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ARIZONA STATE RETIREMENT SYSTEM (R20-0201)

Title 2, Chapter 8, Article 1, Retirement System

Amend: R2-8-122



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: December 30, 2019

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM (R20-0201)
Title 2, Chapter 8, Article 1, Retirement System

Amend: R2-8-122

Summary:

This regular rulemaking from the Arizona State Retirement System (ASRS) seeks to amend one rule in Title 2, Chapter 8, Article 1 regarding the Retirement System. This rule states how employee contributions are to be remitted to the ASRS and when contributions become delinquent if the employer does not remit them on time. The rule also states the interest rate that is applied to delinquent contributions.

In this rulemaking, the ASRS seeks to amend R2-8-122 to clarify that contributions must be remitted based on the contribution rate in effect on the pay period end date. The ASRS also seeks to clarify that an employer must certify that each employee for whom they are remitting contributions has met the requirements for active member eligibility and that all contributions are eligible for compensation under A.R.S. § 38-711 (Definitions).

The ASRS received an exemption from the rulemaking moratorium to conduct this rulemaking on June 25, 2019.

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

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

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

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

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

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

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

The ASRS promulgates rules that allow it to provide for the proper administration of the state retirement trust fund. The ASRS indicates there is little to no economic, small business, or consumer impact, other than the minimal cost to prepare the rule package. The ASRS indicates that this rulemaking has a minimal economic impact, if any, because it merely clarifies how a participating employer must remit contributions. Stakeholders include the ASRS and all members and employers participating in the ASRS. The ASRS currently has a total membership of approximately 586,306.

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 ASRS believes this is the least costly and least intrusive method because it clarifies how participating employers remit contributions without imposing any additional requirements on the public.

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

This rulemaking directly affects all ASRS members and participating employers because it clarifies how the effective contribution rate is applied. The ASRS states that such clarification will benefit members and participating employers by increasing understanding of how contributions are remitted to the ASRS. The rulemaking does not provide any benefits or impose any costs on political subdivisions and does not directly affect businesses.

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

No. The ASRS did not make any changes to these 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 ASRS 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.

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

In this rulemaking, the ASRS seeks to clarify that contributions must be remitted based on the contribution rate in effect on the pay period end date and that a participating employer must certify that each employee for whom it is remitting contributions has met applicable requirements. The amended rule will be more clear and effective. The ASRS accepts the usual 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

December 10, 2019

Ms. Nicole Sornsins, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 2. Administration
Chapter 8. State Retirement System Board

Dear Ms. Sornsins:

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

1. Close of record date: The rulemaking record was closed on December 10, 2019 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
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 Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Jeremiah Scott
Assistant Director

NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

<u>1. Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
R2-8-122	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. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711, 38-735, 38-736, and 38-737

3. The effective date for the rules:

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 Docket Opening: 25 A.A.R. 3291, November 8, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 3285, November 8, 2019

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

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Ste. 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-Mail: JessicaT@azasrs.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:

R2-8-122 clarifies how contributions are to be remitted to the ASRS and when contributions become delinquent if the Employer does not remit contributions on time. This rule also identifies what interest rate is applied to delinquent contributions. However, the ASRS needs to further clarify that contributions must be remitted based on the contribution rate in effect on the pay period end date and that the Employer shall certify that each employee for whom they are remitting contributions has met the requirements for active member eligibility and that all contributions are eligible for compensation under A.R.S. § 38-711.

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:

No study was reviewed.

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 ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies in further detail how an Employer must remit contributions.

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

None

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on December 10, 2019.

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

None

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

The 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:

There are no federal laws applicable to 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 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:

No materials are 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:

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 1. RETIREMENT SYSTEM

Section

R2-8-122. Remittance of Contributions

ARTICLE 1. RETIREMENT SYSTEM

R2-8-122. Remittance of Contributions

- A. No change.
- B. No change.
- C. Each Employer shall remit contributions pursuant to this section based on the contribution rate in effect on the pay period end date.
- D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

The ASRS needs to further clarify that contributions must be remitted based on the contribution rate in effect on the pay period end date and that the Employer shall certify that each employee for whom they are remitting contributions has met the requirements for active member eligibility and that all contributions are eligible for compensation under A.R.S. § 38-711.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Currently, the ASRS collects approximately \$2 Billion in contributions each year from approximately 210,000 active members and 673 employers.

However, some employers misunderstand how to remit contributions when contribution rates are updated, resulting in employers remitting incorrect contributions and payroll adjustments to correct the contribution amount.

With the changes completed in this rulemaking, the process for submitting accurate contributions will be clearer and more effective. Ultimately, the rules will clarify what contribution rate should be used when remitting contributions, thereby providing clear notice to the public.

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:

Currently, the ASRS does not foresee significant changes or harm resulting from the conduct the rule is designed to change because incorrect contributions based on a misapplication of the effective contribution rate is typically corrected within the same fiscal year through a payroll adjustment. However, without this rulemaking, members and Employers will not be aware of how contributions based on new contribution rates should be remitted. Implementing clear and concise language will

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

ensure members and Employers understand how contribution rates are applied. This rulemaking will ensure the ASRS is consistent with Arizona statutes.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how an employer remits contributions based on the effective dates of contributions rates from one fiscal year to the next, thereby increasing understandability of remitting contributions and increasing the efficiency of the administration. Clarifying how employers remit contributions based on a new effective contribution rate will increase understanding of how contributions are withheld from the employee's compensation and remitted to the ASRS, thereby reducing corrections and appeals that arise out of misunderstanding of how contribution rates are applied. Such clarification will ensure that contributions are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of how contributions are remitted, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of the program and its requirements.

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

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if

any, because it merely clarifies in further detail how an Employer must remit contributions. Thus, the economic impact is minimized.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: JessicaT@azasrs.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

In general, all members and Employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 586,306.

Specifically, active members and all Employers who remit contributions will be directly affected by this rulemaking. These rules will clarify how the ASRS applies its contribution rates. Such clarification will benefit members and Employers by increasing the understandability of how contributions are remitted to ASRS.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

All active ASRS members and Employers are directly affected by this rulemaking because it will clarify how the effective contribution rate is applied. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:
This rulemaking does not provide any benefits or impose any costs on political subdivisions.

- c. Costs and benefits to businesses directly affected by the rulemaking:
No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:
The rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:
 - a. Identification of the small business subject to the rulemaking:
No businesses, regardless of size, are subject to the rulemaking.

 - b. Administrative and other costs required for compliance with the rulemaking:
Not applicable.

 - c. Description of methods that may be used to reduce the impact on small businesses:
Not applicable.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
All ASRS members and Employers are directly affected by the rulemaking. The effect has been previously described above.

9. Probable effects on state revenues:
There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:
The ASRS believes this is the least costly and least intrusive method because it will clarify how Employers remit contributions without imposing any additional requirements on the public.

² Small business has the meaning specified in A.R.S. § 41-1001(20).

R2-8-122. Remittance of Contributions

- A. Each Employer shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.

Historical Note

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
 - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
 - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
 - (iv) Payments for allowances.
 - (v) Reimbursements for employee business expenses or employee personal expenses.
 - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
 - (vii) Payments made in lieu of any employer-paid insurance coverage.
 - (viii) Workers' compensation, unemployment compensation payments and disability payments.
 - (ix) Merit awards pursuant to section 38-613.
 - (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
 - (xi) Payments made in the form of goods or services in lieu of gross wages.
 - (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
 - (xiii) Payments in excess of the section 415 of the internal revenue code limits established in section 38-746.
 - (xiv) Payments for any other employment benefit.
 - (xv) Payments for which employer or employee contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

38-735. Payment of contributions; recovery of delinquent payments

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

38-736. Member contributions

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes,

in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions

A. Employer contributions shall be a percentage of compensation of all employees of the employers, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers. Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the ASRS trust fund is less than one hundred percent funded.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D-2

DEPARTMENT OF HEALTH SERVICES (R20-0203)

Title 9, Chapter 16, Article 6, Radiation Technologists

Amend: R9-16-614, R9-16-623



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: December 30, 2019

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R20-0203)

Title 9, Chapter 16, Article 6, Radiation Technologists

Amend: R9-16-614, R9-16-623

Summary:

This regular rulemaking from the Department of Health Services (Department) seeks to amend two rules in Title 9, Chapter 16, Article 6 regarding Radiation Technologists.

Arizona Revised Statutes, in Title 9, Chapter 28, Article 2, provides for the certification of different classifications of radiation technologists. Legislation enacted into law over the past two years (Laws 2017, Ch. 313 and Laws 2018, Ch. 234) made the Department responsible for regulating radiation technologists, replacing the Arizona Radiation Regulatory Agency, the Radiation Regulatory Hearing Board, and the Medical Radiologic Technology Board of Examiners in these duties. These statutory changes also gave the Department the authority to set application fees through rulemaking, replacing the application fees in statute. Rules for the certification of radiation technologists, formerly in A.A.C. Title 12, Chapter 2, were recently re-adopted in A.A.C. Title 9, Chapter 16, Article 6 through expedited rulemaking. This rulemaking only clarified and simplified requirements and did not change any fees.

The Department states that when it assumed the responsibility for regulating radiation technologists, it discovered that the existing fees in the rules were not enough to cover the

Department's expenses in carrying out this responsibility. The Department sought and received an exemption from the rulemaking moratorium to increase the application fees in R9-16-623 to cover the shortfall. The Department received an exemption from the rulemaking moratorium on April 4, 2019.

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

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

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

Yes. This rulemaking establishes a new fee and contains a fee increase. The new fee is authorized under A.R.S. § 32-2812(A) (Applications for certificate; qualifications; fees; examination; denial).

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. However, the Department indicates that it did review the certification fees charged in other states, as shown on their websites and described in the Department's Economic, Small Business, and Consumer Impact Statement (EIS).

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

Laws 2018, Ch. 234, gave the Department the authority to set the application fees for certification of individuals in radiologic technology. In SFY 2019, \$267,596 was received from certification. At the same time, the Department would have incurred expenses of approximately \$400,000 had the Department not used other resources to cover the shortfall. The Department states that they have reached the point where they have to increase fees for certification or reduce regulatory activities. The Department believes the reduction in regulatory oversight may result in harm to health and safety of the public, as well as causing a burden on the regulated community. The Department anticipates receiving \$155,000 in additional fees each year, which they believe should be sufficient to cover the shortfall and allow the Department to continue to protect the public health.

Stakeholders include the Department, certified radiation technologists, students currently in occupational programs related to radiologic technology, businesses employing radiation technologists, patients, and the general public.

As of January 17, 2020 there were approximately 7,700 individuals with active certifications as radiation technologists in Arizona, with another approximately 2,300 with inactive certificates. Certificates are valid for two years. Of the individuals with active certificates, approximately 6,136 individuals were certified as radiologic

technologists, with 702 of these individuals further certified as mammographic technologists and 1,576 further certified as computed tomography technologists. There were 432 individuals with active certification as radiation therapy technologists, 544 individuals certified as nuclear medicine technologist, 492 individuals certified as practical technologists in radiology, three individuals certified as practical technologists in bone densitometry, 86 individuals certified as practical technologists in podiatry, and 10 individuals certified as radiologist assistants.

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 states that the current \$60 fee is paid by an applicant for an initial application or a certificate holder for renewal applications for certification and has been in place for 20 years. The rulemaking will increase the fee to \$100. The Department believes that an applicant or certificate holder may incur a minimal increased cost for certification of \$40 for a two-year certification due to the fee increase, which they indicate equates to an increase of \$1.67 per month. The \$60 fee applies to initial application or certification as practical technologists, radiologic technologists, nuclear medicine technologists, radiation therapy technologists, and certified radiologist assistants. In addition, the Department is adding a \$10 fee for applications for computed tomography preceptor certificates and computed tomography temporary certificates. Initial application or renewal application fees for certification as mammographic technologists or computed tomography technologists will remain at \$20. The Department, businesses employing radiation technologists, patients, and the general public will potentially have significant benefit from knowing that only qualified and competent individuals are certified to provide radiologic technology. The Department believes there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

6. What are the economic impacts on stakeholders?

Increased fees will generate more revenue for the Department, which, in turn, allows the Department to continue providing adequate oversight over certified individuals. Such oversight provides significant benefits for patients and the general public by ensuring that the radiation technologists that patients visit are competent and qualified.

Businesses employing certified radiation technologists may volunteer to subsidize the increase in the cost of certification for their employees, in which case, the businesses will incur minimal costs. The Department states that it is possible that any increased costs incurred by the businesses may be passed on as increased fees for services. However, the general public and businesses employing radiation technologists may also receive a significant benefit from the fee increases through the continuance of external monitoring by the Department of the competency of these employees or potential employees.

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 these 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?**

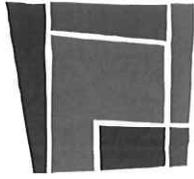
Yes. The Department states that it believes the certification issued to a radiation technologist qualifies as a general permit pursuant to A.R.S. § 41-1037 because once an individual is certified, they are not limited to providing the tasks/services in any one location. This description of the certification is consistent with the definition of “general permit” in A.R.S. § 41-1001(11) (Definitions). The Department complies with A.R.S. § 41-1037.

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

Not applicable. There is no corresponding federal law or regulation for the certification rules. The Department notes that federal law or regulation may impact a certified individual’s scope of practice and methodologies used.

11. **Conclusion**

The Department accepts the usual 60-day delayed effective date for this rulemaking. Council staff recommends approval of the rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

December 19, 2019

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 16, Article 6, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: December 12, 2019
2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 16, Article 6, does not relate to a five-year-review report.
3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does establish a new certificate fee, authorized by A.R.S. § 32-2812.
4. Whether the rulemaking contains a fee increase:
The rulemaking does contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. 41-1032:
The Department is not requesting an immediate effective date for the rules.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

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

The following documents are enclosed:

- a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
- b. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and

- c. General and specific statutes authorizing the rules, including relevant statutory definitions.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,



Stephanie Elzenga
Director's Designee

SE:rms

Enclosures

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

150 N. 18th Ave., Suite 200

Phoenix, AZ 85007

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E-mail: Stephanie.Elzenga@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) Title 9, Chapter 28, Article 2, provides for the certification of different classifications of radiation technologists. Laws 2017, Ch. 313, and Laws 2018, Ch. 234, made the Arizona Department of Health Services (Department) responsible for regulating radiation technologists, replacing the Arizona Radiation Regulatory Agency, the Radiation Regulatory Hearing Board, and the Medical Radiologic Technology Board of Examiners in these duties. Laws 2018, Ch. 234, also replaced application fees specified in statute with authority for the Department to set application fees through rulemaking. When the Department assumed responsibility for regulating radiation technologists, the Department discovered that the fees specified in the rules were insufficient to cover the expenses incurred by the Department in carrying out this function. Rules for certification of radiation technologists, formerly in Arizona Administrative Code (A.A.C.) Title 12, Chapter 2, have recently been re-adopted in 9 A.A.C. 16, Article 6, through expedited rulemaking. This rulemaking clarified and simplified requirements but did not change any fees. Therefore, after receiving an exception from the rulemaking moratorium established by Executive Order 2018-02, the Department is increasing the application fees in R9-16-623 to cover the short-fall, adding fees for applications for computed tomography preceptor certificates and computed tomography temporary certificates, and making other corresponding changes to the rules. The Department anticipates these changes will ensure sufficient funding for the Department to continue regulating radiation technologists in an efficient manner to protect the health and safety of Arizona's citizens. The proposed amendments will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and 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 or rely on any study for this rulemaking. However, the Department did review the certification fees charged by other states, as shown on their websites and described in the economic, small business, and consumer impact statement.

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

Not applicable

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

The Department anticipates that the rulemaking, which is increasing fees that have remained the same for over 20 years, may affect the Department, certified radiation technologists, students currently in occupational programs related to radiologic technology, businesses employing radiation technologists, patients, and the general public. Annual costs/revenues changes are designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

As of July 3, 2019, there were approximately 9,700 individuals with active certification as radiation technologists in Arizona, with another approximately 2,300 with inactive certificates. Under the fees for certification in the current rules, the Department receives approximately \$496,000 every two years from individuals receiving or renewing certification, or approximately \$248,000 per year. Since assuming responsibility for the regulation of individuals certified to provide radiologic technology in 2017, the Department's expenses have consistently been more than the revenue received, and this shortfall has reached the point where the Department has to increase fees for certification or reduce regulatory activities. Such reduction in regulatory activity could include not investigating complaints in a timely manner and taking much more time to resolve problems with applications and to issue certificates. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community. The fees specified in the proposed rules would be sufficient to cover the shortfall and allow the Department to continue to protect public health. They are also in line with the fees charged by other states. Therefore, the Department would receive a substantial benefit from the fee increase.

Businesses employing radiation technologists include hospitals, some clinics, and medical imaging facilities. If one of these entities pays for or subsidizes the cost of licensing/certification for their employees, the fee increase may cause the entity to incur a minimal cost increase. Since the fee increase and new certificate fees will allow the Department to continue regulating

radiation technologists under the current processes and timelines, a business employing radiation technologists may also receive a significant benefit from the fee changes through the continuance of external monitoring by the Department of the competency of these employees or potential employees.

The current certification fee of \$60 is being increased to \$100 every two years to enable the Department to continue providing regulatory oversight at a level that protects the health and safety of the public. Therefore, an applicant or certificate holder may incur a minimal increased cost for certification of \$40 for a two-year certification due to the fee increase, which equates to an increase of \$1.67 per month. Adding fees for computed tomography preceptor certificates and computed tomography temporary certificates may also cause individuals wanting to gain experience towards certification as a computed tomography technologist without taking a separate examination in computed tomography to incur a minimal cost increase. However, the new rules also make clear under what circumstances, specified in A.R.S. § 41-1080.01, the application fee for initial certification will be waived by the Department. This may provide a minimal benefit to students currently in occupational programs related to radiologic technology who meet the criteria for waiver.

The thousands of patients in Arizona receiving a medical imaging procedure or radiation therapy every day rely on the oversight provided by the Department to ensure that the individual applying ionizing radiation to their bodies as part of the procedure or therapy is qualified and competent, so their health and safety are protected. By enabling the Department to continue providing adequate oversight over individuals certified under the rules in 9 A.A.C. 16, Article 6, the Department anticipates that the fee increase may provide a significant benefit to a patient. Similarly, the Department believes that the health and safety of the general public are protected by continued oversight of individuals certified under the rules in 9 A.A.C. 16, Article 6. Therefore, the Department expects that the general public may receive a significant benefit from the fee changes due to knowing that only qualified and competent individuals are certified to provide radiologic technology.

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

No changes were made to the rules between the proposed rulemaking and the final rulemaking.

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

No written comments were received about the rulemaking during the public comment period. The Department held an oral proceeding for the proposed rules on December 12, 2019, which no stakeholder/member of the public attended.

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 Department believes the certification issued to an individual is a general permit in that certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location.

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 laws do not apply to the certification rules. However, federal regulations may impact the scope of practice and methodologies employed by certified individuals.

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES OCCUPATIONAL LICENSING

ARTICLE 6. RADIATION TECHNOLOGISTS

R9-16-614. Application for Computed Tomography Technologist Preceptorship and Temporary Permit

R9-16-623. Fees

ARTICLE 6. RADIATION TECHNOLOGISTS

R9-16-614. Application for Computed Tomography Preceptorship and Temporary Certification

- A.** Before beginning training under R9-16-613(A)(3)(b), an individual shall obtain a computed tomography preceptorship certificate from the Department.
- B.** An applicant for a computed tomography preceptorship certificate shall submit an application packet to the Department that includes:
1. The information and documents required under R9-16-619; ~~and~~
 2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
 - a. The name and date of birth of the applicant;
 - b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
 - c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
 - d. The licensed radiologist's signature and date of signing; and
 3. The applicable fee in R9-16-623.
- C.** The Department shall approve or deny an individual's application for a computed tomography preceptorship certificate according to R9-16-621.
- D.** A computed tomography preceptorship certificate is valid for one year from the date issued and may not be renewed.
- E.** At least 30 days before the expiration of an individual's computed tomography preceptorship certificate, the individual may apply for a computed tomography temporary certificate by submitting an application packet to the Department that includes:
1. The information and documents required under R9-16-619; ~~and~~
 2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
 - a. The name and date of birth of the applicant;
 - b. The name, license number, e-mail address, and telephone number of the licensed radiologist;

- c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
- d. The licensed radiologist's signature and date of signing; and

3. The applicable fee in R9-16-623.

F. The Department shall approve or deny an individual's application for a computed tomography temporary certificate according to R9-16-621.

G. A computed tomography temporary certificate is valid for one year and may not be renewed.

R9-16-623. Fees

A. ~~An~~ Except as provided in subsection (C) or (D), an applicant shall submit to the Department the following nonrefundable fees for:

- 1. An initial application or renewal application for certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry, ~~\$60~~ \$100;
- 2. An initial application or renewal application for certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist, ~~\$60~~ \$100;
- 3. An initial application or renewal application for certification as a mammographic technologist, \$20;
- 4. A computed tomography preceptorship certificate or computed tomography temporary certificate, \$10;
- ~~4.5.~~ An initial application or renewal application for certification as a computed tomography technologist, \$20;
- ~~5.6.~~ An initial application or renewal application for certification as a radiologist assistant, ~~\$60~~ \$100; and
- ~~6.7.~~ A late renewal penalty fee according to A.R.S. § 32-2816(C), \$50.

B. The fee for a duplicate certificate is \$10.

C. An applicant for initial certification is not required to submit the applicable fee in subsection (A) if the applicant, as part of the applicable application packet in R9-16-607, R9-16-609, R9-16-612, R9-16-615, or R9-16-617, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

D. As allowed under A.R.S. § 32-2816(F), a certificate holder is not required to submit a fee for renewal of certification if the certificate holder submits to the Department an affidavit stating that the certificate holder:

- 1. Is retired from the practice of radiologic technology, or
- 2. Requests to be placed on inactive status.

