days after receipt by the Director.
- C. An applicant shall respond to a request for missing information within 20 days of notice of incompleteness.
- D. If an applicant fails to submit a complete application within the time allowed, the Director may close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to R19-3-202.
- E. From the date on which the administrative completeness review of an application is finished, the Director shall complete a substantive review of the applicant's qualifications in no more than 75 days.
 1. If an applicant is found to be ineligible, the Director shall issue a written notice of denial to the applicant.
 2. If an applicant is found to be eligible for a license, the Director shall issue a license to the applicant permitting the applicant to engage in business as a retailer under the terms of this Chapter.
 3. If the Director finds deficiencies during the substantive review of an application, the Director shall issue a written request to the applicant for additional information.
 4. The 75-day time-frame for substantive review is suspended from the date of a written request for additional information until the date that all information is received.
 5. If the applicant and the Director mutually agree in writing, the 75-day substantive review time-frame may be extended once for no more than 18 days.
- F. If the Director does not provide the applicant with written notice granting or denying a license within the overall time-frame, the Director shall refund the applicant's application fee within 30 days after the expiration of the overall time-frame or the time-frame extension.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202.03. Denial of License Application

The Lottery shall not issue a license to an applicant if any of the following applies:

1. The applicant is a minor, a partnership or LLP in which one of the partners is a minor, an LLC in which one of the members or managers is a minor, or a corporation in

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- which a corporate officer, director, or manager of Lottery sales is a minor;
2. The organization is an adult-oriented business as defined in A.R.S. § 13-1422 or displays sexually explicit material in violation of A.R.S. § 13-3507;
 3. The applicant has sold a Lottery product without a license, or operated gaming machines or equipment that are required to be licensed, without a license;
 4. The applicant fails to have a controlling person at least 21 years of age; or
 5. The organization is an age-restricted business that does not have a valid series 06 or 14 liquor license issued by the Arizona Department of Liquor Licenses and Control.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-202.04. Duration and Renewal of License

- A. A license issued under this Chapter shall expire three years from the license issuance date by operation of law.
- B. A retailer may renew a license to sell Lottery tickets by submitting to the Director a verified application for license renewal on forms prescribed by the Director containing the information required in R19-3-202 and R19-3-202.01. By filing an application for renewal, a retailer holding a full product license or limited license authorizes the Lottery to collect a \$45.00 renewal fee by an electronic transfer of funds from the bank account from which the Lottery regularly bills the retailer. A retailer holding a charitable organization license or instant tab license shall submit cash, check, or a money order for \$45 with its renewal application.
 1. An application for renewal of a Lottery license received by the Director or deposited in the United States mail postage prepaid on or before the renewal date shall authorize the retailer to continue to operate until actual issuance of the renewal license.
 2. The Director may refuse to renew a license according to the provisions of R19-3-204.
 3. A retailer holding more than one license may elect to renew all licenses on the same date. If more than one license is renewed under this subsection, the application fee shall be pro-rated at \$1.25 per month from the license expiration date until the next renewal date of the other licenses held by the same retailer.
- C. A license issued under this Chapter is subject to termination by the Director according to the provisions of this Chapter.
- D. A retailer may voluntarily surrender a license unless an investigation or action has been initiated against the retailer.
- E. The Lottery may issue a license which is limited with regard to duration, type of products, methods of selling or validating products, or qualification requirements.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-202.05. Display of License and Point-of-sale Material

- A. A retailer shall conspicuously display to the public that it is a licensed Lottery retailer. A retailer may do this by:
 1. Posting the Lottery license in a prominent place on the premises; or

2. Posting the authorized Lottery retailer decal in a prominent place in public view, and retaining a copy of the license on the premise, available upon request.
- B. A retailer shall prominently display the Americans with Disabilities Act Notice and Arizona Problem Gambling Helpline toll-free telephone number.
 - C. A retailer holding a charitable organization license or instant tab license shall prominently display the flare for each instant tab game currently on sale at or near the point of sale.
 - D. A violation of this subsection is grounds for disciplinary action according to the provisions of R19-3-204.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202.06. Use of Lottery Logo and Trademark

- A. A retailer may not use the logos, trademarks, or other advertising materials of the Lottery without prior written permission or authorization of the Lottery, except for materials provided to the retailer by the Lottery.
- B. A retailer shall not display or publish on the licensed premises material which may be considered derogatory or adverse to the operation or dignity of the Lottery or the state of Arizona. A retailer shall remove any such materials from the licensed premise upon request of the Lottery.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-203. Direct and Promotional Sales

- A. The Lottery may sell Lottery tickets at its main office or any branch it establishes in the state.
- B. The Lottery may sell Lottery tickets at any promotional event.
- C. The Lottery may authorize a licensed retailer to sell Lottery tickets at an auxiliary premise for a promotional event.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R5-37-203 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-2-203 recodified from R4-37-203 (Supp. 95-1). R19-2-203 renumbered to R19-3-202; new Section R19-2-203 renumbered from R19-4-204 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 914, effective February 10, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-203 renumbered to R19-3-204; new R19-3-203 renumbered from R19-3-202 by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204. Revocation, Suspension, or Renewal Denial of Retailer's License

- A. A license may be revoked, suspended, or denied renewal by the Director for any of the following reasons:
 1. The retailer violates a provision of the criminal laws of the state of Arizona or the United States, which could be punished by jail time or imprisonment;
 2. The retailer offers to sell a Lottery ticket, sells a Lottery ticket, or pays a prize on any winning Lottery ticket to a person under 21 years of age;
 3. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any

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- public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
4. The retailer fails to maintain minimum sales requirements or does not follow the guidelines established by the Lottery. The Lottery shall provide minimum sales requirements to retailers at least 30 days prior to the effective change date;
 5. The retailer commits an act that impairs the retailer's reputation for honesty and integrity;
 6. The retailer sells a ticket at a price greater than face value;
 7. The retailer pays less than the full prize value of the ticket at validation;
 8. The retailer advises a player that a winning ticket presented for validation was not a prize winner;
 9. The retailer sells tickets not activated for sale on three or more occasions within any 12-month period;
 10. The retailer sells a ticket while license is suspended for insufficient funds;
 11. The retailer does not make purchase or redemption of Lottery tickets convenient and readily accessible to the public;
 12. The retailer provides to the Lottery a statement, representation, warranty, or certificate that the Lottery determines is false, incorrect, incomplete, or omits relevant information;
 13. The retailer's actions cause two payments to be returned to the Lottery for insufficient funds in a 12-month period;
 14. The retailer becomes insolvent, unable or unwilling to pay debts, or is declared bankrupt;
 15. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager of the retailer:
 - a. Is convicted of a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices; or
 - b. Is the subject of a civil order, judgment, or decree of a federal or state authority for misrepresentation, consumer fraud, or any other fraud.
 16. Facts are discovered which, if known at the time the retailer's license was issued or renewed, would have been grounds to deny licensure;
 17. The retailer adds a minor as an owner, partner, or officer of the business;
 18. The retailer, or an officer, employee, or agent of the retailer does any of the following:
 - a. Plays any Lottery game while working,
 - b. Fails to purchase or validate the ticket from another on-duty employee or through a Lottery product vending machine, or
 - c. Fails to pay for the ticket prior to playing the Lottery game.
 19. The retailer, or an officer, employee, or agent of the retailer sells any Lottery product for consideration other than U.S. currency, check, credit card, debit card or, if a player requests, the exchange of a winning Lottery ticket;
 20. The retailer, or an officer, employee, or agent of the retailer sells a Lottery ticket by telephone, mail, fax, on the internet, or on premises not authorized by the Lottery;
 21. The retailer, or an officer, employee, or agent of the retailer sells an altered Lottery ticket, an expired Lottery ticket, or a Lottery ticket after the announced end of the game;
 22. The retailer fails to display the Authorized Retailer Notice, which includes the Americans with Disabilities Act Notice and Arizona Problem Gambling Helpline toll-free telephone number;
 23. The retailer fails to report a change event defined in R19-3-210;
 24. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws, Lottery regulations, or denies access to Lottery personnel;
 25. The retailer holding a charitable organization license or instant tab license fails to prominently display the flare for each instant tab game currently on sale within public view near the point of sale;
 26. The retailer holding a charitable organization license no longer qualifies as a charitable organization or its letter of determination of tax-exempt status is suspended or revoked;
 27. The retailer fails to comply with the rules governing its license; or
 28. The age-restricted retailer violates a provision of the state of Arizona liquor laws under A.R.S. § 4-101, *et. seq.*
- B.** An investigation of a violation of Lottery rules may be initiated by action of the Director or by a written complaint of any person.
1. An investigation initiated by a written complaint shall be investigated within 30 days of receiving the complaint.
 2. During an investigation the Director may temporarily suspend a license under an emergency action, or impose specific conditions on a retailer.
- C.** An action to suspend or revoke a license shall be initiated by a notice of action to the retailer. Notice may be made by mail, hand-delivery, or electronic mail with a copy by regular mail. Notice to the retailer is effective notice if it is sent to the address in the application or the last address provided under R19-3-210.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-204 adopted effective August 17, 1981 (Supp. 81-4). Amended as an emergency effective June 26, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Correction, former emergency amendment shown effective June 26, 1983 should read effective June 10, 1983. Former emergency amendment now adopted as a permanent amendment without change effective September 14, 1983 (Supp. 83-5). Amended effective March 6, 1986 (Supp. 86-2). Amended subsection (B) effective January 6, 1987 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-204 recodified from R4-37-204 (Supp. 95-1). Section R19-3-204 renumbered to R19-3-203; new Section R19-3-204 renumbered from R19-3-205 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-204 repealed; new R19-3-204 renumbered from R19-3-203 and amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-204.01. Procedure for Requesting a Hearing

- A.** A retailer may request a hearing on any notice to revoke or suspend a Lottery license.

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- B. The hearing shall be held before the Office of Administrative Hearings. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- C. The Director may accept, modify, reject, or allow the recommended decision of the Administrative Law Judge to become final by expiration of time. This is a final administrative decision of the Lottery.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204.02. Lottery Determination of Need for Emergency Action

- A. The Director may determine the need for emergency action to disable a retailer's Lottery-issued equipment, suspend sales of Lottery games, or remove tickets if the public welfare is threatened pending a proceeding for revocation, suspension, or denial of renewal, in the following circumstances:
1. The retailer's bank account has insufficient funds when the Lottery's regularly-scheduled electronic transfer of the retailer's account is returned by the bank as insufficient funds or closed account and the retailer does not immediately pay the insufficiency;
 2. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws or Lottery regulations;
 3. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager is charged with a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices;
 4. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
 5. The retailer sells an altered or expired ticket;
 6. The retailer sells a ticket at a price greater than face value;
 7. The retailer pays less than the full prize value of the ticket at validation; or
 8. The age-restricted retailer violates a provision of the state of Arizona liquor laws under A.R.S. § 4-101 et. seq.
- B. A retailer who receives a Notice of Intent to Revoke a Retailer's License with a finding of emergency action shall:
1. Immediately cease all sales of Lottery products, and
 2. Surrender the license and all other Lottery property and products upon request by the Director's representative.
- C. The Director shall notify the retailer in writing within five days of taking an emergency action that an expedited hearing or informal conference may be obtained before the Office of Administrative Hearings under A.A.C. R2-19-103 and A.A.C. R2-19-110.
- D. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take steps allowed by law to secure payment and return of Lottery property and products.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-204.03. Appealing a Final Administrative Decision of the Lottery

- A. An optional motion for rehearing may be made to the Lottery Commission by filing a Notice of Appeal to the Lottery Commission within 10 days of receipt of the final administrative decision.
1. The notice shall contain:
 - a. A copy of the Director's final administrative decision, and
 - b. The alleged factual or legal error in the final administrative decision from which the appeal is taken.
 2. A person appealing the decision of the Director may file a written brief stating the factual and legal position on the appeal within 30 days after receipt of the decision being appealed.
 3. The Lottery may file a response brief within 15 days after receipt of the appellant's brief.
 4. The Lottery Commission may rule based on the written briefs, or if requested, may provide for oral argument.
 5. The Lottery Commission shall make its ruling on the appeal on the record.
 6. A decision of the Lottery Commission is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- B. A direct appeal of a final decision of the Director under R19-3-204.01(C) may be taken for judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204.04. Surrender of Lottery Equipment and Property Upon Revocation

- A. A retailer who receives a final administrative decision revoking the license shall:
1. Immediately cease all sales of Lottery products; and
 2. Surrender the license and all other Lottery equipment, property, and products upon request of the Director's representative.
- B. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take all steps allowed by law to secure payment and the return of Lottery property and products.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-205. Lottery-issued Equipment

- A. Retailers holding only a charitable organization license or instant tab license shall not be issued Lottery terminal equipment to sell or validate Lottery products, but may use an authorized Lottery product vending machine in accordance with subsection (C).
- B. Retailers holding a full product or limited license shall only sell or validate Lottery products using authorized Lottery-issued equipment.
1. A retailer shall locate the equipment at a site approved by the Lottery and shall not move the equipment from that site without prior approval from the Lottery.
 2. A retailer shall ensure electrical service to the equipment location is installed according to the specifications established by the Lottery. The cost of electrical service shall be the responsibility of the retailer.
 3. A retailer shall cooperate with the Lottery to the extent reasonable and practicable to accomplish any modifications to the equipment or systems in a timely and economical fashion.

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4. The Lottery shall not be liable for damages of any kind due to interruption or failure of any Lottery-issued or authorized equipment.
 5. A retailer shall operate the Lottery-issued equipment and accessories only in the ordinary course of its Lottery business and only according to the requirements established by the Lottery.
 6. A retailer shall exercise diligence and care to prevent damage to the Lottery-issued equipment and other property of the Lottery, or property of Lottery contractors.
 7. A retailer shall maintain the Lottery-issued equipment and accessories in a clean and orderly condition.
 8. A retailer shall minimize equipment downtime by notifying the Lottery or its contractor immediately of any equipment failure, malfunction, damage, or accident.
 9. A retailer shall make the equipment available for repair, adjustment, or replacement at all times during the retailer's regular business hours.
 10. A retailer shall order and use equipment supplies exclusively from the Lottery or its designated contractor. The Lottery shall furnish equipment supplies, at no cost, to the retailer.
 11. A retailer shall install and use only approved Lottery paper stock specifically assigned to the retailer.
- C.** Retailers may sell tickets using an authorized Lottery product vending machine in accordance with the Act and this Chapter.
1. A retailer shall establish loss prevention policies to ensure Lottery product vending machines are not operated by persons under 21 years of age to purchase Lottery tickets.
 2. The Lottery product vending machine shall remain operational during the retailer's regular business hours and be placed in an area visible to retail personnel and easily accessible to players.
 3. A retailer shall maintain an adequate supply of instant scratch or instant tab tickets for the Lottery product vending machine.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Sections R4-37-205 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-3-205 recodified from R4-37-205 (Supp. 95-1). Section R19-3-205 renumbered to R19-3-204; new Section R19-3-205 renumbered from R19-3-206 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-206. Retailer Training

- A.** A retailer holding a full product license shall participate in training provided by the Lottery in the operation of Lottery equipment and sale of Lottery products. Training may take place at a retailer's place of business.
- B.** A retailer holding a full product license shall ensure all employees selling Lottery products or operating Lottery equipment are properly trained in these areas and have access to all materials provided by the Lottery relating to the sales and pro-

motion of Lottery products and the operation of Lottery equipment.

- C.** A retailer holding a full product license shall be responsible for any compensation and other associated costs payable to employees for participation in Lottery training courses and instruction.
- D.** A retailer holding a full product license shall provide all employees operating Lottery equipment with copies of the procedures manual, bulletins, and technical materials furnished to the retailer by the Lottery or its contractors.
- E.** A retailer holding a charitable organization license or instant tab license shall ensure all employees or volunteers selling instant tab tickets are properly trained.

Historical Note

Adopted effective August 17, 1981 (Supp. 81-4). Amended subsection (B) as an emergency effective January 13, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-1). Subsection (B), amended as an emergency, now adopted as permanent with further amendment effective April 21, 1982 (Supp. 82-2). Amended subsection (A)(1), (3) and (4) as an emergency effective November 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days. Former emergency amendment effective November 24, 1982 now adopted as permanent effective December 28, 1982 (Supp. 82-6). Amended as an emergency effective June 10, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-206 adopted as an emergency effective June 10, 1983, now adopted and amended as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsection (A)(4) effective September 26, 1986 (Supp. 86-5). Amended effective September 12, 1989 (Supp. 89-3). R19-3-206 recodified from R4-37-206 (Supp. 95-1). R19-3-206 renumbered to R19-3-205; new Section R19-3-206 renumbered from R19-3-207 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-207. Compliance Investigations

- A.** A retailer shall comply with all provisions of the Act and this Chapter. The Lottery may conduct inspections to verify compliance and, if necessary, order an audit or investigation of the business.
- B.** A retailer shall allow investigations by authorized Lottery investigators during the retailer's regular business hours to determine whether the retailer is complying with the provisions of the Act and this Chapter.
- C.** A retailer shall keep all documentation relating to the purchase, sale, and validation of Lottery products that are kept in the normal course of business for tax purposes for three years. This documentation shall be easily accessible to the Lottery-authorized investigator for examination or audit.

Historical Note

Adopted as an emergency effective June 10, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-207 adopted as an emergency effective June 10, 1983, now adopted and amended as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsections (B) and (J) effective September 26, 1986 (Supp. 86-5). Amended effective September 12,

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1989 (Supp. 89-3). R19-3-207 recodified from R4-37-207 (Supp. 95-1). R19-3-207 renumbered to R19-3-206; new Section R19-3-207 adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-208. Penalties

- A.** The Director shall assess a civil penalty against a retailer for any of the following acts:
1. Offering to sell or selling a Lottery ticket to any person who is under 21 years of age, or
 2. Selling a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security.
- B.** The Director shall, on the written complaint of any person, or upon receipt of information indicating a retailer has committed an act listed in subsection (A), investigate the act or acts. The Director shall give notice to the retailer as provided in A.R.S. §§ 41-1092.03 and 41-1092.04 of imposition of a civil penalty if the Director finds the retailer has committed such an act. A violation of an act listed in subsection (A) is a civil penalty in the amount of:
1. Up to \$300 for the first violation within a 12-month period;
 2. More than \$300 and up to \$500 for the second violation within a 12-month period; and
 3. More than \$500 and up to \$1,000 for the third violation within a 12-month period.
- C.** A retailer against whom a penalty is assessed shall pay the penalty to the Lottery by the 31st day after the retailer receives notice of imposition of the civil penalty, if the retailer does not request a hearing as provided in subsection (D).
- D.** A retailer may request a hearing regarding imposition of a civil penalty. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- E.** A decision of the Director accepting, modifying or rejecting the recommended decision of the Administrative Law Judge is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
1. If the retailer decides not to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the retailer receives the Director's decision.
 2. If the retailer decides to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the Superior Court's decision.
 3. If the retailer decides to appeal the Superior Court's decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the decision on appeal.
 4. A retailer shall pay interest at the rate provided in A.R.S. § 44-1201 from the date final judgment assessing a civil penalty is entered until satisfaction of the judgment.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 3043, effective June 19, 2001 (Supp. 01-2). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

effective August 7, 2012 (Supp. 12-2).

R19-3-209. Notice and Service

Service shall be deemed made by the Lottery for any notice, decision, order, subpoena, or other process when the document or a copy is delivered to the retailer, premise manager, guarantor, or the attorney of record, or is deposited as certified mail in the United States Postal Service, addressed to the retailer or guarantor at the address listed on the application for license or as reported as a change event under R19-3-210.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-210. Reportable Events

- A.** A retailer shall report the following events to the Lottery in writing a minimum of 10 business days before the event:
1. Change in business location of the licensed premise;
 2. Sale of ownership, merger, or acquisition of the licensed entity;
 3. Addition, removal, or change of address or phone number of the following persons:
 - a. A partner in a partnership or a limited liability partnership;
 - b. A member or manager in a limited liability company;
 - c. An officer holding the position or functional equivalent of president, secretary, or treasurer of a corporation; or
 - d. A controlling agent, local premise manager, or designated corporate contact representative.
 4. A charge of felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices that is brought against any person listed in subsection (3);
 5. Divorce or legal separation action filed by a sole proprietor or partner licensed as a retailer or retailer's spouse;
 6. Retailer or guarantor becomes insolvent, files bankruptcy, or a receivership is ordered;
 7. Change in bank account from which the Lottery's electronic funds transfers are made;
 8. Revocation, suspension, or other action against a charitable organization's letter of determination of tax-exempt status; or
 9. Change in the status of liquor license issued by the Arizona Department of Liquor Licenses and Control.
- B.** A retailer shall report to the Lottery in writing the death of a sole proprietor or partner licensed as a retailer within 10 business days after the death occurs.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-211. Change of Ownership or Business Location

A license is not assignable or transferable. A license authorizes the entity described in the application to sell Lottery tickets only at the specific premise authorized by the Lottery.

1. If there is a change of business location or ownership as reportable in R19-3-210(A)(1) through (3) or R19-3-210(B), a criminal charge as reportable in R19-3-210(A)(4), or a change in liquor license status as reportable in R19-3-210(9), the retailer shall:
 - a. Surrender the license to the Director on the date of the event,
 - b. Not sell any additional Lottery tickets, and
 - c. Not allow the sale of Lottery products under a subcontract to avoid the repercussions of a change of status under this section.
2. If the retailer does not notify the Lottery of a change in ownership or business location at least 10 business days before the change, the retailer may not receive credit for any activated partial packs of tickets.
3. The new owner shall apply for a license according to R19-3-202.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-212. Retailer Compensation

- A. Retailer compensation shall be set within the statutory limits by a retailer compensation profile ordered by the Lottery Commission. Each retail compensation profile shall contain the following information:
 1. Retailer compensation profile number;
 2. Specific type of retailer compensation: commission, bonus, or other incentive;
 3. The retailer group to which the retailer commission, bonus, or other incentive applies;
 4. Criteria required to qualify for the commission, bonus, or other incentive;
 5. Duration of the retailer commission, bonus, or other incentive;
 6. Targeted games, if any; and
 7. Special features, if any.
- B. The category of retailer commissions, bonuses, or other incentives shall be one or more of the following:
 1. Full product license basic commission rate,
 2. Limited license basic commission rate,
 3. Sales benchmark rate,
 4. Game product rate,
 5. Promotional incentive or bonus rate,
 6. Temporary incentive or bonus rate, or
 7. Alternate incentive or bonus rate.
- C. More than one retailer commission, bonus, or other incentive may run concurrently.
- D. Promotion bonuses or incentives may be held during a designated period, specific days of the week, specific hours of the day, or a combination thereof.
- E. The Commission shall approve and the Director shall distribute a schedule of available retailer compensation to licensed retailers at least 30 days prior to its effective date and shall post it on the Lottery web site. A technological problem or failure that either prevents the posting of the retailer commission, bonus, or other incentive on the Lottery web site or that temporarily or permanently prevents the use of all or part of

the web site does not preclude the authorization of the retailer compensation.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-213. Ticket Sales to Players

- A. A retailer shall sell only the type of Lottery products authorized by its Lottery-issued license.
- B. The Director may require a retailer to sell any one or combination of Lottery game products based on the retailer's license.
- C. A retailer shall not make any representation to a player regarding a likelihood to win, a guaranteed return on a percentage of purchases, or better chances or odds of winning.
- D. On-line tickets.
 1. All on-line ticket sales are final. If a retailer holding a full product license accepts a returned on-line ticket from a player or generates an on-line ticket refused by the player and the retailer does not resell the ticket, the Lottery shall deem the on-line ticket to be owned by the retailer.
 2. A retailer holding a full product license shall not devote more than 15 consecutive minutes of sales to an on-line game purchase by any single player if other customers are waiting to make a purchase.
 3. A retailer holding a full product license shall only use selection slips, materials, or methods authorized by the Lottery to generate plays selected by the player.
- E. Instant scratch tickets.
 1. All instant scratch ticket sales are final.
 2. A retailer holding a full product license shall sell instant scratch tickets within each pack in sequential order.
 3. A retailer holding a full product license shall not sell an instant scratch ticket after the announced end of game.
- F. All instant tab ticket sales are final.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-214. Payments to Lottery

- A. Money collected from the sale of Lottery tickets by retailers are trust monies required to be collected for the benefit of the state and shall be paid to the Lottery according to subsections (B) and (C).
- B. A retailer holding a full product license or limited license shall pay for ticket sales in the following manner:
 1. Pay to the Lottery each Friday, by an electronic funds transfer, the amount due from the sale of its Lottery tickets for the seven-day period ending at the close of business on the previous Saturday.
 2. The amount due for on-line tickets means the retailer's gross on-line sales revenue, minus any promotional tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments.
 3. The amount due for instant scratch tickets is based on billing for instant ticket packs issued to a retailer with billing occurring 45 days after a pack is activated, or after 85% of winning tickets in the pack are validated, which-

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ever occurs first, minus any promotional tickets, returned tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments. Corporate account retailers may elect to settle in 21 days with no associated validation percentage.

4. The retailer shall deposit funds in a timely manner into a bank account from which the electronic funds transfer will be made to the Lottery.
 - a. The retailer shall provide the Lottery with an electronic funds transfer authorization showing a valid bank account number from which the amounts due to the Lottery will be transferred, and
 - b. The retailer shall notify the Lottery of any bank account changes a minimum of 10 business days before the effective date of the change.
 5. If a retailer's payment is returned to the Lottery for any reason, the retailer shall deliver a certified check, cashier's check, money order, or make a direct deposit for the amount due to the Lottery's bank account within 24 hours of notification. Additionally, if the retailer's payment is returned to the Lottery:
 - a. The Director may require that the retailer's Lottery-issued equipment be disabled;
 - b. The Director may revoke, suspend, or deny renewal of the retailer's license according to R19-3-204;
 - c. The Director may require payment for instant scratch tickets upon activating the pack for sale; and
 - d. The Director may require the return of the retailer's current inventory of instant scratch tickets and suspend further delivery of instant scratch tickets.
- C.** A retailer holding a charitable organization license or instant tab license shall pay the Lottery's authorized representative for instant tab tickets.
- D.** If the retailer owes money to the Lottery, the Lottery may offset that debt with any monies that are owed to the retailer by the Lottery.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

R19-3-215. Prize Validation and Payment

- A.** A retailer holding a full product license shall provide prize validation and payment services for instant scratch tickets or on-line tickets to any Lottery claimant regardless of where the ticket was purchased.
- B.** A retailer holding a full product license shall pay all winning prizes for instant scratch tickets or on-line tickets up to and including \$100, and may pay all winning prizes from \$101 up to and including \$599.
1. A winning instant scratch ticket shall satisfy the validation criteria in R19-3-705 and R19-3-706 and have a proper validation receipt issued by the Lottery-authorized equipment.
 2. A winning on-line ticket shall satisfy the validation criteria in R19-3-406 and R19-3-407 and have a proper validation receipt issued by the Lottery-authorized equipment.
- C.** A retailer selling instant tab tickets shall pay all winning prizes for tickets sold at its location.

1. A winning instant tab ticket shall satisfy the validation criteria in R19-3-705(A) and (B)(1) through (8), and contain the necessary play, prize, and win symbol captions that enable visual confirmation of a prize.
 2. Prizes shall not be paid by the Lottery or by another retailer.
- D.** Prizes shall be paid by cash, check, money order, or if requested by the player, by Lottery tickets. If a retailer pays a prize with a money order, any associated fees shall be paid by the retailer.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-216. Distribution and Return of Instant Tickets

- A.** The Lottery or its authorized representative shall distribute instant scratch tickets and accept returned instant scratch tickets as follows:
1. Distribute to each retailer holding a full product license the quantity of tickets on which the Lottery and the retailer agree, based on the retailer's anticipated sales volume.
 2. Collect full and partial packs of tickets during a game if the Lottery and a retailer holding a full product license determine the retailer's sales for a specific game are minimal.
 3. Collect full and partial packs of tickets when a game is ended. The Lottery shall announce the ending date of a game and communicate this information to all retailers holding a full product license in a timely manner.
 4. Credit to a retailer holding a full product license, in the billing period following the receipt of the Lottery-authorized returned tickets, the net dollar value of any unopened full packs and any partial packs of tickets.
- B.** The Lottery or its authorized representative shall distribute instant tab tickets and shall not accept returns of instant tab tickets.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-217. Unaccounted for and Stolen Instant Scratch Tickets

- A.** All Lottery tickets issued to a retailer holding a full product license or limited license shall be the property of the retailer until their return is acknowledged by the Lottery. The Lottery is not responsible for lost tickets.
- B.** A retailer holding a full product license or limited license shall report stolen Lottery tickets to the local law enforcement agency and the Lottery Investigations unit within one hour from the time the theft occurs or the theft first could have been discovered. The retailer shall:
1. Provide a copy of the written police report to the Lottery,
 2. Cooperate in any investigation and prosecution of the theft,
 3. Sign an affidavit providing the details as known by the retailer, and

Arizona State Lottery Commission

4. Maintain and report current game, pack, and ticket inventory.
- C.** If a retailer holding a full product license or limited license sustains a loss from stolen tickets, the retailer's insurance is the loss payee.
- D.** If a retailer holding a full product license or limited license has insufficient insurance to pay for the retailer's loss and the retailer complies with subsection (B), the Lottery will credit the retailer's account for stolen instant tickets as follows:
1. The Lottery shall credit all charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from a source not associated with the retailer or by an unknown party.
 2. The Lottery shall credit 50% of the charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from an employee, manager, officer, director, or a relative with access to Lottery tickets.
 3. Each retailer is limited to no more than two stolen ticket credit requests within any 12-month period.
- E.** The Lottery shall not issue a credit for stolen tickets if the Lottery finds a retailer holding a full product license or limited license was negligent or did not enforce reasonable loss-prevention procedures to protect tickets, ticket processing, and ticket accounting.
- F.** If a prize claim is made against a ticket that has been reported as stolen or a ticket unaccounted for by the retailer holding a full product license or limited license, the Lottery shall hold the prize money in trust pending the findings of an investigation by an appropriate law enforcement agency.
- G.** The loss of instant tab tickets is the responsibility of the retailer.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

ARTICLE 3. REPEALED**R19-3-301. Repealed****Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-301 adopted effective August 17, 1981 (Supp. 81-4). Former Section R4-37-301 repealed, new Section R4-37-301 adopted effective March 6, 1986 (Supp. 86-2). Amended subsections (F) and (I) effective September 26, 1986 (Supp. 86-5). Amended effective September 12, 1989 (Supp. 89-3). Emergency amendment adopted effective April 20, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency amendments permanently adopted with changes effective July 20, 1993 (Supp. 93-3). R19-3-301 recodified from R4-37-301 (Supp. 95-1). Repealed effective October 25, 1996 (Supp. 96-4).

R19-3-302. Repealed**Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-302 adopted as an emergency effective August 13, 1981, pursuant to A.R.S. § 41-1003,

valid for only 90 days (Supp. 81-4). Former Section R4-37-302 adopted as an emergency now adopted as a permanent rule effective October 15, 1981 (Supp. 81-5). Former Section R4-37-302 repealed, new Section R4-37-302 adopted effective March 6, 1986 (Supp. 86-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective February 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R-19-3-302 recodified from R4-37-302. Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-303. Repealed**Historical Note**

Adopted as an emergency effective October 14, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-5). Former Section R4-37-303 adopted as an emergency now adopted as a permanent rule effective December 17, 1981 (Supp. 81-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-303 adopted effective May 2, 1986 (Supp. 86-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective February 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-303 recodified from R4-37-303. (Supp. 95-1). Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-304. Repealed**Historical Note**

Adopted as an emergency effective January 13, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-1). Former Section R4-37-304 adopted as an emergency now adopted as a permanent rule effective February 16, 1982 (Supp. 82-1). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-304 adopted effective June 30, 1986 (Supp. 86-3). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective March 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-304 recodified from R4-37-304 (Supp. 95-1). Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-305. Repealed**Historical Note**

Adopted as an emergency effective May 21, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R4-37-305 adopted as an emergency now adopted as a permanent rule effective August 19, 1982 (Supp. 82-4). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-305 adopted effective August 28, 1986 (Supp. 86-4). Repealed effective September 12, 1989 (Supp. 89-3). Former R4-37-323 adopted and renumbered as R4-37-305 effective November 1, 1989 (Supp. 89-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-305 recodified from R4-37-305 (Supp. 95-1). New Section R19-3-305 adopted effective November 3, 1995 (Supp. 95-4). Section, including Illustration A, B and C, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16,

5-554. Commission; director; powers and duties; definitions

A. The commission shall meet with the director not less than once each quarter to make recommendations and set policy, receive reports from the director and transact other business properly brought before the commission.

B. The commission shall oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state. To achieve these ends, the commission shall authorize the director to adopt rules in accordance with title 41, chapter 6. Rules adopted by the director may include the following:

1. Subject to the approval of the commission, the types of lottery games and the types of game play-styles to be conducted.
2. The method of selecting the winning tickets or shares for noncomputerized online games, except that a method may not be used that, in whole or in part, depends on the results of a dog race, a horse race, any gaming activity conducted pursuant to the 2021 tribal-state gaming compact amendments or any sports event or other event.
3. The manner of payment of prizes to the holders of winning tickets or shares, including providing for payment by the purchase of annuities in the case of prizes payable in installments, except that the commission staff shall examine claims and may not pay any prize based on altered, stolen or counterfeit tickets or based on any tickets that fail to meet established validation requirements, including rules stated on the ticket or in the published game rules, and confidential validation tests applied consistently by the commission staff. No particular prize in a lottery game may be paid more than once, and in the event of a binding determination that more than one person is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal portion of the single prize.
4. The method to be used in selling tickets or shares, except that no elected official's name may be printed on the tickets or shares. The overall estimated odds of winning some prize or some cash prize, as appropriate, in a given game shall be printed on each ticket or share.
5. The licensing of agents to sell tickets or shares, except that a person who is under eighteen years of age shall not be licensed as an agent.
6. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public, including provision for variable compensation based on sales volume.
7. Matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.
8. The licensing of authorized keno locations, including the persons that control the business or other activity conducted at an authorized keno location.

C. The commission shall authorize the director to issue orders and shall approve orders issued by the director for the necessary operation of the lottery. Orders issued under this subsection may include the following:

1. The prices of tickets or shares in lottery games.
2. The themes, game play-styles, and names of lottery games and definitions of symbols and other characters used in lottery games, except that each ticket or share in a lottery game shall bear a unique distinguishable serial number.
3. The sale of tickets or shares at a discount for promotional purposes.

4. The prize structure of lottery games, including the number and size of prizes available. Available prizes may include free tickets in lottery games and merchandise prizes.

5. The frequency of drawings, if any, or other selections of winning tickets or shares, except that:

(a) All drawings shall be open to the public.

(b) The actual selection of winning tickets or shares may not be performed by an employee or member of the commission.

(c) Noncomputerized online game drawings shall be witnessed by an independent observer.

6. Requirements for eligibility for participation in grand drawings or other runoff drawings, including requirements for the submission of evidence of eligibility within a shorter period than that provided for claims by section 5-568.

7. Incentive and bonus programs designed to increase sales of lottery tickets or shares and to produce the maximum amount of net revenue for this state.

8. The method used for the validation of a ticket, which may be by physical or electronic presentation of a ticket.

D. Notwithstanding title 41, chapter 6 and subsection B of this section, the director, subject to the approval of the commission, may establish a policy, procedure or practice that relates to an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery or may modify an existing rule for an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery, including establishing or modifying the matrix for an online game by giving notice of the establishment or modification at least thirty days before the effective date of the establishment or modification.

E. The commission shall maintain and make the following information available for public inspection at its offices during regular business hours:

1. A detailed listing of the estimated number of prizes of each particular denomination expected to be awarded in any instant game currently on sale.

2. After the end of the claim period prescribed by section 5-568, a listing of the total number of tickets or shares sold and the number of prizes of each particular denomination awarded in each lottery game.

3. Definitions of all play symbols and other characters used in each lottery game and instructions on how to play and how to win each lottery game.

F. Any information that is maintained by the commission and that would assist a person in locating or identifying a winning ticket or share or that would otherwise compromise the integrity of any lottery game is deemed confidential and is not subject to public inspection.

G. The commission, in addition to other games authorized by this article, may establish multijurisdictional lottery games to be conducted concurrently with other lottery games authorized under subsection B of this section. The monies for prizes, for operating expenses and for payment to the state general fund shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. The monies shall be derived from the revenues of multijurisdictional lottery games.

H. The commission, in addition to other games authorized by this article, shall establish special instant ticket games with play areas protected by paper tabs designated for use by charitable organizations. The monies for prizes and for operating expenses shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. Monies saved from the revenues of the special games, by reason of operating efficiencies, shall become other revenue of the lottery commission and revert to the state general fund,

except that the commission shall transfer the proceeds from any games that are sold from a vending machine in an age-restricted area to the state treasurer for deposit in the following amounts:

1. Nine hundred thousand dollars each fiscal year in the internet crimes against children enforcement fund established by section 41-199.
2. One hundred thousand dollars each fiscal year in the victims' rights enforcement fund established by section 41-1727.
3. Any monies in excess of the amounts listed in paragraphs 1 and 2 of this subsection, in the state lottery fund established by section 5-571.

I. The commission or director shall not establish or operate any online or electronic keno game or any game played on the internet, except for the electronic keno game and the mobile draw game authorized in subsection J of this section.

J. From and after the date on which the conditions prescribed in sections 5-1213 and 5-1321 are met, the commission or director, in addition to any other game authorized in this section, may establish and operate a single electronic keno game and a single mobile draw game on a centralized computer system controlled by the lottery that allows a player to place wagers, view the outcome of a game and receive winnings over the internet, including on personal electronic devices.

K. An electronic keno game conducted pursuant to subsection J of this section may be operated only within an authorized keno location. If the electronic keno game is authorized to be played on personal electronic devices, players shall be geographically restricted by means of geofencing to authorized keno locations. Electronic keno game draws may not be conducted more frequently than once every four minutes. The number of authorized keno locations may not exceed the number published annually by the director, which is equal to the total number of establishments licensed by the department of gaming to allow wagering on live horse races and simulcast wagering pursuant to section 5-107, plus the total number of class 14 liquor licenses that the department of liquor licenses and control issued to fraternal organizations or veterans' organizations as of January 1, 2021. The total number of authorized keno locations shall be automatically increased by two percent every two years.

L. A mobile draw game conducted pursuant to subsection J of this section may offer players multiple game play styles and wagering options. Players of the mobile draw game may not play or win a prize more frequently than once per hour.

M. An electronic keno game or mobile draw game conducted pursuant to this section may not present the player with a user interface depicting spinning reels or that replicates a slot machine, blackjack, poker, roulette, craps or any other casino-style game other than traditional keno or a traditional lottery draw game.

N. Except as provided in subsections J, K, L and M of this section, the commission or director shall not establish or operate any lottery game or any type of game play-style, either individually or in combination, that uses gaming devices or video lottery terminals as those terms are used in section 5-601.02, including monitor games that produce or display outcomes or results more than once per hour.

O. The director shall print, in a prominent location on each lottery ticket or share, a statement that help is available if a person has a problem with gambling and a toll-free telephone number where problem gambling assistance is available. The director shall require all licensed agents to post a sign with the statement that help is available if a person has a problem with gambling and the toll-free telephone number at the point of sale as prescribed and supplied by the director.

P. For the purposes of this section:

1. "Additional wagering facility" has the same meaning prescribed in section 5-101.

2. "Authorized keno location" means a physical facility located at least five miles from an Indian gaming facility that is licensed by the director in the same manner as licenses issued pursuant to section 5-562 but only to a fraternal organization or veterans' organization or to a racetrack enclosure or additional wagering facility where pari-mutuel wagering on horse races is conducted.
3. "Charitable organization" means any nonprofit organization, including not more than one auxiliary of that organization, that has operated for charitable purposes in this state for at least two years before submitting a license application under this article.
4. "Electronic keno game" means a house banking game in which:
 - (a) A player selects from one to twenty numbers on a card that contains the numbers one through eighty.
 - (b) The lottery randomly draws twenty numbers.
 - (c) Players win if the numbers they select correspond to the numbers drawn by the lottery.
 - (d) The lottery pays all winners, if any, and collects from all losers.
5. "Fraternal organization" has the same meaning prescribed in section 5-401.
6. "Game play-style" means the process or procedure that a player must follow to determine if a lottery ticket or share is a winning ticket or share.
7. "Matrix" means the odds of winning a prize and the prize payout amounts in a given game.
8. "Mobile draw game" conducted pursuant to subsection J of this section, means a lottery draw game offered to players over the internet, including on mobile devices, in which:
 - (a) A combination of numbers, symbols or characters is selected.
 - (b) A computer system authorized by the lottery randomly selects a winning combination of numbers, symbols or characters.
 - (c) A computer system validates any prize awarded to the players.
9. "Other event" has the same meaning prescribed in section 5-1301.
10. "Sports event" has the same meaning prescribed in section 5-1301.
11. "Veterans' organization" has the same meaning prescribed in section 5-401.

5-562. Licenses to sell tickets or shares; fee; conditions; definitions

A. A license as an agent to sell lottery tickets or shares shall not be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing a license as a lottery sales agent to any person the director shall consider factors such as the financial responsibility and security of the person and the nature of the person's business activity, the person's background and reputation in the community, the accessibility of the person's place of business or activity to the public, the accessibility of existing licensees to serve the public convenience and the volume of expected sales.

B. A person lawfully engaged in nongovernmental business on state property may be licensed as a lottery sales agent.

C. The director may establish by rule and collect a fee for a license issued pursuant to this section.

D. A license is not assignable or transferrable.

E. A licensed agent or licensed agent's employee may sell lottery tickets or shares only on the premises stated in the license of the agent.

F. The director may purchase a blanket bond covering the activities of licensed agents.

G. A licensed agent shall display the licensed agent's license or a copy of the license conspicuously in accordance with the rules prescribed by the director.

H. If a licensed agent sells lottery tickets or shares on leased premises and all or part of the agent's rental payments are based on the total volume of sales made at the premises, the compensation paid by the state lottery commission to the agent for the sale of tickets and shares is the amount of the sale for the purposes of determining the agent's rental payments. This subsection does not apply if the lease agreement expressly provides that the total volume of sales made at the premises includes sales of lottery tickets or shares.

I. The commission shall adopt rules to establish penalties for a licensed agent who violates section 5-565 or 5-565.01. The penalty for a subsequent violation within any twelve month period shall be more severe than the penalty for a prior violation.

J. The director shall not require a licensed agent, as a condition of securing or continuing to hold a license to sell lottery tickets or shares to the public, to sell such tickets or shares through or by the use of a self-service vending machine at the licensed agent's premises.

K. For the purposes of this section, acts or omissions of an employee at the premises of a licensed agent or sales of tickets or shares by a self-service vending machine in violation of section 5-565 or 5-565.01 shall be deemed acts or omissions of the licensed agent only at the premises where the acts, omissions or sales occurred.

L. For the purposes of this section:

1. "Person" means an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee or referee, any other person acting in a fiduciary or representative capacity who is appointed by a court, or any combination of individuals. Person includes any department, commission, agency or instrumentality of this state, including any county, city or town and any agency or instrumentality of this state or of a county, city or town.

2. "Premises" means the physical location and address listed on the license of the licensed agent where lottery tickets or shares may be sold.

CITIZENS CLEAN ELECTIONS COMMISSION
Title 2, Chapter 20, Article 1, General Provisions

Amend: R2-20-101



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 11, 2022

SUBJECT: **CITIZENS CLEAN ELECTIONS COMMISSION**
Title 2, Chapter 20, Article 1, General Provisions

Amend: R2-20-101

Summary:

This regular rulemaking from the Citizens Clean Election Commission ("Commission") seeks to amend one rule in Title 2, Chapter 20, Article 1 related to General Provisions. Specifically, the rulemaking seeks to amend rule R2-20-101(13), the term "family member," to clarify that the terms for family members defined in A.R.S. 16-901 also applies to restrict the pool of potential family members who may provide early contributions to participating candidates in the state's Clean Elections funding program. In other words, this rulemaking seeks to amend the Commission definition of "family member" to match those same individuals included in the A.R.S § 16-901(26) definition of "family contribution" and that family member will have that meaning throughout the Commission rules.

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

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

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

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 any study in conducting this rulemaking.

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

The Citizen's Clean Elections Commission's rulemaking seeks to resolve potential confusion between statutory definitions and preexisting rule definitions of the Commission.

The rules impact participating candidates and donors by limiting their ability to take or give contributions, depending on their family relationship. However, the rule's overall impact will standardize definitions across candidates and other entities, lowering compliance costs. Candidates for state and legislative office are directly affected, along with individual donors who may be related to candidates, and will be limited by this rule. Overall, the economic impact is expected to be minimal.

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 agency believes the amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and regulatory objective.

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

The amendment will affect candidates for state and legislative office, and individual donors who may be related to candidates. The agency does not anticipate any additional full time employees or additional costs. The amendment is intended to ensure consistency across legal definitions where required by state law. This statutory change can be beneficial, as it eliminates a definition that can cause confusion and increase compliance costs. Any businesses directly impacted will benefit from clarity of definitions, which can reduce compliance costs.

There is a probable cost to participating candidates and donors to those candidates. However, the amendment ensures there is no conflict in applying the statute to the affected individuals.

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

The Commission indicates there were no changes between the Notice of Proposed Rulemaking and the final rules now before the Council.

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

The Commission indicates it did not receive any public comments regarding this rulemaking.

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

Not applicable. The rule does 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?

Not applicable. There is no corresponding federal law.

11. Conclusion

The Commission seeks to amend the definition of “family member” found in R2-20-101(13) to match those same individuals included in the A.R.S § 16-901(26) definition of “family contribution” and that family member will have that meaning throughout the Commission rules.

The Commission is seeking an immediate effective date, stating it is necessary to ensure the rules are made consistent with statute and court decisions as soon as possible during the qualifying period set forth in the Clean Elections Act. Council staff believes the Commission has provided an adequate basis for an immediate effective date pursuant to A.R.S. § 41-1032(A)(2) in that the immediate effective date is necessary to avoid a violation of state law, if the need for an immediate effective date is not created due to the agency's delay or inaction. Council staff recommends approval of this rulemaking with an immediate effective date.