TITLE 9. HEALTH SERVICES
CHAPTER 16. OCCUPATIONAL LICENSING
ARTICLE 6. RADIATION TECHNOLOGISTS

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

October 2019

Revised January 2020

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING
ARTICLE 6. RADIATION TECHNOLOGISTS

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) Title 9, Chapter 28, Article 2, provides for the certification of different classifications of radiation technologists. Laws 2017, Ch. 313, and Laws 2018, Ch. 234, made the Arizona Department of Health Services (Department) responsible for regulating radiation technologists, replacing the Arizona Radiation Regulatory Agency, the Radiation Regulatory Hearing Board, and the Medical Radiologic Technology Board of Examiners in these duties. Laws 2018, Ch. 234, also replaced application fees specified in statute with authority for the Department to set application fees through rulemaking. When the Department assumed responsibility for regulating radiation technologists, the Department discovered that the fees specified in the rules were insufficient to cover the expenses incurred by the Department in carrying out this function. Rules for certification of radiation technologists, formerly in Arizona Administrative Code (A.A.C.) Title 12, Chapter 2, have recently been re-adopted in 9 A.A.C. 16, Article 6, through expedited rulemaking, to clarify and simplify requirements. However, fees were not changed as part of that rulemaking. Therefore, after receiving an exception from the rulemaking moratorium established by Executive Order 2018-02, the Department is now increasing the application fees in R9-16-623 to cover the short-fall, adding fees for applications for computed tomography preceptor certificates and computed tomography temporary certificates, and making other corresponding changes to the rules. The Department anticipates these changes will ensure sufficient funding for the Department to continue regulating radiation technologists in an efficient manner to protect the health and safety of Arizona's citizens.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

- The Department
- Certified radiation technologists
- Students currently in occupational education programs related to radiologic technology
- Businesses employing radiation technologists
- Patients
- General public

3. Cost/Benefit Analysis

This analysis includes costs and benefits associated with the increase in application fees for certification of individuals in radiologic technology under the rules in 9 A.A.C. 16, Article 6, as shown

in Attachment A. These fees had been established in A.R.S. 32-2812 at \$60 for over 20 years, until the changes made by Laws 2018, Ch. 234, gave the Department the authority to set the application fees through rulemaking. The Department is increasing these fees to meet the expenses incurred by the Department when it assumed responsibility for certification and regulation of individuals practicing radiologic technology. The Department anticipates requiring one new FTE to adequately accomplish this regulation to protect the health and safety of the public. The fee increases support the budget for this function as reviewed, analyzed, and approved through the state budget process. Annual cost/revenue changes are designated as minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the sections following the Table.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Increasing the fee for certification Adding fees for computed tomography preceptor certificates and computed tomography temporary certificates	None Minimal	Substantial Minimal
B. Privately Owned Businesses and Certified Individuals			
Businesses employing radiation technologists of all categories	Increasing the fee for certification Continuing regulation by the Department	None-to-minimal None	None Significant
Businesses employing individuals requesting computed tomography preceptor certificates or computed tomography temporary certificates	Adding fees for computed tomography preceptor certificates and computed tomography temporary certificates	None-to-minimal	None
Certified radiation technologists of all categories	Increasing the fee for certification	Minimal	None
Individuals requesting computed tomography preceptor certificates or computed tomography temporary certificates	Adding fees for computed tomography preceptor certificates and computed tomography temporary certificates	Minimal	None
Students currently in occupational education	Increasing the fee for certification	Minimal	Minimal

programs related to radiologic technology			
C. Consumers			
Patients	Ensuring only qualified and competent individuals are certified to provide radiologic technology	None-to-minimal	Significant
General public	Ensuring only qualified and competent individuals are certified to provide radiologic technology	None	Significant

- **The Department**

As of January 17, 2020, there were approximately 7,700 individuals with active certification as radiation technologists in Arizona, with another approximately 2,300 with inactive certificates. Of the individuals with active certificates, 6,136 individuals were certified as radiologic technologists, with 702 of these individuals further certified as mammographic technologists and 1,576 further certified as computed tomography technologists. There were 432 individuals with active certification as radiation therapy technologists, 544 individuals certified as nuclear medicine technologists, 492 individuals certified as practical technologists in radiology, three individuals certified as practical technologists in bone densitometry, 86 individuals certified as practical technologists in podiatry, one individual certified as unlimited practical technologists in radiology, and 10 individuals certified as radiologist assistants. These certificates are valid for two years.

Under the fees for certification in the current rules, the Department receives approximately \$508,000 every two years from individuals receiving or renewing certification, or approximately \$254,000 per year, as shown in Attachment A. Since assuming responsibility for the regulation of individuals certified to provide radiologic technology in 2017, the Department's expenses have consistently been more than the revenue received. In SFY 2019, \$267,596 was received from certification. At the same time, the Department would have incurred expenses of approximately \$400,000 had the Department not used other resources to cover the shortfall. For example, personnel paid through other licensing programs were reassigned to carry out duties associated with certification; supplies bought with funds from other licensing programs were used for certification under the rules in 9 A.A.C. 16, Article 6; and the Department did not collect from the program the \$27,441 of indirect fees assessed to cover Department-wide expenses. This situation cannot continue indefinitely, and has reached the point where the Department has to increase fees for certification or reduce regulatory activities, which could include not investigating complaints in a timely manner and taking much more time to resolve problems with applications and to issue certificates. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community. With the fee increase described in Attachment A, the Department anticipates receiving approximately \$155,000 in additional fees each year, of which

approximately \$139,000 would come to the Department and \$15,500 would go to the general fund. Fees for certificates for mammographic technologists and computed tomography technologists are specified in statute and are not being changed. The additional revenue should be sufficient to cover the shortfall and allow the Department to continue to protect public health. As shown below, the new fees are similar to or lower than the fees charged by many other states. Therefore, the Department would receive a substantial benefit from the fee increase.

	Average Annual Salary	Fee	License Duration	Total Over Two Years	Cost/Month
Arizona Proposed CRT Fee	\$63,250	\$100.00	2 years	\$100.00	\$4.17
Fees in Other States					
State		Fee	License Duration	Total Over 2 Years	Cost/Month
New Mexico	\$58,170	\$100.00	2 years	\$100.00	\$4.17
Washington	\$68,830	\$103.00	2 years	\$103.00	\$4.29
California	\$76,060	\$104.00	2 years	\$104.00	\$4.33
Oregon	\$68,780	\$60.00	1 year	\$120.00	\$5.00
Nebraska	\$52,030	\$146.00	2 years	\$146.00	\$6.08
Montana	\$54,420	\$75.00	1 year	\$150.00	\$6.25
North Dakota	\$53,040	\$175.00	2 years	\$175.00	\$7.29
Wyoming	\$55,590	\$225.00	1 year	\$450.00	\$18.75

The Department intends to use the funds as described in Attachment B. With the approximately \$182,000 plus \$84,000 budgeted for personnel, the Department plans to add one FTE and reallocate the funding for the salaries of existing personnel to better reflect their duties. The new personnel member would be a surveyor, whose full-time duties would be to complete substantive review of initial applications; provide technical assistance to certificate holders, internal staff, and the public when complex issues arise; investigate complaints; and manage enforcement. The anticipated cost for this individual is approximately \$70,000, including ERE. The remaining funds would be allocated to pay for the portion of the customer service team's time spent administering the program (four customer service representatives and one customer service supervisor), as well as the time the Program Manager and Bureau Chief devote to the program. Other budgeted items include funding for professional and outside services to cover legal counsel and software enhancement development, and non-capital equipment to cover computers, printers, and monitors. The Department has also budgeted for ongoing supplies and equipment needs and for appropriate payment of direct and indirect fees.

In CY 2019, the Department also issued 57 computed tomography preceptor certificates and 48 computed tomography temporary certificates. An individual who wants to be certified as a computed tomography technologist does not need to obtain these certificates if the individual takes and passes a national examination in computed tomography and is certified by either the American Registry of Radiologic Technologists or the Nuclear Medicine Technology Certification Board in computed tomography. The cost of the examination and certification is approximately \$200. The computed tomography preceptor certificates and computed tomography temporary certificates provide another pathway toward Department certification. They are each valid for one year, and together enable a certified radiologic technologist or nuclear medicine technologist to gain the required two years of experience in computed tomography to be eligible for certification as a computed tomography technologist without passing a separate examination on computed tomography. The issuance of these certificates had been standard practice, even before the Department assumed authority for the regulation of radiation technologists. However, the certificates, although provided for in A.R.S. § 32-2841, were not included in the rules in 12 A.A.C. 2 before they were remade into 9 A.A.C. 16, Article 6, by expedited rulemaking earlier this year. The requirements for applying for a computed tomography preceptor certificate or computed tomography temporary certificate were included in R9-16-614 as part of the expedited rulemaking, but fees associated with applying for them could not be and were not included in the current R9-16-623 through the expedited rulemaking. The Department intends, as part of this rulemaking, to add a nominal fee to partially offset the Department's expenses for issuing a computed tomography preceptor certificate or computed tomography temporary certificate. The Department anticipates that adding fees for these certificates to R9-16-623 may provide a minimal benefit of increased revenue, while offsetting the minimal costs incurred by the Department to issue the certificates.

- **Businesses employing radiation technologists, including those providing computed tomography services**

Businesses employing radiation technologists include hospitals, some clinics, and medical imaging facilities. It is possible that some of these entities may pay for or subsidize the cost of licensing/certification for their employees. If so, the Department believes that the fee increase may cause a business employing radiation technologists that voluntarily pays for or subsidizes the cost of licensing/certification for its employees to incur a minimal cost increase. If the business employs radiation technologists who are gaining experience towards certification as a computed tomography technologist and voluntarily pays for or subsidizes the cost of licensing/certification for its employees, the business may also incur a minimal increase in cost from the added fee for computed tomography preceptor certificates and computed tomography temporary certificates. Since the fee increase and new certificate fees will allow the Department to continue regulating radiation technologists under the

current processes and timelines, a business employing radiation technologists may also receive a significant benefit from the fee changes through the continuance of external monitoring by the Department of the competency of these employees or potential employees.

- **Certified radiation technologists of all categories, individuals requesting computed tomography preceptor certificates or computed tomography temporary certificates, and students currently in occupational education programs related to radiologic technology**

The current fee of \$60, paid by an applicant for an initial application or a certificate holder for a renewal application for certification, has been in place for over 20 years. In this rulemaking, the Department is increasing the fee to \$100 to enable the Department to continue providing regulatory oversight at a level that protects the health and safety of the public. The Department believes that an applicant or certificate holder may incur a minimal increased cost for certification of \$40 for a two-year certification due to the fee increase, which equates to an increase of \$1.67 per month. In comparison, the licensing/certification fee in Arizona for a respiratory therapist is \$120 for two years, for a massage therapist is \$195 for two years, and for a speech-language pathologist assistant is \$200 for two years. Adding fees for computed tomography preceptor certificates and computed tomography temporary certificates may also cause individuals wanting to gain experience towards certification as a computed tomography technologist without taking a separate examination in computed tomography to incur a minimal cost increase. However, the new rules also make clear under what circumstances, specified in A.R.S. § 41-1080.01, the application fee for initial certification will be waived by the Department. This may provide a minimal benefit to students currently in occupational education programs related to radiologic technology who meet the criteria for waiver.

- **Patients**

Every day thousands of patients in Arizona receive a medical imaging procedure or radiation therapy provided by a radiation technologist certified under the rules in 9 A.A.C. 16, Article 6. These patients rely on the oversight provided by the Department to ensure that the individual applying ionizing radiation to their bodies as part of the procedure or therapy is qualified and competent, so their health and safety are protected. By enabling the Department to continue providing adequate oversight over individuals certified under the rules in 9 A.A.C. 16, Article 6, the Department anticipates that the fee increase may provide a significant benefit to a patient. It is possible that a business employing radiation technologists that pays for or subsidizes the cost of certification for these employees may pass through any increased cost incurred by them as increased fees for services provided by the employees, but the Department believes these fee increases would be at most minimal.

- **General public**

Similarly, the Department believes that the health and safety of the general public are protected by continued oversight of individuals certified under the rules in 9 A.A.C. 16, Article 6. Therefore, the

Department expects that the general public may receive a significant benefit from the fee changes due to knowing that only qualified and competent individuals are certified to provide radiologic technology.

4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

Public and private employment in the State of Arizona is not expected to be affected due to the changes in the rules.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses that may be affected by the rule changes include small businesses that employ radiation technologists, if they pay or subsidize the certification fees for these employees, or a certified radiation technologist of any classification who acts as a small business, as described in paragraph 3.

b. The administrative and other costs required for compliance with the rules

The Department is unaware of any additional cost associated with this rulemaking that is not already covered by the current rules or described in paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department does not know of any additional methods to reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

There are minimal, if any, costs to the public from these rules, as described in paragraph 3.

6. A statement of the probable effect on state revenues

Since 10% of the increased revenue generated by the fee increase would be deposited into the general fund according to A.R.S. § 30-654, the Department anticipates that the general fund would receive approximately an extra \$15,500 per year due to the fee increase.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

The Department has now had over a year of experience in administering the program of certification for radiation technicians. During that time, the Department has tried several alternatives to a fee increase to carry out the requirements for the certification program within the current fee structure. These included using personnel paid through other licensing programs to carry out duties associated with certification. However, the time spent by these personnel on certification-related tasks took away from the time they could spend on activities for the other licensing programs, to the potential

detriment of those programs. Other expenses, such as for supplies bought with funds from other licensing programs and the indirect fees assessed to cover Department-wide expenses, were temporarily absorbed by the Department. However, this was a short-term solution to the issue, and the Department determined that the Department has to increase fees for certification or reduce regulatory activities. The Department believes that without the fee increase, the Department could not investigate complaints in a timely manner, which would lead to harm to public health and safety. The Department would also not have the resources to resolve problems with applications, leading to more denials, or to issue certificates effectively and efficiently. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community. The Department's plan to address the funding shortfall through an increase in fees was reviewed and assessed through the budget process, including analysis by the Governor's Office of Strategic Planning and Budgeting, before going to the Legislature for discussion and approval as part of the Department's budget for SFY 2020. The Department believes there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

The data upon which these estimates were based comes from financial systems maintained by state governmental agencies, subject to audit, and are, therefore, considered acceptable data.

ATTACHMENT A RADIATION TECH FEE CHANGE JUSTIFICATION JANUARY 2020

RADIOLOGIC TECHNOLOGY SPECIALTIES	CURRENT FEES	NUMBER OF TECHS	EXPECTED REVENUE	NEW FEES	NEW EXPECTED REVENUE	DIFFERENCE
PRACTICAL TECHNOLOGISTS	\$60	582	\$34,920	\$100	\$58,200	\$23,280
Practical technologists in radiology		492				
Practical technologists in bone densitometry		3				
Practical technologists in podiatry		86				
Practical technologists - unlimited		1				
RADIOLOGIC TECHNOLOGISTS	\$60	6,136	\$368,160	\$100	\$613,600	\$245,440
NUCLEAR MEDICINE TECHNOLOGISTS	\$60	544	\$32,640	\$100	\$54,400	\$21,760
RADIATION THERAPY TECHNOLOGISTS	\$60	432	\$25,920	\$100	\$43,200	\$17,280
MAMMOGRAPHIC TECHNOLOGISTS	\$20	702	\$14,040	\$20	\$14,040	\$0
COMPUTED TOMOGRAPHY TECHNOLOGISTS	\$20	1,576	\$31,520	\$20	\$31,520	\$0
Fee for CT preceptorship certificate	\$0	57		\$10	\$570	\$570
Fee for CT temporary certificate	\$0	48		\$10	\$480	\$480
CERTIFIED RADIOLOGIST ASSISTANTS	\$60	10	\$600	\$100	\$1,000	\$400
TOTAL NUMBER OF CERTIFICATES		10,087				
TOTAL REVENUE FOR TWO YEARS			\$507,800		\$817,010	\$309,210
ANNUAL REVENUE			\$253,900		\$408,505	\$154,605
Application Late Fee	\$50	21	\$1,050	90% Amount	\$367,655	\$139,145
(in addition to the regular application fee)						

ATTACHMENT B
PROGRAM BUDGET FOR CERTIFICATION

EXPECTED EXPENDITURES	AMOUNT
Personal Services	\$181,972
Employee Related Expenditures	\$83,707
Professional & Outside Services	\$2,500
Travel In-State	\$200
Travel Out-of-State	\$0
Other Operating Expenditures	\$50,000
Capital Equipment	\$10,000
Non-Capital Equipment	\$5,000
Transfers-Out	\$64,028
TOTAL	\$397,407



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 09. Health Services

Chapter 16. Department of Health Services - Occupational Licensing

Sections, Parts, Exhibits, Tables or Appendices modified

Article 4. Registration of Environmental Health Sanitarians

R9-16-401 through R9-16-407, Table 4.1, R9-16-408, R9-16-409

REMOVE Supp. 17-3
Pages: 1 - 40

REPLACE with Supp. 17-4
Pages: 1 - 42

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PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION
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.

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Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

ARTICLE 1. LICENSING OF MIDWIFERY

Article 1, consisting of Sections R9-16-101 through R9-16-112 and Exhibits A through E, adopted effective as noted in Section Historical Notes (Supp. 94-1).

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Article 2, consisting of Sections R9-16-201 through R9-16-209, adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4).

Article 2, consisting of Sections R9-16-201 through R9-16-207 and R9-16-211 through R9-16-214, repealed effective March 14, 1994 (Supp. 94-1).

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Article 3, consisting of Sections R9-16-301 through R9-16-314, adopted effective June 25, 1993 (Supp. 93-1).

Article 3, consisting of Sections R9-16-301 through R9-16-305, repealed effective June 25, 1993 (Supp. 93-1).

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Department of Health Services - Occupational Licensing

**ARTICLE 5. LICENSING SPEECH-LANGUAGE
PATHOLOGIST ASSISTANTS**

Article 5, consisting of Sections R9-16-501 through R9-16-508 and Table 1, made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4).

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ARTICLE 1. LICENSING OF MIDWIFERY**R9-16-101. Definitions**

In addition to the definitions in A.R.S. § 36-751, the following definitions apply in this Article unless otherwise specified:

1. "Abnormal presentation" means the fetus is not in a head-down position with the crown of the head being the leading body part.
2. "Addiction" means a condition that results when a person ingests a substance that becomes compulsive and interferes with ordinary life responsibilities, such as work, relationships, or health.
3. "Amniotic" means the fluid surrounding the fetus while in the mother's uterus.
4. "Apgar score" means the number indicating a newborn's physical condition attained by rating selected body functions.
5. "Aseptic" means free of germs.
6. "Breech" means a complete breech, a frank breech, or an incomplete breech.
7. "Certified nurse midwife" means an individual who meets the criteria in 4 A.A.C. 19, Article 5 and is certified by the Arizona State Board of Nursing.
8. "Complete breech" means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded at the knees and the feet near the buttocks.
9. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
10. "Cervix" means the narrow lower end of the uterus which protrudes into the cavity of the vagina.
11. "Consultation" means communication between a midwife and a physician or a midwife and a certified nurse midwife for the purpose of receiving a written or verbal recommendation and implementing prospective advice regarding the care of a pregnant woman or the woman's child.
12. "Current photograph" means an image of an individual, taken no more than 60 calendar days before the submission of the individual's application, in a Department-approved electronic format capable of producing an image that:
 - a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
 - b. Is 2 inches by 2 inches in size;
 - c. Is in natural color;
 - d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;
 - e. Has a plain white or off-white background; and
 - f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
13. "Dilation" means opening of the cervix during the mechanism of labor to allow for passage of the fetus.
14. "Effacement" means the gradual thinning of the cervix during the mechanism of labor and indicates progress in labor.
15. "Emergency care plan" means the arrangements established by a midwife for a client's transfer of care in a situation in which the health or safety of the client or newborn are determined to be at risk.
16. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
17. "Episiotomy" means the cutting of the perineum, center, middle, or midline, in order to enlarge the vaginal opening for delivery.
18. "Fetus" means a child in utero from conception to birth.
19. "Frank breech" means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded flat up against the head.
20. "Gestation" means the length of time from conception to birth, as calculated from the first day of the last normal menstrual period.
21. "Gravida" means the number of times the mother has been pregnant, including a current pregnancy, regardless of whether these pregnancies were carried to term.
22. "Incomplete breech" means that at the time of birth the buttocks of a fetus is pointing downward with one leg folded at the knee with the foot near the buttocks.
23. "Infant" has the same meaning as in A.R.S. § 36-694.
24. "Informed consent" means a document signed by a client, as provided in R9-16-109, agreeing to the provision of midwifery services.
25. "Intrapartum" means occurring from the onset of labor until after the delivery of the placenta.
26. "Jurisprudence test" means an assessment of an individual's knowledge of the:
 - a. Laws of this state concerning the reporting of births, prenatal blood tests, and newborn screening; and
 - b. Rules pertaining to the practice of midwifery.
27. "Ketones" means certain harmful chemical elements which are present in the body in excessive amounts when there is a compromised bodily function.
28. "Local registrar" means a person appointed by the state's registrar of vital statistics for a registration district whose duty includes receipt of birth and death certificates for births and deaths occurring within that district for review, registration, and transmittal to the state office of vital records according to A.R.S. Title 36, Chapter 3.
29. "Meconium" means the first bowel movement of the newborn, which is greenish black in color and tarry in consistency.
30. "Midwifery services" means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care.
31. "Newborn" has the same meaning as in A.R.S. § 36-694.
32. "Para" means the number of births that are greater than 20 weeks of gestation, including viable and non-viable births, where multiples are counted as one birth.
33. "Parity" means the number of newborns a woman has delivered.
34. "Perineum" means the muscular region in the female between the vaginal opening and the anus.
35. "Physician" means an allopathic, an osteopathic, or a naturopathic practitioner licensed according to A.R.S. Title 32, Chapters 13, 14, or 17.
36. "Postpartum" means the six-week period following delivery of a newborn and placenta.
37. "Prenatal" means the period from conception to the onset of labor and birth.
38. "Prenatal care" means the on-going risk assessments, clinical examinations, and prenatal, nutritional, and anticipatory guidance offered to a pregnant woman.
39. "Prenatal visit" means each clinical examination of a pregnant woman for the purpose of monitoring the course of gestation and the overall health of the woman.
40. "Primigravida" means a woman who is pregnant for the first time.

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41. "Primipara" means a woman who has given birth to her first newborn.
 42. "Quickening" means the first perceptible movement of the fetus in the uterus, occurring usually in the 16th to the 20th week of gestation.
 43. "Rh" means a blood antigen.
 44. "Serious mental illness" means a condition in an individual who is 18 years of age or older and who exhibits emotional or behavioral functioning, as a result of a mental disorder as defined in A.R.S. § 36-501, that:
 - a. Is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation; and
 - b. Impairs or substantially interferes with the capacity of the individual to remain in the community without supportive treatment or services of a long-term or indefinite duration.
 45. "Substance abuse" means the continued use of alcohol or other drugs in spite of negative consequences.
 46. "Shoulder dystocia" means the shoulders of the fetus are wedged in the mother's pelvis in such a way that the fetus is unable to be born without emergency action.
 47. "Transfer of care" means that a midwife refers the care of a client or newborn to an emergency medical services provider, a certified nurse midwife, a hospital, or a physician who then assumes responsibility for the direct care of the client or newborn.
 48. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a state-wide furlough day.
- b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
3. Documentation that demonstrates the applicant is 21 years of age or older if the documentation submitted in subsection (A)(2) does not demonstrate that the applicant is 21 years of age or older;
 4. Current documentation of completion of training in:
 - a. Adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association, and
 - b. Neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
 5. Documentation of a high school diploma, a high school equivalency diploma, an associate degree, or a higher degree;
 6. Documentation that the applicant is certified by the North American Registry of Midwives as a Certified Professional Midwife;
 7. A current photograph of the applicant;
 8. A non-refundable application fee of \$25; and
 9. A non-refundable testing fee of \$100 for a jurisprudence test administered by the Department.
- B.** The Department shall review an application for an initial license to practice midwifery according to R9-16-107 and Table 1.1.
- C.** If an applicant receives notification of eligibility to take the jurisprudence test, the applicant:
1. Shall take the jurisprudence test administered by the Department,
 2. Shall provide proof of identity by a government-issued photographic identification card upon the request of the individual administering the jurisprudence test,
 3. May take the jurisprudence test as many times as desired without paying an additional testing fee, and
 4. Shall score 80% or higher correct answers on the jurisprudence test to be eligible to receive an initial license to practice midwifery.
- D.** If an applicant scores 80% or higher correct answers on the jurisprudence test, the Department shall provide written notice to the applicant, within five working days after the date of the jurisprudence test, to submit to the Department:
1. A licensing fee of \$25; and
 2. The documentation required in subsection (A)(4) or (6), if the training required in subsection(A)(4) or certification required in subsection (A)(6) is not current.
- E.** The Department shall issue an initial license to practice midwifery within five working days after receiving the applicable documentation and licensing fee required in subsection (D).
- F.** The Department shall provide to an applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A) and inform the applicant that the applicant may reapply under subsection (A) if the applicant does not:
1. Score 80% or higher correct answers on the jurisprudence test within 180 calendar days after the date of the notification of eligibility to take the jurisprudence test, or
 2. Submit to the Department the applicable documentation and licensing fee required in subsection (D) within 120 calendar days after the date of the notification in subsection (D).

Historical Note

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Section amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-102. Application for Initial Licensure

- A.** An applicant for an initial license to practice midwifery shall submit:
1. An application in a format provided by the Department that contains:
 - a. The applicant's name, address, telephone number, and e-mail address;
 - b. The applicant's Social Security Number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
 - d. If the applicant was convicted of a felony or misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
 - f. An attestation that information required as part of the application has been submitted and is true and accurate; and
 - g. The applicant's signature and date of signature;
 2. A copy of the applicant's:
 - a. U.S. passport, current or expired;

Historical Note

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Section R9-16-102 repealed; new Section R9-16-102 renum-

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bered from R9-16-103 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Exhibit A. Repealed**Historical Note**

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Exhibit A repealed by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2).

R9-16-103. Renewal

- A.** At least 30 calendar days and no more than 60 calendar days before the expiration date of a midwifery license, a midwife shall submit to the Department:
1. An application for renewal of a midwifery license in a format provided by the Department, that contains:
 - a. The midwife's name, address, telephone number, and e-mail address;
 - b. The midwife's license number;
 - c. Whether the midwife has been convicted of a felony or a misdemeanor in this or another state or jurisdiction in the previous two years;
 - d. If the midwife was convicted of a felony or misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the midwife was convicted, and
 - iv. The disposition of the case;
 - e. Whether the midwife agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
 - f. An attestation that the midwife has completed the continuing education requirement in R9-16-105;
 - g. An attestation that the midwife is complying with the requirements in A.R.S. § 32-3211;
 - h. An attestation that information required as part of the application has been submitted and is true and accurate; and
 - i. The midwife's signature and date of signature;
 2. Either:
 - a. Documentation that the midwife is currently certified by the North American Registry of Midwives as a Certified Professional Midwife; or
 - b. For a midwife who has been continuously licensed as a midwife by the Department since 1999, a copy of both sides of documentation showing the completion of current training in:
 - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
 - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b); and
 3. A non-refundable renewal fee of \$25.
- B.** The Department shall review an application for renewal of a license to practice midwifery according to R9-16-107 and Table 1.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-103 renumbered to R9-16-102; new Section R9-16-103 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Exhibit B. Repealed**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit B repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Exhibit C. Repealed**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit C repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-104. Administration

- A.** A midwife may submit a written request for the Department to:
1. Add the midwife's name, address, and telephone number to a list of licensed midwives on the Department's website; or
 2. Remove the midwife's name, address, and telephone number from a list of licensed midwives on the Department's website.
- B.** A midwife shall:
1. Notify the Department in a format provided by the Department within five working days after:
 - a. A client has died while under the midwife's care,
 - b. A stillborn child has been delivered by the midwife, or
 - c. A newborn delivered by the midwife has died within the first 6 weeks after birth; and
 2. Provide a summary of the:
 - a. Circumstances leading up to the event, and
 - b. Actions taken by the midwife in response to the event.
- C.** A midwife shall:
1. Maintain documentation of:
 - a. Completion of current training in:
 - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
 - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b);
 - b. Except as provided in R9-16-103(A)(2)(b), current certification as a Certified Professional Midwife by the North American Registry of Midwives; and
 - c. The continuing education required in subsection R9-16-105 for at least the previous three years; and
 2. Provide a copy of documentation required in subsection (C)(1) to the Department within 2 working days after the Department's request.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-105. Continuing Education

During the term of a midwifery license, the midwife shall obtain at least 20 continuing education units that:

1. Improve the midwife's ability to:
 - a. Provide services within the midwife's scope of practice,
 - b. Recognize and respond to situations outside the midwife's scope of practice, or
 - c. Provide guidance to other services a client may need; and
2. Have been approved as applicable to the practice of midwifery by the:
 - a. American Nurses Association,

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- b. American Congress of Obstetrics and Gynecologists,
- c. Midwives Alliance of North America,
- d. Arizona Medical Association,
- e. American College of Nurse Midwives,
- f. Midwifery Education Accreditation Council, or
- g. Another health professional organization.

Historical Note

Adopted effective March 14, 1994, except for subsections (B)(3) and (C) which are effective September 15, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Exhibit D. Repealed**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit D repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-105.01. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Section repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Table 1. Repealed**Historical Note**

Table 1 made by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Table 1 repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-106. Name Change; Duplicate License

- A. To request a name change on a midwifery license or a duplicate midwifery license, a midwife shall submit in writing to the Department:
 - 1. The midwife's name on the current midwifery license;
 - 2. If applicable, the midwife's new name;
 - 3. The midwife's address, license number, and e-mail address;
 - 4. As applicable:
 - a. Documentation supporting the midwife's name change, or
 - b. A statement that the midwife is requesting a duplicate midwifery license; and
 - 5. A non-refundable fee of \$10.00.
- B. Upon receipt of the written request required in subsection (A), the Department shall issue, as applicable:
 - 1. An amended midwifery license that incorporates the name change but retains the expiration date of the midwifery license, or
 - 2. A duplicate midwifery license.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-106 renumbered to R9-16-108; new Section R9-16-106 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-107. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of license granted by the Department is specified in Table 1.1. The applicant or midwife and the Department may agree in writing to extend the substantive review time-frame

and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25 percent of the overall time-frame.

- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license granted by the Department is specified in Table 1.1.
 - 1. The administrative completeness review time-frame begins:
 - a. For an applicant submitting an application for initial licensure, when the Department receives the application packet required in R9-16-102(A); and
 - b. For a licensed midwife applying to renew a midwifery license, when the Department receives the application packet required in R9-16-103(A).
 - 2. If an application is incomplete, the Department shall provide a notice of deficiencies to the applicant or midwife describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the documentation or information listed in the notice of deficiencies. An applicant or midwife shall submit to the Department the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1 for responding to a notice of deficiencies.
 - 3. If the applicant or midwife submits the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall provide a written notice of administrative completeness to the applicant or midwife.
 - 4. If the applicant or midwife does not submit the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall consider the application withdrawn.
 - 5. When an application is complete the Department shall provide a notice of administrative completeness to the applicant or midwife.
 - 6. If the Department issues a notice of eligibility to take the jurisprudence test or a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is specified in Table 1.1 and begins on the date of the notice of administrative completeness.
 - 1. If an application complies with the requirements in this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.
 - 2. If an application does not comply with the requirements in this Article or A.R.S. Title 36, Chapter 6, Article 7, the Department shall make one comprehensive written request for additional information, unless the applicant or midwife has agreed in writing to allow the Department to submit supplemental requests for information. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested.
 - 3. An applicant or midwife shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental

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- request for information within the time specified in Table 1.1.
4. If the applicant or midwife does not submit the additional information within the time specified in Table 1.1 or the additional information submitted by the applicant or midwife does not demonstrate compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall provide to the applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A).
 5. If the applicant or midwife submits the additional information within the time specified in Table 1.1 and the

additional information submitted by the applicant or midwife demonstrates compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-107 renumbered to R9-16-115; new Section R9-16-107 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Table 1.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Eligibility for Jurisprudence Test (R9-16-102)	A.R.S. §§ 36-753, 36-754, and 36-755	30	15	60	15	30
Midwifery License Renewal (R9-16-103)	A.R.S. § 36-754	30	15	30	15	15

Historical Note

Table 1.1 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Exhibit E. Repealed

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Amended to correct printing errors (Supp. 99-4). Exhibit E repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-108. Responsibilities of a Midwife; Scope of Practice

- A. A midwife shall provide midwifery services only to a healthy woman, determined through a physical assessment and review of the woman’s obstetrical history, whose expected outcome of pregnancy is most likely to be the delivery of a healthy newborn and an intact placenta.
- B. Except as provided in R9-16-111(C) or (D), a midwife who is certified by the North American Registry of Midwives as a Certified Professional Midwife may accept a client for a vaginal delivery:
 1. After prior Cesarean section, or
 2. Of a fetus in a complete breech or frank breech presentation.
- C. Before providing services to a client, a midwife shall:
 1. Inform a client, both orally and in writing, of:
 - a. The midwife’s scope of practice, educational background, and credentials;
 - b. If applicable to the client’s condition, the midwife’s experience with:
 - i. Vaginal birth after prior Cesarean section delivery, or
 - ii. Delivery of a fetus in a complete breech or frank breech presentation;
 - c. The potential risks; adverse outcomes; neonatal or maternal complications, including death; and alternatives associated with an at-home delivery specific to the client’s condition, including the conditions described in subsection (C)(1)(b);
 - d. The requirement for tests specified in subsections (I) and (K)(4)(c), and the potential risks for declining a

- test, and, if a test is declined, the need for a written assertion of a client’s decision to decline testing;
- e. The requirement for consultation for a condition specified in R9-16-112; and
- f. The requirement for the transfer of care for a condition specified in R9-16-111; and
2. Obtain a written informed consent for midwifery services according to R9-16-109.
- D. A midwife shall establish an emergency care plan for the client that includes:
 1. The name, address, and phone number of:
 - a. The hospital closest to the birthing location that provides obstetrical services, and
 - b. An emergency medical services provider that provides service between the birthing location and the hospital identified in subsection (D)(1)(a);
 2. The hospital identified in subsection (D)(1)(a) is within 25 miles of the birthing location for a delivery identified in subsection (B);
 3. The signature of the client and the date signed; and
 4. The signature of the midwife and the date signed.
- E. A midwife shall ensure the client receives a copy of the emergency care plan required in subsection (D).
- F. A midwife shall implement the emergency care plan by immediately calling the emergency medical services provider identified in subsection (D)(1)(b) for any condition that threatens the life of the client or the client’s child.
- G. A midwife shall maintain all instruments used for delivery in an aseptic manner and other birthing equipment and supplies in clean and good condition.
- H. A midwife shall assess a client’s physical condition in order to establish the client’s continuing eligibility to receive midwifery services.
- I. During the prenatal period, the midwife shall:
 1. Until October 1, 2013, schedule or arrange for the following tests for the client within 28 weeks gestation:
 - a. Blood type, including ABO and Rh, with antibody screen;

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- b. Urinalysis;
 - c. HIV;
 - d. Hepatitis B;
 - e. Hepatitis C;
 - f. Syphilis as required in A.R.S. § 36-693;
 - g. Rubella titer;
 - h. Chlamydia; and
 - i. Gonorrhea;
2. Until October 1, 2013, schedule or arrange for the following tests for the client:
 - a. A blood glucose screening test for diabetes completed between 24 and 28 weeks of gestation;
 - b. A hematocrit and hemoglobin or complete blood count test completed between 28 and 36 weeks of gestation;
 - c. A vaginal-rectal swab for Group B Strep Streptococcus culture completed between 35 and 37 weeks of gestation;
 - d. At least one ultrasound and recommended follow-up testing to determine placental location and risk for placenta previa and placenta accrete; and
 - e. An ultrasound at 36-37 weeks gestation to confirm fetal presentation and estimated fetal weight for a breech pregnancy;
 3. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in section (I)(1) are completed by the client within 28 weeks gestation;
 4. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in subsection (I)(2) are completed by the client;
 5. Conduct a prenatal visit at least once every 4 weeks until the beginning of 28 weeks of gestation, once every 2 weeks from the beginning of 28 weeks until the end of 36 weeks of gestation, and once a week after 36 weeks of gestation that includes:
 - a. Taking the client's weight, urinalysis for protein, nitrites, glucose and ketones; blood pressure; and assessment of the lower extremities for swelling;
 - b. Measurement of the fundal height and listening for fetal heart tones and, later in the pregnancy, feeling the abdomen to determine the position of the fetus;
 - c. Documentation of fetal movement beginning at 28 weeks of gestation;
 - d. Document of:
 - i. The occurrence of bleeding or invasive uterine procedures, and
 - ii. Any medications taken during the pregnancy that are specific to the needs of an Rh negative client;
 - e. Referral of a client for lab tests or other assessments, if applicable, based upon examination or history; and
 - f. Recommendation of administration of the drug RhoGam to unsensitized Rh negative mothers after 28 weeks, or any time bleeding or invasive uterine procedures are done, or midwife administration of RhoGam under a physician's written orders;
 6. Monitor fetal heart tones with fetoscope and document the client's report of first quickening, between 18 and 20 weeks of gestation;
 7. Conduct weekly visits until signs of first quickening have occurred if first quickening has not been reported by 20 weeks of gestation;
 8. Initiate a consultation if first quickening has not occurred by the end of 22 weeks of gestation; and
 9. Conduct a prenatal visit of the birthing location before the end of 35 weeks of gestation to ensure that the birthing environment is appropriate for birth and that communication is available to the hospital and emergency medical services provider identified in subsection(D)(1).
- J.** During the intrapartum period, a midwife shall:
1. Determine if the client is in labor and the appropriate course of action to be taken by:
 - a. Assessing the interval, duration, intensity, location, and pattern of the contractions;
 - b. Determining the condition of the membranes, whether intact or ruptured, and the amount and color of fluid;
 - c. Reviewing with the client the need for an adequate fluid intake, relaxation, activity, and emergency management; and
 - d. Deciding whether to go to client's home, remain in telephone contact, or arrange for transfer of care or consultation;
 2. Contact the hospital identified in subsection (D)(1)(a) according to the policies and procedures established by the hospital regarding communication with midwives when the client begins labor and ends labor;
 3. During labor, assess the condition of the client and fetus upon initial contact, every half hour in active labor until completely dilated, and every 15 to 20 minutes during pushing, following rupture of the amniotic bag, or until the newborn is delivered, including:
 - a. Initial physical assessment and checking of vital signs every 2 to 4 hours of the client;
 - b. Assessing fetal heart tones every 30 minutes in active first stage labor, and every 15 minutes during second stage, following rupture of the amniotic bag, or with any significant change in labor patterns;
 - c. Periodically assessing contractions, fetal presentation, dilation, effacement, and fetal position by vaginal examination;
 - d. Maintaining proper fluid balance for the client throughout labor as determined by urinary output and monitoring urine for presence of ketones; and
 - e. Assisting in support and comfort measures to the client and family;
 4. For deliveries described in subsection (B), during labor determine:
 - a. For primiparas, the progress of active labor by monitoring whether dilation occurs at an average of 1 centimeter per hour until completely dilated, and a second stage does not exceed 2 hours, if applicable;
 - b. Normal progress of active labor for multigravidas by monitoring whether dilation occurs at an average of 1.5 to 2 centimeters per hour until completely dilated, and a second stage does not exceed 1 hour, if applicable; or
 - c. The progress of active labor according to the Management Guidelines recommended by the American Congress of Obstetricians and Gynecologists;
 5. After delivery of the newborn:
 - a. Assess the newborn at 1 minute and 5 minutes to determine the Apgar scores;
 - b. Physically assess the newborn for any abnormalities;
 - c. Inspect the client's perineum, vagina, and cervix for lacerations;
 - d. Deliver the placenta within 1 hour and assess the client for signs of separation, frank or occult bleeding; and

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- e. Examine the placenta for intactness and to determine the number of umbilical cord vessels; and
6. Recognize and respond to any situation requiring immediate intervention.
- K.** During the postpartum period, the midwife shall:
1. During the 2 hours after delivery of the placenta, provide the following care to the client:
 - a. Every 15 to 20 minutes for the first hour and every 30 minutes for the second hour:
 - i. Take vital signs of the client,
 - ii. Perform external massage of the uterus, and
 - iii. Evaluate bleeding;
 - b. Assist the client to urinate within 2 hours following the birth, if applicable;
 - c. Evaluate the perineum, vagina, and cervix for tears, bleeding, or blood clots;
 - d. Assist with maternal newborn and infant bonding;
 - e. Assist with initial breast feeding, instructing the client in the care of the breast, and reviewing potential danger signs, if appropriate;
 - f. Provide instruction to the family about adequate fluid and nutritional intake, rest, and the types of exercise allowed, normal and abnormal bleeding, bladder and bowel function, appropriate baby care, signs and symptoms of postpartum depression, and any symptoms that may pose a threat to the health or life of the client or the client's newborn and appropriate emergency phone numbers;
 - g. Recommend or administer under physician's written orders, the drug RhoGam to an unsensitized Rh-negative mother who delivers an Rh-positive newborn. Administration shall occur not later than 72 hours after birth; and
 - h. Document any medications taken by the client in the client's record to an unsensitized Rh-negative client who delivers an Rh-positive newborn;
 2. During the 2 hours after delivery of the placenta, provide the following care to the newborn:
 - a. Perform a newborn physical exam to determine the newborn's gestational age and any abnormalities;
 - b. Comply with the requirements in A.A.C. R9-6-332;
 - c. Recommend or administer Vitamin K under physician's written orders to the newborn. Administration shall occur not later than 72 hours after birth; and
 - d. Document the administration of any medications or vitamins to the newborn in the newborn's record according to the physician's written orders;
 3. Evaluate the client or newborn for any abnormal or emergency situation and seek consultation or intervention, if applicable, according to these rules; and
 4. Re-evaluate the condition of the client and newborn between 24 and 72 hours after delivery to determine whether the recovery is following a normal course, including:
 - a. Assessing baseline indicators such as the client's vital signs, bowel and bladder function, bleeding, breasts, feeding of the newborn, sleep/rest cycle, activity with any recommendations for change;
 - b. Assessing baseline indicators of well-being in the newborn such as vital signs, weight, cry, suck and feeding, fontanel, sleeping, and bowel and bladder function with documentation of meconium, and providing any recommendations for changes made to the family;
 - c. Submitting blood obtained from a heel stick to the newborn to the state laboratory for screening according to A.R.S. § 36-694(B) and 9 A.A.C. 13, Article 2, unless a written refusal is obtained from the client and documented in the client's record and the newborn's record; and
- d. Recommending to the client that the client secure medical follow-up for her newborn.
- L.** A midwife shall file a birth certificate with the local registrar within seven calendar days after the birth of the newborn.
- M.** Subsections (B), (C)(1)(b), (C)(1)(d) and (J)(2) and (4) are effective July 1, 2014.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-108 renumbered to R9-16-111; new Section R9-16-108 renumbered from R9-16-106 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-109. Informed Consent for Midwifery Services

- A.** A midwife shall obtain a written informed consent for midwifery services in a format provided by the Department that contains:
1. The midwife's:
 - a. Name,
 - b. Telephone number,
 - c. License number, and
 - d. E-mail address;
 2. The client's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Date of birth; and
 - e. E-mail address, if applicable;
 3. An attestation that the client was:
 - a. Provided the information required in R9-16-108(C)(1);
 - b. Informed of the emergency care plan as required in R9-16-108(D); and
 - c. Given an opportunity to have questions answered, have an understanding of the information provided, and choose to continue with midwifery services; and
 4. The signatures of the client and midwife and date signed.
- B.** A midwife shall ensure that the written informed consent for midwifery services is placed in the client file.
- C.** A midwife shall ensure that a copy of the written informed consent for midwifery services is provided to the:
1. Client, and
 2. Department within five calendar days after a Department request.
- D.** This section is effective October 1, 2013.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-109 renumbered to R9-16-112; new Section R9-16-109 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Manifest typographical errors corrected in subsections (A)(3)(a) and (b) to rule Section reference of incorrect Chapter number; request made by department at file number R13-232 (Supp. 13-3).