Doug Ducey
Governor

Thomas M. Collins
Executive Director



State of Arizona
Citizens Clean Elections Commission

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.azcleanelections.gov

January 13, 2022

Governor's Regulatory Review Council
1501 N. 15th Ave.
Phoenix, AZ 85007

Via E-Mail

Re: Request for approval of amendment to A.A.C. R2-20-101

Dear Councilmembers and Staff:

Pursuant to A.R.S. §§ 16-956(C), (D) and § 41-1024(C), please find the Arizona Citizens Clean Elections Commission's Amendment to A.A.C. R2-20-101 and its economic impact statement.

I request approval by the Council with an effective date immediately upon filing the Council's certification with the Secretary of State.

In summary:

- The record closed on December 16, 2021.
- The amendment does not relate to a 5-year-review report.
- The amendment does not establish a new fee.
- The amendment does not contain a fee increase.
- The preamble had no study to disclose.
- The amendment does not require any new employees.
- The rulemaking item includes: the final rule and the Economic, Small Business and Consumer Impact Statement, and one written comment.
- No written comments were received respecting this amendment.

- No analysis of the amendments impact on competitiveness with other states was submitted.
- No material was incorporated by reference.
- Authorizing statutes include:
 - General: A.R.S § 16-956(A)(7)
 - Specific: A.R.S. § 16-961(A) (incorporating personal monies definition from A.R.S. § 16-901)
- There are no cross-referenced definitions.

Please contact me with any questions.

Sincerely,

S/Thomas M. Collins
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
R2-20-101 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. § 16-956(A)(7)

Implementing statute: A.R.S. §§ 16-940, -941, 942, 956, 957, 958, 961.
- 3. The effective date of the rule:**
 - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

An immediate effective date is necessary to ensure the rules are made consistent with statute and court decisions as soon as possible during the qualifying period set forth in the Clean Elections Act.
 - 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):**
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 27 A.A.R. 1334 (August 27, 2021)

Notice of Proposed Rulemaking: 27 A.A.R.1297 (August 27, 2021)
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name: Thomas M. Collins

Address: Arizona Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007

Telephone: (602) 364-3477

E-mail: ccec@azcleelections.gov

Web site: azcleelections.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 amendment clarifies that the terms for family members defined in A.R.S. 16-901 also applies to restrict the pool of potential family members who may provide early contributions to participating candidates in the state's Clean Elections funding program. . In 2016 Ariz. Sess. Laws Ch. 79 (Senate Bill 1516 (2016)) the Legislature broadened the definitions of family

members in Article 1, Chapter 6 of Title 16, Arizona Revised Statutes. The result of this is that the narrower definition in the Commission rules should be stricken as inconsistent with existing law. The Clean Elections Act uses this definition as a limitation on contributions while Title 16, Chapter 6, Article 1 uses it to expand contributions not subject to campaign contribution limits. Nevertheless, this seems to reflect the intent of the Court of Appeals in *Arizona Advocacy Network v. State*, 475 P.3d 1149 (Ariz. App. 2020), that the Legislature may reverse and alter certain definitions without “amending” the Clean Elections Act. This action seeks to amend the rule to clarify that the Clean Elections Rules definition of the term “family member” in the same terms that A.R.S § 16-901 seeks to define family contribution and that family member will have that meaning throughout the Clean Elections Rules.

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:

Not applicable.

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

Not applicable.

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

The amendment seeks to resolve potential confusion between statutory definitions and preexisting rule definitions of the Commission. The impact on participating candidates and donors is to limit their ability to take or give contributions depending on the family relationship of the candidate and the donor. However, the overall impact will be to standardize definitions across candidates and other entities, which lowers compliance costs.

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

Not applicable.

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

The Agency received no comments related to this docket.

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

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

No.

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

No.

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.

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:

Not applicable.

15. The full text of the rules follows:

**TITLE 2. ADMINISTRATION
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION
ARTICLE 1. GENERAL PROVISIONS**

R2-20-101. Definitions

In addition to the definitions provided in A.R.S. § 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. No Change.
2. No Change.
3. No Change.
4. No Change.
5. No Change.
6. No Change.
7. No Change.
8. No Change.
9. No Change.
10. No Change.
11. No Change.
 - a. No Change.
 - b. No Change.
 - c. No Change.
12. No Change.
13. "Family member" means ~~parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons~~ parent, grandparent, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members, regardless of whether the relation is established by marriage or adoption.
- ~~14.~~ No Change.
15. No Change.
16. No Change.
17. No Change.
18. No Change.
19. No Change.
20. No Change.
21. No Change.
22. No Change.
23. No Change.
24. No Change.
25. No Change.

Doug Ducey
Governor

Thomas M. Collins
Executive Director



State of Arizona
Citizens Clean Elections Commission

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MEMORANDUM

To: Governor's Regulatory Review Council

From: Thomas M. Collins

Date: 10.26.2021

Subject: Economic, Small Business and Consumer Impact Statement R2-20-101

1. An identification of the proposed rule making.

R2-20-101. Amended.

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

Candidates for state and legislative office are directly affected, as are individual donors who may be related to candidates who, under this rule, will be limited by this rule amendment.

Other entities making expenditures or contributions in state or legislative elections are indirectly effected insofar as their decisions consider participating candidate activities.

3. A cost benefit analysis of the following:

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

Agency probable costs: The agency does not anticipate any additional FTEs, nor additional costs, The agency's view is that this rule change is a necessary to align the Commission's rule with state statute and court rulings and not one that can or will increase any agency cost.

Agency probable benefits: The rule amendment is intended to ensure consistency across legal definitions where required by state law. This reinforces the statutory change and may provide a benefit by eliminating a definition that can cause confusion and increase compliance costs.

No other agency is directly affected.

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

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

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

Because this rule amendment ensures clarity of definitions, any business directly affected will benefit and incur no costs from the change. The benefit arises directly from the amendment, which can reduce compliance costs.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

The agency did and does not anticipate any impact on private or public employment in any of the directly affected communities.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

To the best of the agency's knowledge no small businesses are subject to its amended rule.

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

If there was a small business impact, it would be an decrease in compliance costs as indicated above.

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

The agency would be open to any of the methods prescribed in section 41-1035. However, any anticipated impact is de minimis.

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

There is a probable cost to participating candidates, as well as donors too those candidates. On the other hand, the amendment ensures there is no conflict in the application of the extant statute to those individuals.

6. A statement of the probable effect on state revenues.

This rule amendment does not have a probable impact on state revenues.

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

The amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that amending the rule to ensure the statute's application to affected parties is necessary.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.

Not applicable.

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

The Commission amended this rule as a result of the passage of legislation in 2016 and a 2020 recent court of appeals decision.

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

R2-20-101. Definitions

In addition to the definitions provided in A.R.S. § 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. "Campaign account" means an account at a financial institution designated by a political committee that is used solely for political campaign purposes.
4. "Candidate" means a natural person who receives or gives consent for receipt of a contribution for the person's nomination for or election to any office in this state, and includes the person's campaign committee, the political committee designated and authorized by the person, or any agents or personnel of the person. When not otherwise specified by statute or these rules, "Candidate" includes a Candidate for Statewide Office or a Legislative Candidate.
5. "Candidate for Statewide Office" means: A natural person seeking the office of governor, attorney general, secretary of state, treasurer, superintendent of public instruction, or mine inspector.
6. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
7. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
8. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. "Executive Director" means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. "Expressly advocates" means:
 - a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
 - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents.
- c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.
12. "Extension of credit" means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
14. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
15. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
17. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
19. "Legislative Candidate" means: A natural person seeking the office of state senator or state representative.
20. "Officeholder" means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
21. "Person," unless stated otherwise, or having context requiring otherwise, means: A corporation, company, partnership, firm, association or society, as well as a natural person.
22. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
23. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
24. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
25. "Unopposed" means in reference to state senate candidates and statewide candidates other than Corporation Commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and Corporation Commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office sought.

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 3515, effective September 27, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 23 A.A.R. 113, effective December 15, 2016 (Supp. 16-4).

R2-20-102. Repealed**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Repealed by exempt rulemaking at 19 A.A.R. 3518, effective September 27, 2013 (Supp. 13-4).

R2-20-103. Communications: Time and Method

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of 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. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.
- G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.
- H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a

copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2).

R2-20-104. Certification as a Participating Candidate

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-941(B), but later chooses to run as a participating candidate, shall:
 1. Make the change to participating candidate status during the exploratory and qualifying periods only;
 2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
 3. Return all Political Action Committee (PAC) monies received;
 4. Not have made expenditures exceeding the early contribution limit, or have spent any part of a contribution exceeding the early contribution limit;
 5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
 6. Return all contributions received from another candidate's candidate committee.
- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
 1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), and shall contain contributions received from individuals only;
 2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(24); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
 3. Remitting the money to the Fund; or
 4. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.
- C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date. In the application, a candidate shall certify under oath that the candidate:
 1. Agrees to use all Clean Elections funding for direct campaign purposes only;
 2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;

16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

16-940. Findings and declarations

(Caution: 1998 Prop. 105 applies)

A. The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.

B. The people of Arizona find that our current election-financing system:

1. Allows Arizona elected officials to accept large campaign contributions from private interests over which they have governmental jurisdiction;
2. Gives incumbents an unhealthy advantage over challengers;
3. Hinders communication to voters by many qualified candidates;
4. Effectively suppresses the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests;
5. Undermines public confidence in the integrity of public officials;
6. Costs average taxpayers millions of dollars in the form of subsidies and special privileges for campaign contributors;
7. Drives up the cost of running for state office, discouraging otherwise qualified candidates who lack personal wealth or access to special-interest funding; and
8. Requires that elected officials spend too much of their time raising funds rather than representing the public.

16-941. Limits on spending and contributions for political campaigns

(Caution: 1998 Prop 105 applies)

A. Notwithstanding any law to the contrary, a participating candidate:

1. Shall not accept any contributions, other than a limited number of five-dollar qualifying contributions as specified in section 16-946 and early contributions as specified in section 16-945, except in the emergency situation specified in section 16-954, subsection F.
2. Shall not make expenditures of more than a total of five hundred dollars of the candidate's personal monies for a candidate for the legislature or more than one thousand dollars for a candidate for statewide office.
3. Shall not make expenditures in the primary election period in excess of the adjusted primary election spending limit.
4. Shall not make expenditures in the general election period in excess of the adjusted general election spending limit.
5. Shall comply with section 16-948 regarding campaign accounts and section 16-953 regarding returning unused monies to the citizens clean elections fund described in this article.

B. Notwithstanding any law to the contrary, a nonparticipating candidate shall not accept contributions in excess of an amount that is twenty per cent less than the limits specified in section 16-905, subsections A through E, as adjusted by the secretary of state pursuant to section 16-905, subsection H. Any violation of this subsection shall be subject to the civil penalties and procedures set forth in section 16-905, subsections J through M and section 16-924.

C. Notwithstanding any law to the contrary, a candidate, whether participating or nonparticipating:

1. If specified in a written agreement signed by the candidate and one or more opposing candidates and filed with the citizens clean elections commission, shall not make any expenditure in the primary or general election period exceeding an agreed-upon amount lower than spending limits otherwise applicable by statute.
2. Shall continue to be bound by all other applicable election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with this article.

D. Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.

16-942. Civil penalties and forfeiture of office

(Caution: 1998 Prop. 105 applies)

A. The civil penalty for a violation of any contribution or expenditure limit in section 16-941 by or on behalf of a participating candidate shall be ten times the amount by which the expenditures or contributions exceed the applicable limit.

B. In addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office. The penalty imposed by this subsection shall be doubled if the amount not reported for a particular election cycle exceeds ten percent of the adjusted primary or general election spending limit. No penalty imposed pursuant to this subsection shall exceed twice the amount of expenditures or contributions not reported. The candidate and the candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant to this subsection.

C. Any campaign finance report filed indicating a violation of section 16-941, subsections A or B or section 16-941, subsection C, paragraph 1 involving an amount in excess of ten percent of the sum of the adjusted primary election spending limit and the adjusted general election spending limit for a particular candidate shall result in disqualification of a candidate or forfeiture of office.

D. Any participating candidate adjudged to have committed a knowing violation of section 16-941, subsection A or subsection C, paragraph 1 shall repay from the candidate's personal monies to the fund all monies expended from the candidate's campaign account and shall turn over the candidate's campaign account to the fund.

E. All civil penalties collected pursuant to this article shall be deposited into the fund.

16-957. Enforcement procedure

(Caution: 1998 Prop. 105 applies)

A. If the commission finds that there is reason to believe that a person has violated any provision of this article, the commission shall serve on that person an order stating with reasonable particularity the nature of the violation and requiring compliance within fourteen days. During that period, the alleged violator may provide any explanation to the commission, comply with the order, or enter into a public administrative settlement with the commission.

B. Upon expiration of the fourteen days, if the commission finds that the alleged violator remains out of compliance, the commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with section 16-942, unless the commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. The violator has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in title 12, chapter 7, article 6.

C. Any candidate in a particular election contest who believes that any opposing candidate has violated this article for that election may file a complaint with the commission requesting that action be taken pursuant to this section. If the commission fails to make a finding under subsection A of this section within thirty days after the filing of such a complaint, the candidate may bring a civil action in the superior court to impose the civil penalties prescribed in this section.

16-958. Manner of filing reports

(Caution: 1998 Prop 105 applies)

A. Any person who has previously reached the dollar amount specified in section 16-941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars. Such reports shall be filed at the times specified in subsection B of this section and shall identify the dollar amount being reported, the candidate and the date, and no other detail is required in reports made pursuant to this section.

B. Any person who must file an original report pursuant to section 16-941, subsection D or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section shall file as follows:

1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report within one business day of reaching the dollar amount for filing an original or supplemental report.

C. Any filing under this article on behalf of a candidate may be made by the candidate's campaign committee. All candidates shall deposit any check received by and intended for the campaign and made payable to the candidate or the candidate's campaign committee, and all cash received by and intended for the campaign, in the candidate's campaign account before the due date of the next report specified in subsection B of this section. No candidate or person acting on behalf of a candidate shall conspire with a donor to postpone delivery of a donation to the campaign for the purpose of postponing the reporting of the donation in any subsequent report.

D. The secretary of state shall immediately notify the commission of the filing of each report under this section and deliver a copy of the report to the commission, and the commission shall promptly mail or otherwise deliver a copy of each report filed pursuant to this section to all participating candidates opposing the candidate identified in section 16-941, subsection D.

E. Any report filed pursuant to this section or section 16-916, subsection A, paragraph 1 or subsection B shall be filed in electronic format. The secretary of state shall distribute computer software to political committees to accommodate such electronic filing.

F. During the primary election period and the general election period, all candidates shall make available for public inspection all bank accounts, campaign finance reports and financial records relating to the candidate's campaign, either by immediate disclosure through electronic means or at the candidate's campaign headquarters, in accordance with rules adopted by the commission.

16-961. Definitions

(Caution: 1998 Prop 105 applies)

A. The terms "candidate's campaign committee," "contribution," "expenditures," "exploratory committee," "independent expenditure," "personal monies," "political committee" and "statewide office" are defined in section 16-901.

B. 1. "Election cycle" means the period between successive general elections for a particular office.

2. "Exploratory period" means the period beginning on the day after a general election and ending the day before the start of the qualifying period.

3. "Qualifying period" means the period beginning on the first day of August in a year preceding an election and ending one week before the primary election.

4. "Primary election period" means the nine-week period ending on the day of the primary election.

5. "General election period" means the period beginning on the day after the primary election and ending on the day of the general election.

6. For any recall election, the qualifying period shall begin when the election is called and last for thirty days, there shall be no primary election period and the general election period shall extend from the day after the end of the qualifying period to the day of the recall election. For recall elections, any reference to "general election" in this article shall be treated as if referring to the recall election.

C. 1. "Participating candidate" means a candidate who becomes certified as a participating candidate pursuant to section 16-947.

2. "Nonparticipating candidate" means a candidate who does not become certified as a participating candidate pursuant to section 16-947.

3. Any limitation of this article that is applicable to a participating candidate or a nonparticipating candidate shall also apply to that candidate's campaign committee or exploratory committee.

D. "Commission" means the citizens clean elections commission established pursuant to section 16-955.

E. "Fund" means the citizens clean elections fund defined by this article.

F. 1. "Party nominee" means a person who has been nominated by a political party pursuant to section 16-301 or 16-343.

2. "Independent candidate" means a candidate who has properly filed nominating papers and nominating petitions with signatures pursuant to section 16-341.

3. "Unopposed" means with reference to an election for:

(a) A member of the house of representatives, opposed by no more than one other candidate who has qualified for the ballot and who is running in the same district.

(b) A member of the corporation commission, opposed by a number of candidates who have qualified for the ballot that is fewer than the number of corporation commission seats open at that election and for which the term

of office ends on the same date.

(c) All other offices, opposed by no other candidate who has qualified for the ballot and who is running in that district or running for that same office and term.

G. "Primary election spending limits" means:

1. For a candidate for the legislature, twelve thousand nine hundred twenty-one dollars.
2. For a candidate for mine inspector, forty-one thousand three hundred forty-nine dollars.
3. For a candidate for treasurer, superintendent of public instruction or the corporation commission, eighty-two thousand six hundred eighty dollars.
4. For a candidate for secretary of state or attorney general, one hundred sixty-five thousand three hundred seventy-eight dollars.
5. For a candidate for governor, six hundred thirty-eight thousand two hundred twenty-two dollars.

H. "General election spending limits" means amounts fifty per cent greater than the amounts specified in subsection G of this section.

I. 1. "Original" spending limit means a limit specified in subsections G and H of this section, as adjusted pursuant to section 16-959, or a special amount expressly set for a particular candidate by a provision of this title.

2. "Adjusted" spending limit means an original spending limit as further adjusted pursuant to section 16-952.

***Note:** This rulemaking was previously considered at the December 28, 2021 Study Session and January 4, 2022 Council Meeting. Prior to and at the December 28, 2021 Study Session, there were some questions raised about the Board of Athletic Training's statutory authority to conduct this rulemaking as it relates to the proposed new section, R4-49-406. This proposed new section addresses the scope of practice for athletic trainers regarding the practice of "dry needling." At the Board's request, the Council voted to table consideration of this rulemaking to the January 25, 2022 Study Session and February 1, 2022 Council Meeting.*

C-8

BOARD OF ATHLETIC TRAINING

Title 4, Chapter 49, Board of Athletic Training, Articles 1, 2, and 4

Amend: R4-49-101, R4-49-102, R4-49-202, R4-49-203, R4-49-208, R4-49-401,
R4-49-403, R4-49-404

New Section: R4-49-406



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 4, 2022, February 1, 2022

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

FROM: Council Staff

DATE: December 9, 2021 and January 14, 2022

SUBJECT: BOARD OF ATHLETIC TRAINING
Title 4, Chapter 49, Articles 1, 2, and 4, Board of Athletic Training

Amend: R4-49-101, R4-49-102, R4-49-202, R4-49-203, R4-49-208,
R4-49-401, R4-49-403, R4-49-404

New Section: R4-49-406

***Note:** This rulemaking was previously considered at the December 28, 2021 Study Session and January 4, 2022 Council Meeting. Prior to and at the December 28, 2021 Study Session, there were some questions raised about the Board of Athletic Training's statutory authority to conduct this rulemaking as it relates to the proposed new section, R4-49-406. This proposed new section addresses the scope of practice for athletic trainers regarding the practice of "dry needling." At the Board's request, the Council voted to table consideration of this rulemaking to the January 25, 2022 Study Session and February 1, 2022 Council Meeting.*

Summary:

This regular rulemaking from the Board of Athletic Training (Board) relates to rules in Title 4, Chapter 49, Articles 1, 2, and 4. In this rulemaking, the Board is amending the rules to reduce some fees, reduce unnecessary burdens, and streamline application requirements. The Board also seeks to add one rule to clarify the scope of practice for athletic training relating to the practice of "dry needling."

The Board is requesting the standard 60-day delayed effective date for this rulemaking. The Board received an exception from Executive Order 2020-02 on January 8, 2021 to initiate this rulemaking and final approval to submit the rulemaking to the Council on October 29, 2021.

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

Yes. The Board cites both general and specific statutory authority for the 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. In this rulemaking, the Board is seeking to reduce fees.

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 a study in conducting this regular rulemaking.

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

The rulemaking impacts applicants, licensed athletic trainers, patients of licensed athletic trainers, and the Board. The rulemaking clarifies the current rules and thus, amends existing requirements already established in rule. The Board seeks to eliminate some fees, reduce burdens and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers. The overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures, and enhancing access to care. No new full time employees (FTEs) are required to implement the proposed rule changes.

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 overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures and enhancing access to care. No new FTEs are required to implement the proposed rule changes. The Board does not identify any less costly alternative.

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

Expanded access to the therapeutic modality of dry needling and reduced costs for licensees should have a positive economic impact, if any, on private or public business/employment.

The Board is the only state agency this rulemaking affects. The rulemaking is not expected to create costs to the Board or to the State, and will further streamline the application process as well as improve public protection.

Some athletic trainers practice in a small business setting, and the proposed rule amendments positively impact athletic trainers. The expected economic impact on small businesses, if any, is positive.

Expanded access to the therapeutic modality of dry needling, with protection of the public through efficient and effective rules regarding practice and education of athletic trainers, will benefit consumers by increasing access to care and providing greater continuity of care.

The Board is a 90/10 agency, with the Board retaining 90% of revenue and 10% going to the State General Fund. While the Board anticipates that the addition of dry needling to its rules will attract additional licensees from other states, the Board does not expect a significant increase in the amount transferred to the General Fund when combined with the proposed fee waiver.

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

No. As indicated in the Board's Preamble, the Board made two minor, clarifying 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" pursuant to A.R.S. § 41-1025.

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

As indicated in the Preamble, the Board received 73 comments on this rulemaking, with 69 being in support of the new rule regarding dry needling. The Board did not make any changes to the rules in response to the comments it received.

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

No. These 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 there are no corresponding federal laws to these rules.

11. Conclusion

In this regular rulemaking, the Board seeks to make changes to the rules to reduce fees, reduce unnecessary burdens, and streamline application requirements. The Board also seeks to add a new rule regarding the practice of “dry needling.” The Board is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



ERIC FREAS
Chair

ARIZONA BOARD OF ATHLETIC TRAINING

1740 West Adams Street, Suite 3407
Phoenix, Arizona 85007

www.at.az.gov

(602) 589-6337 Fax: (602) 589-8354

December 14, 2021

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

Re: Arizona Board of Athletic Training Rule Package

Dear Ms. Sornsin:

Pursuant to A.A.C. R1-6-201(A), the Arizona Board of Athletic Training hereby submits to the Governor's Regulatory Review Council a final rule package for Title 4, Chapter 49, Articles 1 through 4. The Board requests that this rulemaking be placed on a future Council agenda.

The Board provides the following information regarding the rule package, as required by A.A.C. R1-6-104(A):

- a. The record for this rulemaking closed on August 3, 2021, at 5:00 p.m.
- b. This rulemaking relates, in part, to a five-year review report approved by Council on November 1, 2016.
- c. The rule does not establish any new fees.
- d. The rule does not contain fee increases.
- e. An immediate effective date is not requested.
- f. The preamble discloses a reference to any study relevant to the rules that the Department reviewed and either did or did not rely on in its evaluation or justification for the rules. No studies were reviewed.
- g. The economic, small business, and consumer impact statement states that no new full-time employees are necessary for the Board to implement and enforce the rules.
- h. The following items are included in this rule package in the following order:
 1. This cover letter.
 2. Exemption approvals
 3. The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule.
 4. The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
 5. Written comments received by the Board concerning the proposed rule.
 6. Not Applicable – Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
 7. Material incorporated by reference, and;
 8. The general and specific statutes authorizing the rule, including relevant statutory definitions; and

Nicole Sornsin
December 14, 2021
Page 2

In this rule package, no analysis was submitted to the Board comparing the rule's impact on the competitiveness of businesses in this state to the impact on businesses in other states.

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact me at 602-589-8353.

Regards,

/s/ Karen Whiteford

Karen Whiteford
Executive Director

Enclosures



ERIC FREAS
Chair

ARIZONA BOARD OF ATHLETIC TRAINING

1740 West Adams Street, Suite 3407
Phoenix, Arizona 85007

www.at.az.gov

(602) 589-6337 Fax: (602) 589-8354

November 18, 2021

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

Re: Arizona Board of Athletic Training Rule Package

Dear Ms. Sornsin:

Pursuant to A.A.C. R1-6-201(A), the Arizona Board of Athletic Training hereby submits to the Governor's Regulatory Review Council a final rule package for Title 4, Chapter 49, Article 2s 1 through 4. The Board requests that this rulemaking be placed on a future Council agenda.

The Board provides the following information regarding the rule package, as required by A.A.C. R1-6-104(A):

- a. The record for this rulemaking closed on August 3, 2021, at 5:00 p.m.
- b. This rulemaking relates, in part, to a five-year review report approved by Council on November 1, 2016.
- c. The Rule does not establish any new fees.
- d. The rule does contain fee increases.
- e. An immediate effective date is not requested.
- f. The preamble discloses a reference to any study relevant to the rules that the Department reviewed and either did or did not rely on in its evaluation or justification for the rules. No studies were reviewed.
- g. The economic, small business, and consumer impact statement states that no new full-time employees are necessary for the Board to implement and enforce the rules.
- h. The following items are included in this rule package in the following order:
 1. This cover letter.
 2. Exemption approvals
 3. The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule.
 4. The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
 5. Written comments received by the Board concerning the proposed rule.
 6. Not Applicable – Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
 7. Material incorporated by reference, and;
 8. The general and specific statutes authorizing the rule, including relevant statutory definitions; and

Nicole Sornsin
November 18, 2021
Page 2

In this rule package, no analysis was submitted to the Board comparing the rule's impact on the competitiveness of businesses in this state to the impact on businesses in other states.

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact me at 602-589-8353.

Regards,

/s/ Karen Whiteford

Karen Whiteford
Executive Director

Enclosures

Re: Athletic Training Board Rulemaking Exemption Request

1 message

Trista Guzman Glover <tguzman@az.gov>
To: Karen Whiteford <karen.whiteford@otboard.az.gov>

Fri, Jan 8, 2021 at 11:16 AM

Karen -

Thank you for submitting this updated rulemaking proposal related to dry needling. This email serves as an approved exemption from the rulemaking moratorium.

Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey
Director, Boards and Commissions
O. (602) 542-1308
www.azgovernor.gov



On Mon, Jan 4, 2021 at 4:27 PM Karen Whiteford <karen.whiteford@otboard.az.gov> wrote:

Trista,

After several discussions with members of the Arizona Athletic Trainers' Association and review of the Board's rules at two Board meetings, we were able to identify two more items to be removed from the Board's rules. They are as follows:

R4-49-202. Original License Application

B. An applicant shall submit or cause to be submitted on the applicant's behalf the following:

~~4. Two letters attesting to the applicant's good moral character from health care providers licensed pursuant to A.R.S § 32-4101 et seq. and~~

The good moral character letters required for an initial license in the above rule are ineffectual and cause an unnecessary burden on the applicant.

R4-49-204. Expired License: Reinstatement

B. An expired license may be reinstated within three years of expiration of the license if:

~~5. THE FORMER LICENSEE'S EMPLOYER ATTESTS, IN WRITING, ON LETTERHEAD, THAT THE LICENSEE HAS NOT PRACTICED ATHLETIC TRAINING IN ARIZONA DURING THE TIME THE LICENSE WAS EXPIRED.~~

The requirement for a letter from the reinstating applicant's employer was originally requested from the Board in approximately 2018. After reviewing at the December 2020 Board meeting, the Board voted to remove the requested language because it was overly burdensome on the applicant.

A revised, marked-up version of the proposed rule changes is attached. I assure you that I, the members of the Board of Athletic Training, and the members of the Board of the Arizona Athletic Trainers' (as well as their legal counsel), have gone through each and every item to remove any unnecessary or overly-burdensome rules.

Please keep these efforts in mind when deciding whether to continue the rulemaking exemption request so that we may move forward with these proposed rule changes.

Regards,

Karen Whiteford
Executive Director
Arizona Board of Athletic Training
Arizona Board of Occupational Therapy Examiners
(602)589-8353

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On Mon, Nov 16, 2020 at 9:22 AM Trista Guzman Glover <tguzman@az.gov> wrote:

Hi, Karen -

So for this rulemaking request, draft R4-49-406 would be one rule, even though there are many subsections.

Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey
Director, Boards and Commissions
O. (602) 542-1308
www.azgovernor.gov



On Thu, Nov 12, 2020 at 3:30 PM Karen Whiteford <karen.whiteford@otboard.az.gov> wrote:

Trista,

Were you able to provide clarification on the question in my previous email?

Regards,

Karen Whiteford
Executive Director
Arizona Board of Athletic Training
Arizona Board of Occupational Therapy Examiners
(602)589-8353

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On Mon, Oct 26, 2020 at 4:24 PM Karen Whiteford <karen.whiteford@otboard.az.gov> wrote:

Trista,

When you say "rule" do you mean entire sections? For instance, if the Athletic Training Board added a section on dry needling, would three sections have to be repealed? Or would repealing three items within a section suffice?

Karen Whiteford
Executive Director
Arizona Board of Athletic Training
Arizona Board of Occupational Therapy Examiners
(602)589-8353

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On Thu, Oct 15, 2020 at 10:22 AM Trista Guzman Glover <tguzman@az.gov> wrote:

Good Morning, Karen -

Thank you for submitting this rulemaking proposal related to lessening the burden on the AT community. This email serves as an approved exemption from the rulemaking moratorium.

As a reminder, in accordance with EO2020-02, for every rule added, three rules must be identified for repeal. Please keep this in mind as you move forward with rulemaking.

Please let me know if I can be of further assistance.

Best,
Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey
Director, Boards and Commissions
O. (602) 542-1308
www.azgovernor.gov



On Fri, Sep 25, 2020 at 11:52 AM Karen Whiteford <karen.whiteford@otboard.az.gov> wrote:

Trista,

Attached, please find a scanned copy of the request from the Athletic Training Board for an exemption from the rulemaking moratorium. The redlined copy of the Board's rules is also attached (both with and without comments.)

These documents are also being sent to you via interagency mail.

Regards,

Karen Whiteford
Executive Director
Arizona Board of Athletic Training
Arizona Board of Occupational Therapy Examiners
(602)589-8353

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Re: Request for Final Approval of Proposed Rules

1 message

Trista Guzman Glover <tguzman@az.gov>
To: Karen Whiteford <karen.whiteford@otboard.az.gov>
Cc: Gabee Lepore <glepore@az.gov>

Fri, Oct 29, 2021 at 9:19 AM

Thank you, Karen. This final rulemaking package is good to go to GRRC.

Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey
Director, Boards and Commissions
O. (602) 542-1308
www.azgovernor.gov



On Wed, Oct 20, 2021 at 12:20 PM Karen Whiteford <karen.whiteford@otboard.az.gov> wrote:

Trista,

Pursuant to Executive Order 2021-02 Item 2, the Arizona Board of Athletic Training requests written final approval of the attached proposed rulemaking.

The public comment period for the proposed rules ended August 2, 2021. The Board reviewed all comments (attached) submitted during their September 13 Board meeting. Of all comments submitted, only one expressed concerns about athletic trainers performing dry needling, particularly in the high school setting. No changes were made to the proposed rulemaking in response to the public comments.

Please contact me if you have any questions or concerns regarding this matter.

Karen Whiteford
Executive Director
Arizona Board of Athletic Training
Arizona Board of Occupational Therapy Examiners
(602)589-8353

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----- Forwarded message -----

From: **Karen Whiteford** <karen.whiteford@otboard.az.gov>
Date: Wed, Sep 22, 2021 at 1:05 PM
Subject: Request for Final Approval of Proposed Rules
To: Gabee Lepore <glepore@az.gov>
Cc: Trista Guzman Glover <tguzman@az.gov>

Gabee,

Pursuant to Executive Order 2021-02 Item 2, the Arizona Board of Athletic Training requests written final approval of the attached proposed rulemaking.

The public comment period for the proposed rules ended August 2, 2021. The Board reviewed all comments (attached) submitted during their September 13 Board meeting. Of all comments submitted, only one expressed concerns about athletic trainers performing dry needling, particularly in the high school setting.

Please contact me if you have any questions or concerns regarding this matter.

Regards,

Karen Whiteford
Executive Director
Arizona Board of Athletic Training
Arizona Board of Occupational Therapy Examiners
(602)589-8353

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NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 49. BOARD OF ATHLETIC TRAINING

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
- | | |
|-----------|-------------|
| R4-49-101 | Amend |
| R4-49-102 | Amend |
| R4-49-202 | Amend |
| R4-49-203 | Amend |
| R4-49-208 | Amend |
| R4-49-401 | Amend |
| R4-49-403 | Amend |
| R4-49-404 | Amend |
| R4-49-406 | New Section |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 32-4103(A)(7)
Implementing statute: A.R.S. §§ 32-4101, 32-4103(A)(6), 32-4123(A) and (B), and 32-4151
- 3. The effective date of the rule:**
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable
- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
- Not applicable
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
- Notice of Rulemaking Docket Opening: 27 A.A.R. 875, June 11, 2021
Notice of Proposed Rulemaking: 27 A.A.R. 951, July 2, 2021
- 5. The agency’s contact person who can answer questions about the rulemaking:**
- Name: Karen Whiteford
Address: 1740 West Adams Street, Suite 3407

Phoenix, AZ 85007
Telephone: (602) 589-8353
Fax: (602) 589-8354
E-mail: Karen.whiteford@otboard.az.gov
Web site: <http://www.at.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 amending its rules to eliminate some fees, reduce unnecessary burdens, and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers. A new section is being added to Article 4 to clarify the scope of practice for athletic trainers. Multiple subsections are removed to comply with paragraph 2 of Executive Order 2020-02. An exemption from Executive Order 2020-02 was provided by Trista Guzman Glover in an e-mail dated January 8, 2021. Final approval was obtained from Trista Guzman Glover on October 29, 2021. (The Board may add, delete, or modify Sections as necessary.)

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 rely on or review any study for this rulemaking.

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

Not applicable.

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

The rulemaking impacts applicants, licensed athletic trainers, patients of licensed athletic trainers, and the Board. Most of the rulemaking clarifies the current rules and thus, amends existing requirements already established in rule. The proposed rules seek to eliminate some fees, reduce burdens and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers.

The overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures and enhancing access to care. No new FTEs are required to implement the proposed rules changes.

Expanded access to the therapeutic modality of dry needling and reduced costs for licensees should have a positive economic impact, if any, on private or public business/employment.

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

A minor change was made to R4-49-403 between the proposed and final rulemaking. This change updates the publication date of the Board of Certification Standards of Professional Practice from October 2017 to November 2020.

The Board made a minor, clarifying change to R4-49-406(A) between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The agency received 73 comments from the public regarding the proposed rulemaking. Of those comments, 69 were in support of the addition of R4-49-406. One member of the public suggested increasing the education requirement for dry needling and add a requirement that a parent/guardian be present when dry needling is being performed on a minor. Two additional comments were in favor of the rulemaking, in general. No changes were made to the proposed rules in response to the comments.

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

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

The rules do 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:

Federal law is not applicable to the rules.

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:

A.R.S. § 32-401, Definitions R4-49-101

A.R.S. § 38-431.03 (B), Confidential record R4-49-101 (7) (a)

A.R.S. § 41-1010, Confidential record R4-49-101 (7) (f)

A.R.S. § 41-4101 (7), Direct Supervision R4-49-101 (12)

A.R.S. § 41-4153, Good Moral Character R4-49-101 (15)

A.R.S. § 32-121.03, Fees R4-49-102 (C)

A.R.S. § 41-1077, Fees R4-49-102 (D)

A.R.S. § 32-4103 (B), Renewal of License R4-49-203 (B) (9)

A.R.S. § 41-4155, Continuing Education R4-49-208 (F)

A.R.S. § 41-4156, Continuing Education R4-49-208 (F)

A.R.S. § 41-4101(4), Scope of Practice R4-49-401 (F)

A.R.S. § 32-4153 (10), Code of Ethics R4-49-404

A.R.S. § 32-4101 (4)(D), Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality R4-49-406 (A)

A.R.S. § 32-4151 (A), Code of ethics R4-49-404, Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality R4-49-406 (C)(2)

A.R.S. § 32-4153 (18), Code of ethics R4-49-404, Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality R4-49-406 (C)(3)

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:

ARTICLE 1. GENERAL PROVISIONS

Section

- R4-49-101. Definitions
- R4-49-102. Fees

ARTICLE 2. LICENSURE

Section

- R4-49-202. Original License Application
- R4-49-203. Renewal of License
- R4-49-208. Continuing Education

ARTICLE 4. ATHLETIC TRAINING PRACTICE

Section

- R4-49-401. Scope of Practice
- R4-49-403. Standards of Practice
- R4-49-404. Code of Ethics
- R4-49-406. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality

ARTICLE 1. GENERAL PROVISIONS

R4-49-101. Definitions

In addition to the definitions at A.R.S. § 32-4101, in this Chapter:

- ~~1.~~ ~~“Accredited educational institution” means an educational institution accredited by the CAATE or its predecessors.~~
- ~~2.~~1. ~~“Active~~ Actively ~~pursuit of pursuing~~ athletic training certification” means:
 - a. Current enrollment in an educational program to fulfill academic requirements for athletic training certification; or
 - b. Current participation in fieldwork experience to fulfill the fieldwork experience requirements for athletic training certification.
- ~~3.~~2. ~~“Applicant” means an individual requesting an original license, a temporary license, a renewal license, or a reinstated license from the Board.~~
- ~~4.~~ ~~“Application packet” means the forms and documents the Board requires an applicant to submit or to be submitted on an applicant’s behalf.~~
- ~~5.~~ ~~“Approved national athletic training certifying agency” means the BOC.~~
- ~~6.~~3. ~~“Approved provider” means an educational provider approved by the BOC.~~
- ~~7.~~ ~~“Athlete” means:~~

- ~~a. A person participating in, or preparing for, a competitive team or individual sport; or~~
- ~~b. A member of a professional athletic team.~~
- 8.4. “Athletic training certification” means current athletic trainer certification provided by the BOC.
- 9.5. “BOC” means the Board of Certification, Inc.
- 10.6. “CAATE” means the Commission on Accreditation of Athletic Training Education.
- 11. ~~“Completed application” means an application packet that is correctly completed and includes the verified signature of the applicant, applicable fees, and all required documentation.~~
- 12.7. “Confidential record” means:
 - a. Minutes of executive sessions except as provided in A.R.S. § 38-431.03(B);
 - b. A record classified as confidential by another law, rule, or regulation applicable to the Board;
 - c. College or university grades, medical or mental health information, and professional references of an applicant except that the applicant who is the subject of the information may view or copy the record;
 - d. An applicant’s driver license number, Social Security number, home address, home phone number, place of birth, and birth date;
 - e. A record for which the Board determines that public disclosure will have a significant adverse effect on the Board’s ability to perform its duties or will otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the record no longer exists, the Board shall make the record available for public inspection and copying; and
 - f. Information regarding a complaint under investigation except as provided in A.R.S. § 41-1010.
- 13.8. “Contact hour” means an actual clock hour spent in direct participation in a structured education format as a learner. ~~One CEU is equivalent to one contact hour.~~
- 14.9. “Continuing education” means a structured learning process required of a licensee to maintain licensure that includes study in the areas of athletic training practice through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in athletic training.
- 15.10. “Continuing education unit” or “CEU” means one contact hour of participation in a continuing education course.
- 16.11. “Day” means a calendar day.
- 17.12. In addition to A.R.S. § 32-4101(7), “Direct supervision” means:
 - a. The athletic trainer can intervene on behalf of the patient, and
 - b. The athletic trainer reviews the performance of the athletic training student every grading period
- 13. “Dry needling” means “a therapeutic modality that is performed by an athletic trainer and that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular and connective tissues to evaluate and manage neuromusculoskeletal conditions, pain and movement impairments”.
- 18.14. “Facility of practice” means the principal location of an agency or organization where an athletic

trainer provides athletic training services but excludes areas used predominantly for athletic sport or competition.

~~19-15.~~ “Good moral character” means the applicant has not taken any action that is grounds for disciplinary action against a licensee under A.R.S. § 32-4153.

~~20.~~ “Good standing” means that an athletic trainer in this state or any other jurisdiction:

- ~~a. Has a current license;~~
- ~~b. Is not presently subject to any disciplinary action, consent order, or settlement agreement; and~~
- ~~c. Has no disciplinary action, consent order, or settlement agreement pending before any licensure Board or court.~~

~~21-16.~~ “Licensee” means a person licensed in Arizona as an athletic trainer.

~~22-17.~~ “National examination” means the national athletic training certification examination provided by the BOC.

R4-49-102. Fees

A. An applicant shall pay the following:

- 1. Application for original license: \$300;
- 2. Renewal of license: \$175;
- 3. Reinstatement of a license: ~~\$200~~ \$100. This is in addition to the renewal license fee;
- 4. Duplicate license: ~~\$25~~ \$10.

B. Applicants who are military service members, military veterans, and military spouses:

- 1. The Board shall waive the application fees and expedite the issuance of a license for an active duty military service member and the member’s spouse, or honorable discharged military veteran who has been discharged not more than two years before application; and
- 2. In order to request a waiver of application fees and expedited services, the military service member, military veteran, or military spouse must submit a copy of the uniformed services military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

~~B.C.~~ The Board shall charge 25¢ per page for copies of records, documents, letters, minutes, applications, and files or appropriate charges prescribed in A.R.S. § 39-121.03(A).

~~C.D.~~ All fees are nonrefundable except as provided in A.R.S. § 41-1077.

~~D.E.~~ An applicant shall pay original license fees and returned or insufficient fund replacement checks in cash or by cashier’s check, money order, or credit card.

~~E.F.~~ An applicant shall pay renewal, reinstatement, and duplicate license fees in cash or by cashier’s check, money order, personal check, or credit card.

ARTICLE 2. LICENSURE

R4-49-202. Original License Application

A. An applicant for an athletic trainer license shall submit an original application that includes the following information:

1. Applicant's full name;
 2. Applicant's name as it will appear on the license;
 3. Other names used;
 4. Social Security number;
 5. Residence address and telephone number;
 6. Date of birth;
 7. Applicant's national athletic training certificate number and date of certification;
 8. Post-secondary educational institutions attended;
 9. Professional experience, field work, or both within the last five years;
 10. Employer's name, address, and telephone number;
 11. Current or previous athletic training or other professional license or certification numbers from other states and foreign countries and the status of each license or certification;
 12. Current and previous arrest, criminal conviction, and disciplinary actions from any licensing agency or court;
 13. E-mail address, if available;
 14. Alternate email address if the personal email address is to remain confidential;
 - ~~14-15.~~ Statement of citizenship or alien status and submittal of documents showing the individual's presence in the United States is authorized under federal law;
 - ~~15-16.~~ Signature and date with an attestation regarding the truthfulness of the information provided.
- B. An applicant shall submit or cause to be submitted on the applicant's behalf the following:
1. Application fee,
 2. Written verification from the BOC of athletic training certification or a passing score on the national examination as required by R4-49-201,
 - ~~3. Official academic transcripts from institutions listed on the application,~~
 - ~~4. Two letters attesting to the applicant's good moral character from health care providers licensed pursuant to A.R.S. § 32-4101 et seq. and~~
 - ~~5-3.~~ A readable fingerprint card and associated fee for submission to the Department of Public Safety or current fingerprint clearance card issued by the Department of Public Safety.
 4. Verification of passing an exam on the athletic training statutes and this chapter as evidenced by an original notice of examination results.
- C. An original license shall expire one year from the date of issuance.

R4-49-203. Renewal of License

- A. To renew a license, a licensee shall submit a renewal application and a renewal fee.
- B. A licensee shall sign the renewal application and include the following:
 1. Applicant's full name;
 2. Applicant's name as it will appear on the renewal license;

3. Residence address and telephone number;
 4. Current Arizona Board of Athletic Training license number;
 5. Arrest, criminal conviction, and disciplinary actions from any licensing agency or court since last license renewal;
 6. Social Security number;
 7. Employer's name, address, and telephone number;
 8. Attestation of compliance with the continuing education requirements listed in R4-49-208;
 9. Attestation that applicant agrees to practice under the direction of a licensed physician as required by R4-49-405, including maintaining physician-approved written protocols for common athletic training activities and post-injury guidelines that comply with A.R.S. § 32-4103(B);
 - ~~9-10.~~ A readable fingerprint card and associated fee for submission to the Department of Public Safety or a current fingerprint clearance card issued by the Department of Public Safety if the previous submission is at least five years old or the Department of Public Safety clearance card will expire within the term of the renewed license;
 - ~~10-11.~~ Statement of lawful presence in the United States or submittal of required documents showing lawful presence; ~~and~~
 12. If a licensee, a statement of whether the licensee has completed the dry needling course content requirements in R4-49-406; and
 - ~~11-13.~~ Signature and date with an attestation regarding the truthfulness of the information provided.
- C. A licensee shall submit the renewal application and fees to the Board office at least 14 days prior to the expiration date of the current license.

R4-49-208. Continuing Education

- A. As a prerequisite to renewal, a licensee shall complete at least 15 CEUs in the area of athletic training since the issuance of the previous license.
- B. A licensee shall:
 1. Maintain continuing education records that:
 - a. Verify the continuing education activities the licensee completed during the preceding two years, and
 - b. Consists of each statement of credit or certificate issued by an approved provider at the conclusion of a continuing education activity;
 2. At the time of licensure renewal, attest to the number of CEUs the licensee completed since the issuance of the previous license ~~during the renewal~~ on the renewal form; and
 3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- C. Licensees may provide proof of continued BOC certification to meet the CEU requirements of this Section.
- ~~D. All licensees shall complete a course approved by the Board on the athletic training statutes and this Chapter within one year of obtaining an original license or license renewal. This course need only be taken one time.~~

- ~~E.D.~~** In addition to the CEU requirements ~~above~~ in subsection (A) of this Section, all licensees shall maintain current certification in cardiopulmonary resuscitation from a provider that is approved by the Board.
- ~~F.E.~~** Upon written request to the Board 30 days prior to the license renewal date, the Board may waive a licensee’s continuing education requirement in the case of extreme hardship including, but not limited to, mental or physical illness, disability, absence from the United States, service in the United States Armed Forces or other extraordinary circumstances as determined by the Board.
- ~~G.F.~~** The Board may audit a licensee’s continuing education records and suspend or revoke, according to A.R.S. §§ 32-4155 and 32-4156, the license of a licensee who fails to comply with continuing education completion, recording, or reporting requirements of this Section.
- ~~H.G.~~** A licensee who is aggrieved by a decision of the Board concerning continuing education units may request an administrative hearing before the Board.

**ARTICLE 4. ATHLETIC
TRAINING PRACTICE**

R4-49-401. Scope of Practice

A licensee shall work within the scope of practice for athletic trainers stated in the definition of “athletic training” at A.R.S. § 32-4101(4) and the competencies contained in the Athletic Training Educational Competencies (5th Edition), published in 2011 by the National Athletic Trainers’ Association, Inc., 1620 Valwood Parkway, Suite 115, Carrollton, TX 75006 ~~2952 Stemmons Freeway #200, Dallas, TX 75247~~, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

R4-49-403. Standards of Practice

A licensee shall comply with the standards of professional practice contained in Board of Certification Standards of Professional Practice, ~~dated January 1, 2006 and~~ published November 2020 by the Board of Certification, Inc., 1415 Harney Street, Suite 200, Omaha, Nebraska 68102, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

R4-49-404. Code of Ethics

A licensee shall work within the code of ethics for athletic trainers as stated in A.R.S. § 32-4153(10) and the NATA Code of Ethics, ~~dated published September 28, 2005 and updated March 2018, and published by~~ the National Athletic Trainers’ Association, 2952 Stemmons Freeway #200, Dallas, TX 75247 1620 Valwood Parkway, Suite 115, Carrollton, TX 75006, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

R4-49-406. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality

- A. Effective July 1, 2021, before providing the therapeutic modality “dry needling” in accordance with A.R.S. § 32-4101(4)(D) and as defined in R4-49-101(13), an athletic trainer shall:**
- 1. Meet the qualifications established in subsection (B) and**

2. Provide the Board with documented proof of compliance with the qualifications listed in subsection (C) in a format as prescribed by the Board.
- B. Course content that meets the training and education qualifications for “dry needling” shall contain all of the following:
1. The course content shall be approved by one or more of the following entities prior to the course(s) being completed by the athletic trainer:
 - a. Commission on Accreditation of Athletic Training Education,
 - b. National Athletic Trainers’ Association,
 - c. Board of Certification, Inc.,
 - d. State or district associations of the National Athletic Trainers’ Association, or
 - e. Specialty groups or societies of the National Athletic Trainers’ Association
 2. The course content shall include all of the following components of education and training:
 - a. Clean needle techniques to include one of the following standards:
 - i. The U.S. Centers for Disease Control and Prevention, or
 - ii. The U.S. Occupational Safety and Health Administration
 - b. Anatomical review,
 - c. Blood borne pathogens, and
 - d. Contraindications and indications for “dry needling”.
 3. The course content required in subsection (B) of this Section shall include passing both a written examination and practical examination before completion of the course content. Practice application course content must be completed in a synchronous environment and examinations shall be done in-person to meet the qualifications of subsection (B).
 4. The course content required in subsection (B) of this section shall total a minimum of 24 contact hours of education.
- C. The standard of care for “dry needling” includes:
1. Dry needling cannot be delegated to any assistive personnel.
 2. Referral to one or more appropriate health care practitioners when required by A.R.S. 32-4151(A).
 3. Documentation of the “dry needling” as required by A.R.S. 32-4153(18).
 4. If the patient is a minor, parent or guardian consent for treatment is obtained and documented in the patient record.
 5. Dry needling must be addressed in the written protocols approved by the physician providing direction.

**ARIZONA STATE BOARD OF ATHLETIC TRAINING
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

TITLE 32. PROFESSIONS AND OCCUPATIONS

CHAPTER 49. ATHLETIC TRAINING

1. An identification of the proposed rulemaking

The Board is proposing to add rule R4-49-406 to clarify the scope of practice for athletic trainers. This includes adding a definition of dry needling in R4-49-101.13 and providing a mechanism in R4-49-203.B.11-12. (renumbered) for licensees to report successful completion of the dry needling course content requirement in R4-49-406.

The Board also seeks to repeal R4-49-101.1, R4-49-101.4, R4-49-101.5, R4-49-101.7, R4-49-101.11, R4-49-101.20 to remove unnecessary definitions for terms that do not appear elsewhere in rules.

R4-49-101.1. is being reworded for clarification.

R4-49-101.13 is being amended to remove duplicate information and burdensome requirements.

R4-49-102.A. is being amended to reduce license reinstatement and duplicate license fees.

R4-49-101.12 and R4-49-202.A.13 are being amended to include the applicant's email address as an application requirement.

R4-49-202.A.14. is being added to allow applicants to provide an alternate email address if they do not wish to keep their personal email address confidential.

The addition of R4-49-102.B. adds fee waivers and expedited processing for military service members, veterans, and their spouses. (Passage of SB 2128 will eliminate the need for this section.)

R4-49-202.B.3. and R4-49-202.B.4. are being repealed to remove burdensome and unnecessary application requirements.

R4-49-203.B.9. is being added in response to a recommendation from the Auditor General's Office during the 2019 performance audit.

R4-49-208.B.2. is being amended for clarification.

R4-49-208.D. is being moved to R4-49-202.B.6.

R4-49-401, R4-49-403, and R4-49-404 are being amended to reference the current versions of the BOC and NATA documents regarding educational competencies and to update the address for NATA.

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

Persons affected:

The rulemaking impacts applicants, licensed athletic trainers, patients of licensed athletic trainers, and the Board. Most of the rulemaking clarifies the current rules and thus, amends existing requirements already established in rule. The proposed rules seek to eliminate some fees, reduce burdens and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers.

Cost Bearer:

The costs of these rule changes will be borne by the Arizona Board of Athletic Training.

Beneficiaries:

Consumers, patients, licensees, and the Board.

3. **A cost benefit analysis of the following:**

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

The overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures and enhancing access to care. No new FTEs are required to implement the proposed rules changes.

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

None apparent.

- (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.

None apparent.

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

Expanded access to the therapeutic modality of dry needling and reduced costs for licensees should have a positive economic impact, if any, on private or public business/employment.

- 5. A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:**

- (a) An identification of the small businesses subject to the proposed rulemaking.**

The potential impact on small businesses, if any, is expected to be positive.

- (b) The administrative and other costs required for compliance with the proposed rulemaking.**

The Arizona State Board of Athletic Training is the only state agency affected by this rule making. The rule making is not expected to create cost to the Agency or the State and will further streamline the application process as well as improve public protection.

- (c) A description of the methods that the agency may use to reduce the impact on small businesses. These methods may include:**

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

For items (c)(i)(ii)(iii):

The Arizona State Board of Athletic Training is a health regulatory board charged with overseeing the licensure of practitioners and protecting public health. Some athletic trainers practice in a small business setting, and the proposed rule amendments positively impact athletic trainers. The expected economic impact on small businesses, if any, is positive and therefore does not

require reduction.

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

Expanded access to the therapeutic modality of dry needling, with protection of the public through efficient and effective rules regarding practice and education of practitioners, will benefit consumers by increasing access to care and providing greater continuity of care.

6. A statement of the probable effect on state revenues.

The Arizona State Board of Athletic Training is a 90/10 agency which means that 90% of revenues are retained by the Board and 10% of the revenue is transferred to the State General Fund. While it is anticipated that the addition of dry needling to the Board's rules will attract additional licensees from other states, however, the Board does not expect a significant increase in the amount transferred to the General Fund when combined with the proposed fee waiver. A 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 nonselected alternatives.

There is no identified alternative or less costly alternative of which the Agency is aware.

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/16/2021	jesseg@ladodgers.com	Please allow athletic trainers that are trained and qualified to practice Dry Needling to use the practice in Arizona as they can freely in other states that we may work and hold licenses. It is of great benefit to the athletes we serve and allows for a higher quality of care to be administered.	Yes
7/16/2021	tmcleod@atsu.edu	Thank you for including the professional standards of care for education qualifications for dry needling. I think including this modality is important for ATs.	Yes
7/18/2021	mittchell.barnhart@pcds.org	Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona.	Yes
7/21/2021	Colin.Glenny@asu.edu	Dry Needling is a practice that is safely and effectively implemented by trained athletic trainers in many other states. Athletic trainers who have been trained in this therapeutic modality should be able to practice their trained skill in order to benefit the patients they serve.	Yes
7/21/2021	andrew.mckay@asu.edu	Athletic trainers in other state are safely and effectively performing dry needling in order to support patient care. Athletic trainers who have taken a course on dry needling should be able to practice dry needling in Arizona in order to treat acute and chronic athletic injuries.	Yes
7/21/2021	taylor.berman@asu.edu	I am supporting the dry needling rule in light of the value this practice can bring to our patients and their health outcomes. The current education competencies of athletic trainers are not reflected by the streamlining and modernization of the existing rules. Dry needling can and will benefit our patients.	Yes
7/26/2021	johnny.marcinkowski@asu.edu	Being able to dry needle in the stated of Arizona as an Athletic Trainer will add great value to providing high quality health care to the patients. With many other stated already allowing athletic trainers to provide this service, it will allow Arizona Athletic Trainers with appropriate training to excel in the profession. As an advocate of the athletic training profession, this will catch up the stated of Arizona with other states regulations and hopefully lead to further progression of the profession.	Yes
7/26/2021	kbliven@atsu.edu	I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. The addition of the dry needling definition as proposed will allow athletic trainers who are educated and trained in dry needling within Arizona and who relocate to Arizona to practice the technique.	Yes
7/29/2021	whebrink@reds.com	I believe that Athletic Trainers (ATC, LAT) are highly qualified medical professionals who should be apply to practice Dry Needling as a therapeutic modality if they have the appropriate education and certifications. If you have the appropriate education and are qualified to be certified in Dry Needling, then there is no reason why ATCs shouldn't be able to use it in their professional setting. It will only benefit our patients and/or athletes.	Yes
8/2/2021	lwhite@xcp.org	ATs have the foundational knowledge to support healthcare treatment that includes dry needling as a modality by definition. This educational foundation provides ATs the preparation to pursue the further advanced training if desired. This is a great move by ABAT to include this modality by rule as a clarification for those pursuing the advanced training or moving in from another state not currently allows this modality and also has the requisite education and training.	Yes
8/2/2021	hmduszynski@gmail.com	Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This substantial educational foundation provides athletic trainers with the same amount of preparation as physical therapists to pursue further education and training in dry needling. A significant number of Arizona athletic trainers are interested in adding dry needling to their clinical practice. Currently, athletic trainers in Arizona may be educated and trained in dry needling, but are unable to practice the technique under current statutory interpretation.	Yes
8/2/2021	barton@sports-injury-info.com	The proposed rules incorporate all of the necessary requirements to ensure that only qualified athletic trainers perform dry needling, and follow the same format as the current rules in place for dry needling within physical therapy. Physical therapy added the definition and scope of practice rules for dry needling in 2015, and there has been no significant negative effects on patient safety, or safety related complaints against PTs using dry needling since its inception. Athletic trainers and physical therapists have similar education and foundational training in anatomy, physiology, examination and diagnosis, and clinical decision making, arising from their professional preparation programs. Dry needling is considered an advanced practice skill and is taught as a supplemental professional workshop training. The course requirements outlined in the proposed rules are appropriate and ensure that all necessary information for safe and effective use of this modality is delivered. The 24 hour training requirement is consistent with physical therapy requirements and aligns with the vast majority of available dry needling courses. The ABAT should be commended for their attention to detail to ensure these rules reflect appropriate education and training and to ensure public safety. The dry needling modality provides the opportunity for improved patient outcomes, improved patient access to this beneficial modality, and poses minimal risk to patient safety when performed by a qualified clinician. As an athletic trainer who has been trained in dry needling since 2017, yet unable to practice this skill in Arizona, these proposed rule changes will provide a significant, positive change to my clinical practice, improving not only my patient outcomes, but also my financial and economic outlook.	Yes
8/2/2021	cwhite@brophyprep.org	R4-49-406 allows athletic trainers to practice to the full extent of their education and training. Athletic trainers have substantial competence in use of modalities, and patterning this after the existing physical therapy rules (2015) that has had no negative outcomes, will surely benefit the patients we athletic trainers treat.	Yes
8/2/2021	rdipanfilo@dbacks.com	I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.	Yes
8/2/2021	dreel@dbacks.com	I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
8/3/2021	alison.valier@gmail.com	<p>I am in full support of the rule proposed for dry needling. Athletic trainers across the country have significant foundational knowledge related to the practice of dry needling. In fact, a study performed by Hartz et al (2019) demonstrated that athletic trainers have equivalent foundational knowledge related to dry needling as physical therapists. The proposed rule is modeled after the physical therapist rule and physical therapists in Arizona have been able to perform dry needling on patients since 2015 with success. Some may argue that the hours are not equivalent to training of an acupuncturist. That is true - they are not. Training to become an acupuncturist is to earn a professional, medical degree. This medical degree consists of foundational knowledge, training in different skills/techniques, learning the philosophies of Chinese medicine, and more - and is more than one skill, such as needling of the musculoskeletal system. All healthcare providers should be able to practice to the full extent of their education and training and this rule allows athletic trainers to do just that and to use dry needling when educated and trained in the technique.</p> <p>It is important to note that regardless of practice setting (eg, high school, hospital, professional, industrial), athletic trainers are held to ethical standards of practice and must adhere to common standards of care, such as practicing under the direction of a physician and parental consent to treat minors. Further, athletic trainers are required to abide by a code of professional responsibility when performing athletic training activities and services. Ensuring treatments and services are delivered in a manner that keeps patients safe is a responsibility of being a healthcare professional.</p>	Yes
8/3/2021	lindseyatc@gmail.com	<p>We support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</p> <p>Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</p> <p>Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona.</p>	Yes
8/3/2021	pserbus@reds.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
8/3/2021	gilbertatc@msn.com	<p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p> <ul style="list-style-type: none"> • Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. • Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. • Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona. 	Yes
8/3/2021	janele.roche@bannerhealth.com	<p>I am in full support in the addition of dry needling as a form of therapeutic modality for the licensed Athletic Trainer in Arizona. As health care professionals, ATs continue their education in many ways to help take stock in patient treatment and care. By adding Dry Needling, it allows for patients in Arizona receive the therapeutic treatment that may be their best option for ailment.</p>	Yes
8/3/2021	eabbott@salpointe.org	<p>Athletic Trainers practice their five domains on a daily basis no matter what setting they may be practicing in. The domain of therapeutic intervention is ever changing and just as keeping up with continuing education, the use of dry needling is something that we are more than educated and capable of administering to our athletes. We see our athletes regularly and honestly spend the most time with them especially during rehabilitation. Dry needling is essentially a tool that we can use to help better an outcome for our athletes just as any other type of modality commonly used in our facilities.</p>	Yes
8/3/2021	jjazawa@dbacks.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
8/3/2021	csimkins@brophyprep.org	<p>Establishing rules similar to what the physical therapists have done, with no negative outcomes, will enhance patient care</p>	Yes
8/4/2021	jrosauer@dbacks.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
8/5/2021	mpowell@dbacks.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
7/1/2021	mobileatc@hotmail.com	<p>The addition of dry needling to our profession I think would be a tremendous addition to our scope of practice. As a Healthcare Provider we need to be cutting edge and being able to provide the best care to our athletes and patients should be a priority.</p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/21/2021	mjhlavaty@gmail.com	I wanted to reach out in support of the proposed changes that the Arizona Board of Athletic Training is seeking to make. The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. Currently, there are athletic trainers in Arizona, myself included, who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.	Yes
7/18/2021	mitchellbarnhart@pcds.org	I support these changes to update the rules to reflect changes.	N/A
7/18/2021	mitchell.barnhart@pcds.org	I support this change which reduces the potential financial barriers encountered by some athletic trainers.	N/A
7/1/2021	mobileatc@hotmail.com	The cost I think is high for our profession. I know other professions are less expensive than ours. I would also like to recommend that if an is going to take a year off, or is working in a sector that an AT is not used, that AT can have their license moved to be temporarily inactive and can be reactivated when they want to reinstate it	N/A
7/15/2021	pserbus@reds.com	To Whom It May Concern- I am writing today in support of the rule changes proposed to R4-49-101, specifically in tremendous support of the inclusion of dry needling as a part of the Athletic Trainer's scope of practice in the State of Arizona. I work in professional baseball for the past 21 years now and can honestly say that Dry Needling is one manual modality that can impact immediate improvements in symptom set, muscle tone, myofascial tension and neurological feedback. It is singularly at the top of a very short list of physical and manual modalities that is critical to working with athletes in a chronic overuse sport such as baseball. Our goal is to provide therapies to our athletes at the cutting edge of what is available to assist them in maintaining their availability to compete on a daily basis. Dry needling is a critical tool for Athletic Trainers that have completed the necessary continuing education coursework to effectively and safely utilize this skill/tool in clinical practice. The education courses that Athletic Trainers complete to learn these skills are the same courses and requirements that other medical professionals that currently practice dry needling in Arizona complete as their own pre-requisite to practice clinically. Please continue to push for the inclusion of dry needling into the scope of practice for all licensed Athletic Trainers in Arizona. It's a clinical outcomes practice changer!! Thank you for your time and support, Patrick Serbus Cincinnati Reds Director of Athletic Training	Yes
7/16/2021	tmcleod@atsu.edu	In support of the rule change to add dry needling.	Yes
7/19/2021	gerry.garcia@asu.edu	The addition of dry needling will allow athletic trainers to practice to their full extent of their education and training. Athletic trainers complete a substantial amount of education related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.	Yes
7/26/2021	kbliven@atsu.edu	I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers. Specifically, I support changes to eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers so they can practice to the full extent of their education and training. I also support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. The addition of the dry needling definition as proposed will allow athletic trainers who are educated and trained in dry needling within Arizona and who relocate to Arizona to practice the technique.	Yes
7/30/2021	bepstein@reds.com	It is imperative that a dry needling practitioner definition includes Athletic Trainers that have completed specific training and shown proper competence with the skill. With an innate understanding of the human body and proper training, the addition of dry needling to the skillset of an Athletic Trainer is an invaluable tool that can be utilized when putting our athletes health first.	Yes
8/2/2021	hmduszynski@gmail.com	A significant number of Arizona athletic trainers are interested in adding dry needling to their clinical practice. Currently, athletic trainers in Arizona may be educated and trained in dry needling, but are unable to practice the technique under current statutory interpretation. Athletic trainers are well educated individually who have the skills and education to pursue appropriate further training required for dry needling. However, we lack the ability to pursue the practice of it daily.	Yes
8/2/2021	barton@sports-injury-info.com	As a licensed athletic trainer in Arizona, I fully support the changes to R4-49-101 to clarify existing rules and to add the definition of Dry Needling; the definition of dry needling is consistent with definitions contained in other professions scope of practice, specifically physical therapy. This modality should be incorporated into AT scope of practice, as the foundational knowledge and training required to safely and effectively administer this modality is readily available to practicing athletic trainers.	Yes
8/2/2021	cwhite@brophyprep.org	Thank you for including dry needling as a modality. Removing definitions certainly will streamline the rules governing the practice of athletic training in Arizona.	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
8/2/2021	soazatc@gmail.com	Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This substantial educational foundation provides athletic trainers with the same amount of preparation as physical therapists to pursue further education and training in dry needling. While I may not choose to do dry needling in the secondary school setting, I do want the ability if I change employment positions to utilize my dry needling skills with other active populations. My other concern is Major League Baseball holds spring training here in state. Those ATs may dry needle in their own states, but cannot here based upon our laws. That may affect the desire for teams to remain in Arizona's Cactus League if the statutes do not resemble their own.	Yes
8/2/2021	l.h.oliver@maranausd.org	Dry needling is a therapeutic modality that man certified Athletic trainers are already trained in and r unable to perform in Az. We need to advance our profession . The future of athletic Training as a healthcare profession is counting on this .	Yes
8/2/2021	rpcohenatc@gmail.com	I support athletic trainers being able to use functional dry needling as part of their practice. As a physical therapist and athletic trainer who uses dry needling i know that athletic trainers have the knowledge and background to be able learn and use this skill.	Yes
8/3/2021	lindseyatc@gmail.com	We support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers	Yes
8/3/2021	rpcohenatc@gmail.com	I support athletic trainers being able to use functional dry needling as part of their practice. As a physical therapist and athletic trainer who uses dry needling i know that athletic trainers have the knowledge and background to be able learn and use this skill.	Yes
8/3/2021	csigwart@reds.com	Dry needling is a very effective treatment that we could use on our players to improve their outcomes and maintain their health so that they stay on the field. All of our athletic trainers have been trained and certified by Structure and Function. Our athletes are investments for us and we want the best for them. With this being said, we will always treat in the appropriate manner within our abilities and correct moral obligations to them. As a group, we have a high standard for continuing education and dry needling has been one of these for close to a decade for those that it was legal to use in their state of practice. We look forward to being able to use this excellent and effective treatment in the future. Please make it happen for us that will use it in a safe and competent manner.	Yes
8/3/2021	rpcohenatc@gmail.com	I support athletic trainers being able to use functional dry needling as part of their practice. As a physical therapist and athletic trainer who uses dry needling i know that athletic trainers have the knowledge and background to be able learn and use this skill.	Yes
8/3/2021	sfalsone@atsu.edu	I am writing as a follow up to my original email regarding my full support of the rule proposed for dry needling. Athletic trainers across the country have more than adequate foundational knowledge related to the practice of dry needling. In fact, a study performed by Hartz et al (2019) demonstrated that athletic trainers have equivalent foundational knowledge related to dry needling as physical therapists. Also, in an article by Jan Dommerholt (2019), he notes "DN is a safe anatomy-driven procedure". To this point, athletic trainers are fully trained in anatomy. The proposed rule is modeled after the physical therapist rule in Arizona, where PTs have been able to perform dry needling on patients since 2015. Some may argue that the hours are not equivalent to training of an acupuncturist. That is true - they are not. Training to become an acupuncturist is to earn a totally different professional, medical degree. This professional degree is rooted in Traditional Chinese Medicine (TCM), which takes years of immersion and study to understand. Multiple TCM philosophies and modalities are taught in acupuncture school, including the use of needles to treat a variety of internal medicine disorders, moxibustion, how to read pulses and tongues for diagnosis, tunia (therapeutic massage), and herbology. My point here is that their years of study are not solely focused on the safe act of needle insertion for neuromusculoskeletal conditions. All healthcare providers should be able to practice to the full extent of their education. These educational standards have been established within our state by the PT board, and the study by Hartz referenced above shows ATs are similarly trained as PTs in the foundational areas needed for dry needling. This rule allows athletic trainers to do just that and to use dry needling when properly educated and trained in proper technique. It is important to note that regardless of practice setting (eg, high school, hospital, professional, industrial), athletic trainers are held to ethical standards of practice and must adhere to common standards of care, such as practicing under the direction of a physician and parental consent to treat minors. Further, athletic trainers are required to abide by a code of professional responsibility when performing athletic training activities and services. Ensuring treatments and services are delivered in a manner that keeps patients safe is a responsibility of being a healthcare professional. This includes a clean area and clean field in which to work. Again, my full support goes towards this rule change for athletic trainers within the state of Arizona.	Yes
8/3/2021	mwalker@dbacks.com	I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.	Yes
8/3/2021	csimkins@brophyprep.gcu	Defining dry needling is beneficial and will allow athletic trainers to better serve patients	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/6/2021	jodymurr13@gmail.com	<p>These comments come from perhaps the only Athletic Trainer in the state of AZ who is also a licensed Acupuncturist. I also have had a lot of exposure to the types of training currently offering dry needling education to ATs. I wish that BOTH PTs and ATs would have a more intensive requirement (more hours of training) before being allowed to practice dry needling, but I recognize that ship has sailed. For instance, my education was 2700 hours on top of already being an AT. The argument that DN is not acupuncture is simply not true. It is 100% a style of acupuncture that has been practice for thousands of years.</p> <p>However, I recognize that this increase in the SOP for ATs is going to happen. I feel very strongly that when working with minors A PARENT SHOULD BE PRESENT, not just their consent to treat. My absolute biggest concern is of DN being performed in a high school AT room. This is a terrifying prospect. I have spent many years in high school ATRs, they are chaotic, overcrowded and not a clean sterile environment. DN demands 100% focus and of course, a clean environment. Requiring a parent present would slow down the amount of treatments occurring in this environment and increase the safety of minor athletes.</p> <p>I also feel that anyone who wants to perform DN should be required to take a Clean Needle Technique class and exam in the same way that all Acupuncturists are required.</p> <p>I am available for any questions you might have from someone uniquely on both sides of this debate.</p>	No
7/7/2021	mobileatc@hotmail.com	<p>I am writing in regarding to the email I received about proposed rulemaking changes for Athletic Training.</p> <p>Some of the recommendations I would like to see happen.</p> <ol style="list-style-type: none"> 1. Fees: The cost I think is high for our profession. I know other professions are less expensive than ours. I would also like to recommend that if an is going to take a year off, or is working in a sector that an AT is not used, that AT can have their license moved to be temporarily inactive and can be reactivated when they want to reinstate it. 2. As far as licensing. I think this area is good. I still feel we need to show proof of identity when applying for a license, as well as maintaining a fingerprint card. 3. The addition of dry needling to our profession I think would be a tremendous addition to our scope of practice. As a Healthcare Provider we need to be cutting edge and being able to provide the best care to our athletes and patients should be a priority. 	Yes
7/10/2021	rpurcell@texasrangers.com	<p>My name is Rachel Purcell, and I am an athletic trainer with the Texas Rangers working full time out of our Arizona Complex here in Surprise, Arizona. I read through the new rule change document, and I was excited to see the new changes proposed for dry needling! I'm currently certified in Dr. Ma's Integrative Dry Needling Course.</p> <p>I was hoping you could clarify a few questions I had regarding athletic trainers being able to dry needle in Arizona. Will I need to send my dry needling certification directly to you or would it be better for me to mail it to the state board to be able to practice? I might have also read this wrong, but is this currently in effect (since July 1st?) or do we need to wait for the rule changes to be formally approved?</p> <p>Thank you so much for your time, and I appreciate all you do.</p>	Yes
7/14/2021	sfalsone@atsu.edu	<p>This email is in response to the open comment period for the modernization of rules for athletic trainers in Arizona.</p> <p>As an athletic trainer in good standing within the state of Arizona, and as a professor teaching within the athletic training profession, I support the streamlining and modernization of the existing rules, which are outdated and do not reflect the current education competencies of athletic trainers.</p> <p>The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</p> <p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</p> <p>I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.</p>	Yes
7/15/2021	EHalbur@cubs.com	<p>We support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers.</p> <p>The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</p> <p>We support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p> <ul style="list-style-type: none"> · Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. · Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. <p>Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona.</p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/15/2021	kpicha@atsu.edu	<p>I am writing today in support of the proposed modernized rules for athletic trainers. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers have a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona. Thank you for the opportunity to provide my support for the modernized rules that will make a difference in our profession.</p>	Yes
7/15/2021	alison.valier@gmail.com	<p>Please accept this email as my support for the proposed rules related to athletic training practice in Arizona. I've been a licensed Athletic Trainer in the state for many years and appreciate the recent efforts by ABAT to streamline and modernize the rules. The previous rules had inconsistencies, redundancies, and outdated content. The proposed rules make the licensing process easier and more clear for athletic trainers and align the rule with the most recent educational competencies and standards. With the modernized rules, athletic trainers are able to practice and care for patients using techniques and treatment strategies that align with their education and training.</p> <p>Defining dry needling clarifies the use of this treatment for athletic trainers who are educated and trained in the technique and wish to use it to the benefit of their patients. Currently, there are athletic trainers in the state who currently can not perform this treatment even though they are educated and trained to do so which limits opportunity for them and their patients. I strongly support the inclusion of this definition in the rule.</p> <p>The proposed rules by ABAT are a much needed and long overdue update. Not only will the rules have a positive impact on licensees, but the updates to the rules will continue to promote delivery of athletic healthcare that maintains patient health and safety.</p> <p>As a licensed athletic trainer in Arizona, I fully support the proposed rules. I appreciate the efforts of ABAT and thank them for the work done to ensure that athletic training rules are modernized and that athletic trainers are able to treat patients to the full extent of their education and training.</p>	Yes
7/21/2021	mjhlavaty@gmail.com	<p>I wanted to reach out in support of the proposed changes that the Arizona Board of Athletic Training is seeking to make. The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. Currently, there are athletic trainers in Arizona, myself included, who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.</p>	Yes
7/26/2021	khuxel02@gmail.com	<p>Please accept this email as my support for the proposed rules related to athletic training practice in Arizona. I've been a licensed Athletic Trainer in the state for many years and appreciate the recent efforts by ABAT to streamline and modernize the rules with the goal of making the licensing process easier and more clear for athletic trainers, and aligning the rule with current educational competencies and standards. The previous rules had inconsistencies, redundancies, and outdated content. The proposed modernized rules will ensure athletic trainers are able to practice and care for patients using techniques and treatment strategies that align with their education and training.</p> <p>Defining dry needling clarifies the use of this treatment delivered by athletic trainers who are educated and trained in the technique and use it to the benefit of their patients. Currently, there are athletic trainers in the state who are unable to perform dry needling treatments even though they are educated and trained to do so, which limits their practice and options for patient care. I am a strong supporter of the inclusion of this dry needling definition in the rule.</p> <p>I support the much needed proposed rules by ABAT and believe they will have a positive impact on athletic trainers licensed to practice in Arizona while at the same time ensuring safe delivery of athletic healthcare to patients in the community.</p> <p>As a licensed athletic trainer in Arizona, I fully support the proposed rules. Thanks to the efforts of ABAT for spearheading the proposed rule changes that will ensure athletic trainers are able to treat patients to the full extent of their education and training.</p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/30/2021	smphillips@arizona.edu	<p>I am Samantha Carhart, assistant athletic trainer for the University of Arizona. I am writing in support of the proposed changes for the Board in regards to streamlining licensure, modernization of practice, and more while maintaining our priority of patient safety. The current standards are now not consistent with ongoing research and education and competencies that athletic trainer consistently engage in. With the proposed changes, athletic trainers can then practice to the full extent of our training and truly provide the best healthcare possible with this proposal.</p> <p>As it stands right now, athletic trainers across the state of Arizona have been properly educated on and trained in dry needling but cannot perform this therapeutic technique without the modernization and clarification of the proposed practice act. We are allied healthcare professionals that are extensively trained in the recognition, prevention, management, rehabilitation, examination, and evaluation of injuries and illnesses, chronic and acute, as well as medical emergencies. With our background, we are perfect candidates for applying and implementing dry needling techniques into our practice, just as our colleagues in physical therapy do. Currently, our patients are not able to experience the therapeutic effects of dry needling, although they would be able to receive this treatment in other states, effectively hurting the ability of patients to receive the best care possible and losing highly qualified healthcare professionals due to our current standards.</p> <p>I am in full support of the expanded access to this therapeutic modality in order to benefit patients all across the state of Arizona. I am I full support of the proposed changes to our application procedure to decrease the burden of applying. I am asking that you take each of these comments into full consideration and enter into decision on these critical rules and regulations.</p>	Yes
8/1/2021	Geordie.Hackett@gcu.edu	<p>I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers.</p> <ul style="list-style-type: none"> · The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. <p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p> <ul style="list-style-type: none"> · Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. · Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. · Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona <p>Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</p> <p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p>	Yes
8/1/2021	J.J.Sayson@gcu.edu	<p>I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers.</p> <ul style="list-style-type: none"> · The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. <p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p> <ul style="list-style-type: none"> · Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. · Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. · Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona <p>Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</p> <p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
8/2/2021	LPowers@reds.com	<p>My name is Lauren Powers and I am a certified athletic trainer currently licensed in the state of Arizona. I spend time working in both Arizona and the Dominican Republic as a minor league athletic trainer in professional baseball. I would like to voice my support for the dry needling rule changes in the state of Arizona. I, and many of my colleagues, have completed training in the area of dry needling and would like to be able to practice to the full extent of our abilities. Below are multiple points that support the proposed dry needling changes.</p> <ol style="list-style-type: none"> 1. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. 2. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. 3. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. 4. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules 	Yes
8/2/2021	Benjamin.Kmetz@gcu.edu	<p>I support the use of dry needling for athletic trainers with the supported points below.</p> <ol style="list-style-type: none"> 1. I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers. <ul style="list-style-type: none"> · The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. 2. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. <ul style="list-style-type: none"> · Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. · Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. · Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona 3. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. 4. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. 5. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules. 	Yes
8/3/2021	apatrickdevies@park.edu	<p>As an athletic trainer in good standing in the state of Arizona, and as a healthcare provider currently providing services to the university athletic population, I am writing to express my support for the ABAT's proposed rule to modernize the practice of athletic training by including a definition of "dry needling" as a therapeutic modality.</p> <p>I am one of many athletic trainers in the state of Arizona who are educated and trained in dry needling but are unable to utilize the technique for the betterment of our patients. I look forward to the clarification this rule change would provide, allowing athletic trainers to raise the level of care they provide by practicing to the full extent of their education and training. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</p> <p>In addition to including dry needling in the athletic training practice, the proposed rule change will also eliminate unnecessary definitions, streamline application requirements, and reduce fees. I fully support the proposed rule changes by the Arizona Board of Athletic Trainers, which would minimize burdens and reduce cost for athletic trainers while allowing them to practice to the full extent of their education and training for the benefit of their patients. I am personally confident in my ability to safely and effectively utilize the technique of dry needling to help my patients reach their goals and heal from injury, and I look forward to the day that I can offer this modality as an option to patients who would benefit from its use. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.</p>	Yes

MATERIAL INCORPORATED BY REFERENCE

R4-49-401 - Athletic Training Educational Competencies (5th Edition)

https://www.nata.org/sites/default/files/competencies_5th_edition.pdf

R4-49-403 – Board of Certification Standards of Professional Practice

<https://7f6907b2.flowpaper.com/SOPP012021/#page=1>

GENERAL STATUTE AUTHORIZING THE RULE

32-4103. Board; powers and duties; direction of athletic trainers; continuing education requirements; civil immunity

A. The board shall administer and enforce this chapter and shall:

7. Adopt and revise rules to enforce this chapter.

SPECIFIC STATUTES AUTHORIZING THE RULE

32-4101. Definitions

In this chapter, unless the context otherwise requires:

6. "Board" means the board of athletic training.

32-4103. Board; powers and duties; direction of athletic trainers; continuing education requirements; civil immunity

A. The board shall administer and enforce this chapter and shall:

6. Establish requirements for assessing the continuing competence of licensees.

32-4123. Application; statement of deficiencies; hearing

A. An applicant for licensure shall file a completed application as required by the board. The applicant shall include application and examination fees as prescribed in section 32-4126.

B. The board may return an application with a statement of deficiencies. On request of an applicant who disagrees with the statement, the board shall hold a hearing pursuant to title 41, chapter 6.

32-4151. Lawful practice

B. An athletic trainer shall adhere to the recognized standards and ethics of the athletic training profession and as further established by rule.



KRISHNA JHAVERI <krishna.jhaveri@azdoa.gov>

Concerns with the Board of Athletic Training Dry Needling Proposed Rule - feel free to forward

1 message

Coady, Monique <Monique.Coady@azag.gov>

Mon, Dec 27, 2021 at 1:14 PM

To: "Simon Larscheidt (simon.larscheidt@azdoa.gov)" <simon.larscheidt@azdoa.gov>, "KRISHNA JHAVERI (krishna.jhaveri@azdoa.gov)" <krishna.jhaveri@azdoa.gov>

Hi Simon, Hi Krishna,

I have concerns regarding whether the Legislature has provided authority to the Board of Athletic Training to promulgate rules authorizing athletic trainers to conduct the invasive process of dry needling. Based on prior legislation, it appears that dry needling may be limited to licensed physical therapists at this time. In 2014, the State Legislature passed SB 1154 (attached), which defines "dry needling" as "a skilled intervention **performed by a physical therapist** ..." A.R.S. § 32-2001(4). That bill also authorized **the Board of Physical Therapy** to promulgate dry needling rules and provided an additional ground for disciplinary action for a physical therapist: "[f]ailing to demonstrate professional standards of care and training and education qualifications, as established by the board by rule, in the performance of dry needling when provided as a therapeutic modality." A.R.S. § 32-2044(25).

The Physical Therapy Board's rules for the "Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention" are found at A.A.C. R4-24-313.

One other thing – the Board of Athletic Training has the following "Dry Needling Statement" posted on its website: "As a reminder, it is the responsibility of all practitioners to engage in activities that are within the scope of practice of athletic training. That scope is set forth in statute at A.R.S. § 32-4101(4). The practice of dry needling does not fall within the statutory definition of athletic training."

Feel free to pass along this email to Councilmembers for their consideration. Let me know if you need anything else from me.

Monique Coady**Assistant Attorney General, Public Law Section**

Office of the Attorney General

State Government Division

Mailing address: 2005 N. Central Ave.

Phoenix, AZ 85004

Office location: 15 S. 15th Ave.

Phoenix, AZ 85007

Direct: 602-542-8011

Monique.Coady@azag.gov

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 **SB 1154.pdf**
32K

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 220
SENATE BILL 1154

AN ACT

AMENDING SECTIONS 32-2001 AND 32-2044, ARIZONA REVISED STATUTES; RELATING TO
THE REGULATION OF PHYSICAL THERAPY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2001, Arizona Revised Statutes, is amended to
3 read:

4 32-2001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Assistive personnel" includes physical therapist assistants and
7 physical therapy aides and other assistive personnel who are trained or
8 educated health care providers and who are not physical therapist assistants
9 or physical therapy aides but who perform specific designated tasks related
10 to physical therapy under the supervision of a physical therapist. At the
11 discretion of the supervising physical therapist, and if properly
12 credentialed and not prohibited by any other law, other assistive personnel
13 may be identified by the title specific to their training or education. This
14 paragraph does not apply to personnel assisting other health care
15 professionals licensed pursuant to this title in the performance of delegable
16 treatment responsibilities within their scope of practice.

17 2. "Board" means the board of physical therapy.

18 3. "Business entity" means a business organization that has an
19 ownership that includes any persons who are not licensed or certified to
20 provide physical therapy services in this state, that offers to the public
21 professional services regulated by the board and that is established pursuant
22 to the laws of any state or foreign country.

23 4. "DRY NEEDLING" MEANS A SKILLED INTERVENTION PERFORMED BY A PHYSICAL
24 THERAPIST THAT USES A THIN FILIFORM NEEDLE TO PENETRATE THE SKIN AND
25 STIMULATE UNDERLYING NEURAL, MUSCULAR AND CONNECTIVE TISSUES FOR THE
26 EVALUATION AND MANAGEMENT OF NEUROMUSCULOSKELETAL CONDITIONS, PAIN AND
27 MOVEMENT IMPAIRMENTS.

28 ~~4.~~ 5. "General supervision" means that the supervising physical
29 therapist is on call and is readily available via telecommunications when the
30 physical therapist assistant is providing treatment interventions.

31 ~~5.~~ 6. "Interim permit" means a permit issued by the board that allows
32 a person to practice as a physical therapist in this state or to work as a
33 physical therapist assistant for a specific period of time and under
34 conditions prescribed by the board before that person is issued a license or
35 certificate.

36 ~~6.~~ 7. "Manual therapy techniques" means a broad group of passive
37 interventions in which physical therapists use their hands to administer
38 skilled movements designed to modulate pain, increase joint range of motion,
39 reduce or eliminate soft tissue swelling, inflammation, or restriction,
40 induce relaxation, improve contractile and noncontractile tissue
41 extensibility, and improve pulmonary function. These interventions involve a
42 variety of techniques, such as the application of graded forces.

43 ~~7.~~ 8. "On-site supervision" means that the supervising physical
44 therapist is on site and is present in the facility or on the campus where
45 assistive personnel or a holder of an interim permit is performing services,

1 is immediately available to assist the person being supervised in the
2 services being performed and maintains continued involvement in appropriate
3 aspects of each treatment session in which a component of treatment is
4 delegated.

5 ~~8-~~ 9. "Physical therapist" means a person who is licensed pursuant to
6 this chapter.

7 ~~9-~~ 10. "Physical therapist assistant" means a person who meets the
8 requirements of this chapter for certification and who performs physical
9 therapy procedures and related tasks that have been selected and delegated by
10 the supervising physical therapist.

11 ~~10-~~ 11. "Physical therapy" means the care and services provided by or
12 under the direction and supervision of a physical therapist who is licensed
13 pursuant to this chapter.

14 ~~11-~~ 12. "Physical therapy aide" means a person who is trained under
15 the direction of a physical therapist and who performs designated and
16 supervised routine physical therapy tasks.

17 ~~12-~~ 13. "Practice of physical therapy" means:

18 (a) Examining, evaluating and testing persons who have mechanical,
19 physiological and developmental impairments, functional limitations and
20 disabilities or other health and movement related conditions in order to
21 determine a diagnosis, a prognosis and a plan of therapeutic intervention and
22 to assess the ongoing effects of intervention.

23 (b) Alleviating impairments and functional limitations by managing,
24 designing, implementing and modifying therapeutic interventions including:

25 (i) Therapeutic exercise.

26 (ii) Functional training in self-care and in home, community or work
27 reintegration.

28 (iii) Manual therapy techniques.

29 (iv) Therapeutic massage.

30 (v) Assistive and adaptive orthotic, prosthetic, protective and
31 supportive devices and equipment.

32 (vi) Pulmonary hygiene.

33 (vii) Debridement and wound care.

34 (viii) Physical agents or modalities.

35 (ix) Mechanical and electrotherapeutic modalities.

36 (x) Patient related instruction.

37 (c) Reducing the risk of injury, impairments, functional limitations
38 and disability by means that include promoting and maintaining a person's
39 fitness, health and quality of life.

40 (d) Engaging in administration, consultation, education and research.

41 ~~13-~~ 14. "Restricted certificate" means a certificate on which the
42 board has placed any restrictions as the result of a disciplinary action.

43 ~~14-~~ 15. "Restricted license" means a license on which the board places
44 restrictions or conditions, or both, as to the scope of practice, place of

1 practice, supervision of practice, duration of licensed status or type or
2 condition of a patient to whom the licensee may provide services.

3 ~~15-~~ 16. "Restricted registration" means a registration the board has
4 placed any restrictions on as the result of disciplinary action.

5 Sec. 2. Section 32-2044, Arizona Revised Statutes, is amended to read:

6 32-2044. Grounds for disciplinary action

7 The following are grounds for disciplinary action:

8 1. Violating this chapter, board rules or a written board order.

9 2. Practicing or offering to practice beyond the scope of the practice
10 of physical therapy.

11 3. Obtaining or attempting to obtain a license or certificate by fraud
12 or misrepresentation.

13 4. Engaging in the performance of substandard care by a physical
14 therapist due to a deliberate or negligent act or failure to act regardless
15 of whether actual injury to the patient is established.

16 5. Engaging in the performance of substandard care by a physical
17 therapist assistant, including exceeding the authority to perform tasks
18 selected and delegated by the supervising licensee regardless of whether
19 actual injury to the patient is established.

20 6. Failing to supervise assistive personnel, physical therapy students
21 or interim permit holders in accordance with this chapter and rules adopted
22 pursuant to this chapter.

23 7. Conviction of a felony, whether or not involving moral turpitude,
24 or a misdemeanor involving moral turpitude. In either case conviction by a
25 court of competent jurisdiction is conclusive evidence of the commission and
26 the board may take disciplinary action when the time for appeal has lapsed,
27 when the judgment of conviction has been affirmed on appeal or when an order
28 granting probation is made suspending the imposition of sentence,
29 irrespective of a subsequent order. For the purposes of this paragraph,
30 "conviction" means a plea or verdict of guilty or a conviction following a
31 plea of nolo contendere.

32 8. Practicing as a physical therapist or working as a physical
33 therapist assistant when physical or mental abilities are impaired by disease
34 or trauma, by the use of controlled substances or other habit-forming drugs,
35 chemicals or alcohol or by other causes.

36 9. Having had a license or certificate revoked or suspended or other
37 disciplinary action taken or an application for licensure or certification
38 refused, revoked or suspended by the proper authorities of another state,
39 territory or country.

40 10. Engaging in sexual misconduct. For the purposes of this paragraph,
41 "sexual misconduct" includes:

42 (a) Engaging in or soliciting sexual relationships, whether consensual
43 or nonconsensual, while a provider-patient relationship exists.

44 (b) Making sexual advances, requesting sexual favors or engaging in
45 other verbal conduct or physical contact of a sexual nature with patients.

1 (c) Intentionally viewing a completely or partially disrobed patient
2 in the course of treatment if the viewing is not related to patient diagnosis
3 or treatment under current practice standards.

4 11. Directly or indirectly requesting, receiving or participating in
5 the dividing, transferring, assigning, rebating or refunding of an unearned
6 fee or profiting by means of any credit or other valuable consideration such
7 as an unearned commission, discount or gratuity in connection with the
8 furnishing of physical therapy services. This paragraph does not prohibit
9 the members of any regularly and properly organized business entity
10 recognized by law and composed of physical therapists from dividing fees
11 received for professional services among themselves as they determine
12 necessary to defray their joint operating expense.

13 12. Failing to adhere to the recognized standards of ethics of the
14 physical therapy profession.

15 13. Charging unreasonable or fraudulent fees for services performed or
16 not performed.

17 14. Making misleading, deceptive, untrue or fraudulent representations
18 in violation of this chapter or in the practice of the profession.

19 15. Having been adjudged mentally incompetent by a court of competent
20 jurisdiction.

21 16. Aiding or abetting a person who is not licensed or certified in
22 this state and who directly or indirectly performs activities requiring a
23 license or certificate.

24 17. Failing to report to the board any direct knowledge of an
25 unprofessional, incompetent or illegal act that appears to be in violation of
26 this chapter or board rules.

27 18. Interfering with an investigation or disciplinary proceeding by
28 failing to cooperate, by wilful misrepresentation of facts or by the use of
29 threats or harassment against any patient or witness to prevent the patient
30 or witness from providing evidence in a disciplinary proceeding or any legal
31 action.