R9-16-110. Assertion to Decline Required Tests

- A.** Except for R9-16-108(I)(1)(f), if the client declines a test required in R9-16-108(I)(3) and (4), a midwife shall obtain a written assertion of a client's decision to decline a required test in a format provided by the Department, that contains:
1. The midwife's:
 - a. Name,
 - b. Telephone number,

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- c. License number, and
 - d. E-mail address;
 - 2. The client's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Date of birth; and
 - e. E-mail address, if applicable;
 - 3. The required test being declined by the client;
 - 4. Additional information as required by the Department;
 - 5. An attestation that the client:
 - a. Was provided the information as required in R9-16-108(C)(1)(d), and
 - b. Is declining testing; and
 - 6. The signatures of the client and midwife and date signed.
 - B.** A midwife shall ensure that the written assertion of the decision to decline a test is placed in the client file.
 - C.** A midwife shall ensure that a copy of the written assertion of the decision to decline a test is provided to the:
 - 1. Client, and
 - 2. Department within five calendar days after a Department request.
 - D.** This section is effective October 1, 2013.
- Historical Note**
- Adopted effective March 14, 1994 (Supp. 94-1). R9-16-110 renumbered to R9-16-113; new Section R9-16-110 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Manifest typographical error corrected in subsection (A)(5)(a) to rule Section reference of incorrect Chapter number; request made by department at file number R13-232 (Supp. 13-3).
- R9-16-111. Prohibited Practice; Transfer of Care**
- A.** A midwife shall not provide midwifery services in a location that has the potential to cause harm to the client or the client's child.
 - B.** A midwife shall not accept for midwifery services or continue midwifery services for a client who has or develops any of the following:
 - 1. A previous surgery that involved:
 - a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
 - b. A previous uterine surgery that enters the myometrium;
 - 2. Multiple fetuses;
 - 3. Placenta previa or placenta accreta;
 - 4. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
 - 5. Deep vein thrombosis or pulmonary embolism;
 - 6. Uncontrolled gestational diabetes;
 - 7. Insulin-dependent diabetes;
 - 8. Hypertension;
 - 9. Rh disease with positive titers;
 - 10. Active:
 - a. Tuberculosis;
 - b. Syphilis;
 - c. Genital herpes at the onset of labor;
 - d. Hepatitis until treated and recovered, following which midwifery services may resume; or
 - e. Gonorrhea until treated and recovered, following which midwifery services may resume;
 - 11. Preeclampsia or eclampsia persisting after the second trimester;
 - 12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
 - 13. A persistent hemoglobin level below 10 grams or a hematocrit below 30 during the third trimester;
 - 14. A pelvis that will not safely allow a baby to pass through during labor;
 - 15. A serious mental illness;
 - 16. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client:
 - a. Alcohol,
 - b. Narcotics, or
 - c. Other drugs;
 - 17. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
 - 18. Labor beginning before the beginning of 36 weeks gestation;
 - 19. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
 - 20. Gestational age greater than 34 weeks with no prior prenatal care;
 - 21. A gestation beyond 42 weeks;
 - 22. Presence of ruptured membranes without onset of labor within 24 hours;
 - 23. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
 - 24. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;
 - 25. A postpartum hemorrhage of greater than 500 milliliters in the current pregnancy; or
 - 26. A non-bleeding placenta retained for more than 60 minutes.
- C.** A midwife shall not perform a vaginal delivery after prior Cesarean section for a client who:
- 1. Had:
 - a. More than one previous Cesarean section;
 - b. A previous Cesarean section:
 - i. With a classical, vertical, or unknown uterine incision;
 - ii. Within 18 months before the expected delivery;
 - iii. With complications, including uterine infection; or
 - iv. Due to failure to progress as a result of cephalopelvic insufficiency; or
 - c. Complications during a previous vaginal delivery after a Cesarean section; or
 - 2. Has a fetus:
 - a. With fetal anomalies, confirmed by an ultrasound; or
 - b. In a breech presentation.
- D.** A midwife shall not perform a vaginal delivery of a fetus in a breech presentation for a client who:
- 1. Had a previous:
 - a. Unsuccessful vaginal delivery or other demonstration of an inadequate maternal pelvis, or
 - b. Cesarean section; or
 - 2. Has a fetus:
 - a. With fetal anomalies, confirmed by an ultrasound;
 - b. With an estimated fetal weight less than 2500 grams or more than 3800 grams; or
 - c. In an incomplete breech presentation.
- E.** If the client has any of the conditions in subsections (B) through (D), a midwife shall:
- 1. Document the condition in the client record, and
 - 2. Initiate transfer of care.
- F.** A midwife shall not perform any operative procedures except as provided in R9-16-113.

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- G.** A midwife shall not:
1. Use any artificial, forcible, or mechanical means to assist birth; or
 2. Attempt to correct fetal presentations by external or internal movement of the fetus.
- H.** A midwife shall not administer drugs or medications except as provided in R9-16-108(I)(5)(f), (K)(1)(g), (K)(2)(c), or R9-16-113.
- I.** Except as provided in R9-16-113, a midwife shall:
1. Discontinue midwifery services and transfer care of a newborn in which any of the following conditions are present:
 - a. Birth weight less than 2000 grams;
 - b. Pale, blue, or gray color after 10 minutes;
 - c. Excessive edema;
 - d. Major congenital anomalies; or
 - e. Respiratory distress; and
 2. Document the condition in subsection (I)(1) in the newborn record.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-111 renumbered to R9-16-116; new Section R9-16-111 renumbered from R9-16-108 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-112. Required Consultation

- A.** A midwife shall obtain a consultation at the time a client is determined to have any of the following during the current pregnancy:
1. A positive culture for Group B Streptococcus;
 2. History of seizure disorder;
 3. History of stillbirth, premature labor, or parity greater than 5;
 4. Age younger than 16 years;
 5. A primigravida older than 40 years of age;
 6. Failure to auscultate fetal heart tones by the beginning of 22 weeks gestation;
 7. Failure to gain 12 pounds by the beginning of 30 weeks gestation or gaining more than 8 pounds in any two-week period during pregnancy;
 8. Greater than 1+ sugar, ketones, or protein in the urine on two consecutive visits;
 9. Excessive vomiting or continued vomiting after the end of 20 weeks gestation;
 10. Symptoms of decreased fetal movement;
 11. A fever of 100.4° F or 38° C or greater measured twice at 24 hours apart;
 12. Tender uterine fundus;
 13. Effacement or dilation of the cervix, greater than a fingertip, accompanied by contractions, prior to the beginning of 36 weeks gestation;
 14. Measurements for fetal growth that are not within 2 centimeters of the gestational age;
 15. Second degree or greater lacerations of the birth canal;
 16. Except as provided in R9-16-111(B)(19), an abnormal progression of labor;
 17. An unengaged head at 7 centimeters dilation in active labor;
 18. Failure of the uterus to return to normal size in the current postpartum period;
 19. Persistent shortness of breath requiring more than 24 breaths per minute, or breathing which is difficult or painful;
 20. Gonorrhea;
 21. Chlamydia;

22. Syphilis;
23. Heart disease;
24. Kidney disease;
25. Blood disease; or
26. A positive test result for:
 - a. HIV,
 - b. Hepatitis B, or
 - c. Hepatitis C.

- B.** A midwife shall obtain a consultation at the time a newborn demonstrates any of the following conditions:
1. Weight less than 2500 grams or 5 pounds, 8 ounces;
 2. Congenital anomalies;
 3. An Apgar score less than 7 at 5 minutes;
 4. Persistent breathing at a rate of more than 60 breaths per minute;
 5. An irregular heartbeat;
 6. Persistent poor muscle tone;
 7. Less than 36 weeks gestation or greater than 42 weeks gestation by gestational exam;
 8. Yellowish-colored skin within 48 hours;
 9. Abnormal crying;
 10. Meconium staining of the skin;
 11. Lethargy;
 12. Irritability;
 13. Poor feeding;
 14. Excessively pink coloring over the entire body;
 15. Failure to urinate or pass meconium in the first 24 hours of life;
 16. A hip examination which results in a clicking or incorrect angle;
 17. Skin rashes not commonly seen in the newborn; or
 18. Temperature persistently above 99.0° or below 97.6° F.
- C.** The midwife shall inform the client of the consultation required in subsections (A) or (B) and recommendations of the physician or certified nurse midwife.
- D.** The midwife shall document the consultation required in subsections (A) or (B) and recommendations received in the client record or newborn record.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5029, effective September 30, 2001 (Supp. 01-4). New Section R9-16-112 renumbered from R9-16-109 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-113. Emergency Measures

- A.** In an emergency situation in which the health or safety of the client or newborn are determined to be at risk, a midwife:
1. Shall ensure that an emergency medical services provider is called; and
 2. May perform the following procedures as necessary:
 - a. Cardiopulmonary resuscitation of the client or newborn with a bag and mask;
 - b. Administration of oxygen at no more than 8 liters per minute via mask for the client and 5 liters per minute for the newborn via neonatal mask;
 - c. Episiotomy to expedite the delivery during fetal distress;
 - d. Suturing of episiotomy or tearing of the perineum to stop active bleeding, following administration of local anesthetic, contingent upon consultation with a physician or certified nurse midwife, or physician's written orders;
 - e. Release of shoulder dystocia by utilizing:

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- i. Hyperflexion of the client's legs to the abdomen,
 - ii. Application of external pressure suprapubically,
 - iii. Rotation of the nonimpacted shoulder until the impacted shoulder is released,
 - iv. Delivery of the posterior shoulder,
 - v. Application of posterior pressure on the anterior shoulder, or
 - vi. Positioning of the client on all fours with the back arched;
 - f. Manual exploration of the uterus for control of severe bleeding; or
 - g. Manual removal of placenta.
- B.** A licensed midwife may administer a maximum dose of 20 units of pitocin intramuscularly, in 10-unit dosages each, 30 minutes apart, to a client for the control of postpartum hemorrhage, contingent upon physician or certified nurse midwife consultation and written orders by a physician, and arrangements for immediate transport of the client to a hospital.
- C.** A midwife shall document in the client's record any medications taken by a client for the control of postpartum hemorrhage.

Historical Note

New Section R9-16-113 renumbered from R9-16-110 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-114. Midwife Report after Termination of Midwifery Services

- A.** A midwife shall complete a midwife report for each client, in a format provided by the Department, that includes the following:
- 1. The midwife's:
 - a. First name,
 - b. Last name, and
 - c. License number;
 - 2. The client's:
 - a. Date of birth;
 - b. Client number;
 - c. Date of last menstrual period;
 - d. Estimated date of delivery;
 - e. Gravida (number);
 - f. Para (number); and
 - g. If applicable, whether the client had a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation;
 - 3. A description of the maternal outcome, including any complications;
 - 4. If a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation:
 - a. Rate of dilation, and
 - b. Duration of second stage labor;
 - 5. If applicable, the newborn's:
 - a. Date of birth;
 - b. Gender;
 - c. Weight;
 - d. Length;
 - e. Head circumference;
 - f. Designation of average, small, or large for gestational age;
 - g. Apgar score at 1 minute;
 - h. Apgar score at 5 minutes;
 - i. Existence of complications;

- j. Description of complications, if applicable;
 - k. Birth certificate filing date; and
 - l. Birth certificate number, if available;
6. Whether the client required transfer of care and, if applicable:
- a. Method of transport,
 - b. Type of facility or individual to which the midwife transferred care of the client,
 - c. Name of destination,
 - d. Time arrived at destination,
 - e. Confirmation the emergency care plan was utilized, and
 - f. Medical reason for transfer of care;
- 7. The date midwifery services were terminated;
 - 8. Reason for the termination of midwifery services;
 - 9. If termination of midwifery services was due to a medical condition, the specific medical condition;
 - 10. Whether information was provided on newborn screening; and
 - 11. Whether newborn screening tests were ordered as required in A.R.S. § 36-694.
- B.** The midwife shall submit a midwife report for a client to the Department within 30 calendar days after the termination of midwifery services to the client.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-115. Client and Newborn Records

- A.** A midwife shall ensure that a record is established and maintained according to A.R.S. §§ 12-2291 and 12-2297 for each:
- 1. Client, and
 - 2. Newborn delivered by the midwife from a client.
- B.** A midwife shall ensure that a record for each client includes the following:
- 1. The client's full name, date of birth, address, and client number;
 - 2. Names, addresses, and telephone numbers of the client's spouse or other individuals designated by the client to be contacted in an emergency;
 - 3. Written informed consent for midwifery services, as required in R9-16-108(C)(2);
 - 4. Assertion to decline required tests, as required in R9-16-110(A)(3);
 - 5. A copy of the emergency care plan, as required in R9-16-108(E);
 - 6. The date the midwife began providing midwifery services to the client;
 - 7. The date the client is expected to deliver the newborn;
 - 8. The date the newborn was delivered, if applicable;
 - 9. An initial assessment of the client to:
 - a. Determine whether the client has a history of a condition or circumstance that would preclude care of the client by the midwife, as specified in R9-16-111; and
 - b. Determine the:
 - i. Number and outcome of previous pregnancies, and
 - ii. Number of previous medical or midwife visits the client has had during the current pregnancy;
 - 10. Progress notes documenting the midwifery services provided to the client;
 - 11. For a delivery identified in R9-16-108(B):
 - a. Rate of dilation, and
 - b. Duration of second stage labor;

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12. Laboratory and diagnostic reports, according to R9-16-108(I);
 13. Documentation of consultations as required in R9-16-112, including:
 - a. Reason for the consultation,
 - b. Name of physician or certified nurse midwife,
 - c. Date of consultation,
 - d. Time of consultation, and
 - e. Recommendation made by the physician or certified nurse midwife;
 14. Written reports received from consultations as required in R9-16-112;
 15. A description of any conditions or circumstances arising during the pregnancy that required the transfer of care;
 16. The name of the physician, certified nurse midwife, or hospital to which the care of the client was transferred, if applicable;
 17. Documentation of medications or vitamins taken by the client;
 18. Documentation of medications or vitamins administered to the client and the physician's written orders for the medications or vitamins;
 19. The outcome of the pregnancy;
 20. The date the midwife stopped providing midwifery services to the client; and
 21. Instructions provided to the client before the midwife stopped providing midwifery services to the client.
- C. A midwife shall ensure that a record for each newborn includes the following:
1. The full name, date of birth, and address of the newborn's mother;
 2. The newborn's:
 - a. Date of birth,
 - b. Gender,
 - c. Weight at birth,
 - d. Length at birth, and
 - e. Apgar scores at 1 minute and 5 minutes after birth;
 3. The newborn's estimated gestational age at birth;
 4. Progress notes documenting the midwifery services provided to the newborn;
 5. Laboratory and diagnostic reports, as required in R9-16-108(I);
 6. Documentation of consultations as required in R9-16-112:
 - a. Reason for the consultation,
 - b. Name of physician or certified nurse midwife,
 - c. Date of consultation,
 - d. Time of consultation, and
 - e. Recommendation made by the physician or certified nurse midwife;
 7. Written reports received from consultations as required in R9-16-112;
 8. A description of any conditions or circumstances arising during or after the newborn's birth that required the transfer of care;
 9. The name of the physician, certified nurse midwife, or hospital to which the care of the newborn was transferred, if applicable;
 10. Documentation of medications or vitamins taken by the newborn;
 11. Documentation of medications or vitamins administered to the newborn and the physician's written orders for the medications or vitamins;
 12. Documentation of newborn screening, including when the specimen collection kit, as defined in A.A.C. R9-13-

- 201, was submitted and results received, as required in R9-16-108(K)(4)(c);
13. The date the midwife stopped providing midwifery services to the newborn; and
14. Instructions provided to the client about the newborn before the midwife stopped providing midwifery services to the newborn.

Historical Note

New Section R9-16-115 renumbered from R9-16-107 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-116. Denial, Suspension, or Revocation of License; Civil Penalties; Procedures

In addition to the grounds specified in A.R.S. §§ 36-756 and 13-904(E), the Department may deny, suspend, or revoke a license permanently or for a definite period of time, and may assess a civil penalty for each violation, for any of the following causes:

1. Practicing under a false name or alias so as to interfere with or obstruct the investigative or regulatory process,
2. Practicing under the influence of drugs or alcohol,
3. Falsification of records,
4. Obtaining any fee for midwifery services by fraud or misrepresentation,
5. Permitting another to use the midwife's license, or
6. Knowingly providing false information to the Department.

Historical Note

New Section R9-16-116 renumbered from R9-16-111 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-117. Expired**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1044, effective August 26, 2017 (Supp. 17-3).

ARTICLE 2. LICENSING AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS**R9-16-201. Definitions**

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article, unless otherwise specified:

1. "Accredited" means approved by the:
 - a. New England Association of Schools and Colleges,
 - b. Middle States Commission on Higher Education,
 - c. North Central Association of Colleges and Schools,
 - d. Northwest Commission on Colleges and Universities,
 - e. Southern Association of Colleges and Schools, or
 - f. Western Association of Schools and Colleges.
2. "Applicant" means:
 - a. An individual who submits an application packet, or
 - b. A person who submits a request for approval for a continuing education course.
3. "Application packet" means the information, documents, and fees required by the Department for a license.
4. "ASHA" means the American Speech-Language-Hearing Association, a national scientific and professional organization for audiologists and speech-language pathologists.
5. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until

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- the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "CCC" means Certificate of Clinical Competence, an award issued by ASHA to an individual who:
 - a. Completes a degree in audiology or speech-language pathology from an accredited college or university that includes a clinical practicum,
 - b. Passes the ETSNEA or ETSNESLP, and
 - c. Completes a clinical fellowship.
 7. "Clinical fellow" means an individual engaged in a clinical fellowship.
 8. "Clinical fellowship" means an individual's postgraduate professional experience assessing, diagnosing, screening, treating, writing reports, and counseling individuals exhibiting speech, language, hearing, or communication disorders, obtained:
 - a. After completion of graduate level academic course work and a clinical practicum;
 - b. Under the supervision of a clinical fellowship supervisor; and
 - c. While employed on a full-time or part-time equivalent basis.
 9. "Clinical fellowship agreement" means the document submitted to the Department by a clinical fellow to register the initiation of a clinical fellowship.
 10. "Clinical fellowship report" means a document completed by a clinical fellowship supervisor containing:
 - a. A summary of the diagnostic and therapeutic procedures performed by the clinical fellow,
 - b. A verification by the clinical fellowship supervisor of the clinical fellow's performance of diagnostic and therapeutic procedures, and
 - c. An evaluation of the clinical fellow's ability to perform the diagnostic and therapeutic procedures.
 11. "Clinical fellowship supervisor" means a licensed speech-language pathologist who:
 - a. Is a sponsor of a temporary licensee,
 - b. Had a CCC while supervising a clinical fellow before October 28, 1999, or
 - c. Has a CCC while supervising a clinical fellow in another state.
 12. "Clinical practicum" means the experience acquired by an individual who is completing course work in audiology or speech-language pathology, while supervised by a licensed audiologist, a licensed speech-language pathologist, or an individual holding a CCC, by assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.
 13. "Continuing education" means a course that provides instruction and training that is designed to develop or improve the licensee's professional competence in disciplines directly related to the licensee's scope of practice.
 14. "Course" means a workshop, seminar, lecture, conference, or class.
 15. "Current CCC" means documentation issued by ASHA verifying that an individual is presently certified by ASHA.
 16. "Department-designated written hearing aid dispenser examination" means one of the following that has been identified by the Department as complying with the requirements in A.R.S. § 36-1924:
 - a. The International Licensing Examination for Hearing Healthcare Professionals, administered by the International Hearing Society; or
 - b. A test provided by the Department or other organization.
 17. "Diagnostic and therapeutic procedures" means the principles and methods used by an audiologist in the practice of audiology or a speech-language pathologist in the practice of speech-language pathology.
 18. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state licensing entity.
 19. "ETSNEA" means Educational Testing Service National Examination in Audiology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
 20. ETSNESLP means Educational Testing Service National Examination in Speech-Language Pathology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
 21. Full-time means 30 clock hours or more per week.
 22. "Graduate level" means leading to, or creditable towards, a master's or doctoral degree.
 23. "Local education agency" means a school district governing board established by A.R.S. §§ 15-301 through 15-396.
 24. "Monitoring" means being responsible for and providing direction to a clinical fellow without directly observing diagnostic and therapeutic procedures.
 25. "On-site" observations" means the presence of a clinical fellowship supervisor who is watching a clinical fellow perform diagnostic and therapeutic procedures.
 26. "Part-time equivalent" means:
 - a. 25-29 clock hours per week for 48 weeks,
 - b. 20-24 clock hours per week for 60 weeks, or
 - c. 15-19 clock hours per week for 72 weeks.
 27. "Pupil" means a child attending a school, a charter school, a private school, or an accommodation school as defined in A.R.S. § 15-101.
 28. "Semester credit hour" means one earned academic unit of study based on completing, at an accredited college or university, a 50 to 60 minute class session per calendar week for 15 to 18 weeks.
 29. "Semester credit hour equivalent" means one quarter credit, which is equal in value to 2/3 of a semester credit hour.
 30. "State-supported institution" means a school receiving funding under A.R.S. §§ 15-901 through 15-1045.
 31. "Supervise" means being responsible for and providing direction to:
 - a. A clinical fellow during on-site observations or monitoring of the clinical fellow's performance of diagnostic and therapeutic procedures; or
 - b. An individual completing a clinical practicum.
 32. "Supervisory activities" means evaluating and assessing a clinical fellow's performance of diagnostic and therapeutic procedures in assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.
 33. "Week" means the period of time beginning at 12:00 a.m. on Sunday and ending at 11:59 p.m. the following Saturday.

Historical Note

Former Section R9-16-201 repealed, new Section R9-16-201 adopted effective January 23, 1978 (Supp. 78-1).
 Repealed effective March 14, 1994 (Supp. 94-1).
 Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by exempt

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rulemaking at 20 A.A.R. 1998, effective July 1, 2014
(Supp. 14-2).

R9-16-202. Application for an Initial License for an Audiologist

- A.** Except as provided in subsection (B), an applicant for an audiology license or an audiology license to fit and dispense shall submit to the Department:
1. An application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. If applicable, the applicant's business address and telephone number;
 - d. If applicable, the name of applicant's employer, including the employer's business address and telephone number;
 - e. Whether the applicant is requesting an audiology license to fit and dispense;
 - f. Whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
 - g. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - h. Whether the applicant is or has been licensed as an audiologist or an audiologist to fit and dispense hearing aids in another state or country;
 - i. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
 - j. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
 - k. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice of audiology;
 - l. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-209;
 - m. An attestation that the information submitted is true and accurate; and
 - n. The applicant's signature and date of signature;
 2. If a license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
 - a. The date of the revocation or suspension,
 - b. The state or jurisdiction of the revocation or suspension, and
 - c. An explanation of the revocation or suspension;
 3. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
 - a. The date of the ineligibility for licensing,
 - b. The state or jurisdiction of the ineligibility for licensing, and
 - c. An explanation of the ineligibility for licensing;
 4. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's audiologist license that is grounds for disciplinary action under Title 37, Chapter 17, documentation that includes:
 - a. The date of the disciplinary action,
 - b. The state or jurisdiction of the disciplinary action,
 - c. An explanation of the disciplinary action, and
 - d. Any other applicable documents, including a legal order or settlement agreement;
 5. If applicable, a list of all states and countries in which the applicant is or has been licensed as an audiologist or an audiologist to fit and dispense hearing aids;
 6. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
 7. One of the following:
 - a. A copy of the applicant's official transcript issued to the applicant by an accredited college or university after the applicant's completion of a doctoral degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940(A)(2); or
 - b. Documentation that the applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(C), of the education and clinical rotation requirements in A.R.S. § 36-1940;
 8. Documentation:
 - a. Of a passing grade on a ETSNEA dated within three years before the date of application required in A.R.S. § 36-1902(E);
 - b. Of a current CCC completed by the applicant within three years before the date of application; or
 - c. The applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(D), of the audiology examination requirements in A.R.S. § 36-1940; and
 9. A nonrefundable \$100 application fee.
- B.** An applicant for an audiology license to fit and dispense hearing aids who was awarded a master's degree before December 31, 2007 shall submit to the Department:
1. An application in a format provided by the Department that contains the information in subsections (A)(1) through (A)(7) and (A)(9);
 2. A copy of the applicant's official transcript from an accredited college or university demonstrating the applicant's completion of a master's degree in audiology before December 31, 2007;
 3. Documentation that the applicant is eligible, according to A.R.S. § 36-1940.02(C), for a waiver of the education and clinical rotation requirements in A.R.S. § 36-1940;
 4. Documentation that the applicant:
 - a. Has a passing grade on a ETSNEA completed within three years before the date of application;
 - b. Has a CCC completed within three years before the date of application; or
 - c. Is eligible for a waiver, according to A.R.S. § 36-1940.02(D), of the audiology examination requirements in A.R.S. § 36-1940; and
 5. Documentation:
 - a. Of a passing grade obtained by the applicant on a Department designated written hearing aid dispenser's examination as required in A.R.S. § 36-1940(C); or
 - b. That the applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(E), of the hearing aid dispensing examination requirements in A.R.S. § 36-1940.

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- C. The Department shall review the application packet for a license to practice as an audiologist, an audiologist to fit and dispense hearing aids, or an audiologist, who has a master's degree, to fit and dispense hearing aids, as applicable, according to R9-16-209 and Table 2.1.
- D. An audiologist with a doctoral degree in audiology who is licensed to fit and dispense hearing aids shall take and pass a Department-provided jurisprudence and ethics examination within six months after the issue date of the audiologist's license.

Historical Note

Former Section R9-16-202 repealed, new Section R9-16-202 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-202 repealed; new Section R9-16-202 renumbered from R9-16-203 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-203. Application for an Initial License for a Speech-language Pathologist

- A. Except as provided in subsection (B), an applicant for a speech-language pathologist license shall submit to the Department:
 1. An application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. If applicable, the applicant's business address and telephone number;
 - d. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
 - e. Whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
 - f. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. Whether the applicant is or has been licensed as a speech-language pathologist in another state or country;
 - h. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
 - i. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
 - j. Whether a disciplinary action has been imposed by any state, territory, or district in this country for an act related to the applicant's speech-language pathologist license;
 - k. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-209;
 - l. An attestation that the information submitted is true and accurate; and
 - m. The applicant's signature and date of signature;
- B. An applicant for a speech-language pathologist license, limited to providing services to pupils under the authority of a local education agency or state-supported institution, shall submit:
 1. An application in a format provided by the Department that contains requirements in subsections (A)(1) through (6) and (A)(9);
 2. A copy of an employee agreement or employment contract, conditioned upon the applicant's receipt of a speech-language pathologist license, with a local education agency or a state-supported institution that includes the:
 - a. Applicant's name and Social Security number,

2. If applicable, a list of all states and countries in which the applicant is or has been licensed as speech-language pathologist;
3. If a license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
 - a. The date of the revocation or suspension,
 - b. The state or jurisdiction of the revocation or suspension, and
 - c. An explanation of the revocation or suspension;
4. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
 - a. The date of the ineligibility for licensing,
 - b. The state or jurisdiction of the ineligibility for licensing, and
 - c. An explanation of the ineligibility for licensing;
5. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's speech-language pathologist license that is grounds for disciplinary action under Title 37, Chapter 17, documentation that includes:
 - a. The date of the disciplinary action;
 - b. The state or jurisdiction of the disciplinary action;
 - c. An explanation of the disciplinary action; and
 - d. Any other applicable documents, including a legal order or settlement agreement;
6. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
7. Documentation of the applicant's:
 - a. Official transcript issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent with the standards of this state's universities;
 - b. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b); and
 - c. One of the following:
 - i. Completion of clinical fellowship signed by the clinical fellowship supervisor as required in A.R.S. § 36-1940.01(A)(2)(c); or
 - ii. Completion of a CCC within three years before the date of the application;
8. Documentation:
 - a. Of the applicant's passing score on the ETSNESLP; or
 - b. That the applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(B), from the examination requirements in A.R.S. § 36-1940.01; and
9. A nonrefundable \$100 application fee.

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- b. Name of the local education agency or state-supported institution,
 - c. Classification title of the applicant,
 - d. Work dates or projected work dates of the employment contract, and
 - e. Signatures of the applicant and the individual authorized by the governing board to represent the local education agency or state-supported institution; and
3. A copy of a temporary or regular certificate in speech and language therapy issued by the State Board of Education to the applicant.
- C. The Department shall review an application packet for a license to practice as a speech-language pathologist according to R9-16-209 and Table 2.1.

Historical Note

Former Section R9-16-203 repealed, new Section R9-16-203 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-203 renumbered to R9-16-202; new Section R9-16-203 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-204. Application for a Temporary License for a Speech-Language Pathologist License

- A. An applicant for a temporary speech-language pathologist license shall submit to the Department:
1. An application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. If applicable, the applicant's business address and telephone number;
 - d. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
 - e. Whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
 - f. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. Whether the applicant is or has been licensed as a speech-language pathologist in another state or country;
 - h. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
 - i. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
 - j. Whether any disciplinary action, consent order, or settlement agreement is pending or has been imposed by any state or country upon the applicant's speech-language pathologist license;
 - k. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-209;
 1. An attestation that the information submitted is true and accurate; and
 - m. The applicant's signature and date of signature;
 2. If applicable, a list of all states and countries in which the applicant is or has been licensed as a speech-language pathologist;
 3. If a license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
 - a. The date of the revocation or suspension,
 - b. The state or jurisdiction of the revocation or suspension, and
 - c. An explanation of the revocation or suspension;
 4. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
 - a. The date of the ineligibility for licensing,
 - b. The state or jurisdiction of the ineligibility for licensing, and
 - c. An explanation of the ineligibility for licensing;
 5. If the applicant has been disciplined by any state, territory or district of this country for an act related to the applicant's speech-language pathologist license that is grounds for disciplinary action under Title 37, Chapter 17, documentation that includes:
 - a. The date of the disciplinary action;
 - b. The state or jurisdiction of the disciplinary action;
 - c. An explanation of the disciplinary action; and
 - d. Any other applicable documents, including a legal order or settlement agreement;
 6. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
 7. Documentation of the applicant's:
 - a. Official transcript issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940.01(A)(2)(a); and
 - b. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b);
 8. A copy of the applicant's clinical fellowship agreement that includes:
 - a. The applicant's name, home address, and telephone number;
 - b. The clinical fellowship supervisor's name, business address, telephone number, and Arizona speech-language pathology license number;
 - c. The name and address where the clinical fellowship will take place;
 - d. A statement by the clinical fellowship supervisor agreeing to comply with R9-16-210; and
 - e. The signatures of the applicant and the clinical fellowship supervisor;
 9. Documentation of the applicant's completion of the ETS-NESLP as required in A.R.S. § 36-1940.01(A)(3); and
 10. A nonrefundable \$100 application fee.
- B. A temporary license issued is effective for 12 months from the date of issuance.
- C. A temporary license may be renewed only once.
- D. An applicant issued a temporary speech-language pathologist license shall:
1. Practice under the supervision of a licensed speech-language pathologist, and

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2. Not practice under the supervision of individual who has a temporary speech-language pathologist license.
- E. The Department shall review an application packet for a temporary speech-language pathologist license according to R9-16-209 and Table 2.1

Historical Note

Former Section R9-16-204 repealed, new Section R9-16-204 adopted effective January 23, 1978 (Supp. 78-1).
 Repealed effective March 14, 1994 (Supp. 94-1).
 Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-204 renumbered to R9-16-209; new Section R9-16-204 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-205. License Renewal for an Audiologist

- A. Except as provided in subsection (B) and before the expiration date of the audiologist's license, a licensed audiologist or audiologist who fits and dispenses hearing aids shall submit to the Department:
1. A renewal application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. If applicable, the applicant's business address and telephone number,
 - c. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
 - d. The applicant's license number and date of expiration;
 - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
 - f. If the applicant was convicted of a felony or a misdemeanor involving moral turpitude:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. Whether the applicant has had, within two years before the renewal application date, an audiologist license suspended or revoked by any state;
 - h. An attestation that the information submitted is true and accurate; and
 - i. The applicant's signature and date of signature;
 2. Documentation of the continuing education required in R9-16-208, completed within the two years before the expiration date of the license, including:
 - a. The name of the individual or organization providing the course;
 - b. The date and location where the course was provided;
 - c. The title of each course attended;
 - d. A description of each course's content;
 - e. The name of the instructor;
 - f. The instructor's education, training, and experience background, if applicable; and
 - g. The number of continuing education hours earned for each course; and
 3. A \$200 license renewal fee.
- B. In addition to the documentation and renewal fee in subsection (A), an applicant who submits a renewal application within 30

calendar days after the license expiration date shall submit a \$25 late fee.

- C. An applicant who does not submit the documentation and the fee in subsection (A) and, if applicable, (B) within 30 calendar days after the license expiration date shall apply for a new license in R9-16-202.
- D. If an applicant applies for a license according to R9-16-202 more than 30 calendar days but less than one year after the expiration date of the applicant's previous license, the applicant:
1. Is not required to submit ETSNEA documentation, and
 2. Shall submit documentation of continuing education according to R9-16-208, completed within the two years before the date of application.
- E. The Department shall review the application packet for a renewal license to practice as an audiologist or an audiologist to fit and dispense hearing aids according to R9-16-209 and Table 2.1.

Historical Note

Former Section R9-16-205 repealed, new Section R9-16-205 adopted effective January 23, 1978 (Supp. 78-1).
 Repealed effective March 14, 1994 (Supp. 94-1).
 Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-205 renumbered to R9-16-210; new Section R9-16-205 renumbered from R9-16-206 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-206. License Renewal for a Speech-language Pathologist

- A. Except as provided in subsection (B) and before the expiration date of the speech-language pathologist's license, a licensed speech-language pathologist shall submit to the Department:
1. A renewal application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. If applicable, the applicant's business address and telephone number;
 - c. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
 - d. The applicant's license number and date of expiration;
 - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
 - f. If the applicant was convicted of a felony or a misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. Whether the applicant had, within two years before the renewal application date, a speech-language pathologist license suspended or revoked by any state;
 - h. An attestation that the information submitted is true and accurate; and
 - i. The applicant's signature and date of signature;
 2. Documentation of the continuing education required in R9-16-208, completed within the two years before the expiration date of the license, including:

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- a. The name of the individual or organization providing the course;
 - b. The date and location where the course was provided;
 - c. The title of each course attended;
 - d. The description of each course's content;
 - e. The name of the instructor;
 - f. The instructor's education, training, and experience background, if applicable; and
 - g. The number of continuing education hours earned for each course;
3. If the applicant is limited to providing speech-language pathology services to pupils under the authority of a local education agency or state-supported institution the documents required in R9-16-203(B); and
 4. A \$200 license renewal fee.
- B.** In addition to the documentation and renewal fee in subsection (A), an applicant who submits a renewal application within 30 calendar days after the license expiration date shall submit a \$25 late fee.
- C.** An applicant who does not submit the documentation and the fee in subsection (A) and, if applicable, (B) within 30 calendar days after the license expiration date shall apply for a new license in R9-16-203.
- D.** If an applicant applies for a license according to R9-16-203 more than 30 calendar days but less than one year after the expiration date of the applicant's previous license, the applicant:
1. Is not required to submit ETSNESLP documentation, and
 2. Shall submit documentation of continuing education according to R9-16-208 completed within the two years before the date of application.
- E.** The Department shall review the application packet for a renewal license to practice as a speech-language pathologist according to R9-16-209 and Table 2.1.

Historical Note

Former Section R9-16-206 repealed, new Section R9-16-206 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-206 renumbered to R9-16-205; new Section R9-16-206 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-207. License Renewal for a Temporary Speech-language Pathologist

- A.** Before the expiration date of the temporary speech-language pathologist license, a licensed temporary speech-language pathologist shall submit to the Department:
1. A renewal application in a format provided by the Department that contains:
 - a. The applicant's name, home address, e-mail address, and telephone number;
 - b. The applicant's license number and date of expiration;
 - c. The name of the applicant's employer, including the employer's business address, and telephone number;
 - d. The name, business address, telephone number, and license number of the speech language pathologist providing supervision to the applicant;
 - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;

- f. If the applicant was convicted of a felony or a misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. An attestation that the information submitted is true and accurate; and
 - h. The applicant's signature and date of signature;
2. A statement signed and dated by the applicant's clinical fellowship supervisor agreeing to comply with R9-16-210; and
 3. A \$100 license renewal fee.
- B.** The Department shall review the application packet for a renewal temporary license to practice as a temporary speech-language pathologist according to R9-16-209 and Table 2.1.

Historical Note

Former Section R9-16-207 repealed, new Section R9-16-207 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-207 renumbered to R9-16-208; new Section R9-16-207 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-208. Continuing Education

- A.** Every 24 months after the effective date of a regular license, a licensee shall complete continuing education approved by the Department.
1. Except as provided in (A)(2), a licensed audiologist shall complete at least 20 continuing education hours related to audiology;
 2. A licensed audiologist who fits and dispenses hearing aids shall complete:
 - a. At least 20 continuing education hours related to audiology and hearing aid dispensing, and
 - b. No more than eight continuing education hours required in subsection (A)(2)(a) provided by a single manufacturer of hearing aids; and
 3. A licensed speech-language pathologist shall complete at least 20 continuing education hours in speech-language pathology related courses.
- B.** Continuing education shall:
1. Directly relate to the practice of audiology, speech-language pathology, or fitting and dispensing hearing aids;
 2. Have educational objectives that exceed an introductory level of knowledge of audiology, speech-language pathology, or fitting and dispensing hearing aids; and
 3. Consist of courses that include advances within the last five years in:
 - a. Practice of audiology,
 - b. Practice of speech-language pathology,
 - c. Procedures in the selection and fitting of hearing aids,
 - d. Pre- and post-fitting management of clients,
 - e. Instrument circuitry and acoustic performance data,
 - f. Ear mold design and modification contributing to improved client performance,
 - g. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,
 - h. Auditory rehabilitation,
 - i. Ethics,
 - j. Federal and state statutes or rules, or

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- k. Assistive listening devices.
- C. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
1. Hearing Healthcare Providers of Arizona,
 2. Arizona Speech-Language-Hearing Association,
 3. American Speech-Language-Hearing Association,
 4. International Hearing Society,
 5. International Institute for Hearing Instrument Studies,
 6. American Auditory Society,
 7. American Academy of Audiology,
 8. Academy of Doctors of Audiology,
 9. Arizona Society of Otolaryngology-Head and Neck Surgery,
 10. American Academy of Otolaryngology-Head and Neck Surgery, or
 11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).
- D. An applicant may request approval for a continuing education course by submitting the following to the Department:
1. The applicant's name, address, telephone number, and e-mail address, as applicable;
 2. If the applicant is a licensee, the licensee's license number;
 3. The title of the continuing education course;
 4. A brief description of the course;
 5. The name, educational background, and teaching experience of the individual presenting the course, if available;
 6. The educational objectives of the course; and
 7. The date, time, and place of presentation of the course.
- E. If an applicant submits the information in subsection (D), the Department shall review the request for approval for a continuing education course according to R9-16-209 and Table 2.1.
- F. The Department shall approve a continuing education course if the Department determines that the continuing education course:
1. Is designed to provide current developments, skills, procedures, or treatment in diagnostic and therapeutic procedures in audiology, speech-language pathology, or hearing aid dispensing;
 2. Is developed and presented by individuals knowledgeable and experienced in the subject area; and
 3. Contributes directly to the professional competence of a licensee.
- Historical Note**
- Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-208 renumbered to R9-16-214; new Section R9-16-208 renumbered from R9-16-207 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).
- R9-16-209. Time-frames**
- A. For each type of license or approval issued by the Department under this Article, Table 2.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
 2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. For each type of license or approval issued by the Department under this Article, Table 2.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1), which begins on the date the Department receives an application packet.
1. The administrative completeness review time-frame begins:
 - a. The date the Department receives an application packet required in this Article, or
 - b. The date the Department receives a request for continuing education course approval according to R9-16-208.
 2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
 - a. If a license application packet or request for continuing education course approval is not complete, the notice of deficiencies listing each deficiency and the information or documentation needed to complete the license application packet or request for continuing education course approval.
 - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
 - c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the license application packet or request for continuing education course approval withdrawn.
 3. If the Department issues a license or approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. For each type of license or approval issued by the Department under this Article, Table 2.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied the license or continuing education course approval.
 2. During the substantive review time-frame:
 - a. The Department may make one comprehensive written request for additional information or documentation; and
 - b. If the Department and the applicant agree in writing to allow one or more supplemental requests for additional information or documentation, the Department may make the number of supplemental requests agreed to between the Department and the applicant.
 3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
 4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days

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- after the date of the request, the Department shall deny the license or approval.
- D. After receiving the written notice of approval in subsection (C)(1), an applicant for a regular license or a temporary license shall send the required license fee to the Department. If the applicant does not submit the license fee within 30 calendar days after the date the Department sends the written notice of approval to the applicant, the Department shall consider the application withdrawn.
 - E. The Department shall issue a regular license or a temporary license:
 1. Within five calendar days after receiving the license fee, and
 2. From the date of issue, the license is valid for:

- a. Two years, if a regular license, and
 - b. Twelve months, if a temporary license.
- F. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-209 renumbered to R9-16-212; new Section R9-16-209 renumbered from R9-16-204 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Table 2.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Application for an Initial License for an Audiologist (R9-16-202)	A.R.S. §§ 36-1904 and 36-1940	60	30	30	30	30
Application for an Initial License for a Speech-language Pathologist (R9-16-203)	A.R.S. §§ 36-1904 and 36-1940.01	60	30	30	30	30
Application for Temporary License for a Speech-language Pathologist (R9-16-204)	A.R.S. §§ 36-1904 and 36-1940.03	60	30	30	30	30
License Renewal for an Audiologist (R9-16-205)	A.R.S. § 36-1904	60	30	30	30	30
License Renewal for a Speech-language Pathologist (R9-16-206)	A.R.S. § 36-1904	60	30	30	30	30
License Renewal for a Temporary Speech-language Pathologist (R9-16-207)	A.R.S. §§ 36-1904 and 36-1940.03	60	30	30	30	30
Approval of Continuing Education Course (R9-16-208)	A.R.S. § 36-1904	45	30	30	15	30