32 19. Failing to maintain patient confidentiality without prior written
33 consent of the patient or unless otherwise required by law.

34 20. Failing to maintain adequate patient records. For the purposes of
35 this paragraph, "adequate patient records" means legible records that comply
36 with board rules and that contain at a minimum an evaluation of objective
37 findings, a diagnosis, the plan of care, the treatment record, a discharge
38 summary and sufficient information to identify the patient.

39 21. Promoting an unnecessary device, treatment intervention or service
40 for the financial gain of the practitioner or of a third party.

41 22. Providing treatment intervention unwarranted by the condition of
42 the patient or treatment beyond the point of reasonable benefit.

43 23. Failing to report to the board a name change or a change in
44 business or home address within thirty days after that change.

1 24. Failing to complete continuing competence requirements as
2 established by the board by rule.

3 25. FAILING TO DEMONSTRATE PROFESSIONAL STANDARDS OF CARE AND TRAINING
4 AND EDUCATION QUALIFICATIONS, AS ESTABLISHED BY THE BOARD BY RULE, IN THE
5 PERFORMANCE OF DRY NEEDLING WHEN PROVIDED AS A THERAPEUTIC MODALITY.

6 Sec. 3. Board of physical therapy; dry needling standards;
7 rules; exemption

8 A. On or before July 1, 2015, the board of physical therapy shall
9 establish by rule professional standards of care and training and education
10 qualifications for the performance of dry needling for therapeutic purposes.
11 A physical therapist who was performing dry needling as a therapeutic
12 modality before January 1, 2014 may continue to perform dry needling until
13 the board adopts standards of care and training and education qualifications
14 pursuant to this section and then is required to meet the standards and
15 qualifications adopted by the board.

16 B. For the purposes of this section, the board of physical therapy is
17 exempt from the rulemaking requirements of title 41, chapter 6, Arizona
18 Revised Statutes, for one year after the effective date of this act.

19 Sec. 4. Effective date

20 Section 32-2044, Arizona Revised Statutes, as amended by this act, is
21 effective from and after June 30, 2015.

APPROVED BY THE GOVERNOR APRIL 24, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2014.



KRISHNA JHAVERI <krishna.jhaveri@azdoa.gov>

Athletic Training Board Response

Karen Whiteford <karen.whiteford@otboard.az.gov>

Tue, Dec 28, 2021 at 9:32 AM

To: KRISHNA JHAVERI <krishna.jhaveri@azdoa.gov>, SIMON LARSCHIEDT <simon.larscheidt@azdoa.gov>

Members,

Yesterday afternoon, I received an email outlining concerns regarding the Arizona Board of Athletic Training's statutory authority to promulgate rules authorizing athletic trainers to practice dry needling. Due to open meeting law constraints, I was unable to meet with the Board to draft an official response. In lieu of this, please accept the response I have drafted below:

The following facts were considered when determining whether the Board could promulgate rules regarding the use of dry needling by athletic trainers:

- A.R.S. 32-4101(4) states, "Athletic training" includes the following performed under the direction of a licensed physician and **for which the athletic trainer has received appropriate education and training as prescribed by the board.**
- The statute further defines athletic training in section (d) as the use of heat, cold, water, light, sound, electricity, passive or active exercise, massage, mechanical devices or **any other therapeutic modality** to prevent, treat, rehabilitate or recondition athletic injuries.
- This statute gives the Board the statutory authority to promulgate rules to prescribe the appropriate education and training for a modality that falls under "any other therapeutic modality".
- SB 1127 was introduced in the 2020 regular legislative session. This bill directed the Board to adopt rules establishing professional standards of care and training and education qualifications for performing dry needling for therapeutic purposes. This bill was near the final stages of passage, when the Legislature adjourned early due to COVID-19.
- The Board received a letter from then Senator Brophy McGee on July 14, 2020, requesting the Board to reduce regulatory barriers to practice by pursuing a regulatory approach to the dry needling issue, rather than waiting for legislative direction to do so.
- The Board consulted with legal counsel from the Attorney General's office during multiple confidential executive sessions.

In response to the concern about the "Dry Needling Statement" posted on the Board's website, which includes the language, "The practice of dry needling does not fall within the statutory definition of athletic training.", the definition of Athletic Training states, "Athletic training includes the following performed under the direction of a licensed physician and for which the athletic trainer has received appropriate education and training as prescribed by the board." Once the appropriation education and training is prescribed by the Board (through rule), dry needling should fall under that definition.

Thank you for your time. I look forward to discussing this with you further in today's study session.

Regards,

Karen Whiteford
Executive Director
Arizona Board of Athletic Training
Arizona Board of Occupational Therapy Examiners
(602)589-8353

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CO-CHAIR
EDUCATION

DISTRICT 28

July 14, 2020

State of Arizona Board of Athletic Training
1740 West Adams Street, Ste. 3407
Phoenix, AZ 85007

Re SB 1127 (athletic trainers; dry needling)

Dear Arizona Board of Athletic Training:

As Chair of the Senate Health Committee, I sponsored SB 1127 during the 2020 regular legislative session. The bill directed the Arizona Board of Athletic Training to adopt rules establishing professional standards of care and training and education qualifications for performing dry needling for therapeutic purposes. I introduced the measure because I was convinced that Athletic Trainers (ATs) in Arizona with training and education in dry needling were unable to use the treatment modality for the benefit of their patients. This includes ATs who had been successfully practicing dry needling in other states but were restricted from doing so when they moved to Arizona. Senate Bill 1127 unanimously passed the Senate and two House Committees before the legislative session was suspended and ultimately ended because of the pandemic.

I am writing now to ask that you voluntarily pursue a regulatory approach to this issue rather than waiting for legislative direction to do so. It is my understanding that several states allow ATs to utilize dry needling as an important and effective patient treatment modality without specific statutory direction. There is also precedent for this approach in that the Arizona Board of Physical Therapy has adopted a rule to facilitate the use of the modality by physical therapists. A study in the Journal of Sports Medicine and Allied Health Sciences established that athletic training education was virtually identical to physical therapy education as it relates to this specific therapeutic modality. In fact, SB 1127 was supported by the Arizona Association of Physical Therapists.

Allowing professionals to practice to the full extent of their education and training and reducing regulatory barriers to practice have been priorities for the Legislature over the last several years. These goals are even more important in this COVID era. I am therefore asking that you explore every possible opportunity to further the purpose and intent of SB 1127 by regulation. My hope is that this will expedite an important opportunity for ATs and their patients.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Brophy McGee".

Kate Brophy McGee
Arizona State Senator
Legislative District 28

Cc: Karen Whiteford, Executive Director

PETERS, CANNATA & MOODY PLC

Tel 602 248 2900
Fax 602 248 2999
3030 North Third Street, Suite 905
Phoenix, Arizona 85012

SUSAN A. CANNATA
scannata@pcmlawaz.com

January 3, 2022

Members of the Governor's Regulatory
Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Comments in Support of Agenda Item D.1 (Arizona Board of Athletic Training)

Dear Members of the Governor's Regulatory Review Council:

I am writing on behalf of the Arizona Association of Athletic Trainers (AzATA), an organization representing more than 800 athletic trainers in the State of Arizona, to request your approval of the rules package as proposed by the Arizona Board of Athletic Training (ABAT). Athletic Trainers are licensed health care professionals engaged in the prevention, care and treatment of athletic injuries and illnesses. Athletic trainers are nationally credentialed after obtaining a master's degree from an accredited athletic training education program and passing a rigorous certification exam. AzATA has worked extensively with ABAT and other stakeholders, including legislators and the executive branch, to ensure a rules package that reduces burdens on the regulated profession and allows athletic trainers to practice to the full extent of their education and training. We ask for your support.

One component of the rules package before you is a new rule detailing the education and training required of athletic trainers when using "dry needling" in their practice. There has been no dispute that dry needling is a therapeutic modality effective for the care and treatment of athletic injuries or that athletic trainers are being adequately educated and trained in the use of this modality. Because the existing scope of practice of athletic training includes the use of any "therapeutic modality" for which athletic trainers are educated and trained, ABAT determined that it had the authority to act on the issue by adopting a rule substantially similar to the dry

needling rule adopted by the Board of Physical Therapy. ABAT proposed this dry needling rule after consultation with its own counsel from the Attorney General's Office, the regulated community and the public. Importantly, ABAT received supportive public comments regarding this rule from more than 70 individuals.

At your December 28, 2021 study session, there was some question about whether ABAT has the authority to promulgate a dry needling rule without legislative direction to do so. In response, we provided brief testimony on the background of this issue during the meeting and it was requested that we provide written comments as well. As a result, we ask that you consider this additional background and other information as you deliberate on the issue.

ABAT's Authority

In order to determine whether ABAT has authority to enact the dry needling rule, one must look at the statutes relating to athletic training and the powers granted to ABAT. *See* A.R.S. § 41-4101, *et. seq.* It is well-settled that an agency or board can make rules when the legislature gives it the power to do so. Moreover, that power can be granted in specific or general terms. *Haggard v. Indust. Comm'n*, 71 Ariz. 91, 101, 223 P.2d 915, 922 (1950) (legislative standards within which an agency may act may be stated in broad and general terms); *State v. Arizona Mines Supply Co.*, 107 Ariz. 199, 206, 484 P.2d 619, 626 (1971). As set forth below, the legislature defined the practice of athletic training and also granted ABAT the general authority to enact rules to regulate the athletic training profession.

The legislature established the parameters of the scope of practice for athletic trainers:

“Athletic training” includes the following performed under the direction of a licensed physician and for which the athletic trainer has received appropriate education and training as prescribed by the board:

...

The use of heat, cold, water, light, sound, electricity, passive or active exercise, massage, mechanical devices or any other therapeutic modality to prevent, treat, rehabilitate or recondition athletic injuries.

A.R.S. § 32-4101(4)(d). The legislature also gave ABAT rulemaking authority as it relates to an athletic trainer's use of therapeutic modalities. A.R.S. § 32-4101(4) suggests that ABAT may prescribe the appropriate education and training for the practice of athletic training. In addition, ARS § 32-4103(C) requires ABAT to prescribe the appropriate education and training for services that are proper to be performed by an athletic trainer. We believe these statutes provide the necessary authority to uphold this ABAT rule.

Legislative History

In expressing concerns about ABAT's authority, your counsel relies heavily on the prior legislative activity on the topic of dry needling. We do not dispute that the legislature has authority to instruct the regulatory boards to act on this topic, just as it did in 2014 for the Board of Physical Therapy and attempted to do in 2020 legislation for ABAT. However, the fact that the legislature can enact a specific mandate for board action does not remove any other general authority that a board may have already been granted to act on its own.

The 2014 Legislation

Prior to 2014, dry needling was being employed by certain health care professionals, including physical therapists. The statutory scope of physical therapy broadly includes therapeutic interventions for which physical therapists are education and trained. *See* A.R.S. § 32-2001(13). Those physical therapists who were educated and trained in dry needling were using the intervention in their practice, even though "dry needling" was not specifically mentioned in their scope. When the acupuncture community questioned the adequacy of these physical therapists' education and training, the legislature chose to act by requiring the Board of Physical Therapy to adopt a rule to define the education and training that would be required for a physical therapist to use dry needling as a skilled intervention. Importantly, the legislature did not expand or otherwise alter the definition of the practice of physical therapy found in A.R.S. § 32-2001(13).

Reference was made in your study session meeting to various statutes in the physical therapy act. We submit that the issue at hand is whether the definition of athletic training is broad enough to encompass dry needling as a therapeutic modality and whether ABAT therefore may prescribe the education and training required for its use. Nothing in the physical therapy statutes affect that analysis. To the contrary, we believe that ABAT is responsibly following the precedent set by the 2014 legislation and the resulting rulemaking by the Board of Physical Therapy. The only difference is that ABAT is using its general authority to act, whereas the Board of Physical Therapy was given a specific mandate to do so.

It has also been suggested to you that the fact that a definition of “dry needling” was added in the physical therapy practice act is controlling or means the modality is reserved only for physical therapists. *See* A.R.S. § 32-2001(4). We disagree. It is often the case that different health care professions share a particular treatment, modality or intervention within their scopes of practice. We know, for example, that there are health care professionals other than physical therapists, including physicians and chiropractors, who are using dry needling in their practice even though it is not specifically mentioned or defined within their practice acts. In short, the definitions found in A.R.S. § 32-2001 apply only to the chapter on physical therapy and do not control other practice acts.

The 2019/2020 Legislative Effort

Sometime after the Board of Physical Therapy enacted its rule on dry needling, ABAT considered the issue of whether athletic trainers could use dry needling in their practice. Having no similar dry needling rule, on its website, ABAT instructed athletic trainers that dry needling was not in their scope of practice. We do not know whether this instruction was based upon any legal advice or interpretation, however, the athletic training community understood that the then-ABAT board members were not likely to act to further athletic trainers’ ability to use dry needling.

In 2019, AzATA determined that the most expeditious way to access dry needling was to ask the legislature to mandate board action, similar to the 2014 legislation for physical therapists. Prior to the 2020 legislative session, AzATA filed a sunrise report out of an abundance of caution. The resulting 2020 legislation (SB 1127), however, just like the 2014 bill, was not a scope of practice expansion. It simply instructed ABAT to enact a rule detailing the education and training required when using dry needling as a therapeutic modality. As has been mentioned, that legislation was widely supported before the session was adjourned due to COVID. Importantly, even the physical therapy association supported the legislation.

After the 2020 session adjourned and at the urging of SB 1127’s sponsor, Senator Brophy McGee, AzATA decided to revisit this issue with ABAT. This work began in the summer of 2020, and it is our understanding that ABAT consulted with its own counsel in determining its authority to enact this rule. In 2021, Senator Pace introduced SB 1169, which was identical to SB 1127 from the 2020 legislative session. However, because the matter was being voluntarily handled by ABAT through rulemaking, the bill was deemed unnecessary.

Other States

Finally, we think it is worth mentioning that other states have handled this matter in a regulatory fashion. Athletic trainers in numerous states, including Colorado, District of Columbia, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, Nevada, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia, Wisconsin, and Wyoming, are currently utilizing dry needling for the benefit of their patients. In most of these states, the practice of athletic training is broadly defined in a manner similar to Arizona's definition, i.e. *"for which the athletic trainer has received appropriate education and training as prescribed by the board"* and *"any other therapeutic modality to prevent, treat, rehabilitate or recondition athletic injuries."* In many cases, regulatory boards have interpreted that language to allow dry needling without any statutory reference.

In October 2019, for example, the North Carolina Board of Athletic Training issued a directive which states, in pertinent part:

Many sports medicine and athletic training staff are beginning to utilize dry needling as a treatment technique. There has been a significant increase in dry needling certification programs and continuing education courses. Athletic trainers are typically in a good position to administer dry needling as a treatment technique in the performance of their duties. The Board has received a number of questions from licensed athletic trainers about the use of dry needling in the performance of their duties. The North Carolina Athletic Trainers Licensing Act ("Act") does not exclude dry needling from the athletic training plan of care. North Carolina law allows athletic trainers to carry out the prevention and rehabilitation of injuries through physical modalities, including heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment. North Carolina law does not allow an athletic trainer to undertake medical diagnosis. But again, based on currently available resource information, nothing in the Act prohibits or excludes dry needling from the athletic training plan of care. The athletic trainer must satisfy certain educational and training requirements prior to providing dry needling for the treatment of musculoskeletal pain and soft tissue. Dry needling is an advanced skill that requires additional training beyond entry-level education and should only be performed by athletic trainers who have demonstrated knowledge, skill, ability, and competence.

North Carolina Board of Athletic Trainer Examiners: Directive, 2019.

Similarly, in Ohio, the athletic training regulatory board included the following information on its website in response to a question about whether athletic trainers can perform dry needling:

Answer: The Ohio Athletic Training Practice Act does not specifically prohibit dry needling . . .

Therefore, the following questions should be asked to determine whether this skill is within the athletic training scope of practice:

- A. Is the task represented in entry level education and practice?
- B. Has the practitioner had continuing education to adequately prepare them to perform the task?
- C. Does this task provide for safety and welfare of the client?

This foundation should provide the framework for analyzing and determining if a task is within one's "personal" scope of practice. If the professional can provide supporting evidence that adequately addresses these areas, then the task is considered within that athletic trainer's scope of athletic training practice.

Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, FAQ on Dry Needling.

Conclusion

AzATA thanks you for considering this additional information. Our goal is and has always been to allow athletic trainers to practice to the full extent of their education and training for the benefit of their patients. AzATA has worked transparently on this issue for several years and hopes you will support the rules package in its entirety. At a minimum, we respectfully ask that you table the dry needling portion of the rules package for further research and consideration at a later date.

Sincerely,



Susan A. Cannata

January 3, 2022
Page 7

cc: Monique Coady, Assistant Attorney General
Senator Nancy Barto, Chairman – Senate Health & Human Services
Senator Tyler Pace, Vice-Chairman – Senate Health & Human Services
Representative Joanne Osborne, Chairman – House Health & Human Services
David Mesman, President, AZ Athletic Trainers' Association
Karen Whiteford, Executive Director, AZ Board of Athletic Training

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COMMITTEES:
RULES,
WAYS AND MEANS

DISTRICT 12

Arizona House of Representatives Phoenix, Arizona 85007

January 11, 2022

Members of the Governor's Regulatory
Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

RE: Arizona Board of Athletic Training Dry Needling Rules Package

Dear Members of the Governor's Regulatory Review Council,

It has come to my attention that a rules package submitted by the Arizona Board of Athletic Training (the "Board") is under your review. The Board's rules package aims to reduce regulatory burdens on athletic trainers and allows them to practice according to their education and training.

During my tenure at the Legislature, I have engaged with the Arizona Athletic Trainers' Association and their members to understand their professional needs. In 2020, as Chair of the House Regulatory Affairs Committee, I supported SB 1127 directing the Board to adopt a rule detailing the professional standards and education and training needed for athletic trainers to use dry needling as a therapeutic modality. In fact, every member of that committee supported this legislation. We were convinced that athletic trainers in Arizona have education and training equivalent to another health profession whose board enacted a dry needling rule. I was particularly bothered to hear that athletic trainers in other states were using the dry needling therapeutic modality but were forced to abandon the practice upon moving to Arizona.

Many bills died due to the abrupt end of the Legislative session, SB 1127 being one. I am aware that since that time the Arizona Athletic Trainers' Association has worked with the Board and other stakeholders to explore viable options for defining the educational and training needs for dry needling in a timely manner. I applaud the movement of this work through the rulemaking process and support the Board's rules package in its entirety. To grow and maintain a strong workforce, it is essential that Arizona regulatory boards eliminate excessive and unnecessary burdens on professionals and allow them to do what they are educated and trained to do.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Grantham".

Travis Grantham
Arizona State Representative
Chairman, House Rules Committee
Legislative District 12



ARIZONA STATE SENATE
Capitol Complex, Senate Building
Phoenix, Arizona 85007

From the office of...

Senator Tyler Pace

(602) 926-3435

Members of the Governor's Regulatory
Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

RE: Arizona Board of Athletic Training Rule on Dry Needling

Dear Members of the Governor's Regulatory Review Council:

Recently, it came to my attention that the rules package submitted by the Arizona Board of Athletic Training (ABAT) is being reviewed by the Governor's Regulatory Review Council. The proposed rules changes aim to reduce burdens on the regulated profession of athletic training and allow athletic trainers to practice to the full extent of their education and training.

I was a member of the Senate Health and Human Services Committee in 2020 when the Arizona Athletic Trainers' Association (AzATA) endorsed SB1127 directing ABAT to adopt a rule detailing the professional standards, education and training needed for athletic trainers to use dry needling as a therapeutic modality for the benefit of their patients. The legislation was widely supported, with no opposition, but was impacted by the abrupt end to the legislative session that year. In 2021, I re-introduced the dry needling legislation to ensure that ABAT would enact such a rule. However, when we became aware that ABAT rulemaking on this issue was already underway, we decided the bill was unnecessary.

At this time, I am asking that you approve the full rules package submitted by ABAT. For a year and a half, ABAT has worked collaboratively with members of the legislative and executive branches as well as key stakeholders and the public in a comprehensive and transparent effort to ensure that regulatory burdens on athletic trainers are reduced and that they are able to practice to the full extent of their education and training for the benefit of their patients. I support this regulatory approach and hope you will too.

Sincerely,

A handwritten signature in cursive script that reads "Tyler Pace".

Tyler Pace
Arizona State Senator, Legislative District 25
Vice-Chairman, Health and Human Services Committee

JOANNE OSBORNE
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DISTRICT 13



COMMITTEES:
HEALTH & HUMAN SERVICES,
Chairman
APPROPRIATIONS

January 20, 2022

Via Email @ grrccomments@azdoa.gov

Members of the Governor's Regulatory
Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

RE: Arizona Board of Athletic Training Rule on Dry Needling

Dear Members of the Governor's Regulatory Review Council:

We are writing as Chairs of the Senate and House Health and Human Services Committees to ask that you support the rules package submitted by the Arizona Board of Athletic Training (ABAT) in its entirety. One component of the rules package is the addition of a rule that clarifies the education and training needed for athletic trainers to perform the therapeutic modality of dry needling for the benefit of their patients. We are in full support of the dry needling rule because:

- ABAT has the responsibility and authority to clarify the training and education necessary for services that are proper to be performed by athletic trainers;
- ABAT is following precedent set by another allied health profession regulatory board and endorsed by this Legislature; and
- Athletic trainers in many states across the country are using dry needling to support patients consistent with broad therapeutic modality language in their practice acts along with regulatory guidance.

Today, more than ever, patients should be cared for with the full set of available services, including treatments, therapeutic modalities and techniques, and preventative and rehabilitative strategies, that healthcare professionals are educated and trained to provide. To make this happen, professionals must be allowed to practice to the full extent of their education and training, which has been a consistent priority of this Legislature and Governor Ducey. To date, athletic trainers in Arizona and those coming from other states have been unable to employ dry needling as a therapeutic modality to help their patients while waiting for enactment of this rule.

We ask that you support ABAT's rules package which reduces regulatory burdens on professionals and clarifies the education and training required when athletic trainers are using the therapeutic modality of dry needling.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Barto".

Nancy Barto, Arizona State Senator
Chairman, Senate Health and Human Services Committee

A handwritten signature in black ink, appearing to read "Joanne Osborne".

Joanne Osborne, Arizona State Representative
Chairman, House Health and Human Services Committee

BOARD OF CHIROPRACTIC EXAMINERS
Title 4, Chapter 7, Board of Chiropractic Examiners



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 12, 2022

SUBJECT: Arizona Board of Chiropractic Examiners
Title 4, Chapter 7

This Five-Year-Review Report from the Board of Chiropractic Examiners relates to rules in Title 4, Chapter 7, regarding the Board.

The Board did not propose any changes to the rules in the last 5YRR of these rules.

Proposed Action

The Board is not proposing any changes to the rules and indicates the rules are overall clear, concise, understandable, and consistent with other rules and statutes.

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

Yes, the Board cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

According to the Board, amendments have not been made to the rules since they were last revised or implemented. The impact identified at that time remains applicable. Staff notes

that the changes made in the licensing rules have greatly reduced delays in the licensing process and helped expedite applicants in getting licensed.

Stakeholders include the Board and persons regulated and licensed by the Board.

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 states that 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.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board indicates they have not received 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.

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

Yes, the Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board 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 to the rules.

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?**

Yes, the Board indicates it complies with A.R.S §. 41-1037.

11. **Conclusion**

As mentioned above, the Board is not proposing any changes to the rules.

Council staff finds the rules to be overall clear, concise, and understandable. Council staff recommends approval of the report.

Douglas A. Ducey
Governor



Justin Bohall
Interim Executive Director

State of Arizona

Board of Chiropractic Examiners

1740 West Adams Street, Suite 2430 · Phoenix, Arizona 85007
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www.chiroboard.az.gov

Tuesday, August 3, 2021

Governor's Regulatory Review Council
100 North Fifteenth Ave.
Suite 402
Phoenix, Arizona 85007

Re: Board of Chiropractic Examiners Five Year Rule Review

Dear Ms. Sornsin and Council Members,

On behalf of the Board of Chiropractic Examiners, thank you for providing the opportunity to present the enclosed Five Year Rule Review Report for Title 4, Professions and Occupations, Chapter 7, Board of Chiropractic Examiners. The Board regulates approximately 2500 licensees, externships for chiropractic students as well as registers chiropractic assistants and chiropractic business entities.

The Board is pleased to present in our report that, in accordance with EO2021-02, our agency continually works to reduce regulatory burdens and enforce the least burdensome regulations as possible to protect the health, safety and welfare of the public in Arizona. The Board conducted an extensive review of the Board's rules and performed a rulemaking process in 2018 that reduced regulations on the application process for new licensees and business entities.

This agency is in compliance with A.R.S. §41-1091.

If you have any questions, please contact me at JBohall@chiroboard.az.gov.

Kind Regards,

Justin Bohall
Interim Executive Director

State of Arizona Board of Chiropractic Examiners Five-Year-Review
August 1, 2021

The following information is identical for each group of rules listed; therefore, it is not included in the analysis of each individual rule.

1. Effectiveness

The established objective of the following rules is effectively met. The data supporting this conclusion is that the Board is able to actively and equally enforce the following rules as written. The Board received a favorable review in 2015 with minor suggested changes to our rules. The Board completed those suggested changes after completing an extensive review and rule making process in 2018. The Board was due for our current 5 year review in August of 2020, the Council approved a one year extension for Board staff to conduct an in-depth review of the rules. Over the last year we have reached out to stakeholders to receive additional feedback on our rules. Staff did not receive any written criticism or requests for substantive changes during that time period.

R4-7-101	Definitions
R4-7-104	Meetings
R4-7-201	Formation
R4-7-202	Powers and Duties
R4-7-301	Hearings
R4-7-302	Service
R4-7-303	Conduct of Hearing
R4-7-305	Rehearing or Review
R4-7-404	Investigations
R4-7-405	Refusal to Issue Licenses
R4-7-501	Display of Licenses
R4-7-502	Procedures for Processing Initial License Applications
R4-7-503	Renewal License: Issuance, Reinstatement
R4-7-504	License Denial
R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-602	Percutaneous Therapy as Applied to Chiropractic
R4-7-702	Education Requirements for Licensure
R4-7-801	Continuing Education Requirements
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-803	Effect of Suspension on Continuing Education Requirements
R4-7-901	Advertising of a Deceptive and Misleading Nature
R4-7-902	Unprofessional or Dishonorable Conduct
R4-7-1001	Eligibility; Application
R4-7-1002	Practice Limitations
R4-7-1003	Regulation and Termination of the Preceptorship Program
R4-7-1101	Use of the Term "Chiropractic Assistant"
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice
R4-7-1401	Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1402	Display of Registration
R4-7-1403	Procedures for Processing Initial Registration applications

- R4-7-1404 Business Entity Registration Renewal; Issuance, Reinstatement
- R4-7-1405 Business Entity Registration; Denial
- R4-7-1406 Reporting: Civil Penalty
- R4-7-1407 Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
- R4-7-1408 Exemptions

2. Criticisms Received within the Last 5 Years.

Over the last year board staff has reached out to stakeholders to receive additional feedback on our rules. Staff did not receive any written criticism.

The Board of Chiropractic Examiners has not received any written criticism during the past five years on any of the following rules.

- R4-7-101 Definitions
- R4-7-104 Meetings
- R4-7-201 Formation
- R4-7-202 Powers and Duties
- R4-7-301 Hearings
- R4-7-302 Service
- R4-7-303 Conduct of Hearing
- R4-7-305 Rehearing or Review
- R4-7-404 Investigations
- R4-7-405 Refusal to Issue Licenses
- R4-7-501 Display of Licenses
- R4-7-502 Procedures for Processing Initial License Applications
- R4-7-503 Renewal License: Issuance, Reinstatement
- R4-7-504 License Denial
- R4-7-601 Definition of Acupuncture as Applied to Chiropractic
- R4-7-602 Percutaneous Therapy as Applied to Chiropractic
- R4-7-702 Education Requirements for Licensure
- R4-7-801 Continuing Education Requirements
- R4-7-802 Documenting Compliance with Continuing Education Requirements
- R4-7-803 Effect of Suspension on Continuing Education Requirements
- R4-7-901 Advertising of a Deceptive and Misleading Nature
- R4-7-902 Unprofessional or Dishonorable Conduct
- R4-7-1001 Eligibility; Application
- R4-7-1002 Practice Limitations
- R4-7-1003 Regulation and Termination of the Preceptorship Program
- R4-7-1101 Use of the Term "Chiropractic Assistant"
- R4-7-1102 Chiropractic Assistant Training
- R4-7-1103 Scope of Practice
- R4-7-1401 Application for Business Entity Registration; Qualification of applicants; fee; background investigations
- R4-7-1402 Display of Registration
- R4-7-1403 Procedures for Processing Initial Registration applications
- R4-7-1404 Business Entity Registration Renewal; Issuance, Reinstatement
- R4-7-1405 Business Entity Registration; Denial
- R4-7-1406 Reporting: Civil Penalty

R4-7-1407 Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408 Exemptions

3. Consistency

The following rules do not have inconsistencies with statute or other rules.

R4-7-101 Definitions
R4-7-104 Meetings
R4-7-201 Formation
R4-7-202 Powers and Duties
R4-7-301 Hearings
R4-7-302 Service
R4-7-303 Conduct of Hearing
R4-7-305 Rehearing or Review
R4-7-404 Investigations
R4-7-405 Refusal to Issue Licenses
R4-7-501 Display of Licenses
R4-7-502 Procedures for Processing Initial License Applications
R4-7-503 Renewal License: Issuance, Reinstatement
R4-7-504 License Denial
R4-7-601 Definition of Acupuncture as Applied to Chiropractic
R4-7-602 Percutaneous Therapy as Applied to Chiropractic
R4-7-702 Education Requirements for Licensure
R4-7-801 Continuing Education Requirements
R4-7-802 Documenting Compliance with Continuing Education Requirements
R4-7-803 Effect of Suspension on Continuing Education Requirements
R4-7-901 Advertising of a Deceptive and Misleading Nature
R4-7-902 Unprofessional or Dishonorable Conduct
R4-7-1001 Eligibility; Application
R4-7-1002 Practice Limitations
R4-7-1003 Regulation and Termination of the Preceptorship Program
R4-7-1101 Use of the Term "Chiropractic Assistant"
R4-7-1102 Chiropractic Assistant Training
R4-7-1103 Scope of Practice
R4-7-1401 Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1402 Display of Registration
R4-7-1403 Procedures for Processing Initial Registration applications
R4-7-1404 Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405 Business Entity Registration; Denial
R4-7-1406 Reporting: Civil Penalty
R4-7-1407 Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408 Exemptions

4. Clarity, Conciseness, & Understandability

The following rules are clear, concise and understandable.

R4-7-101	Definitions
R4-7-104	Meetings
R4-7-201	Formation
R4-7-202	Powers and Duties
R4-7-301	Hearings
R4-7-302	Service
R4-7-303	Conduct of Hearing
R4-7-305	Rehearing or Review
R4-7-404	Investigations
R4-7-405	Refusal to Issue Licenses
R4-7-501	Display of Licenses
R4-7-502	Procedures for Processing Initial License Applications
R4-7-503	Renewal License: Issuance, Reinstatement
R4-7-504	License Denial
R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-602	Percutaneous Therapy as Applied to Chiropractic
R4-7-702	Education Requirements for Licensure
R4-7-801	Continuing Education Requirements
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-803	Effect of Suspension on Continuing Education Requirements
R4-7-901	Advertising of a Deceptive and Misleading Nature
R4-7-902	Unprofessional or Dishonorable Conduct
R4-7-1001	Eligibility; Application
R4-7-1002	Practice Limitations
R4-7-1003	Regulation and Termination of the Preceptorship Program
R4-7-1101	Use of the Term "Chiropractic Assistant"
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice
R4-7-1401	Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1402	Display of Registration
R4-7-1403	Procedures for Processing Initial Registration applications
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405	Business Entity Registration; Denial
R4-7-1406	Reporting: Civil Penalty
R4-7-1407	Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408	Exemptions

5. Economic Impact:

No Change in Economic Impact. No change in the economic impact of the following group of rules has occurred because:

- 1) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 1997. The impact identified at that time remains applicable.

R4-7-803 Effect of Suspension on Continuing Education Requirements

- 2) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 1999. The impact identified at that time remains applicable.

R4-7-1002 Practice Limitations
R4-7-1101 Use of the Term "Chiropractic Assistant"

- 3) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 2001. The impact identified at that time remains applicable.

R4-7-404 Investigation

- 4) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 2002. The impact identified at that time remains applicable.

R4-7-702 Standards of Education as Determined by the Board
R4-7-1001 Eligibility; Application
R4-7-1003 Regulation and termination of the Preceptorship Program

- 5) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 2003. The impact identified at that time remains applicable.

R4-7-901 Advertising of a Deceptive and Fraudulent Nature

- 6) Amendments have not been made since the economic impact statement cited in the Boards Five-year-rule review in 2005. The impact identified at that time remains applicable.

R4-7-104 Meetings
R4-7-201 Formation
R4-7-202 Powers and Duties
R4-7-405 Refusal to Issue Licenses

- 7) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 2007. The impact identified at that time remains applicable.

R4-7-101 Definitions
R4-7-301 Investigation of Complaints

R4-7-302	Service
R4-7-303	Conduct of Hearings
R4-7-305	Rehearing, Review of Decision
R4-7-501	Display of Licenses
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-902	Unprofessional or Dishonorable conduct
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice

8) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 2012. The impact identified at that time remains applicable.

R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-803	Effect of Suspension on Continuing Education Requirements

9) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 2014. The impact identified at that time remains applicable.

R4-7-1402	Display of Registration
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405	Business Entity Registration; Denial
R4-7-1406	Reporting: Civil Penalty
R4-7-1407	Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408	Exemptions

10) Amendments have not been made since the rule was last revised or implemented, with an economic impact statement, in 2018. The impact identified at that time remains applicable. Staff notes that the changes made in the licensing rules have greatly reduced delays in the licensing process and helped expedite applicants in getting licensed.

R4-7-502	Procedures for Processing Initial License Applications
R4-7-503	Renewal License, Issuance, Reinstatement
R4-7-602	Percutaneous Therapy as Applied to Chiropractic
R4-7-801	Continuing Education Requirements
R4-7-1301	Additional charges
R4-7-1401	Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1403	Procedures for Processing Initial Registration applications
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement

11) Analysis

There has been no analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states for the following rules.

R4-7-101	Definitions
R4-7-104	Meetings
R4-7-201	Formation

R4-7-202	Powers and Duties
R4-7-301	Hearings
R4-7-302	Service
R4-7-303	Conduct of Hearing
R4-7-305	Rehearing or Review
R4-7-404	Investigations
R4-7-405	Refusal to Issue Licenses
R4-7-501	Display of Licenses
R4-7-502	Procedures for Processing Initial License Applications
R4-7-503	Renewal License: Issuance, Reinstatement
R4-7-504	License Denial
R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-602	Percutaneous Therapy as Applied to Chiropractic
R4-7-702	Education Requirements for Licensure
R4-7-801	Continuing Education Requirements
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-803	Effect of Suspension on Continuing Education Requirements
R4-7-901	Advertising of a Deceptive and Misleading Nature
R4-7-902	Unprofessional or Dishonorable Conduct
R4-7-1001	Eligibility; Application
R4-7-1002	Practice Limitations
R4-7-1003	Regulation and Termination of the Preceptorship Program
R4-7-1101	Use of the Term "Chiropractic Assistant"
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice
R4-7-1401	Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1402	Display of Registration
R4-7-1403	Procedures for Processing Initial Registration applications
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405	Business Entity Registration; Denial
R4-7-1406	Reporting: Civil Penalty
R4-7-1407	Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408	Exemptions

12) The agency included the following rules in the agency's previous five-year review.

R4-7-101	Definitions
R4-7-104	Meetings
R4-7-201	Formation
R4-7-202	Powers and Duties
R4-7-301	Hearings
R4-7-302	Service
R4-7-303	Conduct of Hearing
R4-7-305	Rehearing or Review
R4-7-404	Investigations
R4-7-405	Refusal to Issue Licenses
R4-7-501	Display of Licenses
R4-7-502	Procedures for Processing Initial License Applications

R4-7-503	Renewal License: Issuance, Reinstatement
R4-7-504	License Denial
R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-702	Education Requirements for Licensure
R4-7-801	Continuing Education Requirements
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-803	Effect of Suspension on Continuing Education Requirements
R4-7-901	Advertising of a Deceptive and Misleading Nature
R4-7-902	Unprofessional or Dishonorable Conduct
R4-7-1001	Eligibility; Application
R4-7-1002	Practice Limitations
R4-7-1003	Regulation and Termination of the Preceptorship Program
R4-7-1101	Use of the Term "Chiropractic Assistant"
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice
R4-7-1401	Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1402	Display of Registration
R4-7-1403	Procedures for Processing Initial Registration applications
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405	Business Entity Registration; Denial
R4-7-1406	Reporting: Civil Penalty
R4-7-1407	Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408	Exemptions

13) The following 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.

R4-7-101	Definitions
R4-7-104	Meetings
R4-7-201	Formation
R4-7-202	Powers and Duties
R4-7-301	Hearings
R4-7-302	Service
R4-7-303	Conduct of Hearing
R4-7-305	Rehearing or Review
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R4-7-405	Refusal to Issue Licenses
R4-7-501	Display of Licenses
R4-7-502	Procedures for Processing Initial License Applications
R4-7-503	Renewal License: Issuance, Reinstatement
R4-7-504	License Denial
R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-602	Percutaneous Therapy as Applied to Chiropractic
R4-7-702	Education Requirements for Licensure
R4-7-801	Continuing Education Requirements
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-803	Effect of Suspension on Continuing Education Requirements
R4-7-901	Advertising of a Deceptive and Misleading Nature

R4-7-902	Unprofessional or Dishonorable Conduct
R4-7-1001	Eligibility; Application
R4-7-1002	Practice Limitations
R4-7-1003	Regulation and Termination of the Preceptorship Program
R4-7-1101	Use of the Term "Chiropractic Assistant"
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice
R4-7-1401	Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1402	Display of Registration
R4-7-1403	Procedures for Processing Initial Registration applications
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405	Business Entity Registration; Denial
R4-7-1406	Reporting: Civil Penalty
R4-7-1407	Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408	Exemptions

- 14) Determination that the rule is not more stringent than a corresponding federal law.

The following rules are not deemed more stringent than any corresponding federal law.

R4-7-101	Definitions
R4-7-104	Meetings
R4-7-201	Formation
R4-7-202	Powers and Duties
R4-7-301	Hearings
R4-7-302	Service
R4-7-303	Conduct of Hearing
R4-7-305	Rehearing or Review
R4-7-404	Investigations
R4-7-405	Refusal to Issue Licenses
R4-7-501	Display of Licenses
R4-7-502	Procedures for Processing Initial License Applications
R4-7-503	Renewal License: Issuance, Reinstatement
R4-7-504	License Denial
R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-602	Percutaneous Therapy as Applied to Chiropractic
R4-7-702	Education Requirements for Licensure
R4-7-801	Continuing Education Requirements
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-803	Effect of Suspension on Continuing Education Requirements
R4-7-901	Advertising of a Deceptive and Misleading Nature
R4-7-902	Unprofessional or Dishonorable Conduct
R4-7-1001	Eligibility; Application
R4-7-1002	Practice Limitations
R4-7-1003	Regulation and Termination of the Preceptorship Program
R4-7-1101	Use of the Term "Chiropractic Assistant"
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice

R4-7-1401	Application for Business Entity Registration; Qualification of applicants; fee; background investigations
R4-7-1402	Display of Registration
R4-7-1403	Procedures for Processing Initial Registration applications
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405	Business Entity Registration; Denial
R4-7-1406	Reporting: Civil Penalty
R4-7-1407	Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408	Exemptions

15) Regulatory permit, license or agency authorization compliance with §41-1037

A regulatory permit or license is not required of the following rules.

R4-7-101	Definitions
R4-7-104	Meetings
R4-7-201	Formation
R4-7-202	Powers and Duties
R4-7-301	Hearings
R4-7-302	Service
R4-7-303	Conduct of Hearing
R4-7-305	Rehearing or Review
R4-7-404	Investigations
R4-7-405	Refusal to Issue Licenses
R4-7-501	Display of Licenses
R4-7-502	Procedures for Processing Initial License Applications
R4-7-503	Renewal License: Issuance, Reinstatement
R4-7-504	License Denial
R4-7-601	Definition of Acupuncture as Applied to Chiropractic
R4-7-702	Education Requirements for Licensure
R4-7-801	Continuing Education Requirements
R4-7-802	Documenting Compliance with Continuing Education Requirements
R4-7-803	Effect of Suspension on Continuing Education Requirements
R4-7-901	Advertising of a Deceptive and Misleading Nature
R4-7-902	Unprofessional or Dishonorable Conduct
R4-7-1001	Eligibility; Application
R4-7-1002	Practice Limitations
R4-7-1102	Chiropractic Assistant Training
R4-7-1103	Scope of Practice
R4-7-1402	Display of Registration
R4-7-1403	Procedures for Processing Initial Registration applications
R4-7-1404	Business Entity Registration Renewal; Issuance, Reinstatement
R4-7-1405	Business Entity Registration; Denial
R4-7-1406	Reporting: Civil Penalty
R4-7-1407	Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct
R4-7-1408	Exemptions

Analysis of Individual Rules

R4-7-101 Definitions

3. Authorization: The Board of Chiropractic Examiners' general authority to adopt rules derives from A.R.S. § 32-904 (B).
12. Proposed Action: The Board does not propose any changes to this rule.

R4-7-104 Meetings

3. This rule is authorized by A.R.S. § 32-902 (A), which states that the Board will annually elect from its membership a chairman and vice-chairman.
6. The Board is unable to locate an economic impact statement for this rule. However, the rule has no economic impact as the rule is restricted to the election of officers.
12. The Board does not propose any changes to this rule.

R4-7-201 Formation

3. The Board of Chiropractic Examiners' general authority to adopt rules derives from A.R.S. § 32-904 (B).
12. The Board does not propose any changes to this rule.

R4-7-202 Powers and Duties

3. The Board of Chiropractic Examiners general authority to adopt rules derives from A.R.S. § 32-904 (B).
12. The Board does not propose any changes to this rule.

R4-7-301 Investigation of Complaints

3. This rule is authorized by A.R.S. § 32-924 (B), (C), (F) and (G) which permits the Board to investigate complaints and hold formal interviews or formal hearings. A.R.S. § 32-929 (A) and (B) empower the Board to carry out investigations and issue subpoenas.
12. The Board does not propose any changes to this rule.

R4-7-302 Service

3. This rule is authorized by A.R.S. § 32-924 (B), (C), (F) and (G) which permits the Board to investigate complaints and hold formal interviews or formal hearings. A. R.S. § 32-929 (A) and (B) empower the Board to carry out investigations and issue subpoenas.
12. The Board does not propose any changes to this rule.

R4-7-303 Conduct of Hearing

3. This rule is authorized by A.R.S. § 32-924 (B), (C), (F) and (G) which permit the Board to investigate complaints and hold formal interviews or formal hearings.
12. The Board does not propose any changes to this rule.

R4-7-305 Rehearing, Review of Decision

3. This rule is authorized by A.R.S. § 32-924 (B), (C), (F) and (G) which permits the Board to investigate complaints and hold formal interviews or formal hearings. A. R.S. § 32-929 (A) and (B) empower the Board to carry out investigations and issue subpoenas.
12. The Board does not propose any changes to this rule.

R4-7-404 Investigation

3. This rule is authorized by A.R.S. § 32- 921 which sets the requirements for application and empowers the Board to conduct background checks and A.R.S § 32-929 which empowers the Board to conduct investigations.
12. The Board does not propose any changes to this rule.

R4-7-405 Refusal to Issue Licenses

3. This rule is authorized by A.R.S. § 32-921 which sets the requirements for application and empowers the Board to conduct background checks and A.R.S § 32-929 which empowers the Board to conduct investigations.
12. The Board does not propose any change to this rule.

R4-7-501 Display of Licenses

3. The Board of Chiropractic Examiners' general authority to adopt rules derives from A.R.S. § 32-904 (B).
12. The Board does not propose any changes to this rule.

R4-7-502 Procedures for Processing Initial License Applications

1. Effectiveness This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 41- 1072 requires that all licensing agencies establish licensing timeframe rules.
12. The Board does not propose any changes to this rule.

R4-7-503 Renewal License, Issuance, Reinstatement

1. Effectiveness This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 41- 1072 requires that all licensing agencies establish licensing timeframes in rule.
12. The Board does not propose any changes to this rule.

R4-7-504 License; Denial

3. A.R.S. § 41- 1072 requires all licensing agencies to establish licensing timeframe rules.
12. The Board does not propose any changes to this rule.

R4-7-601 Definition of Acupuncture as Applied to Chiropractic

3. A.R.S. § 32-922.02 establishes the practice of acupuncture as a certified specialty under a license to practice chiropractic.
12. The Board does not propose any changes to this rule.

R4-7-602 Percutaneous Therapy as Applied to Chiropractic

1. This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 32-922.02 establishes the practice of physical medicine modalities and therapeutic procedures and acupuncture as a certified specialty under a license to practice chiropractic.
12. The Board does not propose any changes to this rule.

R4-7-702 Standards of Education as Determined by the Board.

3. A.R.S. § 32-921 establishes that applicants for a chiropractic license must be a graduate of a chiropractic college which meets the standards determined by the Board.
12. The Board does not propose any change to this rule.

R4-7-801 Continuing Education Requirements

1. This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 32-931 establishes that licensees must meet continuing education requirements and that compliance with the law be documented at the times and in the manner as prescribed by the Board.
12. The Board does not propose any change to this rule.

R4-7-802 Documenting Compliance with Continuing Education Requirements

3. A.R.S. § 32-931 establishes that licensees must meet continuing education requirements and that compliance with the law shall be documented at the times and in the manner prescribed by the Board.
12. The Board does not propose any change to this rule.

R4-7-803 Effect of Suspension on Continuing Education Requirements.

3. A.R.S. § 32-931 establishes that licensees must meet continuing education requirements.
12. The Board does not propose any change to this rule.