Historical Note

Table 2.1 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-210. Clinical Fellowship Supervisors

In addition to complying with the requirements in A.R.S. § 36-1905, a clinical fellowship supervisor shall:

1. Complete a minimum of 36 supervisory activities throughout an individual's clinical fellowship that include:
 - a. A minimum of 18 on-site observations,
 - b. No more than six on-site observations in a 24-hour period, and
 - c. A minimum of 18 monitoring activities;
2. Submit a copy of the clinical fellowship report to the Department within 30 calendar days after the completion of the clinical fellowship; and

3. Provide the Department and the clinical fellow with written notice within 72 hours after the decision to stop supervising the clinical fellow if the clinical fellowship supervisor voluntarily stops supervising a clinical fellow before the completion of the clinical fellowship.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-210 renumbered to R9-16-215; new Section R9-16-210 renumbered from R9-16-205 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-211. Requirements for Supervising a Speech-language

Pathologist Assistant

A licensed speech-language pathologist who provides direct supervision or indirect supervision to a speech-language pathologist assistant shall:

1. Have at least two years of full-time professional experience as a licensed speech-language pathologist;
2. Provide direct supervision or indirect supervision to no more than two full-time or three part-time speech-language pathologist assistants at one time;
3. Ensure that the amount and type of direct supervision and indirect supervision provided is consistent with:
 - a. The speech-language pathologist assistant's skills and experience,
 - b. The needs of the clients served,
 - c. The setting where the services are provided, and
 - d. The tasks assigned;
4. Inform a client when the services of a speech-language pathology assistant is being provided;
5. Document each occurrence of direct supervision and indirect supervision provided to a speech-language pathology assistant, including:
 - a. The speech-language pathologist assistant's name and license number,
 - b. The name and address of business where services occurred, and
 - c. The date and type of supervision provided;
6. Ensure that the amount and type of direct supervision and indirect supervision provided to a speech-language pathology assistant is:
 - a. A minimum of 20 per cent direct supervision and 10 per cent indirect supervision during the first 90 days of employment; and
 - b. Subsequent to the first 90 days of employment, a minimum of 10 per cent direct supervision and 10 per cent indirect supervision;
7. If more than one licensed speech-language pathologist provides direct supervision or indirect supervision to a speech-language pathology assistant, designate one speech-language pathologist as the primary speech-language pathologist who is responsible for coordinating direct supervision and indirect supervision provided by other speech-language pathologists;
8. Establish a record for each speech-language pathologist assistant who receives direct supervision and indirect supervision from the speech-language pathologist that includes:
 - a. The speech-language pathologist assistant's name, home address, telephone number, and e-mail;
 - b. A plan indicating the types of skills and the number of hours allocated to the development of each skill that the speech-language pathologist assistant is expected to complete;
 - c. A document listing each occurrence of direct supervision or indirect supervision provided to the speech-language pathologist assistant that includes:
 - i. Business name and address where supervision occurred;
 - ii. The times when the supervision started and ended,
 - iii. The types of clinical interactions provided; and
 - iv. Notation of speech-language pathologist assistant's progress;
 - d. Documentation of evaluations provided to the speech-language pathologist assistant during the time supervision was provided; and

- e. Documentation of when supervision was terminated; and
9. Maintain a speech-language pathologist assistant record:
 - a. Throughout the period that the speech-language pathologist assistant receives direct supervision and indirect supervision clinical interactions from the supervisor; and
 - b. For at least two years after the last date the speech-language pathologist assistant received clinical interactions from the supervisor.

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-211 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-211 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-212. Equipment; Records

- A. A licensee shall maintain equipment used by the licensee in the practice of audiology or the practice of speech-language pathology according to the manufacturer's specifications.
- B. If a licensee uses equipment that requires calibration, the licensee shall ensure that:
 1. The equipment is calibrated a minimum of every 12 months and according to the American National Standard - Specifications for Audiometers, S3.6-2010, Standards Secretariat, c/o Acoustical Society of America, 1305 Walt Whitman Road, Suite 300, Melville, New York, 11747-4300, November 2, 2010, incorporated by reference and on file with the Department and the Office of the Secretary of State with no future additions or amendments; and
 2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.
- C. A licensee shall maintain the following records according to A.R.S. § 32-3211 for each client for at least 36 months after the date the licensee provided a service or dispensed a product while engaged in the practice of audiology, practice of speech-language pathology, or practice of fitting and dispensing hearing aids:
 1. The name, address, and telephone number of the individual to whom services are provided;
 2. The name or description and the results of each test and procedure used in evaluating speech, language, and hearing disorders or determining the need for dispensing a product or service; and
 3. If a product such as a hearing aid, augmentative communication device, or laryngeal device is dispensed, a record of the following:
 - a. The name of the product dispensed;
 - b. The product's serial number, if any;
 - c. The product's warranty or guarantee, if any;
 - d. The refund policy for the product, if any;
 - e. A statement of whether the product is new or used;
 - f. The total amount charged for the product;
 - g. The name of the licensee; and
 - h. The name of the intended user of the product.

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-212 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-212 renumbered from R9-16-209 and amended by

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exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-213. Bill of Sale Requirements

An audiologist who dispenses hearing aids shall provide a bill of sale to a client at the time the audiologist provides a hearing aid to the client or at a time requested by the client that complies with the requirements in R9-16-314.

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-213 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-213 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-214. Disciplinary Actions

- A.** The Department may, as applicable:
1. Deny, revoke, or suspend an audiologist or speech-language pathologist's license under A.R.S. § 36-1934;
 2. Request an injunction under A.R.S. § 36-1937; or
 3. Assess a civil money penalty under A.R.S. § 36-1939.
- B.** In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
1. The type of violation,
 2. The severity of the violation,
 3. The danger to the public health and safety,
 4. The number of violations,
 5. The number of clients affected by the violations,
 6. The degree of harm to the consumer,
 7. A pattern of noncompliance, and
 8. Any mitigating or aggravating circumstances.
- C.** A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.
- D.** The Department shall notify a licensee's employer within five calendar days after the Department initiates a disciplinary action against a licensee.

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-214 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-214 renumbered from R9-16-208 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-215. Changes Affecting a License or a Licensee; Request for a Duplicate License

- A.** A licensee shall submit a notice to the Department in writing within 30 calendar days after the effective date of a change in:
1. The licensee's home address or e-mail address, including the new home address or e-mail address;
 2. The licensee's name, including a copy of one of the following with the licensee's new name:
 - a. Marriage certificate,
 - b. Divorce decree, or
 - c. Other legal document establishing the licensee's new name; and
 3. The place or places, including address or addresses, where the licensee engages in the practice of audiology, speech-language pathology, or fitting and dispensing hearing aids.

- B.** A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a format provided by the Department that includes:
1. The licensee's name and address,
 2. The licensee's license number and expiration date,
 3. The licensee's signature and date of signature, and
 4. A \$25 duplicate license fee.

Historical Note

New Section R9-16-215 renumbered from R9-16-210 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

ARTICLE 3. LICENSING HEARING AID DISPENSERS**R9-16-301. Definitions**

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means an individual or a business organization that submits to the Department an approval to test, or initial, renewal or temporary license application packet to practice as a hearing aid dispenser.
2. "Application packet" means the information, documents, and fees required by the Department to apply for a license.
3. "Business organization" means an entity identified in A.R.S. § 36-1910.
4. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
5. "Continuing education" means a course that provides instruction and training that directly relates to the practice of fitting and dispensing hearing aids as specified in A.R.S. § 36-1904.
6. "Continuing education hour" means 50 minutes of continuing education.
7. "Controlling person" has the same meaning as in A.R.S. § 36-881.
8. "Course" means a workshop, seminar, lecture, conference, or class.
9. "Department-designated written hearing aid dispenser examination" means one of the following that has been identified by the Department as complying with the requirements in A.R.S. § 36-1924:
 - a. The International Licensing Examination for Healthcare Professionals, administered by the International Hearing Society; or
 - b. A test provided by the Department or other organization.
10. "Designated agent" means an individual who is authorized by an applicant or hearing aid dispenser to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or hearing aid dispenser.
11. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state licensing entity.
12. "In-service education" means organized instruction or information that is provided to a licensed hearing aid dispenser.

Historical Note

Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section amended by exempt rulemak-

ing at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-302. Individuals to Act for Applicant

When an applicant or a hearing aid dispenser is required by this Article to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or hearing aid dispenser:

1. If the applicant or the hearing aid dispenser is an individual, the individual; or
2. If the applicant or hearing aid dispenser is a business organization, the designated agent who:
 - a. Is a controlling person of the business organization,
 - b. Is a U.S. citizen or legal resident, and
 - c. Has an Arizona address.

Historical Note

Amended effective March 22, 1976 (Supp. 76-2). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-303. Examination Requirements

- A. Within two years after the date an applicant receives the approval notification in R9-16-304(C)(1), or a hearing aid dispenser with a temporary license receives the approval in R9-16-309(C), the applicant or hearing aid dispenser with a temporary license shall take and obtain a passing score on the Department-designated:
 1. Written hearing aid dispenser examination required R9-16-304, and
 2. Practical examination required in R9-16-305.
- B. An applicant approved to take the Department-designated practical examination according to R9-16-304(C)(1), the examination required in R9-16-307(E), or a hearing aid dispenser with a temporary license approved to take the Department-designated practical examination according to R9-16-309(F)(1) shall:
 1. Arrive on the scheduled date and time of the examination,
 2. Provide proof of identity by a government-issued photographic identification card that is provided by the applicant or hearing aid dispenser with a temporary license upon the request of the individual administering the examination, and
 3. Exhibit ethical conduct during the examination process.
- C. An applicant or hearing aid dispenser with a temporary license who does not comply with subsection (B)(1) or (B)(2) is ineligible to take the examination on the scheduled date and time.
- D. An applicant or hearing aid dispenser with a temporary license taking the examination:
 1. Required in R9-16-307(E), will receive:
 - a. A passing score if 75% or more of the responses are correct, as determined by the Department; or
 - b. A failing score if fewer than 75% of the responses are incorrect, as determined by the Department; and
 2. Required in R9-16-304(C)(1) or R9-16-309(F)(1) will receive a passing score on the examination if the applicant or hearing aid dispenser with a temporary license demonstrates the proficiencies in A.R.S. § 36-1924(A)(4), as determined by the Department.
- E. The Department shall notify an applicant or hearing aid dispenser with a temporary license that the applicant or hearing aid dispenser with a temporary license may apply for an initial hearing aid dispenser license when the applicant or hearing aid dispenser with a temporary license has received a passing score on both of the examinations in subsection (A).

Historical Note

The Department of Health Services advises that this rule is preempted by Section 521(a) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 360K). See 21 CFR 808.53, effective November 10, 1980 (Supp. 80-6). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-304. Written Hearing Aid Dispenser Examination

- A. An applicant applying for an approval to take the Department-designated written hearing aid dispenser examination shall submit to the Department:
 1. An application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. If applicable, the name of the applicant's employer and the employer's business address and business telephone number;
 - d. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction; and
 - e. If the applicant was convicted of a felony or misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - f. Whether within the two years before the application date, a hearing aid dispenser license issued to the applicant was suspended or revoked;
 - g. Whether the applicant is currently ineligible to apply for a hearing aid dispenser license due to a prior revocation or suspension of the applicant's hearing aid dispenser license;
 - h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-316;
 - i. An attestation that the information submitted as part of the application is true and accurate; and
 - j. The applicant's signature and date of signature;
 2. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
 3. Documentation that the applicant:
 - a. Received a high school diploma from an accredited high school;
 - b. Passed the general education development tests;
 - c. Completed an associate degree or higher from an accredited college or university; or
 - d. Continuously engaged in the practice of fitting and dispensing hearing aids during the three years before August 11, 1970;
 4. If the applicant was issued a hearing aid dispenser license in another state or jurisdiction, where the applicant was issued a hearing aid dispenser license; and
 5. A nonrefundable \$100 application fee.

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- B. The Department shall review an application for an approval to take the Department-designated written hearing aid examination according to R9-16-316 and Table 3.1.
- C. Within five calendar days after the Department receives the applicant's Department-designated written hearing aid dispenser examination results, the Department shall provide written notification to the applicant of:
1. A passing score that includes approval to take the Department-designated practical examination in R9-16-305; or
 2. A failing score that includes, as applicable, approval to retake the Department-designated written hearing aid dispenser examination.

Historical Note

Amended effective March 22, 1976 (Supp. 76-2). The Department of Health Services advises that this rule is preempted by Section 521(a) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 360K). See 21 CFR 808.53, effective November 10, 1980 (Supp. 80-6). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-305. Practical Examination

- A. After an applicant takes the Department-designated practical examination required in R9-16-303(A), the Department shall provide written notification to the applicant within five calendar days after the Department receives the applicant's examination results whether the applicant received:
1. A passing score; or
 2. A failing score and, as applicable, approval to retake the Department-designated practical examination.
- B. The Department shall administer the Department-designated practical exam that complies with A.R.S. § 36-1924(A)(4):
1. In October each calendar year, and
 2. According to A.R.S. § 36-1923.

Historical Note

Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-306. Application for an Initial License by Examination

- A. Within six months after receiving the written notice in R9-16-303(E), an applicant for an initial license by examination shall submit to the Department:
1. An application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. An attestation that the information submitted as part of the application for approval to take the Department-designated written hearing aid dispenser examination required in R9-16-304 is currently true and accurate; and
 - c. The applicant's signature and date signed; and
 2. A license fee of \$200.
- B. The Department shall review an application for an initial hearing aid dispenser license by examination according to R9-16-316 and Table 3.1.
- C. If the Department does not issue an initial hearing aid dispenser license by examination to an applicant, the Department shall return the license fee to the applicant.
- D. An initial hearing aid dispenser license is valid for two years from the date of issue.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-307. Application for an Initial License by Reciprocity

- A. An applicant for an initial license by reciprocity shall submit to the Department:
1. An application in a format provided by the Department that contains:
 - a. The information required in R9-16-304(A)(1)(a) through (A)(1)(j),
 - b. The name of each state that issued the applicant a current hearing aid dispenser license,
 - c. The license number of each current hearing aid dispenser license, and
 - d. The date each current hearing aid dispenser license was issued;
 2. The documents required R9-16-304(A)(2) through (A)(5);
 3. For each state named in subsection (A)(1)(b):
 - a. A statement, on the letterhead of the state licensing entity that issued the hearing aid dispenser license and signed by an official of the state licensing entity, that the applicant holds a current hearing aid dispenser license in good standing;
 - b. A copy of the written and practical portions of the Department-designated hearing aid dispenser examination taken by the applicant or a detailed description of each portion of the examination;
 - c. The state licensing entity's statement of:
 - i. The applicant's score on each section of the hearing aid dispenser examination taken by the applicant,
 - ii. The minimum passing score for each section of the hearing aid dispenser examination taken by the applicant, and
 - iii. The minimum passing score for the hearing aid dispenser examination taken by the applicant;
 - d. A copy of the applicant's current license;
 - e. An attestation that the information submitted as part of the application for an initial license by reciprocity is true and accurate; and
 - f. The applicant's signature and date of signature; and
 4. A \$200 license fee.
- B. Based on the information submitted under subsections (A)(1) through (A)(3), the Department shall determine whether:
1. The content of the examination taken by the applicant is substantially the same as the content of the Department's examinations in:
 - a. The Department-designated written hearing aid dispenser examination, and
 - b. The Department-designated practical examination;
 2. The applicant's scores on the examinations in (A)(3)(c) meet the requirements in R9-16-303 for passing; and
 3. The applicant complies with A.R.S. §§ 36-1922 and 36-1923(A), and this Article.
- C. The Department shall review an application for an initial license by reciprocity according to R9-16-316 and Table 3.1.
- D. If the Department does not issue an initial license by reciprocity to an applicant, the Department shall return the license fee to the applicant.
- E. If the Department issues an initial license by reciprocity to an applicant, the Department shall provide notification to the applicant that the applicant is approved to take and required to pass the examination identified in A.R.S. § 36-1922 within six months after the initial license by reciprocity is issued.

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- F. After an applicant takes the examination in subsection (E), the Department shall provide written notification to the applicant within five calendar days after the Department receives the applicant's examination results whether the applicant received:
1. A passing score; or
 2. A failing score and, as applicable, approval to retake the examination.
- G. An initial license by reciprocity issued to an applicant is valid for two years from the date of issue.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-308. Application for an Initial License to a Business Organization

- A. An applicant that is a business organization shall submit to the Department:
1. An application for an initial hearing aid dispenser license in a format provided by the Department that contains:
 - a. The name of the business organization;
 - b. The business organization's Arizona business name, address, and telephone number;
 - c. The name, address, telephone number, and e-mail address of the individual authorized by the business organization to be the designated agent;
 - d. The name, business telephone number, and Arizona hearing aid dispenser license number of each hearing aid dispenser employed by the business organization in Arizona;
 - e. Whether the business organization or a hearing aid dispenser working for the business organization has had a hearing aid dispenser license suspended or revoked by any state within two years before the application date;
 - f. Whether the business organization or a hearing aid dispenser working for the business organization currently is not eligible for licensing in any state due to a suspension or revocation;
 - g. An attestation that information required as part of the application has been submitted and is true and accurate; and
 - h. The signature and date of signature from the designated agent;
 2. A nonrefundable \$100 application fee; and
 3. A \$200 license fee.
- B. The Department shall review an application for an initial hearing aid dispenser license to a business organization according to R9-16-316 and Table 3.1.
- C. If the Department does not issue an initial hearing aid dispenser license to a business organization, the Department shall return the license fee in subsection (A)(3) to the applicant.
- D. A business organization licensed according to this Section shall comply with A.R.S. § 36-1910.
- E. An initial license issued to a business organization according to this Section is valid for two years from the date of issue.
1. An application in a format provided by the Department that contains:
 - a. The information in R9-16-304(A)(1)(a) through (A)(5); and
 - b. The applicant's sponsor's:
 - i. Name,
 - ii. Business address,
 - iii. Business telephone number, and
 - iv. Arizona hearing aid dispenser license number;
 2. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905; and
 3. A \$100 license fee.
- B. The Department shall review an application for a temporary license according to R9-16-316 and Table 3.1.
- C. If the Department issues a temporary license to the applicant, the Department shall also provide written notification to the applicant of approval to take the Department-designated written hearing aid dispenser examination within six months after the temporary license is issued.
- D. If the Department does not issue an applicant a temporary license, the Department shall return the license fee in subsection (A)(3) to the applicant.
- E. If a hearing aid dispenser with a temporary license takes and fails the Department-designated written hearing aid dispenser examination required in subsection (C), the temporary hearing aid dispenser may:
 1. Renew the temporary license once according to R9-16-311(F), and
 2. Take the Department-designated written hearing aid dispenser examination within the six months after renewal of the temporary license.
- F. Within five calendar days after the Department receives an individual's Department-designated written hearing aid dispenser examination results, the Department shall provide written notification to the individual of:
 1. A passing score that includes approval to take the Department-designated practical examination; or
 2. A failing score that includes, as applicable, approval to retake the Department-designated written hearing aid dispenser examination.
- G. A temporary license is no longer valid on the date the Department receives notice from the sponsor that the sponsor is terminating sponsorship.
- H. A hearing aid dispenser whose temporary license is terminated according to subsection (G), shall:
 1. Not practice until issued a new license, and
 2. May apply for an initial license as a hearing aid dispenser according to this Article or a temporary license according to this Section.
- I. A temporary license is valid for 12 months from the date of issue.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-310. Sponsors

- A. A sponsor shall:
1. Provide to a hearing aid dispenser with a temporary license a minimum of 64 hours per month of on-site training and supervision that:
 - a. Consists of coordinating, directing, watching, inspecting, and evaluating the fitting and dispensing