R4-7-901 Advertising of a Deceptive and Fraudulent Nature

3. A.R.S. § 32-924 identifies those actions for which a licensee can be sanctioned, including advertising in a false, deceptive or misleading manner.
12. The Board does not propose any change to this rule.

R4-7-902 Unprofessional or Dishonorable Conduct Activities

3. A.R.S. § 32-924 identifies those actions for which a licensee can be sanctioned, including unprofessional conduct.
12. The Board does not propose any change to this rule.

R4-7-1001 Eligibility; Application

3. A.R.S. § 32-926 establishes a preceptorship program under the approval of the Board.
12. The Board does not propose any change to this rule.

R4-7-1002 Practice Limitations

3. A.R.S. § 32-926 establishes a preceptorship program under the approval of the Board.
12. The Board does not propose any change to this rule.

R4-7-1003 Regulation and Termination of the Preceptorship Program

3. A.R.S. § 32-926 establishes a preceptorship program under the approval of the Board.
12. The Board does not propose any change to this rule.

R4-7-1101 Use of the Term "Chiropractic Assistant".

3. A.R.S. § 32-900 defines a chiropractic assistant and A.R.S § 32- 930 authorizes the employment of a chiropractic assistant.
12. The Board does not propose any change to this rule.

R4-7-1102 Chiropractic Assistant Training

3. A.R.S. § 32-900 defines a chiropractic assistant and A.R.S § 32-930 authorizes the employment of a chiropractic assistant.
12. The Board does not propose any change to this rule.

R4-7-1103 Scope of Practice

3. A.R.S. § 32-900 defines a chiropractic assistant and A.R.S § 32-930 authorizes the employment of a chiropractic assistant.
12. The Board does not propose any change to this rule.

R4-7-1301 Additional Fees

1. This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 32-907 empowers the Board to charge for services or resources at the cost of rendering such services.
12. The Board does not propose any change to this rule.

R4-7-1401 Application for Business Entity Registration; Qualification of applicants; fee; background investigations

1. This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 32-934 defines a chiropractic business entity, registration, fees, and exempt entities.
12. The Board does not propose any change to this rule.

R4-7-1402 Display of Registration

3. A.R.S. § 32-934 defines a chiropractic business entity, registration, and fees.
12. The Board does not propose any change to this rule.

R4-7-1403 Procedures for Processing Initial Registration applications

1. This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 32-934 defines a chiropractic business entity, registration, fees, and exempt entities.
12. The Board does not propose any change to this rule.

R4-7-1404 Business Entity Registration Renewal; Issuance, Reinstatement

1. This rule was updated in Final Rulemaking on January 1, 2018.
3. A.R.S. § 32-934 defines a chiropractic business entity, registration, fees, and exempt entities.
12. The Board does not propose any change to this rule.

R4-7-1405 Business Entity Registration; Denial

3. A.R.S. § 32-934 defines a chiropractic business entity, registration, fees, and exempt entities.
12. The Board does not propose any change to this rule.

R4-7-1406 Reporting: Civil Penalty

3. A.R.S. § 32-934 defines a chiropractic business entity, registration, fees, and exempt entities.
12. The Board does not propose any change to this rule.

R4-7-1407 Licensed Doctors of Chiropractic and Business Entity, unprofessional conduct

3. A.R.S. § 32-934 defines a chiropractic business entity, registration, fees, and exempt entities.
12. The Board does not propose any change to this rule.

R4-7-1408 Exemptions

3. A.R.S. § 32-934 defines a chiropractic business entity, registration, fees, and exempt entities.
12. The Board does not propose any change to this rule.



**Arizona Board of Chiropractic
Examiners**

5 YEAR REVIEW REPORT

**Arizona Revised Statutes Volume 10, Title 32,
Professions and Occupations Chapter 8, Chiropractic**

January 2022

1. Authorization of the rule by existing statutes

A.R.S. § 32-900, 32-901, 32-902, 32-903, 32-904, 32-905, 32-906, 32-907, 32-921, 32-922, 32-922.01, 32-922.02, 32-922.03, 32-923, 32-924, 32-925, 32-926, 32-927, 32-928, 32-929, 32-930, 32-931, 32-932, 32-933, 32-934

2. The objective of each rule:

Rule	Objective
R4-7-101	The objective of the rule is to interpret and explain words used in chiropractic law.
R4-7-104	The objective of the rule is to interpret and explain the occurrence of the annual election of officers.
R4-7-201	The objective of the rule is to interpret and explain the Board’s authority to create and form committees to assist in carrying out its duties.
R4-7-202	The objective of the rule is to interpret and explain the duties and powers of committees and report findings and make recommendations to the Board.
R4-7-301	The objective of this rule is to specify requirements and procedures for the investigation of a complaint about potential violations of A.R.S. § 32-900 et seq.
R4-7-302	The objective of this rule is to specify requirements and procedures for notification for service in regards to complying with a Board investigation.
R4-7-303	The objective for this rule specifies requirements and procedures for conducting hearings and formal interviews conducted before the Board pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 32, Chapter 8, Article 2.
R4-7-305	The objective of this rule is to specify requirements and procedures for a rehearing or review process of a Board decision.
R4-7-404	The objective of this rule is rule specify requirements for a licensure applicant to appear before the Board and supply information or documents necessary to establish the qualifications of the applicant.
R4-7-405	The objective of the rule is to interpret and explain the Board’s authority to deny a license when an applicant is determined not to have met the necessary requirements and the process for notification of the Board’s decision.
R4-7-501	The objective of this rule is to ensure the conspicuous, public display of current chiropractic and other establishment licenses.
R4-7-502	The objective of this rule is to specify requirements and procedures for the issuance of an original chiropractic establishment license.
R4-7-503	The objective of this rule is to specify the time and procedural requirements for the renewal and reinstatement of a chiropractic license.
R4-7-504	The objective of this rule is rule specify requirements and procedures for notification when the Board denies a license and the right to appeal the decision.

R4-7-601	The objective of the rule is to interpret and explain the use and definition of acupuncture as it is applied to chiropractic care.
R4-7-602	The objective of the rule is to interpret and explain the use and definition of percutaneous therapy as it is applied to chiropractic care.
R4-7-702	The objective of the rule is to interpret and explain the educational requirements for licensure.
R4-7-801	The objective of this rule is to provide requirements for continuing education and to specify the courses approved for continuing education and guidelines for courses submitted for approval.
R4-7-802	The objective of this rule is to provide requirements for documenting and maintaining records as they relate to continuing education.
R4-7-803	The objective of this rule is to interpret and explain the requirements for completing continuing education courses for each calendar year or part of the year that the license is suspended before the license may be reinstated or renewed.
R4-7-901	The objective of the rule is to set forth specific acts that would constitute unprofessional conduct.
R4-7-902	The objective of the rule is to set forth specific acts that would constitute unprofessional or dishonorable conduct.
R4-7-1001	The objective of this rule is to provide requirements for a Preceptorship training program and the application and fee requirements.
R4-7-1002	The objective of this rule is to specify what an extern may do within statutory guidelines during their preceptorship.
R4-7-1003	The objective of this rule is to specify the regulation and termination of the preceptorship program.
R4-7-1101	The objective of the rule is to interpret and explain words as it is used to define Chiropractic Assistant.
R4-7-1102	The objective of this rule is to specify the regulation as it relates to chiropractic assistant training.
R4-7-1103	The objective of this rule is to specify what a chiropractic assistant may do within statutory guidelines during their preceptorship.
R4-7-1301	The objective of this rule is to set fees for license application, license issuance, renewal, establishment license fees, and additional fees.
R4-7-1401	The objective of this rule is to specify the requirements and procedures for applying for a business entity that uses the services of a licensed doctor of chiropractic to provide a service, supervise the provision of services, act as a clinical director or otherwise perform any function under a person's chiropractic license.
R4-7-1402	The objective of this rule is to ensure the conspicuous, public display of current b and other business entity license and other establishment licenses.
R4-7-1403	The objective of this rule is to specify the requirements and procedures as it relates to the processing of the initial registration application.
R4-7-1404	The objective of this rule is to specify the requirements and procedures as it relates to the issuance, renewal, and reinstatement of a business entity license.
R4-7-1405	The objective of this rule is to specify the requirements and procedures as it relates to the denial of a business entity registration.
R4-7-1406	The objective of this rule is to establish the reporting requirements for changes to a business entity and the penalties should the entity not comply with the requirements.
R4-7-1407	The objective of the rule is to set forth specific acts that would constitute unprofessional conduct as it relates to doctors of chiropractic and business entities.
R4-7-1408	The objective of this rule is to establish that the chiropractic assistant does not hold a license and is not exempt from A.R.S. § 32-934.

3. **Are the rules effective in achieving their objectives?**

YES

4. **Are the rules consistent with other rules and statutes?**

YES

5. **Are the rules enforced as written?**

YES

6. **Are the rules clear, concise, and understandable?**

YES

7. **Has the agency received written criticisms of the rules within the last five years?**

The Board has received no written criticisms of the rules during the last five years

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules has not differed from original economic impact statements at the adoption of rules. All rules made have had minimal or no economic impact on the Board, other state agencies, private entities, small businesses, and consumers. In this comparison, Minimal means less than \$1,000, moderate means \$1,000, to \$10,000 and substantial means more than \$10,000.

9. **Has the agency received any business competitiveness analyses of the rules?**

NO

10. **Has the agency completed the course of action indicated in the agency's previous five-year review report?**

The agency's previous five-year review report did not indicate any course of action.

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:**

Notwithstanding any costs imposed by statutes or caused by the rules of other agencies, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?**

Not applicable. There is no corresponding federal law.

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies**

Yes, the Board indicates that complies with A.R.S. §41-1037

14. **Proposed course of action**

None.



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 07. Board of Chiropractic Examiners

Sections, Parts, Exhibits, Tables or Appendices modified

Article 6. Acupuncture Certification (being amended to) Specialty Certifications

R4-7-502, R4-7-503, R4-7-602, R4-7-801, R4-7-1301, R4-7-1401, R4-7-1403, R4-7-1404

REMOVE Supp. 14-3
Pages: 1 - 19

REPLACE with Supp. 17-4
Pages: 1 - 21

The agency's contact person who can answer questions about rules in this Chapter:

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Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, 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

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. An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

(Authority: A.R.S. § 32-904 et seq.)

Editor's Note: All former rules renumbered, and a new Article 10 added (Supp. 85-5).

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New Article 8, consisting of Sections R4-7-801 through R4-7-803, adopted effective June 19, 1997 (Supp. 97-2).

Article 8, consisting of Sections R4-7-60 through R4-7-62,

renumbered as Sections R4-7-801 through R4-7-803, effective September 27, 1985 (Supp. 85-5).

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Former Sections R4-7-1001 through R4-7-1003 repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2). New Sections R4-7-1001 through R4-7-1003 adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

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Article 12, consisting of Sections R4-7-1201 through R4-7-1204, made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4).

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Article 13, consisting of Section R4-7-1301, adopted by final rulemaking at 5 A.A.R. 4532, effective November 9, 1999 (Supp. 99-4).

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Article 14, consisting of Section3 R4-7-1401 through R4-7-1408, made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp. 14-3).

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ARTICLE 1. DEFINITIONS; MEETINGS**R4-7-101. Definitions**

In addition to the definitions in A.R.S. § 32-900, unless otherwise specified, the following terms have the following meanings:

1. "Adequate patient records" means legible chiropractic records containing, at the minimum, sufficient information to identify the patient and physician, support the diagnosis, identify the specific elements of the chiropractic service performed, indicate special circumstances or instruction provided to the patient, if any, identify a treatment plan, and provide sufficient information for another practitioner to assume continuity of patient care.
2. "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. except for state holidays.
3. "C.A." means a chiropractic assistant under A.R.S. § 32-900.
4. "Certification" means approval to practice chiropractic specialties under A.R.S. § 32-922.02.
5. "Chiropractor" means doctor of chiropractic or chiropractic physician pursuant to A.R.S. §§ 32-925(A), 32-926(A) and (B) and may be designated by the abbreviation "D.C."
6. "Controlled substance" means a drug or substance identified, defined, or listed in A.R.S. Title 36, Chapter 27, Article 2.
7. "Device" has the same meaning as prescribed in A.R.S. § 32-1901.
8. "Diagnosis" means the determination of the nature of a condition or illness under A.R.S. § 32-925(A) and (B).
9. "Dispense" means to deliver to an ultimate user under A.R.S. § 32-925(A) and (B).
10. "Extern" means a student of a Board-approved chiropractic college who participates in the preceptorship training program.
11. "License" means a document issued by the Board to practice chiropractic
12. "Non-prescription drug" or "over-the-counter drug" has the same meaning as prescribed in A.R.S. § 32-1901. Drug has the same meaning as prescribed in A.R.S. § 32-1901, but does not include those substances referenced in subsection (13).
13. "Nutrition" includes, but is not limited to, vitamins, minerals, water, enzymes, botanicals, homeopathic preparations, phytonutrients, glandular extracts, and natural hormones.
14. "Preceptor" means a supervising chiropractor approved by the Board to supervise a student in a Board approved preceptorship training program.
15. "Preceptorship training program" means a Board approved program by which a student may practice chiropractic under the supervision of a preceptor.
16. "Prescribe" means to order or recommend a treatment or device.
17. "Prescription drug" has the same meaning as prescribed in A.R.S. § 32-1901.
18. "Supervision" means a licensed chiropractor is present in the office, sees a patient, assigns the work to be done regarding the patient, and is available to check the work of the supervised individual as it progresses and the completed work.

Historical Note

Adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-01 renumbered as Section R4-7-101 and amended effective September 27, 1985 (Supp. 85-5). Amended effective December 18, 1992 (Supp. 92-4).

Amended effective July 6, 1993 (Supp. 93-3). Amended effective June 19, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 14 A.A.R. 502, effective April 5, 2008 (Supp. 08-1).

R4-7-102. Repealed**Historical Note**

Adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-02 renumbered as Section R4-7-102 without change effective September 27, 1985 (Supp. 85-5). Repealed effective July 6, 1993 (Supp. 93-3).

R4-7-103. Renumbered**Historical Note**

Former Section R4-7-03 renumbered as Section R4-7-103 effective September 27, 1985 (Supp. 85-5).

R4-7-104. Meetings

The Board shall hold its annual election of officers during its July meeting.

Historical Note

Former Article I, Rules 1, 2, and 3; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-04 renumbered as Section R4-7-104 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3).

ARTICLE 2. COMMITTEES**R4-7-201. Formation**

The Board may from time to time appoint such committees as it deems necessary or proper to assist it in carrying out its duties. Committees may be appointed for such periods of time as the Board designates.

Historical Note

Former Article II, Rule 1; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-10 renumbered as Section R4-7-201 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3).

R4-7-202. Powers and duties

Committees appointed by the Board shall make reports to the Board based on their findings or investigations and may make recommendations for further action by the Board.

Historical Note

Former Article II, Rule 2; Former Section R4-7-11 renumbered as Section R4-7-202 without change effective September 27, 1985 (Supp. 85-5).

R4-7-203. Renumbered**Historical Note**

Former Article II, Rule 3; Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-12 renumbered as Section R4-7-203 effective September 27, 1985 (Supp. 85-5).

ARTICLE 3. HEARINGS**R4-7-301. Investigation of a Complaint**

- A. The Board may investigate any complaint alleging violation of A.R.S. § 32-900 et seq. or this Chapter.
- B. A subpoena compelling the production of documentary evidence or testimony of a witness under A.R.S. § 32-929 shall bear the seal of the Board and the signature of any member of the Board or the Board's executive director.

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- C. If the Board finds probable cause that a licensee has violated A.R.S. § 32-900 et seq. or this Chapter, the Board shall notice the licensee of the time and place for a formal interview under A.R.S. Title 32, Chapter 8, Article 2, for a public hearing under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Article III, Rule 1; Former Section R4-7-15 repealed, new Section R4-7-15 adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-15 renumbered as Section R4-7-301 without change effective September 27, 1985 (Supp. 85-5). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended by final rulemaking at 7 A.A.R. 1539, effective March 13, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

R4-7-302. Service

- A. Service of any document, or a copy thereof, is deemed to have been made upon personal service or by enclosing a copy of the document in a sealed envelope and depositing the envelope as certified mail in the United States mail, with first-class postage prepaid, addressed to the party, at the address last provided to the Board.
- B. Service by mail is deemed complete five days following the day the paper to be served is deposited in the United States mail.
- C. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted but, if the last day falls on a Sunday or a holiday, that day is not counted and service is considered completed on the next business day.
- D. The Board shall mail each notice of formal interview or hearing and final decision by certified mail to the last known address reflected in the records of the Board.
- E. In addition to service of any pleading upon the Board or any member of the Board, a copy of the pleading shall also be served upon the Attorney General of this state.

Historical Note

Former Article III, Rule 2; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-16 renumbered as Section R4-7-302 without change effective September 27, 1985 (Supp. 85-5). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

R4-7-303. Conduct of Hearing or Formal Interview

- A. All hearings shall be conducted before the Board or a hearing officer pursuant to A.R.S. Title 41, Chapter 6, Article 10. All formal interviews shall be conducted before the Board pursuant to A.R.S. Title 32, Chapter 8, Article 2.
- Parties may stipulate to any facts that are not in dispute. Stipulations may be made in writing or orally by reading the stipulation into the record. A stipulation is binding upon the parties unless the Board grants permission to withdraw from the stipulation. The Board may set aside any stipulation and proceed to ascertain the facts.
 - The Board may, of its own motion or at request of any party, call a conference of the parties at the opening of any hearing or formal interview or at any subsequent time, for the purpose of clarifying the procedural steps to be followed in the proceeding, or the legal or factual issues involved.
 - By order of the Board, proceedings involving a common question of law or fact may be consolidated for hearing or formal interview regarding any or all matters at issue.

- B. If a licensee fails to appear when noticed at any proceeding before the Board, the Board may act upon the available evidence and information without further notice to the licensee.

Historical Note

Former Article III, Rule 3; Former Section R4-7-17 repealed, new Section R4-7-17 adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-17 renumbered as Section R4-7-303 without change effective September 27, 1985 (Supp. 85-5). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

R4-7-304. Repealed**Historical Note**

Former Article III, Rule 4; Former Section R4-7-18 renumbered as Section R4-7-304 without change effective September 27, 1985 (Supp. 85-5). Section repealed effective July 6, 1993 (Supp. 93-3).

R4-7-305. Rehearing or Review

- A. Except as provided in subsection (G), any party in an appealable agency action or contested case before the Board aggrieved by a decision may file with the Board a written motion for rehearing or review specifying the particular grounds not later than 30 days after service of the final administrative decision.
- B. A party may amend a motion for rehearing or review no later than eight days prior to the date set for the Board to rule on the motion. A party may respond within 15 days after service of the motion or amended motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. The Board may grant a rehearing or review for any of the following causes materially affecting the moving party's rights:
- Irregularity in the administrative proceedings of the Board, its hearing officer, or the prevailing party, or any order or abuse of discretion that deprives the moving party of a fair hearing;
 - Misconduct of the Board, the hearing officer, or the prevailing party;
 - Accident or surprise that could not have been prevented by ordinary prudence;
 - Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - Excessive or insufficient penalties;
 - Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
 - That the decision is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- E. Not later than 10 days after the decision, the Board may, after serving each party with notice and an opportunity to be heard, 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. The Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- F. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be served with the motion. An oppos-

ing party may, within 10 days after service, serve an opposing affidavit. The Board may extend the period for serving an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.

- G.** If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, or safety and that a rehearing or review 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 or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Historical Note

Adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-7-19 renumbered as Section R4-7-305 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3). Amended effective June 23, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 1539, effective March 13, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1846, effective July 10, 2007 (Supp. 07-2).

ARTICLE 4. EXAMINATIONS

R4-7-401. Repealed

Historical Note

Former Article IV, Rule 1 (in part); Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-20 renumbered as Section R4-7-401 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4).

R4-7-402. Renumbered

Historical Note

Former Article IV, Rule 1 (in part); Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-21 renumbered as Section R4-7-402 effective September 27, 1985 (Supp. 85-5).

R4-7-403. Repealed

Historical Note

Former Article IV, Rule 1 (in part); Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-22 renumbered as Section R4-7-403 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4).

R4-7-404. Investigations

The Board may require an applicant to appear and supply to the Board information or documents necessary to establish the qualifications of applicant.

Historical Note

Former Article IV, Rule 2; Former Section R4-7-23 renumbered as Section R4-7-404 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 7 A.A.R. 1539, effective March 13, 2001 (Supp. 01-1). Amended by final rulemaking at 18 A.A.R. 2552, effective November 19, 2012 (Supp. 12-3).

R4-7-405. Refusal to Issue Licenses

If the Board, after investigation of an applicant either before or after the applicant has taken the examination, determines that an applicant is not qualified to be issued a license, the Board shall notify

applicant immediately of its decision to refuse to issue a license and the reasons therefore.

Historical Note

Former Article IV, Rule 3; Former Section R4-7-24 renumbered as Section R4-7-405 without change effective September 27, 1985 (Supp. 85-5). Amended effective December 9, 1994 (Supp. 94-4).

R4-7-406. Repealed

Historical Note

Former Article IV, Rule 4; Former Section R4-7-25 renumbered as Section R4-7-406 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4).

ARTICLE 5. LICENSES

R4-7-501. Display of Licenses

A licensee shall, at all times, display the license issued to the licensee by the Board in a conspicuous place at all locations where the licensee engages in the practice of chiropractic, including mobile practices. A licensee shall, upon request of any person, produce for inspection the license renewal certificate for the current calendar year.

Historical Note

Former Article V, Rule 1; Former Section R4-7-30 renumbered as Section R4-7-501 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 7 A.A.R. 2821, effective June 12, 2001 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

R4-7-502. Procedures for Processing Initial License Applications

- A.** An applicant may obtain a license application package at the Board Office on business days, from the Board website, or by requesting that the Board mail the application to an address specified by the applicant. An applicant shall pay the Board a non-refundable \$10 fee for each license application package.
- B.** A completed license application package shall be submitted to the Board office on business days. The Board shall deem the license application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office;
- C.** To complete a license application package, an applicant shall provide the following information and documentation:
 1. Two identical passport quality photographs, showing the applicant's full front face and a description of identifying characteristics, if any;
 2. The applicant's full current name and any former names;
 3. The applicant's current home and all office addresses, current home and all office phone numbers, all current office fax numbers, and any previous home or office address or addresses for the past five years;
 4. The type of license, for which application is made;
 5. All applicable fees.
 6. A record of education requirements described in A.R.S. § 32-921(B) including the applicant's chiropractic college transcript and the applicant's certificate of attainment of passing scores for Parts I, II, III, and IV of the examination conducted by the National Board of Chiropractic Examiners;
 7. Any record of being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or

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- charge within the last 12 months. The applicant shall submit any record of being refused a license to practice chiropractic or any other health care profession in this or any other state, and any record of a formal sanction taken against the applicant's license in this or any other state;
8. A completed fingerprint card;
 9. A list of all other states or jurisdictions in which the applicant is or has been licensed or certified to practice chiropractic or any other health care profession with a verification of good standing for each current license or certification submitted directly by the licensing agency of the other state or jurisdiction;
 10. The name and professional designation of the owner or owners of the clinic or office at which the applicant will be employed, if applicable;
 11. The applicant's Social Security number;
 12. The applicant's notarized signature, attesting to the truthfulness of the information provided by the applicant;
 13. A score of 75% or higher on the Arizona Jurisprudence Examination. The applicant shall not sit for the Arizona Jurisprudence Examination until the application package is otherwise complete.
- D.** Within 25 business days of receiving a license application package, the Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing. If the Board does not provide notice to the applicant, the license application package shall be deemed complete after the passage of 25 business days.
- E.** An applicant with an incomplete license application package shall supply the missing information within 60 calendar days from the date of the notice. An applicant who is unable to supply the missing information within 60 calendar days may submit a written request to the Board for an extension of time in which to provide a complete application package. The request for an extension of time shall be submitted to the Board office before the 60-day deadline for submission of a complete application package, and shall state the reason that the applicant is unable to comply with the 60-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 60-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.
- F.** If an applicant fails to submit a complete license application package within the time permitted, the Board shall close the applicant's file and send a notice to the applicant by U.S. Mail that the application file has been closed. An applicant whose file has been closed and who later wishes to become licensed, shall apply anew.
- G.** After receiving all missing information as specified in subsection (E), the Board shall notify the applicant that the license application package is complete.
- H.** The Board shall render a licensing decision no later than 120 business days after receiving a completed license application package. The Board shall deem a license application package to be complete on the postmarked date of the notice advising the applicant that the package is complete.
- I.** An applicant seeking initial licensure by reciprocity under A.R.S. § 32-922.01 shall submit an application to the Board and shall comply with all provisions of R4-7-502 except that the applicant is not required to submit proof of obtaining a passing score on Part IV of the examination conducted by the National Board of Chiropractic Examiners.
- J.** An applicant seeking initial licensure by endorsement under A.R.S. § 32-922.03 shall submit an application to the Board and shall comply with all provisions of R4-7-502 except that the applicant is not required to submit proof of obtaining a passing score on Part III & IV of the examination conducted by the National Board of Chiropractic Examiners.
- K.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for initial licenses:
1. Administrative completeness review time-frame: 25 business days.
 2. Substantive review time-frame: 120 business days.
 3. Overall time-frame: 145 business days.
- Historical Note**
- Former Article V, Rule 2; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-31 renumbered as Section R4-7-502 without change effective September 27, 1985 (Supp. 85-5). Repealed effective July 6, 1993 (Supp. 93-3). Adopted effective November 1, 1998; filed in the Office of the Secretary of State October 22, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2). Amended by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).
- R4-7-503. Renewal License: Issuance, Reinstatement**
- A.** Under A.R.S. § 32-923(B), an individual licensed under A.R.S. Title 32, Chapter 8, shall renew the license every year before January 1.
- B.** The licensee renewal application shall be returned to the Board office on a business day. The date of receipt shall be the post-marked date or the date the licensee hand delivers the license renewal application.
- C.** To complete a license renewal application, a licensee shall provide the following information and documentation:
1. The licensee's full name;
 2. The licensee's current home and office addresses, current home and all office phone numbers, and all current office fax numbers;
 3. The name and professional designation of the owner or owners of the clinic or office at which the licensee is employed;
 4. The licensee's Social Security number;
 5. A record of any professional disciplinary investigation or sanction taken against the licensee by a licensing board since the licensee last applied for renewal of a license in this or any other state;
 6. A record of any arrest, indictment or charge or any conviction or plea agreement for a misdemeanor or felony since the licensee last applied for renewal of the license;
 7. The renewal fee as required by A.R.S. § 32-923;
 8. Attestation of compliance with the continuing education requirements under A.R.S. § 32-931 and R4-7-801. The licensee shall attest to compliance with continuing education requirements by documenting, on the renewal form, the date or dates the continuing education course was attended, the number of hours of continuing education completed, the qualifying course topic or topics, and the name of the accredited college or university with whom the course instructor is affiliated with as faculty. If the course does not meet the requirements under A.R.S. § 32-931 and R4-7-801, but has been approved by the Board, the applicant shall provide the continuing education course approval number issued by the Board instead of the name of the affiliated college or university;
 9. The licensee's signature attesting to the truthfulness of the information provided by the licensee.

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- D. In accordance with A.R.S. § 32-923(C), the Board shall automatically suspend a license if the licensee does not submit a completed application for renewal before January 1 of each calendar year. The Board shall send written notice of the license suspension to the licensee on or before January 20.
- E. The Board shall reinstate a suspended license if the licensee pays the annual license renewal fee, pays an additional fee of \$200 as required by A.R.S. § 32-923(D), and submits a completed license renewal application between January 1, and March 31 of the calendar year for which the license renewal is made.
- F. On or after July 1 of the calendar year for which a license renewal application was to be made, an individual who wishes to have a suspended license reinstated shall apply for reinstatement in accordance with A.R.S. § 32-923(D).
- G. An application for reinstatement of license shall be made on a form and in a manner prescribed by the Board.
- H. A completed application for reinstatement of a license shall be submitted to the Board office on a business day. The Board shall deem an application for reinstatement of a license received on the date that the Board stamps on the application as the date it is delivered to the Board office.
- I. To complete an application for reinstatement of license, an applicant shall provide the following information and documentation:
1. The applicant's full current name, suspended license number, and certification number if a specialty certification was held by the licensee;
 2. The applicant's current home and all office addresses, current home and all office phone numbers, and all current office fax numbers;
 3. The name and professional designation of the owner or owners of the office or clinic at which the applicant will be employed;
 4. The applicant's Social Security number;
 5. A list of all other states or jurisdictions in which the applicant is or has been licensed or certified to practice chiropractic or any other health care profession with a verification of good standing for each current license or certification submitted directly by the licensing agency of the other states or jurisdictions;
 6. A list of required continuing education courses completed and certification of course completion;
 7. A record of any professional disciplinary investigation or sanction initiated since the applicant last applied to renew the license;
 8. A record of any arrest, indictment or charge or any conviction or plea agreement for a misdemeanor or a felony since the date of the applicant's last application for licensure;
 9. The applicant's notarized signature attesting to the truthfulness of the information provided by the applicant.
- J. The Board shall process a license reinstatement application in accordance with R4-7-502(D) through (J). The Board shall deem the application received on the date that the Board stamps on the application as the date the application is delivered to the Board Office.
- K. The Board shall reinstate or renew a license if:
1. The applicant or licensee has complied with the requirements of this Chapter and A.R.S. § 32-900 et seq.;
 2. The applicant or licensee has not had any professional disciplinary sanction taken against the applicant's or licensee's license by a licensing board since the last application for licensure;
 3. The applicant or licensee has not been convicted of, pled guilty to, or pled nolo contendere to a misdemeanor or a felony since the last application for licensure.
- L. If the provisions of subsection (K) are satisfied, the Board shall issue a license renewal certificate on or before February 1, of each year. The license renewal certificate shall serve as notice that the renewal application is complete and approved.
- M. If there is reason to believe that the provisions of subsection (K) have not been satisfied or that possible grounds for denying the renewal or reinstatement application exist, the Board shall notify the applicant of this possibility within 25 business days of the date that the application is received at the Board office.
- N. An applicant who is so notified that renewal or reinstatement may be denied may provide a written response and shall submit any documentation as required through written notice by the Board within 60 calendar days from the date of the Board's notice. An applicant who is unable to supply the required documentation within 60 calendar days may submit a written request to the Board for an extension of time in which to provide the required documentation. The request for an extension of time shall be submitted to the Board office before the 60-day deadline for submission of the required documentation, and shall state the reason that the applicant is unable to comply with the 60-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 60-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.
- O. If an applicant fails to submit required documentation within the time permitted, the Board shall issue a notice of intent to deny the renewal application or reinstatement application.
- P. The Board shall make a licensing decision no later than 70 business days after receiving all required documentation as specified in subsection (N). The Board shall deem required documentation received on the date that the Board stamps on the documentation as the date the documentation is delivered to the Board's office.
- Q. For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for renewal or reinstatement of licenses:
1. Administrative completeness review time-frame: 25 business days.
 2. Substantive review time-frame: 70 business days.
 3. Overall time-frame: 95 business days.

Historical Note

Former Article V, Rule 3; Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-32 renumbered as Section R4-7-503 effective September 27, 1985 (Supp. 85-5). Adopted effective November 1, 1998; filed in the Office of the Secretary of State October 22, 1998 (98-4). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2). Amended by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).

R4-7-504. License: Denial

If the Board denies a license, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial;
3. The time periods for appealing the denial; and

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4. The right to request an informal settlement conference with the Board's authorized agent.

Historical Note

Former Article V, Rule 4 (in part); Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-33 renumbered as Section R4-7-504 without change effective September 27, 1985 (Supp. 85-5). Repealed effective July 6, 1993 (Supp. 93-3). Adopted effective November 1, 1998; filed in the Office of the Secretary of State October 22, 1998 (98-4). Amended by final rulemaking at 18 A.A.R. 2552, effective November 19, 2012 (Supp. 12-3).

R4-7-505. Renumbered**Historical Note**

Former Article V, Rule 4 (in part); Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-34 renumbered as Section R4-7-505 effective September 27, 1985 (Supp. 85-5).

ARTICLE 6. SPECIALTY CERTIFICATIONS**R4-7-601. Definition of Acupuncture as Applied to Chiropractic**

- A. Acupuncture as applied to chiropractic is stimulation of a certain meridian point or points on or near the surface of the body to control and regulate the flow and balance of energy of the body.
- B. Acupuncture includes acupuncture by needle, electrical stimulation, ultrasound, acupressure, laser, auricular therapy, or any implement that stimulates acupuncture points.
- C. Acupuncture does not include cupping, moxibustion, or cosmetic therapy.

Historical Note

Repealed effective December 31, 1975 (Supp. 75-2). New Section R4-7-40 adopted effective January 25, 1984 (Supp. 84-1). Former Section R4-7-40 renumbered as Section R4-7-601 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 7 A.A.R. 2821, effective June 12, 2001 (Supp. 01-2). Amended by final rulemaking at 18 A.A.R. 2552, effective November 19, 2012 (Supp. 12-3).

R4-7-602. Percutaneous Therapy as Applied to Chiropractic

- A. "Percutaneous Therapy" means a skilled procedure performed by a Chiropractic Physician that uses a filiform needle to penetrate the skin and produce changes to underlying neural, muscular and other biologic tissues for the evaluation and management of neuromusculoskeletal conditions.
- B. "Percutaneous Therapy" includes the use of electrified needles.
- C. Effective January 1, 2018, A Chiropractic Physician, who wishes to perform the Percutaneous Therapy procedure, shall have met the qualifications established in paragraph (D) before providing "Percutaneous Therapy."
- D. A Chiropractic Physician offering to provide or providing "Percutaneous Therapy" procedures shall provide documented proof of compliance with the qualifications to the Board within 30 days of completion of the course content in subsections (G) through (J) or within 30 days of initial licensure as a chiropractic physician in Arizona.
- E. An application for review and approval of a chiropractic physician offering to provide "Percutaneous Therapy" shall be made on a form and in a matter prescribed by the Board. An applicant shall pay the Board a non-refundable \$50 fee for each application package.

- F. An application for approval of a "Percutaneous Therapy" course shall comply with R4-7-801(E).
- G. The course content shall be approved by one or more of the following entities prior to the course or courses being completed by the Chiropractic Physician.
1. State of Arizona Board of Chiropractic Examiners
 2. American Chiropractic Association
 3. The Federation of Chiropractic Licensing Boards
 4. International Chiropractic Association
 5. Providers of Approved Continuing Education (PACE)
 6. American Medical Association
 7. American Osteopathic Association
 8. Accreditation Council for Continuing Medical Education (ACCME)
- H. The course content shall include the following components of education and training:
1. Sterile Needle procedures to include either the U.S. Centers for Disease Control and Prevention, or The U.S. Occupational Safety and Health Administration
 2. Anatomical Review
 3. Blood Borne Pathogens
 4. Indications and Contraindication for "Percutaneous Therapy"
- I. The course content required of this section shall total a minimum of 24 in person contact hours of education.
- J. At the request of a licensee, the Board may:
1. Review coursework completed prior to January 1, 2018 for approval.
 2. Waive some or all of the hours required by subsection (4), if the licensee presents satisfactory proof of completing course work that constitutes adequate training of "Percutaneous Therapy" or of the components of education and training required for "Percutaneous Therapy."
 3. Determine the licensee has received adequate training to be eligible to perform "Percutaneous Therapy."
 4. Determine that a licensee who has been issued an Acupuncture certification is qualified to perform "Percutaneous Therapy."
- K. The Standard of Care of the "Percutaneous Therapy" procedure includes, but is not limited to the following:
1. "Percutaneous Therapy" cannot be delegated to any assistive personnel.
 2. Consent & Documentation for Treatment shall be maintained in accordance with R4-7-101(1) and R4-7-902(5) and (6).
- L. The Board may upon its own motion or on receipt of a complaint may withdraw its approval for a licensee to provide "Percutaneous Therapy" or it may withdraw its approval of a "Percutaneous Therapy" course.
- M. The Board shall keep a register of licensees who have been approved to provide "Percutaneous Therapy."

Historical Note

Repealed effective December 31, 1975 (Supp. 75-2). New Section R4-7-41 adopted effective January 25, 1984 (Supp. 84-1). Former Section R4-7-41 renumbered as Section R4-7-602 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4). New Section made by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).

R4-7-603. Renumbered**Historical Note**

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-42 renumbered as Section R4-7-603

effective September 27, 1985 (Supp. 85-5).

R4-7-604. Renumbered

Historical Note

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-43 renumbered as Section R4-7-604 effective September 27, 1985 (Supp. 85-5).

R4-7-605. Renumbered

Historical Note

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-44 renumbered as Section R4-7-605 effective September 27, 1985 (Supp. 85-5).

R4-7-606. Renumbered

Historical Note

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-45 renumbered as Section R4-7-606 effective September 27, 1985 (Supp. 85-5).

ARTICLE 7. STANDARDS OF EDUCATION

R4-7-701. Repealed

Historical Note

Adopted as an emergency effective June 24, 1977 (Supp. 77-3). Former Section R4-7-50 adopted as an emergency pursuant to A.R.S. § 41-1003, valid for only 90 days. New Section R4-7-50 adopted effective December 29, 1977 (Supp. 77-6). Former Section R4-7-50 renumbered as Section R4-7-701 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3). Section repealed by final rulemaking at 8 A.A.R. 4895, effective January 7, 2003 (Supp. 02-4).

R4-7-702. Educational Requirements for Licensure

To qualify for licensure, an individual shall have graduated from a college of chiropractic that is accredited as specified in A.R.S. § 32-921(B)(2)(a) or that meets the standards of education for accreditation contained in The Council on Chiropractic Education Standards for Doctor of Chiropractic Programs and Institutions.

Historical Note

Adopted as an emergency effective June 24, 1977 (Supp. 77-3). Former Section R4-7-51 adopted as an emergency pursuant to A.R.S. § 41-1003, valid for only 90 days. New Section R4-7-51 adopted effective December 29, 1977 (Supp. 77-6). Former Section R4-7-51 renumbered as Section R4-7-702 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4895, effective January 7, 2003 (Supp. 02-4).

ARTICLE 8. CONTINUING EDUCATION

R4-7-801. Continuing Education Requirements

- A.** To be eligible to renew a license, a licensee shall complete 12 credits of continuing education between January 1 and December 31 of each year, and document compliance with continuing education requirements on the license renewal application as required by R4-7-503(C). Continuing education credit shall be given for a minimum of fifty minutes of continuous study for each class hour. No credit shall be allowed for breaks or for time expended for study outside of the classroom.
- B.** Basic requirements – The primary consideration in determining whether or not a specific course qualifies as acceptable continuing education is that it must be a formal program of learning which will contribute directly to the professional

competence of a licensee in the practice of chiropractic. Each course shall be on subjects of clinical benefit to the consumer of chiropractic services.

1. The content of the course, seminar or workshop must be recognized by reputable authorities as having validity, and must conform to the scope of practice for assessment, treatment and diagnosis as authorized under A.R.S. § 32-925 and A.R.S. § 32-922.02.
 2. Instructors shall be qualified by education and/ or experience to provide instruction in the relevant subject matter.
 3. Each licensee is responsible for determining in advance that the course which he or she attends qualifies for continuing education credit under this Article.
- C.** A licensee shall only obtain continuing education credit by:
1. Attending a course, (which includes a seminar or workshop), through a provider and on a subjects that have been pre-approved by the Board.
 2. Participating in the development of, or proctoring the National Board of Chiropractic Examiners (NBCE) examinations. Continuing education credits earned in this manner are calculated as one credit hour for each hour of participation in the development of the NBCE examination for a maximum credit of eight hours per year, and one credit hour for each hour proctoring the NBCE exam for a total of eight hours per year. A licensee shall obtain a certificate of participation from the National Board of Chiropractic Examiners to verify compliance with this provision.
 3. By teaching a post-graduate course that has been pre-approved by the Board for continuing education credit under this Section as a faculty member of a college or university that is accredited by or is in good standing with the Council on Chiropractic Education or is accredited by an accrediting agency recognized by the United States Department of Education or the Private Postsecondary Education Board during the renewal year. Continuing education credits earned in this manner are calculated as one credit of continuing education for each hour of post-graduate course instruction. A maximum of six credits of continuing education credit may be earned in this manner annually.
 4. By completing a post-graduate mediated instruction or programmed learning course pre-approved by the Board through an accredited college or university that meets the requirements of A.R.S. § 32-931(B). Mediated instruction and programmed learning refers to learning transmitted by intermediate mechanisms such as webinar or other internet delivered courses that are structured to confirm 50 minutes of continuous instruction for each credit hour received. A licensee shall obtain a certificate of program completion from the accredited college or university to verify compliance with this provision.
- D.** The following are predetermined to meet Board approval as providers for continuing education. Additional approval is not required, nor should it be expected. An application submitted for a course that falls under this subsection shall be returned to the applicant without a review and subsection (E) does not apply. Coursework provided by these entities is approved as meeting continuing education requirements only for those subjects listed in subsections (J) and (K) of this Section. Pre-approval does not include mediated instruction or programmed learning courses.
1. A college or university that meets the requirements of A.R.S. § 32-921(B)(2)(a), the American Chiropractic Association and the International Chiropractors Association, with qualified instructors and that provide courses

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- that meet the subject requirements under subsections (J) or (K).
2. CPR training provided or sponsored by the American Heart Association, the American Red Cross, or an entity that meets equivalent standards of the American Heart Association and the American Red Cross. A maximum of four credits of continuing education credit may be earned in this manner annually.
 3. Participation in the development of or proctoring the NBCE examinations.
- E.** Prior approval is required for all course providers not mentioned in subsection (D) and for all mediated instruction or programmed learning courses regardless of subsection (D). A provider applying for approval of a continuing education course shall submit a complete application to the Board at least 60 days prior to the anticipated initial date of the course if submitted by internet, or 75 days if provided in hard copy form. The Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing and the applicant must submit the missing information within 10 days of the notice. The Board will not approve a course if a complete application has not been submitted at least 15 business days prior to the initial date of the course identified in the initial application. If the applicant changes the initial date of the course or the course content or the instructors, it shall be considered a new application. A complete application shall include:
1. The name, dates, and locations of the course.
 2. The number of hours requested for approval.
 3. The subjects of the course, broken down by the specific time of instruction in/of each subject.
 4. A course description including the content, explicit written objectives identifying expected learner outcomes for each section of the course and teaching method (i.e. lecture, discussion, PowerPoint, internet, webinar).
 5. A detailed, hour by hour syllabus identifying the subject of instruction for each hour, with the instructor for each section identified. If less than an hour is dedicated to a subject, the syllabus shall identify the number of minutes dedicated to instruction on that subject.
 6. A resume or curriculum vitae for each instructor and an attestation of the following:
 - a. Licenses for all instructors are currently in good standing.
 - b. No instructor has had a license placed on probation or restricted within the past five years in this or any other jurisdiction.
 - c. No instructor has ever had a license suspended or surrendered for unprofessional conduct or revoked in this or any other jurisdiction.
 - d. No instructor has had a license application or renewal denied for unprofessional conduct.
 - e. No instructor has been convicted of a misdemeanor involving moral turpitude or a felony in this or any other jurisdiction.
 7. Documentation of license in good standing for each instructor for each state in which the instructor has or currently holds a license, if applicable. If an instructor is currently under investigation by a regulatory agency or is under investigation for, or been charged with, a criminal offense, the applicant shall disclose the investigation or charge and shall provide all relevant records.
 8. One letter of reference for each course instructor from a person familiar with the instructor's qualifications as an instructor and education and/or experience in the relevant subject.
 9. Identification of a sponsor, if applicable, and disclosure of any connection between the provider and/or instructor and/or sponsor of any commercial relationship and/or any external entity giving financial support to the course. If the course does have a sponsor, a completed sponsor/program provider agreement for continuing education, signed and notarized by a responsible party must be provided with the application.
 10. Documentation of the method by which attendance will be monitored, confirmed and documented.
 11. The name and contact information for the attendance certifying officer with an attestation that the certifying officer is supervised by the applicant provider and a description of the supervision method employed to confirm that the certifying officer is performing the duty of monitoring and confirming attendance.
 12. Attestation that each course hour consists of no less than 50 minutes of continuous instruction and that credit is not provided for breaks.
 13. The non-refundable fee required under R4-7-1301 for each course, whether individual or included in a program of multiple courses.
 14. The name, address, telephone number, fax number and e-mail of a contact person.
 15. Any other information required or requested by the Board.
 16. If the course is a mediated instruction or programmed learning course, a detailed description of the method used to confirm that the participant was engaged in 50 minutes of continuous instruction for each credit hour awarded.
 17. The Board may require that the applicant provide additional information in support of the application if the course qualifications are not clearly demonstrated through the materials provided.
 18. At the request of a provider, the Board may review courses for retroactive approval and waive the requirement of 60 days, if the following requirements are met:
 - a. The provider submits an application for retroactive course approval.
 - b. Pays the nonrefundable retroactive application fee of \$50.00.
 - c. The course was provided no more than 12 months prior to the application being submitted.
 - d. Meets all other requirements of this section.
- F.** The Board shall approve a continuing education course if the applicant has submitted a complete application to the Board's satisfaction within the time-frame required by this chapter and has demonstrated the following:
1. The course complies with this Chapter.
 2. The course instructor is faculty at an accredited college or university that meets the requirements of A.R.S. § 32-921(B)(2)(a) or demonstrates equivalent qualifications through postgraduate study and experience teaching postgraduate coursework. An instructor must:
 - a. Hold an applicable license in good standing.
 - b. Shall not have had a license placed on probation within the last five years.
 - c. Shall not ever have had a license suspended, surrendered for unprofessional conduct or revoked.
 - d. Shall not have had a license application or renewal denied for unprofessional conduct.
 - e. Shall not or been convicted of a felony in this or any other jurisdiction.
 3. The course instructor is qualified by education and experience to provide instruction in the relevant subject matter.

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4. The subject of the course qualifies under subsections (D)(2) and (3), (J) and (K).
 5. The course demonstrates attendance and/or monitoring procedures. Monitoring procedures must provide confirmation that a licensee was engaged in 50 minutes of continuous study for each credit hour.
- G.** The Board shall not approve a continuing education course if the applicant fails to submit a complete application within the time-frame required by this Chapter or if:
1. The course does not qualify under this Chapter.
 2. The course subject does not qualify for continuing education credit under subsections (D)(2) and (3), (J) and (K).
 3. The instructor's does not qualify as per subsection (F)(2).
 4. The instructor's references do not support the qualifications of the instructor as per subsection (F).
 5. The course primary focus is to promote a product or service.
 6. The course requires participants to purchase a product or service.
 7. The course has no significant relationship to the assessment, diagnosis or treatment of patients within the scope of practice of chiropractic as defined under A.R.S. §§ 32-925 and 32-922.02.
 8. The content cannot be verified.
 9. The course refutes generally accepted medical care and treatment and/or instructs participants to encourage patients to stop taking medication and/or stops participating in generally accepted medical care or fails to qualify under subsection (K).
- H.** A course approved by the Board pursuant to subsections (E) and (F) shall be issued an approval number. Once approved, a course provider shall:
1. Provide course attendees with a certificate confirming course participation. The certificate shall:
 - a. Include the name of the college or university through which the course was completed, or the course approval code issued by the Board, if applicable,
 - b. The name and Arizona license number of the attendee,
 - c. The name of the course provider, the course subject matter,
 - d. The name of the course if different than the subject matter listed,
 - e. The date and location of the course, and the number of hours of continuing education completed.
 2. Maintain a list of all course attendees for a minimum of five years after each date that the course is held, and shall provide a copy of the list to the board within 10 days of a written request to do so.
 3. Maintain a copy of the course syllabus and stated learning objectives, a list of instructors and documentation of the name, location and date of the course for a minimum of five years and shall provide the Board with a copy these materials within 10 days of a written request to do so.
 4. Monitor course attendance by each attendee in a manner that confirms that the attendee was present and participating in the course for a continuous 50 minutes for each hour of continuing education credited.
 5. Notify the Board immediately of concerns or problems that may arise regarding the approved course, to include discipline being imposed on the license of an instructor or an instructor being convicted of a criminal offense.
 6. Reapply for Board approval every two years no later than the first day of the month in which the course was initially approved, and every time the subject of the course changes and/or there is a change in instructors that does not include an instructor already approved by the Board. Failure to reapply as per this subsection shall disqualify the course for ongoing continuing education credit.
- I.** The Board may monitor a continuing education provider's compliance with continuing education statutes and rules as follows:
1. The Board may request any or all documentation as per Section (H) of this rule from a board-approved Continuing education provider for any course registered for license renewal to ensure compliance with this rule.
 2. A representative of the Board may attend any approved continuing education course for the purpose of verifying the content of the program and ensuring compliance with the Board's continuing education rules at no charge to the Board representative.
 3. If the Board finds that a course or provider is not compliant with the Continuing statutes or rules, has misrepresented course content or instructors in an application, failed to obtain new approval for a course with a change in subject or instructor or failed to pay the course fee, the Board may withdraw its approval for continuing credit for the course and/or the provider. The withdrawal of approval shall be effective upon written notification to the provider's contact of record by the Board.
 4. The Board shall notify a provider that it will consider withdrawal of course approval and provide the date, time and location of the meeting at which the matter will be discussed and possible action taken.
 5. If approval is withdrawn, the Board shall notify the provider of the reasons for withdrawal of approval.
 6. The provider shall notify all Arizona licensees who attended the course that any course hours obtained through the course cannot be used for continuing education credit of license renewal in the State of Arizona. If a provider fails to provide appropriate notice to Arizona licensed attendees, within ten business days of written notice from the Board that course approval has been withdrawn, that provider shall not be considered for approval of continuing education credit in the future. The notice to the Arizona licensed attendees must be made by certified mail in order to establish documentation that the requirement was met.
- J.** Course subjects approved for continuing education for renewal of an Arizona chiropractic license are:
1. Adjusting techniques;
 2. Spinal analysis;
 3. Physical medicine modalities and therapeutic procedures as defined in A.R.S. § 32-900(7) and (8);
 4. Record keeping and documentation;
 5. Ethics;
 6. CPR;
 7. Public health;
 8. Communicable diseases;
 9. Sexual boundaries;
 10. Emergency procedures;
 11. Acupuncture;
 12. Nutrition;
 13. Examination;

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14. Assessment and diagnostic procedures to include physical, orthopedic, neurological procedures;
 15. Radiographic technique;
 16. Diagnostic imaging and interpretation;
 17. Laser as permitted by law;
 18. Clinical laboratory procedures limited to urine collection, fingerpicks and venipuncture (not to be confused with evaluation of lab reports);
 19. Anatomy;
 20. Physiology;
 21. Bacteriology;
 22. Chiropractic orthopedics and neurology;
 23. Chemistry;
 24. Pathology;
 25. Patient management;
 26. Evidence-based clinical interventions models;
 27. Symptomatology;
 28. Arizona jurisprudence;
 29. Billing & Coding;
 30. Recognition of substance abuse in a patient and Substance Abuse and Mental Health Services Administration Topics; and
 31. Participation in National Board of Chiropractic Examiners examination development or administration of examinations.
- K.** In addition to the subjects in subsections (A), (C), (D) and (J), courses for the purpose of recognizing, assessing and determining appropriate referral or collaborative treatment of complex conditions, including but not limited to cancer, autism, multiple sclerosis, diabetes, and developmental disorders, for the purpose of co-management of the patient's condition with qualified medical providers shall qualify for continuing education credit.
- L.** The following subjects shall not qualify for continuing education for the purpose of license renewal and shall not be approved by the Board:
1. Malpractice defense;
 2. Practice management;
 3. Risk management;
 4. Promotion of a product or a service or a requirement that attendees purchase a product or service;
 5. Strategies to increase insurance payments;
 6. Administrative or economic aspects of a practice;
 7. Motivational courses;
 8. Legal courses other than pre-approved Board jurisprudence;
 9. Anti-aging;
 10. Hormone treatment;
 11. Aroma therapy;
 12. Stress management;
 13. Psychological treatment;
 14. HIPAA;
 15. Homeopathic practice that exceeds A.R.S. § 32-925;
 16. Professional or business meetings, speeches at luncheons, banquets, etc.;
 17. Subject matter that exceeds the assessment, diagnosis and treatment of patients within the scope of practice of chiropractic as defined in this chapter;
 18. Any course without a significant relationship to the safe and effective practice of chiropractic under A.R.S. § 32-925 and A.R.S. § 32-922.02;
 19. And any course that involves a distance learning format or materials if the course has not been pre-approved by the board and issued a board approval number;
- M.** A licensee's compliance with subsections (A), and (C), shall include the following coursework in order to renew a license.
1. Each licensee shall complete a minimum of two hours of continuing education in recordkeeping for every even numbered year.
 2. Each person who is issued a new license to practice chiropractic in Arizona on or after January 1, 2013 is required to attend three hours of a single regularly scheduled Board meeting within the first year of residence in Arizona. The licensee cannot distribute the three hours of Board meeting attendance over two or more Board meetings. The licensee shall notify the Board in writing within ten days of moving to Arizona. The meeting attendance must be pre-scheduled and pre-approved by Board staff. Continuing education credit will not be awarded if the licensee is attending the meeting as a subject of an investigation or other Board review or if the licensee fails to properly schedule attendance as per this Section. This subsection does not pertain to any person who has had a license to practice chiropractic in Arizona issued prior to January 1, 2013.
- N.** The Board shall grant an extension of 90 days to comply with the continuing education requirements to a qualified licensee. To qualify for an extension, a licensee shall:
1. Timely file a license renewal application and renewal fee; and
 2. Submit a written request for an extension no later than December 1 of the current renewal year, including evidence of good cause why the continuing education requirements cannot be met by December 31 of the current renewal year.
- O.** The following reasons constitute good cause for the Board to grant an extension of time to comply with the continuing education requirements:
1. The licensee lived in a country where there was no accredited chiropractic college, or a college that meets the requirements of R4-7-702, for at least seven months during the year that the continuing education requirements are to be met;
 2. The licensee was in active military service for at least seven months during the year that the continuing education requirements are to be met; or
 3. The licensee was not able to complete the continuing education requirements because of a documented disability of the licensee or the licensee's spouse, child, or parent.
- P.** If the Board grants an extension of time to complete the required 12 hours of continuing education requirements, 12 hours of required continuing education credits obtained during the 90-day extension shall be applied to meet only the requirements for which the extension is granted. A licensee shall not report those 12 hours of continuing education credit earned during a 90-day extension for a subsequent renewal year.

Historical Note

Adopted as an emergency effective Oct. 7, 1977 (Supp. 77-5). Former Section R4-7-60 repealed, New Section R4-7-60 adopted effective December 29, 1977 (Supp. 77-6). Repealed effective May 14, 1980 (Supp. 80-3). Former Section R4-7-60 renumbered as Section R4-7-801 effective September 27, 1985 (Supp. 85-5). Adopted effective June 19, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 2821, effective June 12, 2001 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2). Amended by final rulemaking at 18 A.A.R. 2554, effective November 19, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).

R4-7-802. Documenting Compliance with Continuing Edu-

Continuing Education Requirements

- A.** A licensee shall retain documents to verify compliance with the continuing education requirements for at least five years from the date the continuing education credit is used to qualify the licensee for renewal. The Board may audit continuing education compliance at any time during those five years by requiring submission of documentation of course completion.
- B.** With each license renewal application, a licensee shall attest by providing the licensee's signature, that the licensee has met the continuing education requirements, and complied with R4-7-503(C)(8) and subsection (A). A licensee's documentation of compliance on the license renewal application shall include the name of the approved course provider.
- C.** The Board may require a licensee to provide documentation to verify compliance with continuing education requirements, including evidence that:
1. Each continuing education credit was for 50 minutes of education,
 2. The requirements of subsections (A) and (B) were satisfied,
 3. Continuing education credit was earned between the immediately preceding January 1 and the date that the license renewal application was filed or the date on which an extension of time expired,
 4. No continuing education credit earned between the immediately preceding January 1 and the date that the license renewal application was filed was earned under an extension of time to comply with the continuing education requirements of a previous year, and
 5. The provisions of A.R.S. § 32-931 and R4-7-801 were met.
- D.** Documentation shall be in the form of a certificate of completion issued by a Board-approved provider. The Board may require submission of a time sheet demonstrating that the licensee was in attendance for a continuous 50 minutes for every hour of continuing education credit awarded.
- E.** The Board shall suspend a license upon notification to the licensee that the licensee has failed to demonstrate compliance with continuing education requirements as per A.R.S. §§ 32-923(C) and 32-931.

Historical Note

Adopted as an emergency effective Oct. 7, 1977 (Supp. 77-5). Former Section R4-7-61 repealed, new Section R4-7-61 adopted effective December 29, 1977 (Supp. 77-6). Repealed effective May 14, 1980 (Supp. 80-3). Former Section R4-7-61 renumbered as Section R4-7-802 effective September 27, 1985 (Supp. 85-5). Adopted effective June 19, 1997 (Supp. 97-2). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2). Amended by final rulemaking at 18 A.A.R. 2554, effective November 19, 2012 (Supp. 12-3).

R4-7-803. Effect of Suspension on Continuing Education Requirements

A licensee whose license is suspended under A.R.S. §§ 32-923, 32-924, or 32-931, shall complete 12 credits of continuing education for each calendar year or part of a calendar year that the license is suspended before the license may be reinstated or renewed.

Historical Note

Adopted as an emergency effective Oct. 7, 1977 (Supp. 77-5). Former Section R4-7-62 repealed, new Section R4-7-62 adopted effective December 29, 1977 (Supp. 77-6). Repealed effective May 14, 1980 (Supp. 80-3). Former Section R4-7-62 renumbered as Section R4-7-803 effective September 27, 1985 (Supp. 85-5). Adopted effective June 19, 1997 (Supp. 97-2).

ARTICLE 9. UNPROFESSIONAL CONDUCT**R4-7-901. Advertising of a Deceptive and Misleading Nature**

The Board shall investigate an allegation of advertising in a false, deceptive, or misleading manner by a licensee and may sanction a licensee for a violation under A.R.S. § 32-924. Advertising of a false, deceptive, or misleading manner includes, but is not limited to, the following:

1. Advertising painless procedures;
2. Advertising complete health services; or
3. Advertising that uses the words "specialist," "specializing," or "expert."

Historical Note

Adopted effective May 8, 1978 (Supp. 78-3). Former Section R4-7-70 renumbered as Section R4-7-901 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 4895, effective January 7, 2003 (Supp. 02-4).

R4-7-902. Unprofessional or Dishonorable Conduct

Unprofessional or dishonorable conduct, as used in A.R.S. § 32-924(A)(5), means:

1. Failing to disclose, in writing, to a patient or a third-party payor that the licensee has a financial interest in a diagnostic or treatment facility, test, good, or service when referring a patient for a prescribed diagnostic test, treatment, good, or service and that the diagnostic test, treatment, good or service is available on a competitive basis from another provider. This subsection does not apply to a referral by one licensee to another within a group of licensees who practice together. This subsection applies regardless of whether the referred service is provided at the licensee's place of practice or at another location.
2. Knowingly making a false or misleading statement to a patient or a third-party payor.
3. Knowingly making a false or misleading statement, providing false or misleading information, or omitting material information in any oral or written communication, including attachments, to the Board, Board staff, or a Board representative or on any form required by the Board.
4. Knowingly filing with the Board an application or other document that contains false or misleading information.
5. Failing to create an adequate patient record that includes the patient's health history, clinical impression, examination findings, diagnostic results, x-ray films if taken, x-ray reports, treatment plan, notes for each patient visit, and a billing record. The notes for each patient visit shall include the patient's name, the date of service, the chiropractic physician's findings, all services rendered, and the name or initials of the chiropractic physician who provided services to the patient.
6. Failing to maintain the information required by subsection (5) for a patient, for at least six years after the last treatment date, or for a minor, six years after the minor's 18th birthday, or failing to provide written notice to the Board about how to access the patient records of a chiropractic practice that is closed by providing, at a minimum, the physical address, telephone number and full name of a person who can be contacted regarding where the records are maintained, for at least six years after each patient's last treatment date or 18th birthday.
7. Failing to:
 - a. Release a copy of all requested patient records under subsection (5), including the original or diagnostic quality radiographic copy x-rays, to another licensed

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- physician, the patient, or the authorized agent of the patient, within 10 business days of the receipt of a written request to do so. This subsection does not require the release of a patient's billing record to another licensed physician.
- b. Release a copy of any specified portion or all of a patient's billing record to the patient or the authorized agent of the patient, within 10 business days of the receipt of a written request to do so.
 - c. In the case of a patient or a patient's authorized agent who has verbally requested the patient record:
 - i. Provide the patient record, or
 - ii. Inform the patient or patient's authorized agent that the record must be provided if a written request is made under subsection (7)(a) or (b).
 - d. Return original x-rays to a licensed physician within 10 business days of a written request to do so.
 - e. Provide free of charge, copies of patient records to another licensed physician, the patient, or the authorized agent of the patient in violation of A.R.S. Title 12, Chapter 13, Article 7.1.
8. Representing that the licensee is certified by this Board in a specialty area in which the licensee is not certified or has academic or professional credentials that the licensee does not have.
 9. Failing to provide to a patient upon request documentation of being certified by the Board in a specialty area or the licensee's academic certification, degree, or professional credentials.
 10. Practicing, or billing for services under any name other than the name by which the chiropractic physician is licensed by the Board, including corporate, business, or other licensed health care providers' names, without first notifying the Board in writing.
 11. Suggesting or having sexual contact, as defined in A.R.S. § 13-1401, in the course of patient treatment or within three months of the last chiropractic examination, treatment, or consultation with an individual with whom a consensual sexual relationship did not exist prior to a chiropractic/patient relationship being established.
 12. Intentionally viewing a completely or partially disrobed patient in the course of an examination or treatment if the viewing is not related to the patient's complaint, diagnoses, or treatment under current practice standards.
 13. Improper billing. Improper billing means:
 - a. Knowingly charging a fee for services not rendered;
 - b. Knowingly charging a fee for services not documented in the patient record as being provided;
 - c. Charging a fee by fraud or misrepresentation, or willfully and intentionally filing a fraudulent claim with a third-party payor;
 - d. Misrepresenting the service provided for the purpose of obtaining payment; and
 - e. Charging a fee for a service provided by an unlicensed person who is not a chiropractic assistant under A.R.S. § 32-900 or for services provided by an unsupervised chiropractic assistant; and
 - f. Repeatedly billing for services not rendered or not documented as rendered or repeatedly engaging in acts prohibited under subsections (13)(c) through (e).
 14. Failing to timely comply with a board subpoena pursuant to A.R.S. § 32-929 that authorizes Board personnel to have access to any document, report, or record maintained by the chiropractic physician relating to the chiropractic physician's practice or professional activities.
 15. Failing to notify the Board of hiring a chiropractic assistant or to register a chiropractic assistant under R4-7-1102 or failing to supervise a chiropractic assistant, under A.R.S. § 32-900 that is supervised or employed by the chiropractic physician.
 16. Allowing or directing a person who is not a chiropractic assistant and who is not licensed to practice a health care profession to provide patient services, other than clerical duties.
 17. Intentionally misrepresenting the effectiveness of a treatment, diagnostic test, or device.
 18. Administering, prescribing, or dispensing prescription-only medicine, or prescription-only drugs, or a prescription-only device as defined in A.R.S. § 32-1901 and pursuant to A.R.S. § 32-925(B). This subsection does not apply to those substances identified under R4-7-101(13).
 19. Performing surgery or practicing obstetrics in violation of A.R.S. § 32-925(B).
 20. Performing or providing colonic irrigation.
 21. Penetration of the rectum by a rectal probe or device for the administration of ultrasound, diathermy, or other modalities.
 22. Use of ionizing radiation in violation of A.R.S. § 32-2811.
 23. Promoting or using diagnostic testing or treatment for research or experimental purposes:
 - a. Without obtaining informed consent from the patient, in writing, before the diagnostic test or treatment. Informed consent includes disclosure to the patient of the research protocols, contracts the licensee has with researchers, if applicable, and information on the institutional review committee used to establish patient protection.
 - b. Without conforming to generally accepted research or experimental criteria, including following protocols, maintaining detailed records, periodic analysis of results, and periodic review by a peer review committee; or
 - c. For the financial benefit of the licensee.
 24. Having professional connection with, lending one's name to, or billing on behalf of an illegal practitioner of chiropractic or an illegal practitioner of any healing art.
 25. Holding oneself out to be a current or past Board member, Board staff member or a Board chiropractic consultant if this is not true.
 26. Claiming professional superiority in the practice of chiropractic under A.R.S. § 32-925.
 27. Engaging in disruptive or abusive behavior in a clinical setting.
 28. Providing substandard care due to an intentional or negligent act or failure to act regardless of whether actual injury to the patient is established.
 29. Intentionally disposing of confidential patient information or records without first redacting all personal identifying patient information or by any means other than shredding or incinerating the information or record.
 30. Intentionally disclosing a privileged communication or document, or confidential patient information except as otherwise required or allowed by law.
 31. Having been diagnosed by a physician whom the Board determines is qualified to render the diagnosis as habitually using or having habitually used alcohol, narcotics, or stimulants to the extent of incapacitating the licensee for the performance of professional duties.
 32. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. Con-

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- viction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
33. Having an action taken against a professional license in another jurisdiction, any limitation or restriction of the license, probation, suspension, revocation, surrender of the license as a disciplinary measure or denial of a license application or license renewal for a reason related to unprofessional conduct.
 34. Directly or indirectly dividing a professional fee for patient referrals among health care providers or health care institutions or between providers and institutions or entering into a contractual arrangement to that effect. This subsection does not prohibit the members of any regularly and properly organized business entity recognized by law from dividing fees received for professional services among themselves as they determine necessary.
 35. Failing to report in writing to the Board any information based upon personal knowledge that a chiropractic physician may be grossly incompetent, guilty of unprofessional or dishonorable conduct, or mentally or physically unable to provide chiropractic services safely. Any person who reports or provides information to the Board in good faith is not subjected to civil damages as a result of reporting or providing the information. If the informant requests that the informant's name not be disclosed, the Board shall not disclose the informant's name unless disclosure is essential to the disciplinary proceedings conducted under A.R.S. § 32-924 or required under A.R.S. § 41-1010.
 36. Violating any federal or state statute or rule or regulation applicable to the practice of chiropractic.
 37. Any act or omission identified in A.R.S. § 32-924(A).
- extern or preceptor is currently under investigation for a violation of criminal or administrative law.
- B. Except as provided in subsection (D), the Board shall approve participation by an extern who does not come under subsection (C) and who:
 1. Concurrently participates in an undergraduate or post-graduate preceptorship program offered by an accredited chiropractic college and provides verifiable proof of enrollment;
 2. Submits a written waiver of confidentiality that permits the Board access to any information, records, or documentation collected or used by the college to evaluate the extern's eligibility for or performance in the program;
 3. Provides a certificate of attainment on Parts I and II of the examination by the National Board of Chiropractic Examiners;
 4. Successfully completes and provides documentation of the coursework required by A.R.S. § 32-922.02 for practice of chiropractic specialties, if specialties are to be included in the training program; and
 5. Submits the \$75.00 filing fee, which is non-refundable except if A.R.S. § 41-1077 applies.
 - C. The Board shall not approve participation for an extern who:
 1. Has been the subject of disciplinary sanction or convicted of a felony or misdemeanor involving moral turpitude;
 2. Is currently under investigation for a licensing violation, or a felony or misdemeanor involving moral turpitude;
 3. Fails to demonstrate good character and reputation;
 4. Fails to demonstrate the physical and mental ability to practice chiropractic skillfully and safely; or
 5. Has practiced chiropractic without a license or through participation in an approved preceptor program.
 - D. The Board shall approve participation for a preceptor who:
 1. Concurrently participates as a preceptor at the chiropractic college in which the extern is enrolled throughout the time period of the preceptor program and provides verifiable proof of participation;
 2. Submits a written waiver of confidentiality that permits the Board access to any information, records, or documentation collected or used by the college to evaluate the preceptor's eligibility for or performance in the program; and
 3. Is continuously licensed in Arizona for at least five years before the date the program is to begin and, if the program is to include practice of chiropractic specialties, is certified in those specialties for at least three years before the date upon which the program is to begin; and
 - E. The Board shall not approve participation for a preceptor who:
 1. Has been the subject of disciplinary sanction or convicted of a felony or a misdemeanor involving moral turpitude;
 2. Is currently under investigation for a licensing violation, felony, or misdemeanor involving moral turpitude;
 3. Fails to demonstrate good character and reputation; or
 4. Fails to demonstrate the physical and mental ability to practice chiropractic skillfully and safely.

Historical Note

Adopted effective September 9, 1997 (Supp. 97-3).
Amended by final rulemaking at 14 A.A.R. 502, effective April 5, 2008 (Supp. 08-1).

ARTICLE 10. PRECEPTORSHIP TRAINING PROGRAM**R4-7-1001. Eligibility; Application**

- A. Both extern and preceptor shall submit a written application to the Board for approval of participation in a preceptor training program. The Board shall process the application within the time-frames provided in R4-7-502(J).
 1. The application shall be submitted on a form that contains:
 - a. The extern's photo;
 - b. The extern's and preceptor's names, addresses, telephone numbers, and any other names of the extern or preceptor;
 - c. The preceptor's license number, number of years in practice, and disciplinary history;
 - d. A waiver of confidentiality under subsection (B)(2) and notarized signature from both the extern and preceptor;
 - e. The beginning and ending date of the program;
 - f. Location, days, and hours of the program;
 - g. The name and contact number for the college sponsoring the preceptorship program under subsection (B)(1);
 - h. The date of extern graduation from a chiropractic college and identification of the proposed scope of the program for which the application is being submitted and the eligibility of the applicants for approval.
 2. The application shall require the extern and the preceptor to disclose any convictions or sanctions and whether the

Historical Note

Adopted effective September 27, 1985 (Supp. 85-5). Section repealed and new Section adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 3293, effective July 17, 2002 (Supp. 02-3).

R4-7-1002. Practice Limitations

- A. Under the supervision of the preceptor and commensurate with the extern's education, training, and experience, an extern may engage in the practice of health care, as defined in A.R.S. § 32-

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925, except that an extern shall not perform any procedure defined as a chiropractic specialty requiring certification unless the extern and the preceptor have met the eligibility requirements in R4-7-1001 for that specialty.

- B. At all times when patients may be present, the extern shall wear a badge showing the extern's name and the title "Extern" in capital letters equal in size to the name.
- C. Before an extern conducts an examination or renders care to a patient, the preceptor shall secure from the patient a written consent to the examination or care. The written consent shall specify that the patient understands that an extern is not a licensed doctor, and that the preceptor retains responsibility for quality of care. The preceptor shall maintain the signed consent as a part of the patient's file.

Historical Note

Adopted effective September 27, 1985 (Supp. 85-5). Section repealed and new Section adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

R4-7-1003. Regulation and Termination of the Preceptorship Program

- A. The Board, on its own initiative or upon receipt of a complaint, may investigate conduct of an extern or preceptor occurring within the program for compliance with this Chapter and A.R.S. § 32-924. The Board may, pursuant to A.R.S. § 32-929, obtain patient records as part of the investigation.
- B. If after investigation, the Board determines that the conduct of the extern or preceptor imperatively requires emergency action, the Board shall suspend approval of the program pending proceedings for termination or other action. The Board shall promptly notify the extern, the preceptor, and the college of the suspension, the reasons for the suspension, and the conditions under which the suspension may be lifted, if any.
- C. If after a hearing, the Board determines that the conduct of the preceptor or the extern constitutes a violation of this Chapter or A.R.S. § 32-924, the Board shall terminate the program and may sanction the preceptor or deny licensure to the extern if the extern has applied for a license.
- D. If the Board receives written verification from a chiropractic college that the extern or preceptor is no longer concurrently participating in the associated chiropractic college program, the Board shall terminate approval of the extern's training program.
- E. An extern may participate in a preceptorship program until the results of the next scheduled Part IV of the National Board of Chiropractic Examiners examination are released or for six months immediately following the extern's date of graduation from chiropractic college, whichever occurs first.

Historical Note

Adopted effective September 27, 1985 (Supp. 85-5). Section repealed and new Section adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 3293, effective July 17, 2002 (Supp. 02-3).

Appendix A. Repealed**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

Appendix B. Repealed**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective

May 20, 1999 (Supp. 99-2).

Appendix C. Repealed**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

Appendix D. Repealed**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

Appendix E. Repealed**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

Appendix F. Repealed**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

ARTICLE 11. CHIROPRACTIC ASSISTANTS**R4-7-1101. Use of the Term "Chiropractic Assistant"**

Only a chiropractic assistant as defined in A.R.S. § 32-900 who assists a chiropractor by performing basic health care duties, shall use the term "chiropractic assistant" or "C.A."

Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1).

R4-7-1102. Chiropractic Assistant Training

- A. A C.A. shall complete 24 clock hours of coursework, with a minimum of four hours in each of the following subjects: chiropractic principles, management of common diseases, history taking, recordkeeping, professional standards of conduct, and CPR. If a chiropractor supervising a C.A. is certified in physiotherapy under A.R.S. § 32-922.02, the C.A. shall complete 12 hours of training in physiotherapy in addition to the 24 hours of coursework. If a chiropractor supervising a C.A. is certified in acupuncture under A.R.S. § 32-922.02, the C.A. shall complete two hours of training in acupuncture in addition to the 24 hours of coursework.
- B. A C.A. shall take coursework from a Board-approved facility or chiropractor. The facility or chiropractor providing coursework shall submit documentation that describes each subject listed in subsection (A) to the Board for approval prior to offering the course.
- C. A chiropractor shall inform the Board, in writing, that the chiropractor has employed a chiropractic assistant within seven days of hiring the C.A. by submitting the name of the C.A., the name and license number of the supervising chiropractor, the address and phone number where the C.A. is employed, and the initial date of hire. A C.A. shall begin Board-approved coursework within three months of initial employment with a supervising chiropractor, and shall complete the coursework within one year of initial employment with the supervising chiropractor.
- D. A C.A. shall register with the Board upon completing required coursework. A C.A. shall submit a separate registration form for each place of employment and each supervisor. A C.A.

shall register by submitting documentation to the Board on a Board-approved form, signed by the supervising chiropractor, showing the date that the C.A. completed each required subject. The Board shall issue the C.A.'s registration upon approval of the registration form.

- E. A chiropractor supervising a C.A. shall maintain at the C.A.'s place of employment a copy of the C.A.'s registration.

Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 4584, effective February 2, 2008 (Supp. 07-4).

R4-7-1103. Scope of Practice

- A. A C.A. may only perform clinical duties that are:
1. Consistent with a supervising chiropractor's licensure and certification; and
 2. Delegated by the supervising chiropractor.
- B. Clinical duties that a chiropractic assistant may perform as directed by the supervising chiropractor under subsection (A) include, but are not limited to:
1. Asepsis and infection control,
 2. Taking patient histories and vital signs,
 3. Performing first aid and CPR,
 4. Preparing patients for procedures,
 5. Assisting the supervising chiropractor with examinations and treatments, and
 6. Collecting and processing specimens.
- C. A chiropractic assistant who meets the education requirements for physiotherapy under R4-7-1102(A) may administer, under the direct supervision of a chiropractor certified in physiotherapy, but is not limited to administering:
1. Whirlpool treatments,
 2. Diathermy treatments,
 3. Electronic galvanization stimulation treatments,
 4. Ultrasound therapy,
 5. Massage therapy,
 6. Traction treatments,
 7. Transcutaneous nerve stimulation unit treatments, and
 8. Hot and cold pack treatments.
- D. A chiropractic assistant that meets the education requirements for acupuncture under R4-7-1102(A) may prepare and sterilize instruments and may remove acupuncture needles under the direct supervision of a chiropractor certified in acupuncture.
- E. A C.A. shall not:
1. Take an x-ray,
 2. Perform an independent examination,
 3. Diagnose a patient,
 4. Determine a regimen of patient care,
 5. Change the regimen of patient care set by the supervising chiropractor,
 6. Perform an adjustment, or
 7. Perform acupuncture by needle insertion.
- F. A person who has had a license to practice chiropractic or any other health care profession suspended, revoked, or denied for any reason other than failing to meet education or licensing examination requirements in this or any other jurisdiction shall not perform the clinical duties of a chiropractic assistant.
- G. As per A.R.S. § 32-900(3), a chiropractic assistant shall not be licensed to practice chiropractic in this or any other jurisdiction.
- H. A supervising chiropractor shall be responsible for all acts or omissions of a C.A.
- I. A person who does not meet the requirements of R4-7-1102 shall perform only clerical or administrative duties.

Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 4584, effective February 2, 2008 (Supp. 07-4).

ARTICLE 12. EXPIRED

R4-7-1201. Expired

Historical Note

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

R4-7-1202. Expired

Historical Note

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

R4-7-1203. Expired

Historical Note

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

R4-7-1204. Expired

Historical Note

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

ARTICLE 13. CHARGES

R4-7-1301. Additional Charges

- A. The Board shall collect charges for services as follows:
1. Annual license renewal fee: \$225.00;
 2. Licensure by Examination & Reciprocity Application Fee: \$325.00
 3. Licensure by Endorsement Application Fee: \$500.00
 4. Specialties Certification Application Fee: \$125.00
 5. Issuance Fee: \$125.00
 6. Copies of public records: \$0.25 per page, with a minimum fee of \$2.00;
 7. Directories or labels: \$40.00;
 8. Annual subscription for meeting minutes: \$70.00;
 9. Agendas: \$25.00 for an annual subscription or \$2.00 per agenda;
 10. Recordings of Board meetings: \$5.00 per disc or tape;
 11. Lists of licensees, applicants, chiropractic assistants: \$0.05 per name, with a minimum fee of \$2.00;
 12. Hard copy credential verification: \$2.00 per name;
 13. Verification of license status: \$25.00;
 14. Continuing education course review for approval: \$50.00;
 15. Jurisprudence booklet: \$10.00;
 16. Renewal Receipt: \$5.00;
 17. Ornamental License: \$20.00;
 18. Ornamental Certificate: \$20.00; and
 19. Penalty for insufficient funds check submitted to Board as payment of fee or other charge: \$25.00.

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- B. All charges are non-refundable, except if A.R.S. § 41-1077 applies.
- C. The fees in this Section pertain regardless of the method by which the document is delivered.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 4532, effective November 9, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 4328, effective September 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5026, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 12 A.A.R. 4687, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).

ARTICLE 14. BUSINESS ENTITIES**R4-7-1401. Application for Business Entity; Qualifications of Applicant; Fee**

- A. A business entity that wishes to operate a clinic, franchise, business, club, or any other entity which uses the services of a licensed doctor of chiropractic to provide a service, supervise the provision of services, act as clinical director or otherwise perform any function under a person's chiropractic license (doctor of chiropractic) shall submit a complete application to the Board at least sixty days prior to the intended implementation of engaging the services of a licensed doctor of chiropractic. A business entity that uses the services of a doctor of chiropractic as defined in this subsection prior to the effective date of these rules shall submit a complete application to the Board no later than ten days from the effective date of these rules. A business entity shall not engage the services of a doctor of chiropractic as noted in this section until the Board has approved and issued the registration. The registration shall serve as a license for the purpose of compliance with this Chapter.
- B. "Owner, officer or director" means any person with a fiscal or an administrative interest in the business entity, regardless of whether the business is a for-profit or non-profit affiliation.
- C. To be eligible for business entity registration, the applicant owners, officers or directors shall:
1. Be of good character and reputation.
 2. Have obtained a license or a permit to conduct a business under applicable law and jurisdiction.
- D. The Board may deny registration to a business entity if:
1. The business entity fails to qualify for registration.
 2. An owner, an officer or a director has had a license to practice any profession refused, revoked, suspended, surrendered or restricted by a regulatory entity in this or any other jurisdiction for any act that constitutes unprofessional conduct pursuant to this Chapter.
 3. An owner, an officer or a director is currently under investigation by a regulatory entity in this or any other jurisdiction for an act that may constitute unprofessional conduct pursuant to this Chapter.
 4. An owner, an officer or a director has surrendered a license for an act that constitutes unprofessional conduct pursuant to this Chapter in this or any other jurisdiction.
 5. An owner, an officer or a director has been convicted of criminal conduct that constitutes grounds for disciplinary action pursuant to this Chapter.
 6. The business entity allows or has allowed any person to practice chiropractic without a license or fails or failed to confirm that a person that practices chiropractic is properly licensed.
 7. The business entity allows or has allowed a person who is not a licensed doctor of chiropractic and who is not a chi-

ropractic assistant to provide patient services according to this Chapter.

- E. The applicant shall pay to the Board a nonrefundable application fee of \$400.00.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).

R4-7-1402. Display of Registration

A business entity shall, at all times, display the registration issued to the business entity by the Board in a conspicuous place at all locations where a doctor of chiropractic is employed, contracted or otherwise functions in any capacity under a chiropractic license, including mobile practices. The business entity shall, upon request of any person, immediately produce for inspection the annual renewal certificate for the current registration period and shall keep a renewal certificate issued by the Board present at all locations.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

R4-7-1403. Procedures for Processing Initial Registration Applications

- A. An application for Business Entity Registration shall be made on a form and in a manner prescribed by the Board.
- B. A completed business entity registration application package shall be submitted to the Board office on a business day. The Board shall deem the business entity application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office.
- C. To complete a business entity application package, an applicant shall provide the following information and documentation:
1. The full current name and any former names and title of any and all owners, officers or directors.
 2. The current home and all office addresses, current home and all office phone numbers, all current office fax numbers, and any previous home or office addresses for the past five years for each owner, officer or director.
 3. The business name and the current addresses, phone numbers and fax numbers for each office, clinic or other setting where any service is performed, supervised or directed by a licensed doctor of chiropractic according to R4-7-1401(A) and this Chapter.
 4. The non-refundable application fee of four hundred dollars.
 5. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity according to R4-7-1401(A) and this Chapter.
 6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or charge that has not been concluded.
 7. Any record of an owner, officer or director being refused a license to practice chiropractic or any other profession in this or any other jurisdiction, and any record of a disciplinary action taken against an owner, officer or director's license in this or any other jurisdiction.
 8. The social security number for each owner, officer, or director.

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9. A government issued photo identification confirming U.S. citizenship or legal presence in the United States for each owner, officer or director, or if those individuals reside outside of the United States, confirmation of legal authority to operate a business in the United States.
 10. A copy of the written protocol required by A.R.S. § 32-934(G).
 11. The name, phone number and address for a contact person.
 12. A notarized signature for each owner, officer or director attesting to the truthfulness of the information provided by the applicants. A stamped signature will not be accepted for the purposes of completing the application.
- D.** Within 25 business days of receiving a business entity registration application package, the Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing.
- E.** An applicant with an incomplete business entity registration application package shall supply the missing information within 30 calendar days from the date of the notice. An applicant who is unable to supply the missing information within 30 calendar days may submit a written request to the Board for an extension of time in which to provide a complete application package. The request for an extension of time shall be submitted to the Board office before the 30-day deadline for submission of a complete application package, and shall state the reason that the applicant is unable to comply with the 30-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 30-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.
- F.** If an applicant fails to submit a complete business entity registration application package within the time permitted, the Board shall close the applicant's file and send a notice to the applicant by U.S. Mail that the application file has been closed. An applicant whose file has been closed and who later wishes to become registered shall reapply pursuant to R4-7-1401 and R4-7-1403.
- G.** After timely receipt of all missing information as specified in subsection (E), the Board shall notify the applicant that the application package is complete.
- H.** The Board shall render a decision no later than 120 business days after receiving a completed registration application package. The Board shall deem a registration application package to be complete on the postmarked date of the notice advising the applicant that the package is complete.
- I.** The Board shall approve the registration for a business entity that meets all of the following requirements:
1. Timely submits a complete application.
 2. The Board does not find grounds to deny the application under subsection R4-7-1401(D).
 3. Pays the original business entity prorated renewal fee of seventeen dollars per month from the first day of the month the business entity is registered through May 31 plus \$25 for each duplicate license issued by the Board for the purpose of compliance with R4-7-1402.
- J.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for initial registration:
1. Administrative completeness review time-frame: 25 business days.
 2. Substantive review time-frame: 120 business days.
 3. Overall time-frame: 145 business days.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3). Amended by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).

R4-7-1404. Business Entity Registration Renewal: Issuance, Reinstatement

- A.** A business entity registration expires on June 1 of each year.
- B.** Under A.R.S. § 32-934(C), a Business Entity Registered under A.R.S. Title 32, Chapter 8, shall renew the registration every year before June 1.
- C.** The business entity registration renewal application shall be returned to the Board office on a business day. The Board shall deem the business entity registration renewal application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office.
- D.** To complete a registration renewal application, a business entity shall provide the following information and documentation:
1. The name of the business entity.
 2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter.
 3. Notice of any change of owners, officers or directors, to include any additions and/or deletions with the date of the change for each individual, and notice of any change in home address, office address and phone numbers for owners, officers or directors with the date of the change for each individual.
 4. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity per Section R4-7-1401(A), to include any affiliation through a franchise.
 5. The record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction within the last 12 months.
 6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment within the last 12 months.
 7. A statement attesting that the contract or any other form of agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of any new or amended contract or agreement.
 8. Report any change in the status of the business entity's license or permit to own and operate a business in the State of Arizona.
 9. The renewal fee of \$200 plus a \$25 fee for each duplicate Board issued renewal certificate for the purpose of compliance with R4-7-1402. A business entity applying for renewal for the first time shall pay a prorated fee according to A.R.S. § 32-934(C).
 10. The name, address, phone number, fax number and email for a contact person.
 11. The original signature of the delegated contact person attesting to the truthfulness of the information provided by the business entity. All owners, officers or directors also remain responsible for the accuracy and truthfulness of the application. A stamped signature will not be accepted for the purpose of a complete application.
- E.** A business entity registration shall automatically expire if the business entity does not submit a completed application for renewal, the renewal fee and the fee for duplicate renewal certificates for the purpose of complying with R4-7-1402 before

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June 1 of each registration period. The Board shall send written notice to the business entity that its registration has expired on or before June 20. A business entity shall not use the services of a licensed doctor of chiropractic according to R4-7-1401(A) if the business entity's registration has expired.

- F. The Board shall reinstate an expired business entity registration if the business entity pays the annual renewal fee, the additional fee for duplicate certificates for the purpose of compliance with R4-7-1402, pays an additional non-refundable late fee of \$200 as required by A.R.S. § 32-934(C), and submits a completed renewal application between June 1, and July 30 of the registration period for which the business entity registration renewal is made.
- G. On or after August 1 of the registration period for which a renewal application was to be made, a business entity that wishes to have an expired registration reinstated shall apply in accordance with subsection (L).
- H. If the business entity fails to timely submit a complete business entity reinstatement application within 6 months of the date the registration expired, the business entity's registration shall lapse. "Lapse" means that the business entity is no longer registered and cannot offer services per this Chapter.
- I. A business entity that has had a registration lapse and that later wishes to become registered must apply as a new candidate pursuant to R4-7-1401 and R4-7-1403.
- J. An application for reinstatement of business entity registration shall be made on a form and in a manner prescribed by the Board.
- K. A completed application for reinstatement of a business entity registration shall be submitted to the Board office on a business day. The Board shall deem an application for reinstatement of a business entity registration received on the date that the Board stamps on the application as the date it is delivered to the Board office.
- L. To complete an application for reinstatement of a registration, a business entity shall provide the following information and documentation:
 1. The business entity's name and expired registration number.
 2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter.
 3. The names, home addresses, office addresses and phone numbers for each owner, officer or director.
 4. The name and license number of each doctor of chiropractic employed with, contracted with or otherwise affiliated with the business entity according to R4-7-1401(A) and this Chapter, to include franchises.
 5. The record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction.
 6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment, or charge within the last 12 months, to include new owners, officers or directors.
 7. A statement attesting that the contract or other agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of the new or amended contract or agreement.
 8. Report any change in the status of the business entity's license or other permit to own and operate a business in the State of Arizona.

9. The non-refundable renewal fee of \$200 and a \$25 fee for each Board issued duplicate renewal certificate for the purpose of compliance with R4-7-1402.
 10. The non-refundable late fee of \$200.
 11. The name, phone number, fax number and email for a contact person.
 12. The original signature of the delegated contact attesting to the truthfulness of the information provided by the business entity. All owners, officers or directors also remain responsible for the accuracy and truthfulness of on application. A stamped signature will not be accepted for the purpose of completing an application.
- M. The Board shall process a business entity registration reinstatement application in accordance with R4-7-1403(D) through (G).
 - N. The Board shall reinstate or renew a business entity registration if:
 1. The business entity has timely submitted a complete application and paid all fees.
 2. The business entity has complied with the requirements of this Chapter and A.R.S. § 32-900 et seq.
 3. The Board does not find grounds to deny the application under subsection (D).
 4. The business holds a current business license or other permit to own and operate the business in the State of Arizona.
 - O. If the provisions of subsection (N) are satisfied, the Board shall issue a business registration renewal certificate. The renewal certificate shall serve as notice that the renewal application is complete and approved.
 - P. The Board shall make a decision no later than 70 business days after receiving all required documentation as specified in subsection (N). The Board shall deem required documentation received on the date that the Board stamps on the documentation as the date the documentation is delivered to the Board's office.
 - Q. For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for registration renewal or reinstatement of registration:
 1. Administrative completeness review time-frame: 25 business days.
 2. Substantive review time-frame: 70 business days.
 3. Overall time-frame: 95 business days.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3). Amended by final rulemaking at 23 A.A.R. 3534, effective January 1, 2018 (Supp. 17-4).

R4-7-1405. Business Entity Registration: Denial

If the Board denies a business entity registration, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial;
3. The time periods for appealing the denial; and,
4. The right to request a settlement conference with the Board's authorized agent.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

R4-7-1406. Reporting; Civil Penalty

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- A.** A business entity that reports a change to any owner, officer or director pursuant to A.R.S. § 32-934(D)(2) shall include the following:
1. Any record of the new owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or unconcluded charge.
 2. Any record of a new owner, officer or director being refused a license to practice chiropractic or any other profession in this or any other jurisdiction, and any record of a disciplinary action taken against the new owner, officer or director's license in this or any other jurisdiction.
- B.** A business entity that fails to comply with A.R.S. § 32-934(D) shall pay to the Board a non-refundable civil penalty of \$100.00 for each violation. If the business entity fails to pay the civil penalty within 30 days, the business entity shall within 15 days pay an increased civil penalty of one \$150.00 for each violation.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

R4-7-1407. Licensed Doctors of Chiropractic and Business Entities, Unprofessional Conduct

- A.** Nothing in this Section shall be construed to exempt a licensed doctor of chiropractic from complying with this Chapter.
- B.** The following are grounds for disciplinary action under A.R.S. § 32-924(A) and R4-7-902 for a licensed doctor of chiropractic who:
1. Performs any service according to R4-7-1401(A) for a business entity in the State of Arizona that is not registered per this Chapter, and/or;
 2. Enters into an agreement of any nature with a business entity to engage in any activity that violates A.R.S. § 32-924(A), R4-7-901 or R4-7-902 or any provision of this Chapter, and/or;
 3. Fails to report in writing to the Board any knowledge of a business entity that fails to register with this Board under this Chapter or a business entity that violates any provisions of this Chapter.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

R4-7-1408. Exemptions

A chiropractic assistant does not hold a license and is not exempt from A.R.S. § 32-934 or this Article.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

32-900. Definitions

In this chapter, unless the context otherwise requires:

1. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
 - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
 - (c) The violation is a minor or technical violation, and while the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
2. "Board" means the state board of chiropractic examiners.
3. "Certification" means that a doctor of chiropractic has been certified by the board in a specialty of chiropractic as provided by law.
4. "Chiropractic assistant" means an unlicensed person who has completed an educational training program approved by the board, who assists in basic health care duties in the practice of chiropractic under the supervision of a doctor of chiropractic and who performs delegated duties commensurate with the chiropractic assistant's education and training but who does not evaluate, interpret, design or modify established treatment programs of chiropractic care or violate any statute.
5. "Doctor of chiropractic" means a natural person who holds a license to practice chiropractic pursuant to this chapter.
6. "License" means a license to practice chiropractic.
7. "Physical medicine modalities" means any physical agent applied to produce therapeutic change to biologic tissues, including thermal, acoustic, noninvasive light, mechanical or electric energy, hot or cold packs, ultrasound, galvanism, microwave, diathermy and electrical stimulation.
8. "Therapeutic procedures" means the application of clinical skills and services, including therapeutic exercise, therapeutic activities, manual therapy techniques, massage and structural supports, to improve a patient's neuromusculoskeletal condition.