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- activities of the hearing aid dispenser with a temporary license; and
- b. Directly relates to the type of training and education needed to pass the licensing examination required in A.R.S. § 36-1924;
2. Maintain a record that:
 - a. Is signed by the hearing aid dispenser with a temporary license;
 - b. Has the date, time, and content of the training and supervision provided to the hearing aid dispenser with a temporary license, as required in subsection (A)(1); and
 - c. Is available for inspection by the Department for at least 12 months after the end of the sponsorship agreement; and
 3. Not provide sponsorship to more than two hearing aid dispensers with temporary licenses, at one time.
- B.** When a sponsor terminates a sponsorship agreement with a hearing aid dispenser with a temporary license:
1. The sponsor shall:
 - a. Provide a written notice to the hearing aid dispenser with a temporary license indicating termination of the sponsorship agreement; and
 - b. Provide a copy of the written notice required in subsection (B)(1)(a), and documentation that the hearing aid dispenser with a temporary license received the written notice, to the Department; and
 2. The hearing aid dispenser with a temporary license shall return the temporary license to the Department.
- Historical Note**
- Adopted effective June 25, 1993 (Supp. 93-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5029, effective September 30, 2001 (Supp. 01-4). New Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).
- R9-16-311. License Renewal**
- A.** A licensee, except for a hearing aid dispenser with a temporary license, shall submit a renewal application in a format provided by the Department that contains:
1. For an individual licensed as a hearing aid dispenser:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. The applicant's Social Security Number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. If applicable, the name of the applicant's employer and the employer's business address and business telephone number;
 - d. The applicant's license number and expiration date;
 - e. Since the hearing aid dispenser's previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state or jurisdiction;
 - f. If the applicant was convicted of a felony or misdemeanor involving moral turpitude:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
 - h. Whether the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension;
 - i. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act upon the applicant's hearing aid dispenser license;
 - j. An attestation that information required as part of the application has been submitted and is true and accurate; and
 - k. The applicant's signature and date of signature;
- 2.** In addition to the requirements in subsection (A)(1) an individual shall submit:
- a. Documentation of 24 continuing education hours completed within the 24 months before the expiration date on the license, including:
 - i. The name of the organization providing the course;
 - ii. The date and location where the course was provided;
 - iii. The title of each course attended;
 - iv. A description of each course's content;
 - v. Whether the course was taught in-person;
 - vi. The name of the instructor;
 - vii. The instructor's education, training, and experience background, if available; and
 - viii. The number of continuing education hours earned for each course; and
 - b. A \$200 license renewal fee; or
- 3.** For a business organization licensed as a hearing aid dispenser:
- a. The information in subsection R9-16-308(A)(1), and
 - b. A \$200 license renewal fee.
- B.** A licensee, except for a hearing aid dispenser with a temporary license, who renews a license within 30 calendar days after the expiration date of the license, shall submit to the Department:
1. The information and renewal fee required in subsection (A), and
 2. A \$25 late fee.
- C.** A renewal license issued to a licensee, except for a hearing aid dispenser with a temporary license, is valid for two years after the expiration date of the previous license issued by the Department.
- D.** If a licensee does not comply with subsections (A) or (B), the license is nonrenewable and:
1. The hearing aid dispenser may apply for a new license according to subsection (E), or
 2. The business organization may apply for a new license according to R9-16-308.
- E.** A licensee whose license is nonrenewable according to subsection (D)(1) and it is within one year after the expiration date of the hearing aid dispenser's license:
1. The applicant shall submit an application in a format provided by the Department that contains:
 - a. The information required in R9-16-304(A)(1) through (A)(4), and
 - b. Documentation of continuing education according to R9-16-312; and
 2. A nonrefundable \$100 application fee and a \$100 license fee.
- F.** If allowed in R9-16-309(E)(1), a hearing aid dispenser with a temporary license shall submit at least 30 calendar days before the expiration date on the license, a renewal application in a format provided by the Department that contains:
1. The information in R9-16-304(A)(1) through (A)(4);
 2. The applicant's sponsor's:
 - a. Name,
 - b. Business address,
 - c. Business telephone number, and

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- d. Arizona hearing aid dispenser license number;
- 3. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905; and
- 4. A \$100 license renewal fee.
- G. A renewal license issued to a licensee according to subsection (F) is valid for one year after the expiration date of the previous license issued by the Department.
- H. The Department shall review a renewal application according to R9-16-316 and Table 3.1.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-312. Continuing Education

- A. Continuing education shall:
 - 1. Directly relate to the practice of fitting and dispensing hearing aids;
 - 2. Have educational objectives that exceed an introductory level of knowledge of fitting and dispensing hearing aids; and
 - 3. Consist of courses that include advances within the last five years in:
 - a. Procedures in the selection and fitting of hearing aids,
 - b. Pre- and post-fitting management of clients,
 - c. Instrument circuitry and acoustic performance data,
 - d. Ear mold design and modification contributing to improved client performance,
 - e. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,
 - f. Auditory rehabilitation,
 - g. Ethics,
 - h. Federal and state statutes or rules, or
 - i. Assistive listening devices.
- B. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (A):
 - 1. Hearing Healthcare Providers of Arizona,
 - 2. Arizona Speech-Language-Hearing Association,
 - 3. American Speech-Language-Hearing Association,
 - 4. International Hearing Society,
 - 5. International Institute for Hearing Instrument Studies,
 - 6. American Auditory Society,
 - 7. American Academy of Audiology,
 - 8. Academy of Doctors of Audiology,
 - 9. Arizona Society of Otolaryngology-Head and Neck Surgery,
 - 10. American Academy of Otolaryngology-Head and Neck Surgery, or
 - 11. An organization determined by the Department to be consistent with an organization in subsection (B)(1) through (10).
- C. A hearing aid dispenser shall comply with the continuing education requirements in A.R.S. § 36-1904.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-313. Responsibilities of a Hearing Aid Dispenser

- A. A hearing aid dispenser licensed according to subsections R9-16-306 or R9-16-307 shall:
 - 1. Upon licensure, notify the Department in writing of the address where the hearing aid dispenser practices the fitting and dispensing of hearing aids;
 - 2. Conspicuously post the license received according to subsections R9-16-306 or R9-16-307 in the hearing aid dispenser's office or place of business;
 - 3. Except as specified in subsections (A)(4) or (A)(5), conduct audiometric tests before selecting a hearing aid for a client that provides detailed information about the client's hearing loss, including:
 - a. Type, degree, and configuration of hearing loss;
 - b. Ability, as measured by the percentage of words the client is able to repeat correctly, to discriminate speech; and
 - c. The client's most comfortable and uncomfortable loudness levels in decibels;
 - 4. Have the option to conduct audiometric testing required in subsection (A)(3) before selling a client a hearing aid if the client provides to the dispenser the information required in subsection (A)(3) from a licensed professional and the information was:
 - a. Obtained within the previous 12 months for an adult, or
 - b. Within the previous six months for an individual under the age of 18;
 - 5. Have the option to conduct audiometric testing required in subsection (A)(3) if the tests cannot be performed on the client due to:
 - a. The client's young age, or
 - b. A physical or mental disability;
 - 6. Maintain documentation for three years from the date of receipt of the information, that supports the exclusion of specific audiometric tests according to subsections (A)(4) and (A)(5);
 - 7. Evaluate the performance characteristics of the hearing aid as it functions on the client's ear for the purpose of assessing the degree of audibility provided by the device and benefit to the client;
 - 8. Provide a bill of sale to a client according to A.R.S. § 36-1909(A) that contains:
 - a. Information required in A.R.S. § 36-1909;
 - b. A complete description of:
 - i. Warranty information, and
 - ii. The conditions of any offer of a trial period with a money back guarantee or partial refund; and
 - c. The client's signature and date of signature; and
 - 9. Not:
 - a. Practice without a license according to A.R.S. § 36-1907,
 - b. Commit unlawful acts according to A.R.S. § 36-1936, or
 - c. Commit actions described in A.R.S. § 36-1934(A).
- B. The trial period described in subsection (A)(8)(b)(ii) shall not include any time that the hearing aid is in the possession of the hearing aid dispenser or the manufacturer of the hearing aid.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-314. Equipment and Records

- A. A licensee shall maintain an audiometer that performs the audiometric tests as described in R9-16-313 according to the manufacturer's specifications.

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- B.** If a licensee uses equipment that requires calibration, the licensee shall ensure that:
1. The equipment is calibrated at least every 12 months and according to the American National Standard - Specifications for Audiometers, S3.6-2010, Standards Secretariat, c/o Acoustical Society of America, 1305 Walt Whitman Road, Suite 300, Melville, New York, 11747-4300, November 2, 2010, incorporated by reference and on file with the Department and the Office of the Secretary of State, with no future additions or amendments; and
 2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.
- C.** A licensee shall maintain a record according to A.R.S. § 32-3211 for each client with the following documents for at least 36 months after the date the licensee provided a service or dispensed a product while engaged in the practice of fitting and dispensing hearing aids:
1. The name, address, and telephone number of the individual to whom services are provided;
 2. A written statement from a licensed physician that the client has medical clearance to use hearing aids or a medical waiver signed by the client who is 18 years of age or older;
 3. For each audiometric test conducted for the client, the:
 - a. Audiometric test results by date and procedure used in evaluating hearing disorders or determining the need for dispensing a product or service,
 - b. Name of the individual who performed the audiometric tests, and
 - c. Signature of the individual who performed the audiometric tests;
 4. A copy of the bill of sale required in R9-16-313(A)(8);
 5. Documented verification of the effectiveness of the hearing aid required in R9-16-313 (A)(7); and
 6. The contracts, agreements, warranties, trial periods, or other documents involving the client.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-315. Disciplinary Actions

- A.** The Department may, as applicable:
1. Take an action under A.R.S. § 36-1934,
 2. Request an injunction under A.R.S. § 36-1937, or
 3. Assess a civil money penalty under A.R.S. § 36-1939.
- B.** In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
1. The type of violation,
 2. The severity of the violation,
 3. The danger to the public health and safety,
 4. The number of violations;
 5. The number of clients affected by the violations,
 6. The degree of harm to the consumer,
 7. A pattern of noncompliance, and
 8. Any mitigating or aggravating circumstances.
- C.** A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.
- D.** The Department shall notify a licensee's employer within five days after the Department initiates a disciplinary action against a licensee.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2688, effective June 7, 2002 (Supp. 02-2). Section repealed;

new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Table 1. Renumbered**Historical Note**

Table 1 made by final rulemaking at 8 A.A.R. 2688, effective June 7, 2002 (Supp. 02-2). Table 1 renumbered to Table 3.1 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-316. Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072 for each type of license or approval granted by the Department is specified in Table 3.1. The Department and an applicant may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of license or approval granted by the Department is specified in Table 3.1.
1. The administrative completeness review time-frame begins:
 - a. For an applicant submitting an application for approval to take the Department-designated written hearing aid dispenser examination, when the Department receives the application required in R9-16-304(A);
 - b. For an applicant submitting an application for initial hearing aid dispenser license by examination, when the Department receives the application required in R9-16-306;
 - c. For an applicant submitting an application for initial hearing aid dispenser license by reciprocity, when the Department receives the application required in R9-16-307;
 - d. For a business organization submitting an application for an initial hearing aid dispenser license to a business organization, when the Department receives the application required in R9-16-308;
 - e. For an applicant submitting an application for a temporary license, when the Department receives the application required in R9-16-309;
 - f. For a licensed hearing aid dispenser applying to renew a hearing aid dispenser license, when the Department receives the application required in R9-16-311;
 - g. For a business organization applying to renew a business organization hearing aid dispenser license, when the Department receives the application required in R9-16-311; and
 - h. For a temporary hearing aid dispenser applying to renew a temporary license, when the Department receives the application required in R9-16-311.
 2. If an application is incomplete, the Department shall provide a notice of deficiencies to the applicant or licensee describing the missing documents or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the documentation or information listed in the notice of deficiencies. An applicant or licensee shall submit to the Department the documentation or information listed in the notice of deficiencies within the time specified in Table 3.1 for responding to a notice of deficiencies.
 3. If the applicant or licensee submits the documentation or information listed in the notice of deficiencies within the

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- time specified in Table 3.1, the Department shall provide a written notice of administrative completeness to the applicant of licensee.
4. If the applicant or licensee does not submit the documentation or information listed in the notice of deficiencies within the time specified in Table 3.1, the Department shall consider the application withdrawn.
 5. When an application is complete, the Department shall provide a notice of administrative completeness to the applicant or licensee.
 6. If the Department issues a license or notice of approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is specified in Table 3.1 and begins on the date of the notice of administrative completeness.
1. If an application complies with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall issue a notice of approval to an applicant or a license to an applicant or licensee.
 2. If an application does not comply with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional or a supple-

- mental request for information until the date that the Department receives all of the information requested.
3. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information within the time specified in Table 3.1.
4. If the applicant or licensee does not submit the additional information within the time specified in Table 3.1 or the additional information submitted by the applicant or licensee does not demonstrate compliance with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall provide to the applicant or licensee a written notice of denial that complies with A.R.S. § 41-1092.03(A).
5. If the applicant or licensee submits the additional information within the time specified in Table 3.1 and the additional information submitted by the applicant or licensee demonstrates compliance with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall issue a license to an applicant or licensee or a notice of approval to an applicant.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Historical note corrected to reflect the rulemaking action on file and effective with the 04-2 supplement (Supp. 05-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Table 3.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Notice of Deficiency	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
Approval to take the Department-designated Written Hearing Aid Dispenser Examination	A.R.S. §§ 36-1923, 36-1924	60	30	60	30	30
Initial License by Examination	A.R.S. §§ 36-1904, 36-1923	60	30	30	30	15
Initial License by Reciprocity	A.R.S. § 36-1922	60	30	30	30	15
Initial License to a Business Organization	A.R.S. § 36-1910	60	30	30	30	15
Temporary License	A.R.S. § 36-1926	60	30	30	30	15
Renewal of a Hearing Aid Dispenser License	A.R.S. § 36-1904	60	30	30	30	15
Renewal of a Business Organization License	A.R.S. § 36-1910	60	30	30	30	15

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Renewal of a Temporary License	A.R.S. § 36-1926	60	30	30	30	15
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Historical Note

Table 3.1 renumbered from Table 1 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-317. Change Affecting a License or a Licensee; Request for Duplicate License

- A. A licensee shall submit a written notice to the Department in writing within 30 calendar days after the effective date of a change in:
 - 1. The licensee’s home address or e-mail address, including the new home address or e-mail address;
 - 2. The licensee’s name, including a copy of one of the following with the licensee’s new name:
 - a. Marriage certificate,
 - b. Divorce decree, or
 - c. Other legal document establishing the licensee’s new name; or
 - 3. The place or places where the licensee engages in the practice of hearing aid dispensing, including the address or addresses of the place or places where the licensee engages in the practice of hearing aid dispensing.
- B. A licensee may obtain a duplicate license by submitting to the Department a request for a duplicate license in a format provided by the Department that includes:
 - 1. The licensee’s name and address,
 - 2. The licensee’s license number and expiration date,
 - 3. The licensee’s signature and date of signature, and
 - 4. A \$25 duplicate license fee

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

R9-16-401. Definitions

The following definitions apply in this Article, unless otherwise specified:

- 1. “Accredited” means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
- 2. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.
- 3. “Applicant” means an individual who submits an application packet or renewal application packet for registration as an environmental health sanitarian.
- 4. “Application packet” means the information, documents, and fees required by the Department to apply for approval to:
 - a. Take a sanitarian examination, and
 - b. Be registered as an environmental health sanitarian.
- 5. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.

- 6. “Continuing education” means a course that provides instruction and training that is designed to develop or improve a registered environmental health sanitarian’s professional competence in disciplines directly related to the practice of a registered environmental health sanitarian.
- 7. “Continuing education hour” means 50 to 60 minutes of continuous course work.
- 8. “Course” means a workshop, seminar, lecture, conference, or other learning program activities as approved by the Department.
- 9. “Department” means the Arizona Department of Health Services established in A.R.S. § 36-104 and the Sanitarians Council established in A.R.S. § 36-136.01.
- 10. “Environmental health” means the science and practice of preventing human injury and illness and promoting well-being by identifying sources that produce potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions; and eliminating or minimizing exposure to the sources that adversely affect or may adversely affect human health.
- 11. “Environmental health sanitarian aide” means an individual who performs and assists with environmental health services as described and under the supervision of an individual in R9-16-403.
- 12. “Hazardous environmental agent” means a material, whether liquid, solid, gas, or sludge, that contains properties that make the material potentially harmful to public health or the environment.
- 13. “Immediate family member” means an individual related by birth, marriage, or adoption.
- 14. “License or licensed” means a permit, certificate, or similar form of approval issued by a state agency according to state law that an individual may practice in the profession indicated by the approval.
- 15. “Natural science” means a branch of science that deals with the physical world, including life, physical, and health sciences.
- 16. “Overall time-frame” has the same meaning as in A.R.S. § 41-1072.
- 17. “Practice of a registered environmental health sanitarian” means acting under the authority of R9-16-402.
- 18. “Registered environmental health sanitarian” means the same as a “registered sanitarian” in A.R.S. § 36-136.01.
- 19. “Renewal application packet” means the information, documents, and fees required by the Department to apply for a renewal registration as an environmental health sanitarian.
- 20. “Sanitarian examination” means a test that consists of questions related to environmental health including natural sciences, facility and system inspections, investigations, compliance, responding to emergencies, and promoting environmental public health awareness.
- 21. “Semester credit” means one earned academic unit of study or equivalent, with a grade of “C” or better, at an accredited college or university by:
 - a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
 - b. Completing practical work for a class as determined by the accredited college or university.
- 22. “Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.

23. "Supervision" means being responsible for and providing direction to an individual who:
- Performs and assists a registered environmental health sanitarian with environmental health services as described in R9-16-403, and
 - Is employed as an environmental health sanitarian aide in a position directly related to environmental health.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4). New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-402. Eligibility and Responsibilities for a Registered Environmental Health Sanitarian

- A. An individual is eligible to be a registered environmental health sanitarian, if the individual meets at least one of the following:
- Has completed at least 30 semester credits at an accredited college or university in the natural sciences or the equivalent credits from a college or university from outside the United States or its territories verified by a Department-approved third party evaluation service;
 - Has completed at least five years of employment as a sanitarian aide in a position directly related to environmental health;
 - Has completed at least five years of active military service in the field of environmental health;
 - Is currently licensed as a sanitarian in another jurisdiction, has passed a sanitarian examination that is equivalent to this state's examination with a score of 70% or more, and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3); or
 - Has received an official notice from a testing organization approved by the Department that contains the sanitarian examination test results with a score of 70% or more and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3).
- B. An individual who is eligible to be a registered environmental health sanitarian according to subsection (A)(1) through (3) shall pass a sanitarian examination administered by the Department or administered by a testing organization approved by the Department.
- C. The practice of a registered environmental health sanitarian may include:
- Investigate, sample, measure, and assess hazardous environmental agents;
 - Recommend and apply protective interventions that control hazards to health;
 - Develop, promote, and enforce guidelines, policies, rules, statutes, and regulations;
 - Perform system analysis;
 - Interpret research utilizing science and evidence to understand the relationship between health and environment; or
 - Interpret data and prepare technical summaries and reports.
- D. A registered environmental health sanitarian shall:
- Comply with A.R.S. § 41-1009;
 - Comply with A.A.C. Title 9, Chapter 8; and
 - Review and, as applicable, sign reports prepared by a sanitarian aide.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-403. Requirements for an Environmental Health Sanitarian Aide

- A. An environmental health sanitarian aide may perform and assist in any of the following environmental health services:
- Inspections related to food establishments, food processing, food distribution, sewage and refuse disposal, water supplies, hotels, motels, campground, swimming pools, and other related public facilities regulated under A.A.C. Title 9, Chapter 8;
 - Investigations of complaints to ensure compliance with environmental regulations;
 - Routine samplings of water, sewage, food, and other samples for analysis; or
 - Application of ordinances, codes, rules, and regulations governing public health.
- B. An environmental health sanitarian aide shall:
- Have reports reviewed by a registered environmental health sanitarian;
 - Not approve or disapprove the operation of an establishment under A.A.C. Title 9, Chapter 8; and
 - Not sign on behalf of a registered environmental health sanitarian.
- C. A sanitarian aide, who has completed at least five years of employment as an environmental health sanitarian aide in a position directly related to environmental health, may apply for registration as an environmental health sanitarian according to R9-16-405.
- D. An individual who provides supervision to an environmental health sanitarian aide shall:
- Ensure that the number of hours and type of supervision in providing environmental health services is consistent with:
 - The sanitarian aide's skills and experience,
 - The setting where the environmental health services are provided, and
 - The tasks assigned;
 - Establish a record for the environmental health sanitarian aide who receives supervision that includes:
 - The sanitarian aide's name, address, e-mail address, and telephone number;
 - A plan indicating the types of skills and the number of hours allocated to the development of each skill that the environmental health sanitarian aide is expected to complete;
 - Documentation of evaluations provided to the environmental health sanitarian aide during the time supervision was provided; and
 - Documentation of when supervision began and ended; and
 - Maintain a sanitarian aide's record throughout the period that the environmental health sanitarian aide received supervision.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-403 renumbered to R9-16-404; new R9-16-403 made by final

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rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-404. Continuing Education Requirements; Continuing Education Deferral; and Renewal Extension

A. A registered environmental health sanitarian shall complete 12 continuing education hours during the 12 months prior to December 31 of each calendar year, unless the registered environmental health sanitarian:

1. Has been a registered environmental health sanitarian for less than 12 months as indicated on the renewal application;
2. Was prevented from completing continuing education according to subsection (A) due to a personal or immediate family member's illness during at least six continuous months of the preceding 12 months; or
3. Was called to active military service.

B. Except for a registered environmental health sanitarian in subsection (A)(1) and (3), by November 1 of each calendar year, a registered environmental health sanitarian may request to defer continuing education by submitting:

1. A request in a Department-provided format that contains:
 - a. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;
 - b. The registered environmental health sanitarian's registration number;
 - c. A statement regarding the registered environmental health sanitarian's personal or immediate family member's illness;
 - d. Indicate the number of continuing education hours requesting to defer;
 - e. An attestation that the Department is authorized to verify all information provided in the continuing education deferral request; and
 - f. The registered environmental health sanitarian's signature, including date of signature;
2. Documentation that verifies the duration of the registered environmental health sanitarian's personal or immediate family member's illness from the physician treating or who treated the registered environmental health sanitarian's personal or immediate family member's illness; and
3. If a registered environmental health sanitarian has completed any continuing education hours, report the completed continuing education hours according to R9-16-406(D)(1)(h).

C. A registered environmental health sanitarian that deferred continuing education in subsection (B) shall obtain:

1. The deferred continuing education by the end of the subsequent renewal year, and
2. The continuing education required in subsection (A) for the current renewal year.

D. A registered environmental health sanitarian called to active military service:

1. Shall submit:
 - a. Written notice for renewal extension to the Department that includes:
 - i. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;
 - ii. The registered environmental health sanitarian's registration number;
 - iii. A statement stating the reason for the notice of renewal extension; and
 - iv. The registered environmental health sanitarian's signature, including date of signature; and

- b. A copy of the registered environmental health sanitarian's deployment documentation;
 2. Retains registration as an environmental health sanitarian for the term of service or deployment plus 180 calendar days;
 3. Defers the requirement for completing the continuing education for the term of service or deployment plus 180 calendar days; and
 4. Shall submit a renewal application packet according to R9-16-406 after the term of service or deployment plus 180 calendar days.
- E.** The Department shall review the request to defer continuing education submitted in subsection (B) for approval according to R9-16-407 and Table 4.1.
- F.** If the Department denies a registered environmental health sanitarian's request to defer continuing education, the registered environmental health sanitarian shall submit the required continuing education hours in subsection (A) according to R9-16-406(D)(1)(h).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-404 renumbered to R9-16-406; new R9-16-404 renumbered from R9-16-403 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-405. Application for Sanitarian Examination and Registration

A. An individual may apply to take the sanitarian examination for registration as a sanitarian if the individual meets one of the eligibility requirements in R9-16-402(A).