32-901. Board of chiropractic examiners; removal; immunity.

- A. The state board of chiropractic examiners is established consisting of three licensed chiropractors and two consumer members who are appointed by the governor. One member shall be appointed each year for a term of five years, to begin and end on July 1.
- B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor 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.
- C. Each member of the board shall be a resident of this state, and each of the licensed chiropractic members shall have practiced chiropractic in this state for three years or more. The two consumer members of the board shall not be in any manner connected with, or have an interest in, any college or school of chiropractic or any person practicing any form of healing or treatment of bodily or mental ailments. A board member shall not receive compensation as an agent or employee of or a contractor for an insurance company. This subsection does not prevent a board member who is a licensed chiropractor from receiving compensation from an insurance company for patient care as provided for in a patient's insurance policy.
- D. Before taking office, each board member shall take an oath prescribed by law and shall affirm by oath that the board member meets the qualifications as prescribed in this section.
- E. The governor may remove board members for neglect of duty, malfeasance or misfeasance in office. Vacancies occurring on the board other than by expiration of a term shall be filled for the unexpired portion of the term by appointment in the same manner as regular appointments.
- F. A member of the board may not serve more than two consecutive terms.
- G. A board member who acts within the board member's authority is personally immune from civil liability with respect to all actions taken in good faith pursuant to this chapter.

32-902. Organization; meetings

A. The board shall annually elect from its membership a chairman and vice-chairman.

B. The board shall hold regular meetings at such places as it determines in January and July of each year, and may hold other meetings at times and places determined by a majority of the board. The board shall notify the public of such dates, time and place of meetings at least twenty-four hours prior to any meeting as provided by law. Meetings of the board shall be open to the public as provided by law.

C. A majority of the members of the board shall constitute a quorum and a majority vote of a quorum present at any meeting shall govern all actions taken by the board, except that licenses shall be issued pursuant to this chapter only upon the vote of a majority of the full board.

32-904. Powers and duties

A. The board may administer oaths, summon witnesses and take testimony on matters within its powers and duties.

B. The board shall:

1. Adopt a seal, which shall be affixed to licenses issued by the board.

2. Adopt rules that are necessary and proper for the enforcement of this chapter.

3. Adopt rules regarding chiropractic assistants who assist a doctor of chiropractic, and the board shall determine the qualifications and regulation of chiropractic assistants who are not otherwise licensed by law.

4. At least once each fiscal year and before establishing the amount of a fee for the subsequent fiscal year, review the amount of each fee authorized in this chapter in a public hearing.

C. A copy of the rules shall be filed with the secretary of state upon adoption as provided by law.

32-905. Executive director of board; duties; other personnel; immunity

A. Subject to title 41, chapter 4, article 4, the board shall appoint an executive director who is not a member of the board and who shall serve at the pleasure of the board.

B. The executive director shall:

1. Keep a record of the proceedings of the board.

2. Collect all monies due and payable to the board.

3. Deposit, pursuant to sections 35-146 and 35-147, all monies received by the board in the board of chiropractic examiners fund.

4. Prepare bills for authorized expenditures of the board and obtain warrants from the director of the department of administration for payment of bills.

5. Administer oaths.

6. Act as custodian of the seal, books, minutes, records and proceedings of the board.

7. At the request of the board, do and perform any other duty not prescribed for the executive director elsewhere in this chapter.

C. Subject to title 41, chapter 4, article 4, the board may employ other personnel as it deems necessary to carry out the purposes of this chapter.

D. The executive director and a person acting pursuant to the executive director's direction is personally immune from civil liability for all actions taken in good faith pursuant to this chapter.

ARIZONA LOTTERY

Title 19, Chapter 3, Article 5, Procurements



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 1, 2022

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

FROM: Council Staff

DATE: January 6, 2022

SUBJECT: Arizona State Lottery Commission
Title 19, Chapter 3, Article 5

This Five-Year-Review Report (5YRR) from the Lottery Commission relates to rules in Title 19, Chapter 3, Article 5 regarding Procurement.

In the last 5YRR of these rules the Department identified potential improvements to the rules, but did not propose a course of action. The Commission indicates they completed a rulemaking in 2016 prior to the 2017 5YRR.

Proposed Action

The Commission is proposing to amend several of its rules to improve their overall clarity, conciseness, understandability, and consistency with other rules and statutes. The Commission indicates additional changes to the rules will be necessary once the Department of Administration completes the proposed rule changes for the state-wide procurement rules. The Commission plans to submit a Notice of Proposed Final Rulemaking no later than July 2022.

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

Yes, the Commission cites to both general and specific statutory authority.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

The Arizona Lottery began in 1980 and is entirely self-supporting, receiving no monies from the State’s General fund. The Lottery sells products through approximately 2,700 licensed retailers, with total sales exceeding \$1.4 billion in fiscal year 2021.

In this five year review, the Lottery has determined that the economic impact of rules has not changed significantly from the 2016 EIS. The affected stakeholder include: the Lottery, the Arizona Department of Administration (ADOA), and small businesses.

The Lottery continues to bear the administrative costs for procurement staff to process purchases and secure contracts. The procurement staff was previously supplied by ADOA through an interagency agreement. However, the Lottery hired its own procurement officer in December 2021. This has not resulted in additional cost for the Lottery, since the budget for a procurement officer is covered in the Lottery’s annual appropriation.

The rules have a positive impact on small businesses, since many proprietary products are innovations from small companies trying to enter the lottery market. These rules for small businesses do not have an adverse effect on State revenue or expenses.

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 Lottery has determined that although some rules can be improved for clarity, the rules as a whole impose the least burden and costs to stakeholders. The rules for procurement ensures fairness to potential small businesses, while providing the best value to the Lottery and the State.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Commission indicates they have not received any written criticisms to the rules.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

Yes, the Commission indicates the rules are overall clear, concise, and understandable, with the exception of the following:

R19-3-501 - Definitions

R19-3-504 - General Provisions

R19-3-510 - Pre-Offer Conferences

R19-3-514 - Receipt, Opening, and Recording of Offers

R19-3-515 - Late Offers, Modifications, Withdrawals

- R19-3-524 - Offer Revisions and Best and Final Offers
- R19-3-526 - Responsibility Determinations
- R19-3-531 - Procurements not Exceeding the Amount Prescribed in A.R.S. 41-2535
- R19-3-535 - Sole Source Procurements
- R19-3-543 - Change Name
- R19-3-558 - Appeals to the Director Regarding Protest Decision
- R19-3-560 - Stay of Procurement During Appeal to Director
- R19-3-568 - Controversies Involving Lottery Claims Against the Contractor

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

Yes, the Commission indicates the rules are consistent with other rules and statutes with the exception of the following:

- R19-3-501 - Definitions
- R19-3-514 - Receipt, Opening, and Recording of Offers
- R19-3-524 - Offer Revisions and Best and Final Offers Offer Revisions and Best and Final Offers

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Commission indicates the rules are overall effective in achieving their objectives with the exception of the following:

- R19-3-501 - Definitions
- R19-3-504 - General Provisions

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Commission 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 statutes to the rules.

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, and for the reasons mentioned in the report, the Commission is proposing to amend several of its rules to improve their overall clarity, conciseness, consistency, and understandability. Additionally, the Commission indicates the rules will require additional changes, once ADOA completes the proposed rule changes for the statewide procurement rules. Currently, ADOA estimates completing the Notice of Final Rulemaking no later than April 2022.

The Commission plans to complete a Notice of Proposed Rulemaking within 90 days of the effective date of the revised Title 2 rules or no later than July 2022.

Council staff recommends approval of this report.



Douglas A. Ducey
Governor

Gregory R. Edgar
Executive Director

November 29, 2021

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

**Re: Five Year Review Report
19 A.A.C. 3
Article 5: Procurements**

Dear Ms. Sornsins,

Pursuant to A.R.S. § 41-1056, the Lottery has reviewed 19 A.A.C. 3, Article 5 and is submitting its five year review of the rules. Attached to the report are copies of the existing rules, the previous economic impact statement, and authorizing statutes.

The Lottery is also in compliance with the requirements of A.R.S. § 41-1091 that governs the directory of rules and substantive policy statements.

Should you have any questions, please contact Sherri Zendri at (480) 921-4401, or email szendri@azlottery.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Edgar", with a long horizontal flourish extending to the right.

Gregg Edgar
Executive Director

Enclosures

**ARIZONA STATE LOTTERY COMMISSION
FIVE-YEAR-REVIEW REPORT**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION
ARTICLE 5. PROCUREMENTS**

NOVEMBER 2021

Historical overview of agency

Agency Mission:

To support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.

Agency Background:

The Arizona Lottery was voted into existence by a public initiative in November 1980. Lottery sales began July 1, 1980. Since its inception, the Lottery's mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery currently offers seven draw games and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations.

The Lottery is overseen by an Executive Director appointed by the Governor, in addition to a five-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no monies from the state general fund. The Lottery sells products and redeems prizes through a state-wide network of approximately 2700 licensed retailers, who receive a commission on each ticket sold. A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the state general fund. The Lottery has achieved record sales levels in recent years. In fiscal year 2021, total sales exceeded \$1.4 billion and transfers to statutory beneficiaries totaled \$287,832,983. As a result of legislation in the 2010 Legislative 6th Special Session, the existing Lottery will terminate in July 2035.

Overview of 5-Year Review

A.A.C. Title 19, Chapter 3, Article 5, Procurements, sets forth the policies and procedures for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. The review of these rules was conducted by Arizona Lottery procurement and legal staff. The rules were reviewed for consistency and conformity with state procurement rules, and for overall clarity. As a result of the evaluation, the agency plans to amend the rules identified in the report. The Lottery proposes to retain the majority of the rules as written since they remain consistent with the Arizona Procurement Code and state procurement rules, and

are sufficiently clear and understandable. These rules continue to protect the interests of potential contractors, the Lottery, and the state. Because the Lottery’s rules must be substantially equivalent to the State Procurement Code, the Lottery anticipates submitting a NPRM to SOS July 2022 and a final rulemaking package to Council by November 2022, provided a rulemaking moratorium exemption from the Governor’s Office is approved.

Authorization of the rule by existing statutes [ARS 41-1056(A)(3)]

General Statutory Authority: Arizona Revised Statutes (A.R.S.) §5-559 authorizes the director to engage in the process to solicit bids and **contract** for the design and operation of the lottery or the purchase of lottery equipment, tickets and related materials and to effectuate the purposes of this chapter and the rules adopted pursuant to this chapter. A.R.S. §5-559(B) requires procurement for the design and operation of the lottery or the purchase of lottery equipment, tickets and related materials shall be performed as prescribed in A.R.S. § 41-2501(G).

Specific Statutory Authority: A.R.S. §41-2501(G) exempts the Lottery from Title 41, Chapter 23 for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials and requires the director to adopt rules substantially equivalent to the policies and procedures in the chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials.

The objective of each rule

Rule	Objective
R19-3-501	The rule defines terms used in 19 A.A.C. 3, Article 5, to clarify meanings that are not self-evident and to allow for consistent interpretation of Article requirements.
R19-3-502	The rule requires that, when a written determination is required by law the procurement officer must include the basis for the action in the written determination. By requiring documentation of procurement decisions, the rule ensures transparency and accountability to interested parties and the public.
R19-3-503	The rule outlines the procedures for an offeror to follow to request that information submitted in an offer, specification or protest be considered confidential information and not be disclosed. It also outlines the process the procurement officer should follow to determine whether the information is confidential. The rule protects offerors by providing a process in which an offeror can shield proprietary information that is included in an offer from public disclosure
R19-3-504	The rule sets forth two general unrelated procurement provisions. Section A ensures that someone who acts as an advisor to the Lottery on a procurement does not benefit from the resulting contract
R19-3-505	The rule authorizes the procurement officer to use the state procurement supplier list or create a list specifically for the Lottery. The rule allows the Lottery to create a suppliers list to ensure that prospective bidders who have expertise in providing lottery-specific services or materials

	receive notification of Lottery solicitations.
R19-3-506	The rule provides guidance to the procurement officer in determining the appropriate source selection method for a procurement. The rule ensures that the correct procurement method is based on the aggregate dollar amount of the contract and that sufficient funds are available for the procurement.
R19-3-507	The rule sets forth the minimum time period between the issuance of a solicitation and the offer due date and time. The rule ensures that offerors have sufficient time to respond to a solicitation but also permits the procurement officer to provide for a shorter time if justified by the circumstances.
R19-3-508	The rule provides direction to the procurement officer regarding the required elements of a bid solicitation. The rule ensures that solicitation documents are uniform and comprehensive by requiring that standard terms and conditions be included and by fully informing interested parties of the offer submission requirements.
R19-3-509	The rule provides direction to the procurement officer regarding the required elements of a proposal solicitation. It ensures that solicitation documents are uniform and comprehensive by requiring that standard terms and conditions be included and by fully informing interested parties of the offer submission requirements.
R19-3-510	This rule authorizes the procurement officer to conduct a pre-offer conference and provides direction regarding the timing of the conference. The rule allows for better and more complete offers by allowing potential offerors to ask questions and discuss the procurement requirements in advance of the offer due date
R19-3-511	The rule outlines the circumstances that require the procurement officer to issue a solicitation amendment. The rule ensures that offerors are responding to a correct and complete solicitation, and serves the best interests of the Lottery by allowing the procurement officer to extend the offer due date and time if advantageous to the Lottery.
R19-3-512	The rule allows an offeror to modify or withdraw an offer before the due date. The rule ensures that, in evaluating offers, the Lottery considers only the most current offers and does not review offers from offerors that do not wish to be considered
R19-3-513	The rule authorizes the procurement officer to cancel a solicitation before the offer due date and time and provides that the procurement officer shall not open offers after cancellation. It protects the Lottery's best interests by allowing a solicitation to be cancelled when circumstances change and it is no longer beneficial to proceed with the solicitation
R19-3-514	The rule provides direction to the procurement officer regarding the opening and recording of offers and ensures the integrity of the procurement process.
R19-3-515	The rule outlines the actions the procurement officer must take when an offer, modification, or withdrawal is received after the due date and time. The rule ensures fairness of the procurement by accepting only timely offers, but allowing the procurement officer to make an exception for offers that were untimely because of the action or inaction of the Lottery.
R19-3-516	The rule outlines the procedures the procurement officer must follow if a solicitation is canceled after offer due date and time. It protects the Lottery's best interests by allowing a solicitation to be cancelled when circumstances change and it is no longer beneficial to proceed with the solicitation.
R19-3-517	The rule provides guidance to the procurement officer regarding the actions that may be taken

	when only one offer is received in response to a solicitation. The rule protects the Lottery's best interests by giving the procurement officer discretion to determine whether to award the contract to the offeror, resolicit for new offers, cancel the procurement, or use a different source selection method
R19-3-518	This rule outlines the actions the procurement officer and an offeror must take if a mistake is discovered in an offer after opening, but before contract award and is effective. The rule protects the Lottery's best interests and fair competition by allowing an offeror to correct minor informalities and errors rather than automatically deeming the offer nonresponsive
R19-3-519	The rule authorizes the procurement officer to extend the offer acceptance period and requires the procurement officer to notify all offerors. Allowing the offer acceptance period to be extended ensures that the Lottery can extend the time for acceptance when circumstances require an extension of time
R19-3-520	The rule provides criteria for the procurement officer to consider to determine if an offer is not susceptible for award. The rule ensures efficiency of the procurement process by allowing offers that are not susceptible for award to be eliminated from consideration.
R19-3-521	The rule provides direction to the procurement officer and information to the public regarding the criteria and procedures used to evaluate bid offers. The rule requires that the procurement officer consider which offer provides the lowest cost, which protects the Lottery's budget and financial interests.
R19-3-522	The rule authorizes the procurement officer to request clarification from offerors at any time after receipt of offers. The rule ensures that the Lottery is able to make the most informed decision on awarding a contract by providing a means for greater understanding of the offers
R19-3-523	The rule provides direction to the procurement office and interested parties regarding the procedures for conducting negotiations with offerors and explains that offers may be revised during negotiations and is effective. It ensures fairness and confidentiality of proposal negotiations
R19-3-524	The rule provides direction to the procurement officer regarding procedures for requesting best and final offers. It also provides direction to the procurement officer and offerors regarding procedures to follow when a mistake in the award determination or the best and final offer. The rule ensures that the procurement officer uniformly handles offer revisions and also ensure fairness in the best and final offer process.
R19-3-525	The rule provides direction to the procurement officer regarding the criteria and procedures for evaluating best and final offers. It ensures that the procurement officer does not evaluate an offer on criteria other than that outlined in the request for proposals.
R19-3-526	The rule outlines the factors a procurement officer shall consider in determining whether an offeror is responsible or non-responsible and explains how the procurement officer should notify the offeror if the offeror is determined to be non-responsible. It protects the Lottery interests by ensuring that only responsible offerors are awarded contracts and informs interested parties regarding the specific factors the procurement officer evaluates to make a responsible or non-responsible determination.
R19-3-527	The rule provides direction to the procurement officer regarding awarding a bid contract to an offeror and outlines the documentation the procurement officer must make regarding the award. It ensures consistency and fairness in making bid contract awards and informs interested parties regarding the criteria and procedure for awarding a bid contract.

R19-3-528	The rule provides direction to the procurement officer regarding awarding a proposal contract to an offeror and outlines the procedure for obtaining Lottery Commission approval. It ensures consistency and fairness in making proposal contract awards and informs interested parties regarding the criteria and procedure for awarding a proposal contract.
R19-3-529	The rule outlines the procedures to follow when a mistake is discovered after a bid contract award. It provides information to offerors regarding how to request a correction, and it grants the procurement officer discretion to determine how to handle the mistake and the contract award so that Lottery's best interests are served in the contract award
R19-3-530	The rule outlines the procedures to follow when a mistake is discovered after a proposal contract award. It provides information to offerors regarding how to request a correction, and it grants the procurement officer discretion to determine how to handle the mistake and the contract award.
R19-3-531	The rule requires the procurement officer to issue a request for quotation for purchases less than the amount specified in A.R.S. § 41-2535 unless certain circumstances apply. The rule ensures that the request for quotation process will be followed for purchases between \$10,000 and \$100,000 unless the purchase can be made from a state or agency contract, a set-aside organization or competition is impracticable
R19-3-532	This rule outlines the requirements the procurement officer must include in a solicitation for purchases exceeding \$10,000 but less than the amount specified in A.R.S. § 41-2535. The rule ensures that the solicitation requirements are clear to interested parties and that the Lottery is complying with state law requiring purchases or contracts to be awarded to small businesses if practicable.
R19-3-534	The rule outlines procedures for the procurement officer to follow when awarding a quotation contract. It outlines a procedure for the Lottery to follow in the event only one responsive offer is received.
R19-3-535	The rule provides direction to the procurement officer regarding the circumstances under which a sole source procurement is appropriate and outlines procedures for sole source procurements. It permits the Lottery to procure a material or service without a competitive process when there is only a single source or no reasonable source exists.
R19-3-536	The rule permits the Lottery to proceed with an emergency procurement when the procurement is estimated to exceed the amount specified in A.R.S. § 41-2535 and defines the conditions that must be met to justify an emergency procurement. It permits the Lottery to procure materials or services when there is an immediate and serious need because of a serious threat to the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person
R19-3-537	The rule authorizes the Lottery to procure goods or services outside of the typical solicitation process when competition is impracticable because of an unusual or unique situation or a lack of available vendors.
R19-3-538	The rule authorizes the procurement officer to issue a request for information for planning purposes and specifies that the responses are not offers and the time period that the information is confidential. The rule enables the Lottery to gather information in anticipation of a prospective procurement
R19-3-539	The rule authorizes the procurement officer to award contracts for demonstration projects and describes the requirements and procedures for demonstration projects. The rule is effective in

	providing the Lottery a means to explore a new product at no cost.
R19-3-540	The rule outlines the conditions under which the procurement officer may purchase products or services using General Services Administration (“GSA”) schedules or contracts. The rule ensures that GSA contracts are used only when it is in the Lottery’s best interests
R19-3-541	The rule directs the procurement officer to include all contract clauses necessary to ensure the Lottery’s interests are addressed
R19-3-542	The rule prohibits a contractor from assigning or transferring a Lottery contract without the consent of the Director. The rule is effective in preventing a contractor from assigning transferring a contract when that assignment or transfer would not be advantageous to the Lottery or would be harmful to the Lottery’s interests.
R19-3-543	The rule sets forth procedures to change a contractor’s name on an existing Lottery contract. It allows the Lottery to make necessary changes when a contractor’s business name is changed without affecting other contract terms and conditions
R19-3-544	The rule provides direction to the procurement officer regarding the procedures for executing change orders or amendments to existing contracts. The rule establishes a check and balance system for change orders that exceed 25% of the original contract amount, ensuring that monies are budgeted for the expense and that the change is advantageous to the Lottery.
R19-3-545	The rule sets the maximum contract term as five years, but gives the procurement officer the ability to exceed the time period under certain circumstances. It is effective because the Lottery is better able to maximize revenue and standardize its products and services by entering into long-term contracts with its ticket vendors.
R19-3-546	This rule requires that uniform terms and conditions be used in Lottery contracts. It ensures consistency in contracts and reduces the possibility of negotiation that might negatively impact the Lottery’s interests.
R19-3-547	The rule requires the Lottery to use existing Arizona state contracts for all non-Lottery specific materials and services. It ensures that the Lottery stays within its statutory exemption from the state procurement statutes and rules, and that resources are not wasted procuring materials and services that the state has already procured
R19-3-548	The rule is effective in limiting multiple award contracts to the least number of suppliers necessary to meet the Lottery’s requirements
R19-3-549	The rule allows the procurement officer to waive conflicts of interest of persons involved in the preparation of specifications, plans or scopes of work for a procurement. The rule is effective in ensuring that even when a person has a conflict of interest, he or she may be involved when it is determined to be in the Lottery’s best interest.
R19-3-550	The rule outlines the requirements the procurement officer must use to determine whether a price is fair and reasonable for a contract or contract modification that exceeds \$100,000. The rule is effective in ensuring that, for contracts involving a significant dollar amount, the Lottery obtains a fair and reasonable price based on competition or objective criteria
R19-3-551	The rule requires that offerors submit certified cost or pricing data as specified by the procurement officer and keep all data submitted current until negotiations are concluded. The rule is effective in ensuring that the Lottery has current information during negotiations.
R19-3-552	The rule outlines the actions the procurement officer may take if an offeror or contractor fails to submit cost or pricing data. It is effective in reducing costs by allowing the procurement

	officer to reject the proposed offer or contract modification
R19-3-553	The rule sets forth the procedure for the procurement officer to determine that cost or pricing data is defective and for an offeror or contractor to appeal the procurement officer's determination. It is effective in ensuring lowest cost for the Lottery by allowing an adjustment where pricing data was effective.
R19-3-554	The rule outlines the requirements and procedures for an interested party to file a protest of a solicitation, a determination of not susceptible for award, or the award of a contract. The rule is effective in informing interested parties of the rights and the procedures for filing a protest
R19-3-555	The rule outlines the procurement officer's options and obligations when a protest is filed before a solicitation due date, before contract award, or before contract performance has begun. It also provides notice to protesters that they may request a stay from the Director if denied by the procurement officer.
R19-3-556	The rule establishes the procurement officer's authority to resolve a protest and provides guidelines for issuing a written decision regarding a protest. It effectively outlines the procurement officer's required actions and provides information regarding the interested party's rights.
R19-3-557	The rule authorizes the procurement officer to implement an appropriate remedy if a protest is sustained, outlines the factors to consider in determining the remedy, and describes the remedies that may be implemented. It is effective in providing information about appropriate remedies to the procurement officer and interested parties.
R19-3-558	The rule provides direction to interested parties regarding the process and time frame for appealing the procurement officer's decision on a protest. It is effective in outlining the requirements for an appeal
R19-3-559	The rule requires that the procurement officer promptly give notice of an appeal to all offerors. It ensures that all offerors know that an appeal has been filed and allows offerors to request a copy of the appeal.
R19-3-560	The rule effectively provides direction to interested parties regarding the impact of filing an appeal during a stay of procurement under R19-3-555.
R19-3-561	The rule outlines the time limit for and required contents of the procurement officer's agency report on an appeal. It also provides direction to interested parties regarding the process to file comments. It is effective in providing direction to the procurement officer and interested parties regarding the protest appeal process.
R19-3-562	The rule outlines the remedies that may be imposed when the Director sustains an appeal in whole or part. It is effective in providing notice of potential remedies to interested parties.
R19-3-563	The rule sets forth the procedure to be followed in setting and holding an informal settlement conference and the documentation required in the event a settlement agreement is reached. It is an effective method to shorten the dispute resolution process and allow disputes to be settled informally.
R19-3-564	The rule provides direction to the Lottery Director regarding the circumstances under which he can dismiss an appeal. The rule is effective in outlining the Director's authority and in giving notice to claimants regarding the basis for dismissal of an appeal.
R19-3-565	The rule outlines the time frame and requirements for a claimant to file a contract claim with the procurement officer. It is effective in providing direction to claimants regarding the

	procedure to resolve a claim.
R19-3-566	This rule outlines the requirements and procedures regarding the procurement officer's decision on a contract claim. It is effective in providing guidance to the procurement officer.
R19-3-567	The rule provides direction to claimants regarding the procedures for appealing a final procurement decision. It also outlines what actions the procurement officer must take after an appeal is filed. It is effective in giving guidance to claimants and the procurement officer regarding the appeals process.
R19-3-568	The rule directs the procurement officer to seek resolution under A.R.S. § 41-1092.07 when the procurement officer is unable to resolve a claim against the Lottery by mutual agreement. It is effective in giving guidance to the procurement officer regarding available remedies
R19-3-569	The rule allows the procurement officer to use state procurement statutes and rules as guidance in written determinations where the Lottery procurement rules do not address the procedure

Are the rules effective in achieving their objectives? [ARS 41-1056(A)(1) Yes__ No **X**

With a few exceptions, the rules have effectively allowed the Lottery to procure the specialty services and equipment required for a state lottery. The rules offer greater efficiency and reduced costs for the smaller universe of qualified vendors and contractors in the gaming and lottery business. However the following rules have been identified as only partially effective in achieving their objective and could be improved with minor revisions:

Rule	Explanation
R19-3-501	The rule is partially effective but contains several unnecessary definitions. For example, the rule includes definitions for terms that are not used anywhere else in the Article.
R19-3-504	The meaning and objective of Section B is unclear as to whose full approval the Director must obtain before paying for a material or service

Has the agency received written criticisms of the rules within the last five years? [ARS 41-1056(A)(2) Yes__ No **X**

Are the rules consistent with other rules and statutes? [ARS 41-1056(A)(4) Yes__ No **X**

A.R.S. 41-2501(G) authorizes the Lottery to adopt rules substantially equivalent with AAC Title 2, Chapter 7 relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets and related materials. The rules in Title 19, Chapter 3, Article 5 are consistent with other state statutes and rules, with the following exceptions:

Rule	Explanation
R19-3-501	The rule is generally consistent with statutes and rules but needs a few changes. The definition for "Services" should be amended to mirror A.R.S. § 41-2503(35). The definition for "price data" should be amended to be consistent with the wording in the state procurement rules

R19-3-514	This rule is not entirely consistent with state procurement rules or the Arizona Procurement Code. The rule should accurately reflect state procedures related to the opening and recording of solicitation offers.
R19-3-524	This rule is not entirely consistent with state procurement rules or the Arizona Procurement Code. The rule should be updated to accurately reflect state procedures related to best and final offers.

Are the rules enforced as written? [ARS 41-1056(A)(4)]

Yes No

The Lottery follows the rules as written. The rules are fairly and consistently enforced.

Are the rules clear, concise, and understandable? [ARS 41-1056(A)(5)]

Yes No

The majority of the rules are clear, concise, and understandable, however the following rules could be improved with minor revisions:

Rule	Explanation
R19-3-501	The rule is generally clear, concise, and understandable, but could be improved by removing definitions for terms that are not used in Article 5 or refer to processes not used by the agency, such as “affiliate,” “governing instruments,” “multi-step sealed bidding,” “purchase request,” “reverse auction,” and “technical offer.” Clarity could also be improved by defining the term “aggregate dollar amount.”
R19-3-504	The rule is concise, but not clear or understandable. Section A should be removed from the “general provisions” section and added to R19-3-549 Conflict of Interest as Section C. Section B should be eliminated as an unnecessary provision. The process for Lottery purchases and expenditures is provided for in statute and other rules.
R19-3-510	While portions of the rule are clear, concise, and understandable, the rule could be improved by removing or rewording confusing language related to the time needed to discuss procurement requirements and solicit comments from prospective offerors
R19-3-514	The rule is generally clear, concise, and understandable, however it could be improved by clarification in the subsections regarding receipt of, opening of, and recording of offers via the e-procurement system.
R19-3-515	The rule is generally clear, concise, and understandable, however it could be improved by clarification in subsection (C) regarding submissions via the e-procurement system
R19-3-524	The rule is clear and understandable, but not concise. Sections A and B include redundant language and could be combined to address the procedure of all written revisions, including best and final offers.
19-3-526	The rule is generally clear, concise and understandable, however the first sentence in section C could be reworded to be clearer and more understandable. Specifically, it should be reworded as follows: “If the procurement officer determines an offeror is non-responsible, the procurement officer shall promptly notify the offeror, in writing, of the final determination that the offeror is nonresponsive, except when notification to the offeror would compromise the Lottery’s ability to negotiate with other offerors.”
R19-3-531	The rule is generally clear and understandable, however, there is some duplication of

	language with R19-3-532 and the rule refers to R19-3-532. The rule could be eliminated and its language incorporated into section A of R19-3-532. The remaining sections of R19-3-532 could be renumbered
R19-3-535	This rule is generally clear and understandable. It could be made more concise by combining Section D and E.
R19-3-543	The rule is consistent with Lottery statutes, and state procurement statutes and rules. The rule could be eliminated by including similar language as a standard contract term.
R19-3-558	The rule is generally clear, concise and understandable. Section A could be made clearer. It refers to “the decision entered or deemed to be entered by the procurement officer” and “the date the decision is received or deemed received under R19-3-556.” Including a reference to R19-3-556(E) would make it clearer that “deemed to be entered” and “deemed received” refers to the situation where the procurement officer fails to issue a timely decision.
R19-3-560	This rule is concise and understandable. It could be made clearer by incorporating it into R19-3-555 so that only one rule addresses stays.
R19-3-568	The rule is generally clear, concise and understandable, but it should refer to A.R.S. § 41-1092.02

Economic, small business, and consumer impact comparison [ARS 41-1056(A)(6):

The last economic impact statement was prepared when these rules were amended and filed with Council in September 2016. After this most recent review, the Lottery believes the actual economic impact of the rules has not differed significantly from the economic impact statement submitted in 2016. The rules continue to primarily affect the agency and businesses that supply products or services to the Lottery. Lottery costs include time spent by procurement staff to process purchases and secure contracts, and the cost of the procurement itself. Procurement staff had been supplied by the Arizona Department of Administration pursuant to an interagency services agreement (ISA). The Lottery has not renewed this ISA and recently hired a full time procurement officer that will report directly to the Lottery Executive Director starting in December 2021. The cost for a procurement officer, irrespective of whether an ISA or direct hire, continues to be included in the Lottery’s annual appropriation. Consistent with the expectations from the 2016 economic impact statement, the Lottery has not experienced any additional costs as a result of the rulemaking.

The rules are consistent with policies and procedures of the Arizona Procurement Code, as required by A.R.S. § 41-2501(G). The rules provide for competition, consistency, and equal treatment of all contractors with respect to procurement procedures, while recognizing the need for flexibility due to a smaller universe of qualified contractors and vendors, and more proprietary products with sole-source vendors. The impact on small businesses with the Lottery-specific rules is positive as many of the proprietary products are innovations from smaller companies trying to enter into the lottery/gaming market. These businesses will benefit from procurements specifically targeted to small businesses as provided in R19-3-532, consistent with state procurement rules. As noted in the 2016 economic impact statement, the rules do not have any measurable impact on state revenues or expenses.

Has the agency received any business competitiveness analyses of the rules? [ARS 41-1056(A)(7)]

Yes No

Has the agency completed the course of action indicated in the agency’s previous five-year-review report? [ARS 41-1056(A)(8)]

Yes No

The Lottery completed a rulemaking on this article in 2016 immediately prior to the 2017 five year review. The overview of the report did propose a 2018 update; however the body of the review did not recommend any action. Although some minor potential improvements were identified, the Lottery did not intend to immediately pursue another rulemaking.

Do the probable benefits of the rule outweigh the probable costs within this state? Does 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? [ARS 41-1056(A)(9)]

Yes No

While the review report notes that some individual rules can be improved, the agency believes the rules as a whole impose the least burden and cost to persons regulated by the rules. As required by A.R.S. § 41-2501(G), these rules are substantially equivalent to the policies and procedures of the Arizona Procurement Code. Procurement procedures ensure fairness to potential vendors while providing the best value to the Lottery and the state. These benefits outweigh any necessary compliance costs.

Are the rules more stringent than corresponding federal laws? [ARS 41-1056(A)(10)]

Yes No

There are no corresponding federal laws that are applicable.

For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, are the rules in compliance with the general permit requirements of A.R.S. §41-1037? [ARS 41-1056(A)(11)]

These rules do not require the issuance of a regulatory permit, license, or agency authorization.

Proposed course of action

In addition to the recommendations for improvement included herein, the Lottery expects additional changes will be necessary once the Department of Administration (ADOA) completes the proposed rule changes for the state-wide procurement rules. The Lottery understands ADOA plans to conduct an expedited rulemaking to address the issues identified in the five-year-review report for the state procurement rules in Title 2, Chapter 7. Based upon the ADOA proposed course of action the Lottery has identified the following additional rule that may require revision to remain substantially equivalent to Title 2.

Rule	Explanation
R19-3-524	Eliminate the procurement officer’s written determination for the second best and final offer

	(BAFO) as one BAFO may not be in the state’s best interest. In addition to additional work, this step is also potentially burdensome by delaying contraction and potentially increasing the costs of contracting for both agencies and prospective suppliers/proposers.
R19-3-568	Revisions to bring clarity to the consequences to contractors for failure to bring a timely claim.

ADOA is currently estimating submission of a Notice of Final Expedited Ruling to the Office of the Governor no later than April 2022. The Lottery proposes to pursue a rule revision for the Lottery procurement rules within 90 days of the effective date of the revised Title 2 rules, or a Notice of Proposed Rulemaking no later than July 2022, whichever occurs first.

5-559. Contracts; limitation; restrictions

A. Notwithstanding any other statute, the director may:

1. Directly solicit bids and contract for the design and operation of the lottery or the purchase of lottery equipment, tickets and related materials.
2. Contract to effectuate the purposes of this chapter and the rules adopted pursuant to this chapter.
3. Acquire administrative office facilities and related facilities and equipment for the use of the commission by lease, purchase or lease-purchase.

B. Procurement pursuant to this section shall be performed as prescribed in section 41-2501, subsection G. Bids received under this section may be deemed confidential in whole or in part by the director if required on account of the sensitive and responsible nature of the commission's functions and the paramount considerations of security and integrity.

C. Any award made by the director pursuant to this section becomes effective and binding on the commission unless it is rejected by the commission at a meeting held within fourteen calendar days after the award is communicated to the members of the commission.

D. A contract awarded or entered into by the director pursuant to this section shall not be assigned by the holder except by specific approval of the director. In all awards of contracts pursuant to this section, the director shall take particular account of the sensitive and responsible nature of the commission's functions and the paramount considerations of security and integrity.

41-2501. Applicability

- A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.
- B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section 41-2637, by this state, acting through a state governmental unit as defined in this chapter, under any contract, except that this chapter does not apply to either grants as defined in this chapter, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms of any grant, gift, bequest or cooperative agreement.
- C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.
- D. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.
- E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in subsection F of this section.
- F. The Arizona board of regents and the judicial branch shall adopt rules prescribing procurement policies and procedures for themselves and institutions under their jurisdiction. The rules must be substantially equivalent to the policies and procedures prescribed in this chapter.
- G. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.
- H. The Arizona health care cost containment system administration is exempt from this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.
- I. Arizona correctional industries is exempt from this chapter for purchases of raw materials, components and supplies that are used in the manufacture or production of goods or services for sale entered into pursuant to section 41-1622. All other procurement shall be as prescribed by this chapter.
- J. The state transportation board and the director of the department of transportation are exempt from this chapter other than sections 41-2517 and 41-2586 and are subject to title 28, chapter 20 and 2 Code of Federal Regulations section 200.317 for the procurement of the following:
1. All items of construction, reconstruction, rehabilitation, preservation or improvement undertaken on highway infrastructure.
 2. Engineering services and any other work or activity to carry out engineering services related to highway infrastructure.
 3. Right-of-way services related to land titles, appraisals, real property acquisitions, relocation services, property management and facility design.

4. Any other construction, reconstruction, rehabilitation, preservation or improvement work or activity that is required pursuant to title 28, chapter 20.

K. The Arizona highways magazine is exempt from this chapter for contracts for the production, promotion, distribution and sale of the magazine and related products and for contracts for sole source creative works entered into pursuant to section 28-7314, subsection A, paragraph 5. All other procurement shall be as prescribed by this chapter.

L. The secretary of state is exempt from this chapter for contracts entered into pursuant to section 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

M. This chapter is not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.

N. The head of any state governmental unit, in relation to any contract exempted by this section from this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

O. Agreements negotiated by legal counsel representing this state in settlement of litigation or threatened litigation are exempt from this chapter.

P. This chapter is not applicable to contracts entered into by the department of economic security:

1. With a provider licensed or certified by an agency of this state to provide child day care services.
2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).
3. For services pursuant to title 36, chapter 29, article 2.
4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

Q. The Arizona health care cost containment system may not require that persons with whom it contracts follow this chapter for the purposes of subcontracts entered into for the provision of the following:

1. Mental health services pursuant to section 36-189, subsection B.
2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.
3. Drug and alcohol services pursuant to section 36-141.

R. The department of health services may not require that persons with whom it contracts follow this chapter for the purpose of subcontracts entered into for the provision of domestic violence services pursuant to title 36, chapter 30, article 1.

S. The department of health services is exempt from this chapter for contracts for services of physicians at the Arizona state hospital.

T. Contracts for goods and services approved by the board of trustees of the public safety personnel retirement system are exempt from this chapter.

U. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2,

article 1.

V. The Arizona state parks board is exempt from this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.

W. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

X. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

Y. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from this chapter.

Z. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.
2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

AA. The department of environmental quality is exempt from this chapter for contracting for procurements relating to the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5. The department shall engage in a source selection process that is similar to the procedures prescribed by this chapter. The department may contract for remedial actions with a single selection process. The exclusive remedy for disputes or claims relating to contracting pursuant to this subsection is as prescribed by article 9 of this chapter and the rules adopted pursuant to that article. All other procurement by the department shall be as prescribed by this chapter.

BB. The motor vehicle division of the department of transportation is exempt from this chapter for third-party authorizations pursuant to title 28, chapter 13, only if all of the following conditions exist:

1. The division does not pay any public monies to an authorized third party.
2. Exclusivity is not granted to an authorized third party.
3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

CC. This section does not exempt third-party authorizations pursuant to title 28, chapter 13 from any other applicable law.

DD. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

EE. The cotton research and protection council is exempt from this chapter for procurements.

FF. The Arizona commerce authority is exempt from this chapter, except article 10 for the purpose of cooperative purchases. The authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public. The authority may exempt specific expenditures from the policies, procedures and practices.

GG. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

HH. This chapter does not apply to the purchase of water, gas or electric utilities.

II. This chapter does not apply to professional certifications, professional memberships and conference registrations.

JJ. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

KK. This chapter does not apply to contracts for credit reporting services.

LL. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family foster care pursuant to section 8-503.
2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.
3. For services pursuant to title 36, chapter 29, article 1 and as set forth in the approved medicaid state plan.

MM. This chapter does not apply to contracts entered into by the department of economic security with a financial institution to serve as a program manager and depository under section 46-903.

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- B.** To claim a prize that the retailer does not validate or is not authorized to pay, including all prizes of \$600 or more, the claimant shall submit a claim form, available from any retailer, and the ticket to the Lottery. If the claim is:
1. Verified and validated by the Lottery as a winning ticket, the Lottery shall make payment of the amount due to the claimant, less any authorized debt set-off amounts and/or withheld taxes.
 2. Denied by the Lottery, the claimant shall be notified within 15 days from the day the claim is received in the Lottery office.
- C.** If a prize winner dies prior to receiving full payment, the Lottery shall pay all remaining prize money to the prize winner's beneficiary or to any person designated by an appropriate judicial order.
- D.** The Lottery is discharged of all liability upon payment of the prize money.
- E.** Payment of prize money shall not be accelerated ahead of its normal date of payment.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-409. Claim Period

- A.** In order for the claimant to receive payment, a winning on-line game ticket shall be received by the Lottery or a retailer no later than 5:00 p.m. (Phoenix time) on the 180th calendar day following the game drawing date.
- B.** If a claimant presents a valid winning ticket to a retailer for payment on the 180th calendar day following the game drawing date and is not paid the prize, the Director is authorized to pay the prize if the claimant presents the valid winning ticket to the Lottery no later than 5:00 p.m. (Phoenix time) on the following business day.
- C.** The end of an on-line game shall be designated by the Director and on file at the Lottery.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-410. Disputes Concerning a Ticket

- A.** If a dispute between the Lottery and a claimant occurs concerning a ticket, the Director is authorized to replace the disputed ticket with a ticket of equivalent sales price for any subsequent drawing from the same game.
- B.** If a defective ticket is purchased, the Lottery shall replace the defective ticket with a ticket or tickets of equivalent sales price from the same game.
- C.** Replacement of the disputed ticket is the sole and exclusive remedy for a claimant.
- D.** If a dispute between the Lottery and a claimant occurs concerning the eligibility of an entry into a Grand Prize drawing, the Director is authorized to place any person's eligible entry that was not entered in the Grand Prize drawing into a subsequent Grand Prize drawing or drawings.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-411. Prize Fund

- A.** Not less than 50 percent of the total annual revenue accruing from the sale of on-line game tickets shall be deposited in the state lottery prize fund for payment of prizes to the holders of winning tickets.
- B.** If an on-line game is terminated for any reason, any remaining prize monies shall be held by the Lottery for a period of 180

days from the date of the last drawing and then used for additional prizes in any other Lottery game.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-412. Multi-State Lottery Association Games

- A.** The Arizona Lottery is a participating member of the Multi-State Lottery Association (MUSL) referred to as a "party lottery" in the MUSL game rules.
- B.** A game profile approved by the Commission and conforming to the information required in R19-3-403 shall be on file at the Arizona State Lottery for all MUSL games played in Arizona.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

ARTICLE 5. PROCUREMENTS**R19-3-501. Definitions**

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
3. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
4. "Best interests of the Lottery" means advantageous to the Lottery.
5. "Bid" means an offer in response to solicitation.
6. "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
7. "Change order" means a written order that is signed by the procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
8. "Contract" means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.
9. "Contract amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
10. "Contractor" means a person who has a contract with the Lottery.
11. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
12. "Cost-plus-a-percentage-of-cost-contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
13. "Cost reimbursement contract" means a contract under which a contractor is reimbursed for costs that are reason-

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- able, allowable, and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
14. "Day" means a calendar day and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
 15. "Defective data" means data that is inaccurate, incomplete, or outdated.
 16. "Director" means the Executive Director of the State Lottery.
 17. "Discussions" means oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions, and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute "discussions."
 18. "Filed" means delivered to the procurement officer or to the Director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
 19. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.
 20. "Interested party" means an offeror or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
 21. "Invitation for bids" means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.
 22. "Minor informality" means any mistake, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
 23. "Multiple award" means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
 24. "Multi-step sealed bidding" means a two-phase bidding process consisting of a technical phase and a price phase.
 25. "Negotiation" means an exchange or series of exchanges, including a request for a best and final offer, between the Lottery and an offeror or contractor that allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
 26. "Offer" means a response to a solicitation.
 27. "Offeror" means a person who responds to a solicitation.
 28. "Person" means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
 29. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
 30. "Procurement" means all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets, and related materials.
 31. "Procurement file" means the official records file of the Lottery. The procurement file shall include (electronic or paper) the following:
 - a. List of notified vendors;
 - b. Final solicitation;
 - c. Solicitation amendments;
 - d. Bids and offers;
 - e. Offer revisions and best and final offers;
 - f. Discussions;
 - g. Clarifications;
 - h. Final evaluation reports; and
 - i. Additional information, if requested by the procurement officer.
 32. "Proposal" means an offer submitted in response to a solicitation.
 33. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
 34. "Purchase description" means the words used in a solicitation to describe Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.
 35. "Purchase request" or "purchase requisition" means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
 36. "Request for proposals" means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.
 37. "Responsible bidder or offeror" means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
 38. "Responsive bidder or offeror" means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
 39. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
 40. "Services" means the labor, time, or effort furnished by a contractor with no expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.
 41. "Significant procurement role":
 - a. Means any role that includes any of the following duties:
 - i. Participating in the development of a procurement.
 - ii. Participating in the development of an evaluation tool.
 - iii. Approving a procurement or an evaluation tool.
 - iv. Soliciting quotes greater than ten thousand dollars for the provision of materials or services.
 - v. Serving as a technical advisor or an evaluator who evaluates a procurement.
 - vi. Recommending or selecting a vendor that will provide materials or services to the Lottery.

- vii. Serving as a decision maker or designee on a protest or an appeal by a party regarding a Lottery procurement selection or decision.
- b. Does not include making a decision on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the Lottery as applied to the project, services, goods, or materials.
- 42. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
- 43. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.
- 44. "Specification" means a description of the physical or functional characteristics, or of the nature of a Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a Lottery material for delivery.
- 45. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.
- 46. "Suspension" means an action taken by the Director of the Department of Administration under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
- 47. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.
- 48. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-501 repealed, new Section R4-37-501 renumbered from R4-37-502 and amended effective May 7, 1990 (Supp. 90-2). R19-3-501 recodified from R4-37-501 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-502. Written Determination

- A. If a written determination is required under applicable law, the procurement officer shall include the basis for the action taken in the written determination.
- B. The procurement officer shall place the written determination into the Lottery's procurement file.
- C. A procurement file is considered the official records file of the Lottery.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-

3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-502 renumbered to R4-37-501, new Section R4-37-502 renumbered from R19-3-503 and amended effective May 7, 1990 (Supp. 90-2). R19-3-502 recodified from R4-37-502 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-503. Confidential Information

- A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate the beginning and end of any information that is designated a trade secret or other proprietary information, using the term "confidential." Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a final determination is made under subsection (D), the procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.
- C. Upon protest to a confidential submission, the procurement officer shall request that the offeror and protester submit factual and legal comments on the issue by a date certain.
- D. After reviewing the statements or expiration of the time to comment, or both, the procurement officer shall make a determination that:
 1. The designated information is confidential and the procurement officer shall not disclose the information except to those individuals deemed by the procurement officer to have a legitimate Lottery interest,
 2. The designated information is not confidential, or
 3. Additional information is required before a final confidentiality determination can be made.
- E. If the procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination. The procedures and requirements for review in A.R.S. Title 41, Chapter 6, Article 10 apply to such a review by the Director.
- F. The procurement officer may release information designated as confidential under subsection (A) if:
 1. A request for review is not received by the procurement officer within the time period specified in the notice; or
 2. The Director, after review of the recommended findings of fact and conclusions of law, makes a written determination that the designated information is not confidential.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-503 renumbered to R4-37-502, new Section R4-37-503 renumbered from R19-3-504 and amended effective May 7, 1990 (Supp. 90-2). R19-3-503 recodified from R4-37-503 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-504. General Provisions

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- A. A person that participates in any aspect of a specific procurement as an advisor to the Lottery shall not receive any direct or indirect benefit from a contract for the procurement.
- B. The Director shall not pay for any material or service unless fully approved.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-504 renumbered to R4-37-503, new Section R4-37-504 renumbered from R4-37-505 and amended effective May 7, 1990 (Supp. 90-2). R19-3-504 recodified from R4-37-504 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-505. Prospective Suppliers List

- A. The procurement officer may refer to a prospective suppliers list maintained by the state procurement administrator as a resource for selection of suppliers.
- B. The procurement officer may choose to compile and maintain a Lottery prospective suppliers list as a resource for selection of suppliers.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-505 renumbered to R4-37-504, new Section R19-3-505 renumbered from R4-37-507 and amended effective May 7, 1990 (Supp. 90-2). R19-3-505 recodified from R4-37-505 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-506. Source Selection Method: Determination Factors

- A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ 5-559 and 41-2501(G).
- B. If the procurement officer believes that an existing Arizona state contract is sufficient to satisfy the Lottery's requirements, the procurement officer may procure those materials and services covered by such contracts.
- C. The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-506 repealed, new Section R4-37-506 renumbered from R4-37-508 and amended effective May 7, 1990 (Supp. 90-2). R19-3-506 recodified from R4-37-506 (Supp. 95-1). Amended effective

December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the first A.R.S. citation in subsection (A) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-507. Solicitation

- A. The procurement officer shall issue a solicitation at least 14 days before the offer due date and time, unless the procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the procurement officer shall document the specific reasons in the procurement file.
- B. The procurement officer shall:
 1. Advertise the procurement not less than two weeks before offer due date at least one time in a newspaper of general circulation and place the notice on the Lottery web site; and
 2. At a minimum, provide written notice to the prospective suppliers that have registered with the Lottery's procurement officer for the specific material, service, or construction solicited.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-507 renumbered to R4-37-505, new Section R4-37-507 renumbered from R4-37-509 and amended effective May 7, 1990 (Supp. 90-2). R19-3-507 recodified from R4-37-507 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-508. Bid Solicitation Requirements

The procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum required information in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f. Any specific responsibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
 - h. Any evaluation criteria;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;

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- k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
- l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
- m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- n. Any bid security required;
- o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
- p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
- q. Any other offer submission requirements;
- 2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
 - c. Any other specification requirements;
- 3. Terms and Conditions, including:
 - a. Whether the contract will include an option for extension, and
 - b. Any other contract terms and conditions.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-508 renumbered to R4-37-506, new Section R4-37-508 renumbered from R4-37-510 and amended effective May 7, 1990 (Supp. 90-2). R19-3-508 recodified from R4-37-508 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-509. Request for Proposal Solicitation Requirements

The procurement officer shall include the following in the solicitation:

- 1. Instructions to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;

- d. The minimum information required in the offer;
- e. The specific requirements for designating trade secrets and other proprietary information as confidential;
- f. Any specific responsibility or susceptibility criteria;
- g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
- h. Evaluation factors and the relative order of importance;
- i. A statement of where documents incorporated by reference are available for inspection and copying;
- j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
- k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
- l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
- m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- n. Any offer security required;
- o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
- p. Any cost or pricing data required;
- q. The type of contract to be used;
- r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award; and
- s. Any other offer requirements specific to the solicitation.
- 2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
- 3. Terms and Conditions, including:
 - a. Whether the contract is to include an extension option, and
 - b. Any other contract terms and conditions.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-509 renumbered to R4-37-507, new Section R4-37-509 renumbered from R4-37-512 and amended effective May 7, 1990 (Supp. 90-2). R19-3-509 recodified from R4-37-509 (Supp. 95-1). Amended effective December 16, 1997

(Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-510. Pre-Offer Conferences

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted for a solicitation, it shall be within a reasonable time prior to the offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R19-3-511.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-510 renumbered to R4-37-508, new Section R4-37-510 renumbered from R4-37-513 and amended effective May 7, 1990 (Supp. 90-2). R19-3-510 recodified from R4-37-510 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-511. Solicitation Amendment

- A. The procurement officer shall issue a solicitation amendment to do any or all of the following:
 1. Make changes in the solicitation,
 2. Correct defects or ambiguities,
 3. Provide additional information or instructions, or
 4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the Lottery.
- B. If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-511 repealed, new Section R4-37-511 renumbered from R4-37-514 and amended effective May 7, 1990 (Supp. 90-2). R19-3-511 recodified from R4-37-511 (Supp. 95-1). Former Section R19-3-511 renumbered to R19-3-513 and amended; new Section R19-3-511 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-512. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
- B. The procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-512 renumbered to R4-37-509, new Section R4-37-512 renumbered from R4-37-515 and amended effective May 7, 1990 (Supp. 90-2). R19-3-512 recodified from R4-37-512 (Supp. 95-1). Former Section R19-3-512 renumbered to R19-3-514 and amended; new Section R19-3-512 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-513. Cancellation of a Solicitation Before Offer Due Date and Time

- A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation before the offer due date and time.
- B. The procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C. The procurement officer shall not open offers after cancellation. The procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-513 renumbered to R4-37-510, new Section R4-37-513 renumbered from R19-3-516 and amended effective May 7, 1990 (Supp. 90-2). R19-3-513 recodified from R4-37-513 (Supp. 95-1). Former Section R19-3-513 renumbered to R19-3-515 and amended; new Section R19-3-513 renumbered from R19-3-511 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-514. Receipt, Opening, and Recording of Offers

- A. The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.
- C. For a bid solicitation, the procurement officer shall open offers after the offer due date and time. The procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.
- D. For a proposal solicitation, the procurement officer shall open offers after the offer due date and time. The procurement officer shall record the name of each offeror and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.
- E. Except for the information identified in subsections (C) and (D), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those per-

sons assisting in the evaluation process and the Lottery Commissioners, after award, and before the contract becomes effective and binding.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-514 renumbered to R4-37-511, new Section R4-37-514 renumbered from R4-37-517 and amended effective May 7, 1990 (Supp. 90-2). R19-3-514 recodified from R4-37-514 (Supp. 95-1). Former Section R19-3-514 renumbered to R19-3-516 and amended; new Section R19-3-514 renumbered from R19-3-512 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-515. Late Offers, Modifications, Withdrawals

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, the procurement officer shall determine the offer, modification, or withdrawal as late.
- B. The procurement officer shall reject a late offer, modification, or withdrawal unless:
 1. The document is received before the contract award at the location designated in the solicitation; and
 2. The document would have been received by the offer due date and time, but for the action or inaction of Lottery personnel.
- C. Upon receiving a late offer, modification, or withdrawal, the procurement officer shall:
 1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-515 renumbered to R4-37-512, new Section R4-37-515 renumbered from R4-37-518 and amended effective May 7, 1990 (Supp. 90-2). R19-3-515 recodified from R4-37-515 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Former Section R19-3-515 renumbered to R19-3-517 and amended; new Section R19-3-515 renumbered from R19-3-513 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-516. Cancellation of Solicitation After Receipt of Offers and Before Award

- A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation after offer due date and time. The

procurement officer shall prepare a written justification for cancellation and place it in the procurement file.

- B. The procurement officer shall notify offerors of the cancellation in writing.
- C. The procurement officer shall retain offers received under the cancelled solicitation in the procurement file. If the Lottery intends to issue another solicitation within six months after cancellation of the procurement, the procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R19-3-503.
- D. In the event of cancellation, the procurement officer shall promptly return any bid security provided by an offeror.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-516 renumbered to R4-37-513, new Section R4-37-516 renumbered from R4-37-519 and amended effective May 7, 1990 (Supp. 90-2). R19-3-516 recodified from R4-37-516 (Supp. 95-1). Former Section R19-3-516 renumbered to R19-3-518 and amended; new Section R19-3-516 renumbered from R19-3-514 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-517. One Offer Received

- A. If only one offer is received in response to a solicitation, the procurement officer shall review the offer and either:
 1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable under R19-3-550,
 - b. The offer is responsive, and
 - c. The offeror is responsible, or
 2. Reject the offer and:
 - a. Resolicit for new offers,
 - b. Cancel the procurement, or
 - c. Use a different source selection method authorized under these rules.
- B. If the procurement officer awards a contract for a solicitation under (A)(1), the award shall comply with R19-3-527 for a bid solicitation and R19-3-528 for a proposal solicitation.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-517 renumbered to R4-37-514, new Section R4-37-517 renumbered from R4-37-520 and amended effective May 7, 1990 (Supp. 90-2). R19-3-517 recodified from R4-37-517 (Supp. 95-1). Former Section R19-3-517 renumbered to R19-3-519 and amended; new Section R19-3-517 renumbered from R19-3-515 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R.

2966, effective November 21, 2016 (Supp. 16-4).

R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award

- A.** If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information,
 - b. A request for correction including the corrected offer or a request for withdrawal, and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B.** An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
 2. A request for correction including the corrected offer or a request for withdrawal, and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- C.** The procurement officer may permit an offeror to correct a mistake if the mistake involves a minor informality or if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The procurement officer shall not permit a correction that is prejudicial to the Lottery or fair competition.
- D.** The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E.** The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.
- F.** If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-518 renumbered to R4-37-515, new Section R4-37-518 renumbered from R4-37-521 and amended effective May 7, 1990 (Supp. 90-2). R19-3-518 recodified from R4-37-518 (Supp. 95-1). Former Section R19-3-518 renumbered to R19-3-520 and amended; new Section R19-3-518 renumbered from R19-3-516 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-519. Extension of Offer Acceptance Period

- A.** To extend the offer acceptance period, the procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.
- B.** To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-519 renumbered to R4-37-516, new Section R4-37-519 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-519 recodified from R4-37-519 (Supp. 95-1). Former Section R19-3-519 renumbered to R19-3-521 and amended; new Section R19-3-519 renumbered from R19-3-517 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-520. Determination of Not Susceptible for Award

- A.** The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
 3. The offer is not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award, the offer should be included for further consideration.
- B.** The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award, unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-520 renumbered to R4-37-517, new Section R4-37-520 renumbered from R4-37-523 and amended effective May 7, 1990 (Supp. 90-2). R19-3-520 recodified from R4-37-520 (Supp. 95-1). Former Section R19-3-520 renumbered to R19-3-522 and amended; new Section R19-3-520 renumbered from R19-3-518 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-521. Bid Evaluation

- A.** The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation.

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- B. The procurement officer may consider life cycle costs and application benefits when evaluating offers for the procurement of materials.
- C. The procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.
- D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the procurement officer shall make the award by drawing lots. If time permits, the procurement officer shall provide the offerors involved an opportunity to attend the drawing. The procurement officer shall ensure that the drawing is witnessed by at least one person other than the procurement officer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-521 renumbered to R4-37-518, new Section R4-37-521 renumbered from R4-37-524 and amended effective May 7, 1990 (Supp. 90-2). R19-3-521 recodified from R4-37-521 (Supp. 95-1). Former Section R19-3-521 renumbered to R19-3-523 and amended; new Section R19-3-521 renumbered from R19-3-519 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-522. Clarification of Proposal Offers

- A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
- B. The procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
- C. The procurement officer shall retain any clarifications in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-522 renumbered to R4-37-519, new Section R4-37-522 renumbered from R4-37-525 and amended effective May 7, 1990 (Supp. 90-2). R19-3-522 recodified from R4-37-522 (Supp. 95-1). Former Section R19-3-522 renumbered to R19-3-524 and amended; new Section R19-3-522 renumbered from R19-3-520 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

- A. The procurement officer shall establish procedures and schedules for conducting negotiations. The procurement officer

shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.

- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the procurement officer shall confirm the negotiations in writing and provide the document to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. The procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Lottery based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the best and final offer due date and time by submitting a written request to the procurement officer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-523 renumbered to R4-37-520, new Section R4-37-523 renumbered from R4-37-526 and amended effective May 7, 1990 (Supp. 90-2). R19-3-523 recodified from R4-37-523 (Supp. 95-1). Former Section R19-3-523 renumbered to R19-3-525 and amended; new Section R19-3-523 renumbered from R19-3-521 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-524. Offer Revisions and Best and Final Offers

- A. The procurement officer may request written revisions to an offer. The procurement officer shall include in the written request:
 1. The date, time, and place for submission of offer revisions; and
 2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.
- B. The procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted, however it is not mandatory to conduct negotiations prior to requesting a best and final offer. The procurement officer shall include in the written request:
 1. The date, time, and place for submission of best and final offer; and
 2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.
- C. The procurement officer shall request written best and final offers only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.
- D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the procurement officer shall contact the offeror for written confirmation.

The procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information,
 - b. A request for correction including the corrected offer or a request for withdrawal, and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- E.** An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:
1. Explanation of the mistake and any other relevant information,
 2. A request for correction including the corrected offer or a request for withdrawal, and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- F.** In response to a request made under subsections (D) or (E), the procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Lottery. If an offeror does not provide written confirmation of the best and final offer, the procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-524 renumbered to R4-37-521, new Section R4-37-524 renumbered from R4-37-527 and amended effective May 7, 1990 (Supp. 90-2). R19-3-524 recodified from R4-37-524 (Supp. 95-1). Former Section R19-3-524 renumbered to R19-3-526 and amended; new Section R19-3-524 renumbered from R19-3-522 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-525. Evaluation of Proposal Offers

- A.** The procurement officer shall evaluate offers and best and final offers based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B.** The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The procurement officer may:
1. Accept or reject the findings of the evaluation committee,
 2. Request additional information from the evaluation committee, or
 3. Replace the evaluation committee.

- C.** The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-525 renumbered to R4-37-522, new Section R4-37-525 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-525 recodified from R4-37-525 (Supp. 95-1). Former Section R19-3-525 renumbered to R19-3-527 and amended; new Section R19-3-525 renumbered from R19-3-523 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-526. Responsibility Determinations

- A.** The procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.
- B.** The procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:
1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
 2. The offeror's record of performance and integrity;
 3. Whether the offeror has been debarred or suspended;
 4. Whether the offeror is legally qualified to contract with the Lottery;
 5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
 6. Whether the offeror meets the responsibility criteria specified in the solicitation.
- C.** If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly send a determination to the offeror stating the basis for the determination, except when notification to the offeror would compromise the Lottery's ability to negotiate with other offerors. The procurement officer shall file a copy of the determination in the procurement file.
- D.** The procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.
- E.** For the offeror awarded a contract, the procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-526 renumbered to R4-37-523, new Section R4-37-526 renumbered from R4-37-529 and amended effective May 7, 1990 (Supp. 90-2). R19-3-526 recodified from R4-37-526 (Supp. 95-1). Former Section R19-3-526 renumbered to R19-3-528 and amended; new Section R19-3-526 renumbered from R19-3-524 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21,

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R19-3-527. Bid Contract Award

- A. The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
- B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.
- E. Within three days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-527 renumbered to R4-37-524, new Section R4-37-527 renumbered from R4-37-530 effective May 7, 1990 (Supp. 90-2). R19-3-527 recodified from R4-37-527 (Supp. 95-1). Former Section R19-3-527 renumbered to R19-3-529 and amended; new Section R19-3-527 renumbered from R19-3-525 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-528. Proposal Contract Award

- A. The procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Lottery based on the evaluation factors set forth in the solicitation. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- B. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- C. If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director may authorize a meeting of the Lottery Commission to be held for consideration of the award.
 1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
 2. The Lottery Commission shall not take action in the executive session.

3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations occur regarding specified issues. If further negotiations are directed, the procurement officer shall withhold the recommended award from public inspection.
- D. The procurement officer shall notify all offerors of an award that has become effective and binding.
- E. After an award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.
- F. Within three days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-528 renumbered to R4-37-525, new Section R4-37-528 renumbered from R4-37-531 and amended effective May 7, 1990 (Supp. 90-2). R19-3-528 recodified from R4-37-528 (Supp. 95-1). Former Section R19-3-528 renumbered to R19-3-530 and amended; new Section R19-3-528 renumbered from R19-3-526 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-529. Mistakes Discovered After Bid Award

- A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
 1. Explanation of the mistake and any other relevant information,
 2. A request for correction including the corrected offer or a request for withdrawal, and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
 1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the Lottery.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-529 renumbered to R4-37-526, new Section R4-37-529 renumbered from R4-37-532 and amended effective May 7, 1990 (Supp. 90-2). R19-3-529 recodified from R4-37-529 (Supp. 95-1). Former Section R19-3-529 renumbered to R19-3-531 and amended; new Section R19-3-529 renum-

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bered from R19-3-527 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-530. Mistakes Discovered After Proposal Award

- A.** If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
 2. A request for correction including the corrected offer or a request for withdrawal, and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B.** Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
1. Allow correction of the mistake,
 2. Cancel all or part of the award, or
 3. Deny correction or withdrawal.
- C.** After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the Lottery according to the evaluation factors contained in the solicitation.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-530 renumbered to R4-37-527, new Section R4-37-530 renumbered from R4-37-533 and amended effective May 7, 1990 (Supp. 90-2). R19-3-530 recodified from R4-37-530 (Supp. 95-1). Former Section R19-3-530 renumbered to R19-3-533 and amended; new Section R19-3-530 renumbered from R19-3-528 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under R19-3-532 unless any of the following apply:

1. The purchase can be made from a state or agency contract,
2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636,
3. The purchase is not expected to exceed \$10,000.00, or
4. The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-531 renumbered to R4-37-528, new Section R4-37-531 renumbered

from R4-37-534 and amended effective May 7, 1990 (Supp. 90-2). R19-3-531 recodified from R4-37-531 (Supp. 95-1). Former Section R19-3-531 renumbered to R19-3-535 and amended; new Section R19-3-531 renumbered from R19-3-529 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-532. Solicitation – Request for Quotation

- A.** A request for quotation shall be issued for purchases estimated to exceed \$10,000 but less than that specified in A.R.S. § 41-2535. The procurement officer shall include the following in the solicitation:
1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
 2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 3. The minimum information that the offer shall contain;
 4. Any evaluation factors;
 5. Whether negotiations may be held;
 6. Any contract options including renewal or extension;
 7. The uniform terms and conditions by text or reference; and
 8. Any other terms, conditions, or instructions specific to the procurement.
- B.** The procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.
- C.** The request for quotation shall include a statement that only a small business, as defined in R19-3-501, shall be awarded a contract, unless any of the following apply:
1. The purchase has been unsuccessfully competed under subsection (B), including failure to obtain fair and reasonable prices;
 2. The procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list, or
 3. The procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-532 renumbered to R4-37-529, new Section R4-37-532 renumbered from R4-37-535 and amended effective May 7, 1990 (Supp. 90-2). R19-3-532 recodified from R4-37-532 (Supp. 95-1). Former Section R19-3-532 renumbered to R19-3-536 and amended; new Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-533. Repealed**Historical Note**

Adopted as an emergency effective June 5, 1985, pursu-

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ant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-533 renumbered to R4-37-530, new Section R4-37-533 renumbered from R4-37-536 and amended effective May 7, 1990 (Supp. 90-2). R19-3-533 recodified from R4-37-533 (Supp. 95-1). Former Section R19-3-533 renumbered to R19-3-537 and amended; new Section R19-3-533 renumbered from R19-3-530 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-534. Quotation Contract Award

- A. If only one responsive offer is received, the procurement officer shall determine if the price is fair and reasonable, and in the best interest of the Lottery to award a contract, and place the determination in the procurement file. If time permits, the procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.
- B. The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. The procurement officer shall make the procurement file available to the public on the date the contract award becomes effective and binding.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-534 renumbered to R4-37-531, new Section R4-37-534 renumbered from R4-37-538 and amended effective May 7, 1990 (Supp. 90-2). R19-3-534 recodified from R4-37-534 (Supp. 95-1). Former Section R19-3-534 renumbered to R19-3-538 and amended; new Section R19-3-534 adopted December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-535. Sole Source Procurements

- A. For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
 - 1. There is only a single source for the material or service, or
 - 2. No reasonable alternative source exists.
- B. This Section applies only to sole source procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535.
- C. The procurement officer shall make a written determination that includes the following information:

1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists,
 2. The name of the proposed supplier,
 3. The duration and estimated total dollar value of the proposed procurement,
 4. Documentation that the price submitted is fair and reasonable pursuant to R19-3-550, and
 5. A description of efforts made to seek other sources.
- D. The procurement officer shall post the request on the Lottery website and send notice to registered vendors on the state’s electronic system to invite comments on the sole-source request for three working days. Following this period, the procurement officer shall either:
 1. Issue a written determination with any conditions or restrictions, or
 2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
 - E. If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.
 - F. The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.
 - G. The procurement officer shall keep a record of all sole-source procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-535 renumbered to R4-37-532, new Section R4-37-535 renumbered from R4-37-539 and amended effective May 7, 1990 (Supp. 90-2). R19-3-535 recodified from R4-37-535 (Supp. 95-1). Former Section R19-3-535 renumbered to Section R19-3-339 and amended; new Section R19-3-535 renumbered from R19-3-531 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-536. Emergency Procurements

- A. For the purposes of this Section, the term “emergency” means any condition creating an immediate and serious need for materials, services, or construction in which the Lottery’s best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.
- B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
- C. A Lottery employee with the approval of the immediate supervisor or the Director may proceed with an emergency procurement without approval from the procurement officer if the emergency necessitates immediate response and it is impracticable to contact the procurement officer. The supervisor or Director shall submit a written confirmation of the emergency

procurement to the procurement officer within five working days of the emergency.

- D. An emergency procurement shall be limited to such actions necessary to address the emergency.
- E. An emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the Lottery.
- F. The procurement officer shall keep a record of all emergency procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-536 renumbered to R4-37-533, new Section R4-37-536 renumbered from R4-37-540 and amended effective May 7, 1990 (Supp. 90-2). R19-3-536 recodified from R4-37-536 (Supp. 95-1). Former Section R19-3-536 renumbered to Section R19-3-541 and amended; new Section R19-3-536 renumbered from R19-3-532 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-537. Competition Impracticable Procurements

- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.
- B. The procurement officer shall make a written determination that includes the following information:
 1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest;
 2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
 3. An explanation of why the proposed procurement process is advantageous to the Lottery; and
 4. The scope, duration, and estimated total dollar value of the procurement need.
- C. The procurement officer shall keep a record of all competition impracticable procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-537 repealed, new Section R4-37-537 renumbered from R4-37-541 and amended effective May 7, 1990 (Supp. 90-2). R19-3-537 recodified from R4-37-537 (Supp. 95-1). Former Section R19-3-537 renumbered to R19-3-542 and amended; new Section R19-3-537 renumbered from R19-3-533 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citations in subsections (A) and (B)(1) were updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-

- 3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-538. Request for Information

The procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

- 1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
- 2. Information contained in a response to a request for information shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the procurement officer.
- 3. There is no required format to be used for requests for information.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-538 renumbered to R4-37-534, new Section R4-37-538 renumbered from R4-37-542 and amended effective May 7, 1990 (Supp. 90-2). R19-3-538 recodified from R4-37-538 (Supp. 95-1). Former Section R19-3-538 renumbered to R19-3-543 and amended; new Section R19-3-538 renumbered from R19-3-534 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-539. Demonstration Projects

- A. The procurement officer may award a contract for a demonstration project. The written determination shall contain the following:
 1. Name of the contractor;
 2. Description of the project, including unique and innovative features of the project;
 3. Statement and explanation that the project is in the best interest of the Lottery;
 4. Duration of the project; and
 5. Proposed contract terms and conditions.
- B. Demonstration projects shall be provided by the contractor at no cost and the Lottery shall not be obligated to purchase or lease the services or materials from the contractor.
- C. The procurement officer may purchase or lease from the demonstration contractor within 12 months after the demonstration project begins or within 12 months after the demonstration project ends by making a written determination that contains the following:
 1. Name of the contractor;
 2. Description of the project, including unique and innovative features of the project;
 3. Statement and explanation that lease or purchase is in the best interest of the Lottery;
 4. Cost to the Lottery;
 5. Duration of the proposed contract; and
 6. Proposed contract terms and conditions.
- D. The term of the contract resulting from a demonstration project shall not exceed two years.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-539 renum-

bered to R4-37-535, new Section R4-37-539 renumbered from R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-539 recodified from R4-37-539 (Supp. 95-1). Former Section R19-3-539 renumbered to R19-3-547 and amended; new Section R19-3-539 renumbered from R19-3-535 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-540. General Services Administration Contracts

- A.** The procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
1. Use of the GSA contract or schedule is cost effective and in the best interest of the Lottery,
 2. Price is equal to or less than the contractor's current GSA price,
 3. Price is fair and reasonable,
 4. Contractor is willing to offer GSA pricing and terms to the Lottery,
 5. Comparable products or services are not available under a state or agency contract,
 6. Comparable products or services are not restricted under a set-aside contract, and
 7. Contractor accepts required Lottery contract terms and conditions.
- B.** The procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the Lottery. The determination shall contain the following:
1. Name of the contractor;
 2. GSA contract or schedule number;
 3. Procurement description;
 4. Analysis of price, quality, and other relevant factors; and
 5. Statement that the price is fair and reasonable.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-540 renumbered to R4-37-536, new Section R4-37-540 renumbered from R4-37-544 and amended effective May 7, 1990 (Supp. 90-2). R19-3-540 recodified from R4-37-540 (Supp. 95-1). Former Section R19-3-540 renumbered to R19-3-549 and amended; new Section R19-3-540 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-541. Contract Clauses

The procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the Lottery's interests are addressed.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-541 renumbered to R4-37-538, new Section R4-37-541 renumbered from R4-37-545 and amended effective May 7, 1990 (Supp. 90-2). R19-3-541 recodified from R4-37-541 (Supp. 95-1). Former Section R19-3-541 renumbered to R19-3-551 and amended; new Section R19-3-541 renum-

bered from R19-3-536 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-542. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a Lottery contract without the written consent of the Director.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-542 renumbered to R4-37-539, new Section R4-37-542 renumbered from R4-37-546 and amended effective May 7, 1990 (Supp. 90-2). R19-3-542 recodified from R4-37-542 (Supp. 95-1). Former Section R19-3-542 repealed; new Section R19-3-542 renumbered from R19-3-537 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-543. Change of Name

If a contractor requests to change the name in which it holds a Lottery contract, the procurement officer may, upon receipt of a document indicating name change and any other information requested by the procurement officer in the best interest of the Lottery concerning the name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-543 renumbered to R4-37-540, new Section R4-37-543 renumbered from R4-37-547 and amended effective May 7, 1990 (Supp. 90-2). R19-3-543 recodified from R4-37-543 (Supp. 95-1). Former Section R19-3-543 repealed; new Section R19-3-543 renumbered from R19-3-538 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-544. Contract Change Orders and Amendments

- A.** The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B.** Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds 25% of the original contract amount may be executed only if approved by the budget manager and the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to R19-3-550.
- C.** The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-544 renumbered to R4-37-541, new Section R4-37-544 renumbered from R4-37-548 and amended effective May 7, 1990

(Supp. 90-2). R19-3-544 recodified from R4-37-544 (Supp. 95-1). Former Section R19-3-544 repealed; new Section R19-3-544 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-545. Multi-term Contracts

- A.** Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.
- B.** A contract may be entered into for a period exceeding five years if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery and the Lottery Commission pre-approves the extended contract period. The written determination shall include:
1. The initial and renewal option periods for the contract,
 2. Documentation that the estimated requirements are reasonable and continuing, and
 3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.
- C.** The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-545 renumbered to R19-3-541, new Section R4-37-545 renumbered from R4-37-549 and amended effective May 7, 1990 (Supp. 90-2). R19-3-545 recodified from R4-37-545 (Supp. 95-1). Former Section R19-3-545 renumbered to R19-3-552 and amended; new Section R19-3-545 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-546. Terms and Conditions

- A.** The procurement officer shall use the uniform terms and conditions published by the state procurement administrator for state contracts.
- B.** The procurement officer may make changes to uniform terms and conditions by making a written determination that it is in the best interest of the Lottery and does not conflict with any statutory requirements, provided that the procurement officer gives notice to the state procurement administrator of those changes.

Historical Note

Renumbered to Section R4-37-542 effective May 7, 1990 (Supp. 90-2). R19-3-546 recodified from R4-37-546 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-547. Mandatory Statewide Contracts

The Lottery shall use existing Arizona state contracts to satisfy the need for materials and services covered under such contracts for all non-Lottery specific materials and services, unless an off-contract request is approved by the state procurement administrator.

Historical Note

Renumbered to Section R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-547 recodified from R4-37-547 (Supp. 95-1). New Section R19-3-547 renumbered from R19-3-339 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-547 renumbered to R19-3-550; new Section R19-3-547 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-548. Multiple Source Contracts

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the Lottery, unless a written determination is made by the procurement officer providing otherwise.

Historical Note

Renumbered to Section R4-37-544 effective May 7, 1990 (Supp. 90-2). R19-3-548 recodified from R4-37-548 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-548 renumbered to R19-3-551; new Section R19-3-548 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-549. Conflict of Interest

- A.** A person preparing or assisting in the preparation of specifications, plans, or scopes of work shall not receive any direct benefit from the utilization of those specifications, plans, or scopes of work.
- B.** The procurement officer may waive the restriction set forth in subsection (A) if the procurement officer determines in writing that the rule's application would not be in the Lottery's best interest. The determination shall state the specific reasons that the restriction in subsection (A) has been waived. If the procurement officer is the individual with the restriction, the Director may waive the restriction set forth in subsection (A) if the Director determines in writing that the rule's application would not be in the Lottery's best interest. If the Director is the person with the restriction, the restriction may be waived by a determination of the office of the Governor.

Historical Note

Renumbered to Section R4-37-545 effective May 7, 1990 (Supp. 90-2). R19-3-549 recodified from R4-37-549 (Supp. 95-1). R19-3-549 renumbered from R19-3-540 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking

at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-549 renumbered to R19-3-552; new Section R19-3-549 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-550. Determination of Fair and Reasonable Price

- A.** For contracts or contract modifications that exceed \$100,000, the procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
 2. Price is supported by an established catalog or market prices;
 3. Price is set by law or rule; or
 4. Price is supported by relevant, historical price data.
- B.** The procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A), or
 2. The procurement officer determines in writing that it is in the best interest of the Lottery regardless of the amount of the contract or contract modification.

Historical Note

Adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-550 renumbered to R19-3-553; new Section R19-3-550 renumbered from R19-3-547 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-551. Submission and Certification of Cost or Pricing Data

- A.** The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the procurement officer.
- B.** The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- C.** The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief, as of a date mutually determined with the procurement officer.

Historical Note

Section R19-3-551 renumbered from R19-3-541 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-551 renumbered to R19-3-554; new Section R19-3-551 renumbered from R19-3-548 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-552. Refusal to Submit Cost or Pricing Data

- A.** If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.
- B.** If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the procurement officer may:
1. Reject the contract modification; or

2. Set the amount of the contract modification subject to the contractor's rights under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section R19-3-552 renumbered from R19-3-545 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-552 renumbered to R19-3-555; new Section R19-3-552 renumbered from R19-3-549 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-553. Defective Cost or Pricing Data

- A.** The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B.** The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C.** The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under R19-3-565 through R19-3-567. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-553 renumbered to R19-3-556; new Section R19-3-553 renumbered from R19-3-550 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-554. Protest of Solicitations and Contract Awards

- A.** Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B.** The interested party shall file the protest in writing with the procurement officer and shall include the following information:
1. The name, address, and telephone number of the interested party;
 2. The signature of the interested party or the interested party's representative;
 3. Identification of the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 5. The form of relief requested.
- C.** If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D.** In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the procurement officer makes the procurement file available for public inspection.
- E.** The interested party may submit a written request to the procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Lottery that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in

Arizona State Lottery Commission

writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

- F. If the interested party shows good cause, the procurement officer may consider a protest that is not timely filed.
- G. The procurement officer shall immediately give notice of a protest to all offerors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-554 renumbered to R19-3-557; new Section R19-3-554 renumbered from R19-3-551 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-555. Stay of Procurements During the Protest

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer shall make a written determination to either:
 1. Proceed with the award or contract performance, or
 2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Lottery.
- B. The procurement officer shall provide the interested party and other interested parties with a copy of the written determination.
- C. Determination of a stay decision shall be issued no later than the time of issuance of the procurement officer's decision in accordance with R19-3-556.
- D. Should a stay request be denied by the procurement officer, the protestant may request a procurement stay from the Director. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-555 renumbered to R19-3-561; new Section R19-3-555 renumbered from R19-3-552 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-556. Resolution of Solicitation and Contract Award Protests

- A. The procurement officer has the authority to resolve a protest.
- B. The procurement officer shall issue a written decision within 14 days after a protest has been filed under R19-3-554. The decision of the procurement officer shall contain the factual and legal basis for the decision and a statement that the decision of the Lottery may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision.
- C. The procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt and provide a copy to the Director.
- D. The time limit for decisions under subsection (B) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- E. If the procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may

proceed as if the procurement officer had issued an adverse decision.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-556 renumbered to R19-3-564; new Section R19-3-556 renumbered from R19-3-553 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-557. Remedies by the Procurement Officer

- A. If the procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the procurement officer shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
 1. The seriousness of the procurement deficiency,
 2. The degree of prejudice to other interested parties or to the integrity of the procurement system,
 3. The good faith of the parties,
 4. The extent of performance,
 5. The costs to the Lottery,
 6. The urgency of the procurement,
 7. The impact on the agency's mission, and
 8. Other relevant issues.
- C. The procurement officer may implement any of the following appropriate remedies:
 1. Decline to exercise an option to renew under the contract,
 2. Terminate the contract,
 3. Amend the solicitation,
 4. Issue a new solicitation,
 5. Award a contract consistent with procurement statutes and regulations, or
 6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). R19-3-557 renumbered to R19-3-565; new Section R19-3-557 renumbered from R19-3-554 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-558. Appeals to the Director Regarding Protest Decision

- A. An interested party may appeal the decision entered or deemed to be entered by the procurement officer to the Director within 30 days after the date the decision is received or deemed received under R19-3-556. The interested party shall file a copy of the appeal with the Director and the procurement officer.
- B. The interested party shall file the appeal in writing and shall include the following information:
 1. The information prescribed in R19-3-554(B) including the identification of confidential information under R19-3-503,
 2. A copy of the decision of the procurement officer, and
 3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C. The Director may consider any appeal that is not filed timely if:
 1. The interested party shows good cause, or

2. The Director finds there is a good cause.
- D.** The Director shall resolve appeals of solicitation decisions as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-559. Notice of Appeal to the Director Regarding Protests

- A.** The procurement officer shall promptly give notice of the appeal to all offerors.
- B.** The Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R19-3-503.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-559 renumbered to R19-3-566; new Section R19-3-559 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-560. Stay of Procurement During Appeal to Director

- A.** If a stay is issued under R19-3-555, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the Lottery.
- B.** Following a review of the procurement officer's decision and the interested party's appeal, the Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the Lottery.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-560 renumbered to R19-3-567; new Section R19-3-560 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-561. Agency Report Regarding Protest Appeals

- A.** The procurement officer shall file a complete report on any appeal under A.R.S. Title 41, Chapter 6, Article 10 within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
1. The appeal;
 2. The offer submitted by the interested party;
 3. The offer of the firm that is being considered for award;
 4. The solicitation, including the specifications or portions relevant to the appeal;
 5. The abstract of offers or relevant portions;
 6. Any other documents that are relevant to the protest; and
 7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B.** The time limit for filing the agency report under subsection (A) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of the agency report has been extended and the date by which a decision shall be issued.

- C.** The interested party shall file comments on the agency report with the procurement officer within 10 days after receipt of the report. The interested party shall provide copies of the comments to the other interested parties.
- D.** The interested party may submit a written request to the Director for an extension of the period for submission of comments, identifying the reasons for the extension. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section R19-3-561 renumbered from R19-3-555 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-562. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not-susceptible-for-award determination, or an award does not comply with procurement statutes and rules, the Director shall implement remedies as provided in R19-3-557 or R19-3-563.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-562 renumbered to R19-3-568; new Section R19-3-562 made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-563. Informal Settlement Conference

- A.** In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision.
- B.** If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing.
- C.** If any interested party chooses not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference.
- D.** If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings.
- E.** If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision.
- F.** When making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the

perceived success or failure of the informal settlement conference.

Historical Note

New Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-564; new Section R19-3-563 made by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-564. Dismissal Before Hearing

- A. The Director may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
1. The appeal does not state a valid basis for protest,
 2. The appeal is untimely as prescribed under R19-3-558, or
 3. The appeal attempts to raise issues not raised in the protest.
- B. The procurement officer shall notify the interested party in writing of a determination to dismiss an appeal before hearing.

Historical Note

New Section R19-3-564 renumbered from R19-3-556 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-565; new Section R19-3-564 renumbered from R19-3-563 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-565. Controversies Involving Contract Claims Against the Lottery

- A. A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;
 2. The signature of the claimant or claimant's representative;
 3. Identification of the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
 5. The form and dollar amount of the relief requested.
- B. The procurement officer shall have the authority to settle and resolve contract claims.

Historical Note

New Section R19-3-565 renumbered from R19-3-557 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-566; new Section R19-3-565 renumbered from R19-3-564 by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-566. Procurement Officer's Decision Regarding Contract Claims

- A. If a claim cannot be resolved under R19-3-565, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B. The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:
1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;

4. A statement of the procurement officer's decision, with supporting rationale; and
 5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in R19-3-567(B) with the procurement officer within 30 days from the date you receive this decision."
- C. If the procurement officer fails to issue a decision on a contract claim within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

Historical Note

New Section R19-3-566 renumbered from R19-3-559 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-567; new Section R19-3-566 renumbered from R19-3-565 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-567. Appeals and Reports to the Director Regarding Contract Claims

- A. The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.
- B. The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the procurement officer,
 2. A statement of the factual areas of agreement or disagreement, and
 3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C. The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
- D. The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

Historical Note

New Section R19-3-567 renumbered from R19-3-560 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-568; new Section R19-3-567 renumbered from R19-3-566 by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-568. Controversies Involving Lottery Claims Against the Contractor

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07. The procurement officer shall furnish a copy of the claim to the Director.

Historical Note

New Section R19-3-568 renumbered from R19-3-562 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-569; new Section R19-3-568 renumbered from R19-3-567 by final rulemaking at 22 A.A.R. 2966,

effective November 21, 2016 (Supp. 16-4).

R19-3-569. Guidance

If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or 2 A.A.C. 7, including, but not limited to a procurement utilizing a cooperative contract.

Historical Note

New Section R19-3-569 renumbered from R19-3-568 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

ARTICLE 6. ANNUITY ASSIGNMENTS

R19-3-601. Voluntary Assignment of Prizes Paid in Installments

- A. A prize winner may request a voluntary assignment of an annuity or a portion of the remaining installments of the annuity by filing an action in a court of competent jurisdiction requesting judicial approval of the assignment. The prize winner and the purchaser of the annuity shall name the state of Arizona as a defendant in the action and shall bear all costs associated with filing the request for judicial approval of the assignment.
- B. A prize winner shall include in the request for judicial approval under subsection (A) the following:
 1. The affidavit required under A.R.S. § 5-563(A)(3);
 2. A copy of the signed assignment agreement between the prize winner and the assignee; and
 3. Proof that the fee under subsection (D) has been paid to the Lottery.
- C. After the court approves the assignment, the prize winner shall send the written judicial approval to the Lottery. Upon receipt of judicial approval of the voluntary assignment, the Director shall direct the insurance company to make future annuity payments as provided in the Court order.
- D. The prize winner or assignee shall pay a fee of \$235.00 to the Lottery to process the voluntary assignment.

Historical Note

Adopted as an emergency effective October 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-5). Adopted without change as a permanent rule effective February 25, 1987 (Supp. 87-1). Amended effective May 7, 1993 (Supp. 93-2). R19-3-601 recodified from R4-37-601 (Supp. 95-1). Repealed effective June 14, 1997 (Supp. 97-2). New Section made by final rulemaking at 11 A.A.R. 2028, effective July 2, 2005 (Supp. 05-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (B)(1) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3).

ARTICLE 7. DESIGN AND OPERATION OF INSTANT GAMES

R19-3-701. Definitions

In this Article, unless the context otherwise requires:

1. "Caption" means the printed characters appearing below a play symbol or prize symbol that verify and correspond with that symbol. No more than one caption will appear under a symbol.
2. "Game profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential game fundamentals required by these rules for an instant game.

3. "Instant game" means a game that is played by removing the protective covering from a ticket to reveal the play symbols, or prize symbols, or both that determine if a ticket holder is entitled to a prize or prizes.
4. "Instant scratch game" means an instant game where the protective covering is made of latex or another substance that is scratched off.
5. "Instant tab game" means an instant game where the protective covering is a perforated paper tab that is opened.
6. "Pack" means a group of tickets bearing a common identification number.
7. "Pack-ticket number" means a unique multi-digit number that includes a game number, a pack number, and a ticket number which distinguishes each ticket from every other ticket within an instant game.
8. "PIN" means the designated characters within the validation number that allows an on-line terminal to validate an instant ticket.
9. "Play area" means the portion or portions of the ticket which contains the play symbol or symbols. More than one play area may appear on a ticket.
10. "Play symbols" means the printed image or images that appear within the defined play area of the ticket that determine if the ticket holder is entitled to a prize or prizes.
11. "Prize structure" means the estimated number of prizes, prize values, and odds of winning prizes for an individual game.
12. "Prize symbol" means the printed image or images that indicates the prize or prizes available in that game.
13. "Retailer validation code" means the multiple letters in the play area, under the protective covering that verify prizes less than \$600.
14. "Validation code" means the unique multi-positional code on each ticket that is used to authenticate winning tickets.

Historical Note

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

R19-3-702. Game Profile

- A. Each game shall have a Game Profile and at a minimum, the Profile shall contain the following information:
 1. Game name;
 2. Game number;
 3. Prize structure;
 4. Game Playstyle;
 5. Play symbols;
 6. Retailer validation codes, if any;
 7. Special features, if any;
 8. Retail sales price;
 9. How to play and win instructions; and
 10. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.
- B. The Commission shall approve the individual Game Profile prior to the game being sold to the public.

Historical Note

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

R19-3-703. Game Playstyle

E.

CONSIDERATION AND DISCUSSION OF REQUEST FOR A ONE-YEAR EXTENSION OF THE DUE DATE FOR A FIVE-YEAR REVIEW REPORT ON 18 A.A.C. 18, ARTICLE 2 FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

December 13, 2021

SENT VIA EMAIL ONLY

Nicole Sornsin
Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Five Year Review Report for 18 A.A.C. 18, Article 2 – Extension Request

Dear Chairperson Sornsin:

Pursuant to A.R.S. § 41-1056(F) and A.A.C. R1-6-303(B), ADEQ requests a one-year extension of the July 29, 2022 due date for the 18 A.A.C. 18, Article 2, Five Year Review Report (5YRR).

ADEQ requests the extension of the due date to July 29, 2023 so that it may submit one 5YRR for two closely-related Articles, which were recently recodified from the Department of Emergency and Military Affairs to ADEQ (27 A.A.R. 1535), specifically:

- 8 A.A.C. 2, Article 6. Hazardous Materials Training Program, Student and Instructor Evidence of Completion; recodified to 18 A.A.C. 18, Article 2, and currently due July 31, 2022.
- 8 A.A.C. 4, Article 1. Emergency Planning and Community Right to Know; recodified to 18 A.A.C. 18, Article 1, and currently due July 31, 2023.

Because these Articles are small (Article 1 contains 10 rules, while Article 2 contains only 5 rules) and closely related, it would be a more efficient use of ADEQ's resources to combine the 5YRRs for these Articles. If GRRC grants this request, the result would be one 5YRR due July 29, 2023 for 18 A.A.C.- 18, Articles 1 and 2.

Please do not hesitate to contact Dena Kalamchi if you have any questions. She can be contacted by phone at (602) 771-5215, and email at kalamchi.dena@azdeq.gov. Thank you for your assistance in reviewing the Department's rules.

Sincerely,

Phoenix Office

1110 W. Washington St. • Phoenix, AZ 85007
602-771-2300

Southern Regional Office

400 W. Congress St. • Suite 433 • Tucson, AZ 85701
520-628-6733

azdeq.gov

Page 2 of 2
Chair Sornsin
Governor's Regulatory Review Council



Laura Malone
Waste Programs Division Director
Arizona Department of Environmental Quality

cc: Anakaren Lemus
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