B. At least seven calendar days before a Sanitarians Council meeting, an applicant for environmental health sanitarian registration shall submit an application packet to the Department containing:

1. The following information in a Department-provided format:
 - a. The applicant's name, address, e-mail address, and telephone number;
 - b. If applicable, applicant's former names;
 - c. The applicant's social security number, required under A.R.S. §§ 25-320 and 25-502;
 - d. If applicable, the applicant's current employment information:
 - i. The employer's name, address, e-mail address, and telephone number;
 - ii. The applicant's position title; and
 - iii. The applicant's employment start date;
 - e. If an applicant meets the eligibility requirement in R9-16-402(A)(1), the following for each college or university where the applicant completed semester credits or the equivalent credits from a college or university:
 - i. The college or university's name, address, e-mail address, and telephone number;
 - ii. The number of natural science semester credits completed; and
 - iii. If applicable, the degree obtained;
 - f. If an applicant meets the eligibility requirement in R9-16-402(A)(2), the following for each employer during the five years the applicant was employed as a sanitarian aide:
 - i. The employer's name, address, e-mail address, and telephone number;

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- ii. The name, title, e-mail address, and telephone number of a contact individual for the employer;
 - iii. The applicant's position and description of responsibilities; and
 - iv. The months and years of employment;
 - g. If an applicant meets the eligibility requirement in R9-16-402(A)(3), the following for each active military service assignment during the five years the applicant held a military job position in the field of environmental health:
 - i. The military branch name, address, e-mail address, and telephone number;
 - ii. The name, title, e-mail address, and telephone number of a contact individual from the military branch;
 - iii. The applicant's military job position and description of responsibilities; and
 - iv. The months and years of active military service assignments;
 - h. If an applicant meets the eligibility requirement in R9-16-402(A)(4), the following for a sanitarian licensed in another state or jurisdiction:
 - i. The state, county, and city that issued the applicant's current license as a sanitarian;
 - ii. The testing organization that administered the sanitarian examination;
 - iii. The name of the sanitarian examination;
 - iv. The sanitarian examination administration date;
 - v. The number of sanitarian examination questions;
 - vi. The sanitarian examination score;
 - vii. The other eligibility requirement in R9-16-402(A)(1), (2), or (3) met by the applicant; and
 - viii. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
 - i. If an applicant meets the eligibility requirement in R9-16-402(A)(5), the following for an official notice from a Department-approved testing organization that contains a sanitarian examination test results with a score of 70% or more:
 - i. The name of the testing organization;
 - ii. The date the sanitarian examination was completed;
 - iii. The sanitarian examination score; and
 - iv. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
 - j. Whether the applicant is or has been licensed as a sanitarian in another state or jurisdiction;
 - k. Whether the applicant has had an application for licensure as a sanitarian denied in a state or jurisdiction;
 - l. If the applicant has had an application for licensure as a sanitarian denied, the:
 - i. Reason for denial;
 - ii. Date of the denial; and
 - iii. Name, address, and telephone number of the licensing agency that denied the applicant's application;
 - m. Whether the applicant has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction;
 - n. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement, the:
 - i. Reason for the suspension, revocation, or consent agreement;
 - ii. Date of the suspension, revocation, or consent agreement; and
 - iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement with the applicant;
 - o. Whether the applicant has been convicted of a felony or a misdemeanor related to the functions of the applicant's employment or occupation as a sanitarian in this state or another state;
 - p. If the applicant has been convicted of a felony or a misdemeanor in subsection (o):
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - q. Whether the applicant agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-16-407;
 - r. An attestation that:
 - i. The applicant authorizes the Department to verify all information provided in the application packet, and
 - ii. The information submitted as part of the application packet is true and accurate; and
 - s. The applicant's signature and date of signature;
2. In addition to the application in subsection (B)(1), the following:
- a. A copy of applicant's Social Security card;
 - b. Proof of U.S. citizenship or alien status according to A.R.S. § 41-1080;
 - c. If applicable, a copy of an applicant's sanitarian license issued by another state or jurisdiction;
 - d. If an official transcript is issued by a college or university from outside of the United States or its territories, documentation from a third party evaluation service verifying equivalent credits identified in subsection (d);
 - e. If applicable, a letter verifying an applicant's start and end dates of employment for each employer identified in subsection (B)(1)(f);
 - f. If applicable, a letter verifying an applicant's start and end dates of the military job position for each active military service assignment identified in subsection (B)(1)(g);
 - g. If applicable, documentation of the completed sanitarian examination, including the sanitarian examination test results, from the testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction in subsection (B)(1)(h); and
 - h. If applicable, a copy of the official notice from a Department-approved testing organization in subsection (B)(1)(i); and
3. The nonrefundable \$25 application fee.
- C.** If an official transcript documents natural science semester credit hours identified in subsection (B)(1)(e), an applicant shall instruct the college or university to send the official transcript to the Department.
- D.** The Department shall review an application packet for an applicant to take a sanitarian examination according to R9-16-407 and Table 4.1.

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- E. The Department shall review a sanitarian examination for an applicant licensed by another state or jurisdiction for approval for the applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.
- F. The Department shall:
1. Administer the sanitarian examination at least four times each calendar year;
 2. By January 1 of each calendar year, provide the annual sanitarian examination schedule;
 3. If a scheduled sanitarian examination requires rescheduling, provide a notice at least 14 calendar days before a scheduled sanitarian examination date in subsection (2) occurs that includes information about the revised sanitarian examination; and
 4. By January 1 of each calendar year, provide a list of Department-approved testing organizations.
- G. An applicant approved to take a sanitarian examination shall:
1. Determine whether the applicant will take a sanitarian examination administered by the Department or administered by a testing organization approved by the Department:
 - a. If the applicant determines to take a sanitarian examination administered by the Department, the applicant shall:
 - i. Submit a nonrefundable \$140 sanitarian examination fee to the Department at least 30 calendar days before taking a scheduled sanitarian examination,
 - ii. Take a scheduled sanitarian examination administered by the Department, and
 - iii. Submit the completed sanitarian examination to the Department; or
 - b. If the applicant determines to take a sanitarian examination administered by a testing organization approved by the Department, the applicant shall:
 - i. Select a testing organization from the Department-approved list,
 - ii. Take a scheduled sanitarian examination administered by the testing organization, and
 - iii. Submit a copy of the official notice from the testing organization that contains the sanitarian examination test results to the Department.
 2. Take the sanitarian examination within 6 months after the date the applicant received the notice of approval to take the sanitarian examination.
 3. Pass the sanitarian examination with a score of 70% or more.
- H. The Department shall review a sanitarian examination for approval for an applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.
- I. An applicant, who does not submit a sanitarian examination or a copy of an official notice from a testing organization in subsection (G) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination, shall submit a new application packet according to R9-16-405(B).
- J. An applicant, who submits a sanitarian examination or a copy of an official notice from a testing organization in subsection (G) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination and does not score 70% or more, shall:
1. Have 12 months from the date of the approval letter the applicant received from the Department to resubmit a sanitarian examination or a copy of an official notice from a testing organization in subsection (G); and
 2. Comply with subsections (G)(1)(a) or (b) to retake the sanitarian examination.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4). New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-405 renumbered to R9-16-407; new R9-16-405 made by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-406. Application for Renewal Registration

- A. Except as provided in R9-16-404(D), a registered environmental health sanitarian shall submit an application packet for registration renewal on or before December 31 of each calendar year.
- B. A registered environmental health sanitarian who does not submit a renewal application packet by December 31 has a grace period until February 15 to submit a renewal application packet.
- C. A registered environmental health sanitarian, who does not submit a renewal application packet by February 15, shall not practice as a registered environmental health sanitarian.
- D. By December 31 of each calendar year, an applicant shall submit to the Department a renewal application packet containing:
1. The following information in a Department-provided format:
 - a. The applicant's name, address, e-mail address, and telephone number;
 - b. The applicant's environmental health sanitarian registration number;
 - c. Whether the applicant, since the applicant last submitted an application packet or renewal application packet, has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with another jurisdiction;
 - d. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement with another jurisdiction, the:
 - i. Reason for the suspension, revocation, or consent agreement;
 - ii. Date of the suspension, revocation, or consent agreement; and
 - iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement;
 - e. Whether the applicant, since the applicant last submitted a renewal application packet, has been convicted of a felony or a misdemeanor related to the applicant's employment or occupation as a sanitarian in this state or another jurisdiction;
 - f. If the applicant has been convicted of a felony or a misdemeanor as stated according to subsection (e):
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. Whether the applicant requested to defer continuing education due to a personal or immediate family member's illness according to R9-16-404(B);
 - h. Except for a registered environmental health sanitarian in R9-16-404(A), for each continuing education

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course completed during the previous 12 months, the following:

- i. The course title,
- ii. A course description,
- iii. The name of the individual providing the continuing education course,
- iv. The date the continuing education course was completed, and
- v. The total number of continuing education hours attended;
- i. Whether the applicant has been a registered environmental health sanitarian for less than 12 months according to R9-16-404(A)(1);
- j. An attestation that:
 - i. The applicant affirms that the continuing education courses specified according to subsection (h) are applicable and consistent with the Department's approved continuing education courses or with the practice of a registered environmental sanitarian described in R9-16-402(C);
 - ii. The applicant authorizes the Department to verify all information provided in the renewal application packet; and
 - iii. The information submitted as part of the renewal application packet is true and accurate; and
 - k. The applicant's signature and date of signature;
2. If applicable, a copy of the approved request to defer continuing education, and
3. The \$10 renewal application fee.
- E.** If a registered environmental health sanitarian does not submit a renewal application packet in subsection (D) by February 15:
 1. The registered environmental health sanitarian's registration expires on February 16; and
 2. Before practicing as a registered environmental health sanitarian, a registered environmental health sanitarian whose environmental health sanitarian registration expired shall submit a new application packet according to R9-16-405.
- F.** The Department shall review the renewal application packet for approval of registration as an environmental health sanitarian according to R9-16-407 and Table 4.1.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-406 renumbered to R9-16-408; new R9-16-406 renumbered from R9-16-404 by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-407. Time-frames

- A.** The overall time-frame begins, for:
 1. A sanitarian examination approval, on the date the Department receives an application packet in R9-16-405;
 2. An environmental health sanitarian registration approval, on the date the Department receives an official notice for an applicant's sanitarian examination test result administered by:
 - a. A testing organization described in R9-16-405(B)(1)(i) or (G), or
 - b. A testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction described in R9-16-405(B)(1)(h);
3. A continuing education deferral approval, on the date the Department receives the continuing education deferral request in R9-16-404; and
4. A renewal registration approval, on the date the Department receives a renewal application packet in R9-16-406.
- B.** The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.
- C.** Within the administrative completeness review time-frame in Table 4.1, the Department shall:
 1. Provide a notice of administrative completeness to an applicant; or
 2. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.
- D.** If the Department provides a notice of deficiencies to an applicant:
 1. The administrative completeness review time-frame and the overall time-frame are suspended after the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
 2. If the applicant submits the missing information or documents to the Department within the time-frame in Table 4.1, the substantive review time-frame resumes on the date the Department receives the missing information or documents; and
 3. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 4.1, the Department shall consider the application or the request withdrawn.
- E.** If the Department issues a registration or notice of approval during the administrative completeness review time-frame, the Department may not issue a separate written notice of administrative completeness.
- F.** Within the substantive review time-frame specified in Table 4.1, the Department:
 1. Shall approve an:
 - a. Applicant's request for registration as an environmental health sanitarian or
 - b. Applicant, who did not score 70% or more on the sanitarian examination, to resubmit a sanitarian examination according to R9-16-405(J);
 2. Shall deny an applicant's request for registration as an environmental health sanitarian;
 3. May make a written comprehensive request for additional information or documentation; and
 4. May make supplemental requests for additional information and documentation if agreed to by the applicant.
- G.** If the Department provides a written comprehensive request for additional information or documentation or a supplemental request to the applicant:
 1. The substantive review time-frame and overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the Department receives the information and documents requested; and
 2. The applicant shall submit to the Department the information and documents listed in the written comprehensive request within 15 calendar days after the date of the written comprehensive request or supplemental request.
- H.** The Department shall issue:
 1. An approval to an applicant who submits:

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- a. An application packet to take a sanitarian examination that complies with the requirements in R9-16-405;
 - b. An application packet and a sanitarian examination with a score of 70% or more from a testing organization approved by the Department that complies with the requirements in R9-16-405;
 - c. An application packet and a sanitarian examination test results from the testing organization or jurisdiction that administered the sanitarian examination that complies with the requirements in R9-16-405;
 - d. A continuing education deferral request that complies with the requirements in R9-16-404; and
 - e. A renewal application packet that complies with the requirements R9-16-406; or
2. A denial to an applicant, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:
- a. The applicant does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or
 - b. The applicant does not comply with A.R.S. § 36-136.01 and this Article.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-407 renumbered to R9-16-409; new R9-16-407 renumbered from R9-16-405 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

Table 1. Repealed

Historical Note

Table 1. Time-frames made by final rulemaking under new Section R9-16-405 at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Table 1. Time-frames following Section R9-16-405 renumbered below Section R9-16-407 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Table 1. Time-frames repealed by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

Table 4.1 Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Written Comprehensive Request
Sanitarian Examination (R9-16-405)	A.R.S. § 36-136.01(B)	150	30	30	120	15
Registration (R9-16-405)	A.R.S. § 36-136.01(B)	35	5	15	30	15
Registration by Reciprocity (R9-16-405)	A.R.S. § 36-136.01(C)	150	30	30	120	15
Deferred Continuing Education (R9-16-404)	A.R.S. § 36-136.01(E)	45	30	15	15	15
Renewal Registration (R9-16-406)	A.R.S. § 36-136.01(D)	75	60	15	15	15

Historical Note

Table 4.1 Time-frames made by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-408. Requesting a Change

Within 30 calendar days after the effective date of a change, a registered environmental health sanitarian requesting a change to personal information shall submit in a Department-provided format:

- 1. A written notice stating the information to be changed and indicating the new information; and
- 2. If the change is to the registered environmental health sanitarian’s legal name, a copy of one of the following with the registered environmental health sanitarian’s new name:
 - a. Marriage certificate,
 - b. Divorce decree,
 - c. Professional license, or
 - d. Other legal document establishing the registered environmental health sanitarian’s legal name.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Section R9-16-408 renumbered from R9-16-406 by final rulemaking at 10

A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-409. Denial, Suspension, or Revocation

- A. The Department may deny an application packet for approval for registration or renewal of registration if the Department determines that an applicant:
 - 1. Intentionally provided false information or documents in an application packet or renewal application packet;
 - 2. Had an application for a license related to the practice of a registered environmental health sanitarian denied by a state or jurisdiction;
 - 3. Had a license related to the practice of a registered environmental health sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction; or
 - 4. Was convicted of or entered into a plea of no contest to a misdemeanor resulting from employment as a registered environmental health sanitarian or a felony.

- B.** The Department may suspend or revoke a registered environmental health sanitarian's registration if the Department determines that a registered environmental health sanitarian:
1. Assisted an individual who is not a registered environmental health sanitarian to circumvent the requirements in this Article;
 2. Allowed an individual who is not a registered environmental health sanitarian to use the registered environmental health sanitarian's registration;
 3. Falsified records to interfere with or obstruct an investigation or regulatory process of the Department or a political subdivision; or
 4. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.
- C.** In determining whether to suspend or revoke a registered environmental health sanitarian's registration, the Department shall consider the threat to public health based on:
1. Whether there is repeated non-compliance with statutes or rules,
 2. Type of non-compliance,
 3. Severity of non-compliance, and
 4. Number of non-compliance actions.
- D.** The Department's notice of suspension or revocation to the applicant or registered environmental health sanitarian shall comply with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Section R9-16-409 renumbered from R9-16-407 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

R9-16-410. Repealed

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Former Section R9-16-410 repealed, new Section R9-16-410 adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

R9-16-411. Repealed

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Former Section R9-16-411 renumbered as Section R9-16-414, new Section R9-16-411 adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

R9-16-412. Repealed

Historical Note

Adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

R9-16-413. Repealed

Historical Note

Adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

R9-16-414. Expired

Historical Note

Former Section R9-16-411 renumbered as Section R9-16-414 effective April 12, 1985 (Supp. 85-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4).

ARTICLE 5. LICENSING SPEECH-LANGUAGE PATHOLOGIST ASSISTANTS

R9-16-501. Definitions

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:

1. "Accredited" means approved by the:
 - a. New England Association of Schools and Colleges,
 - b. Middle States Commission on Higher Education,
 - c. North Central Association of Colleges and Schools,
 - d. Northwest Commission on Colleges and Universities,
 - e. Southern Association of Colleges and Schools, or
 - f. Western Association of Schools and Colleges.
2. "Applicant" means:
 - a. An individual who submits a license application packet, or
 - b. A person who submits a request for approval of a continuing education course.
3. "Application packet" means the information, documents, and fees required by the Department to apply for a license.
4. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
5. "Client" means an individual who receives speech-language pathology services from a speech-language pathologist assistant.
6. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a licensee's professional competence in disciplines that directly relate to the licensee's scope of practice.
7. "Continuing education hour" means 50 to 60 minutes of continuous instruction.
8. "Course" means a workshop, seminar, lecture, conference, or class.
9. "Documentation" or "documented" means information in written, photographic, electronic, or other permanent form.
10. "General education" means instruction that includes:
 - a. Oral communication,
 - b. Written communication,
 - c. Mathematics,
 - d. Computer instruction,
 - e. Social sciences, and
 - f. Natural sciences.
11. "Observation" means to witness:
 - a. The provision of speech-language pathology services to a client, or
 - b. A demonstration of how to provide speech-language pathology services to a client.
12. "Semester credit hour" means one earned academic unit of study completed, at an accredited college or university, by:
 - a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or

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- b. Completing practical work for a course as determined by the accredited college or university.
- 13. "Speech-language pathologist" means an individual who is licensed under A.R.S. § 36-1940.01.
- 14. "Speech-language pathology technical course work" means a curriculum that provides knowledge to develop core skills and assume job responsibilities, including:
 - a. Language acquisition,
 - b. Speech development,
 - c. Communication disorders,
 - d. Articulation and phonology, and
 - e. Intervention techniques for speech and language disorders.
- 15. "Supervision" means instruction and monitoring provided by a licensed speech-language pathologist as required in A.R.S. § 36-1940.04 to an individual training to become a speech-language pathologist assistant that includes:
 - a. Onsite observation and guidance; and
 - b. Activities, such as consultation, record review, and review and evaluation of an audiotaped or videotaped screening evaluation or clinical session.
- 3. If a license for an applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
 - a. The date of the revocation or suspension,
 - b. The state or jurisdiction of the revocation or suspension, and
 - c. An explanation of the revocation or suspension;
- 4. If the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension, documentation that includes:
 - a. The date of the ineligibility for licensure,
 - b. The state or jurisdiction of the ineligibility for licensure, and
 - c. An explanation of the ineligibility for licensure;
- 5. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
- 6. An official transcript issued to the applicant from an accredited college or university, showing completion of at least 60 semester credit hours of general education and speech-language pathology technical course work, as required in A.R.S. § 36.1940.04(A);
- 7. Documentation, signed by a licensed speech-language pathologist as required in A.R.S. § 36-1940.04 who provided supervision to the applicant, confirming the applicant's completion of at least 100 hours of clinical interaction that did not include observation;
- 8. A nonrefundable \$100 application fee; and
- 9. A \$200 license fee.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-502. Application for an Initial License

- A. An applicant for a speech-language pathologist assistant initial license shall submit to the Department an application packet that includes:
 - 1. An application in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. If applicable, the name of the applicant's employer and the employer's business address and telephone number;
 - d. Whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in this state or another state;
 - e. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - f. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
 - g. Whether the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension;
 - h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-505;
 - i. An attestation that the information submitted is true and accurate; and
 - j. The applicant's signature and date of signature;
 - 2. If applicable, a list of all states and countries in which the applicant is or has been licensed as a speech-language pathologist assistant;

- B. The Department shall review the application packet for an initial license to practice as a speech-language pathologist assistant according to R9-16-505 and Table 5.1.
- C. If the Department does not issue an initial license to an applicant, the Department shall refund the license fee to the applicant.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-502 repealed; new Section R9-16-502 renumbered from R9-16-503 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-503. License Renewal

- A. Before the expiration date of a speech-language pathologist assistant license, an applicant shall submit to the Department:
 - 1. An application for renewal of a speech-language pathologist assistant license in a format provided by the Department that contains:
 - a. The applicant's name, home address, telephone number, and e-mail address;
 - b. If applicable, the name of the applicant's employer and the employer's business address and telephone number;
 - c. If applicable, the name of the applicant's supervising speech-language pathologist;
 - d. The applicant's license number and date of expiration;
 - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
 - f. If the applicant has been convicted of a felony or a misdemeanor:
 - i. The date of the conviction,

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- ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-505;
 - h. An attestation that the information submitted is true and accurate; and
 - i. The applicant's signature and date of signature;
 - 2. Documentation of continuing education as required in R9-16-504 and completed within 24 months before the expiration date on the license, including:
 - a. The name of the individual or organization providing the course;
 - b. The date and location where the course was provided;
 - c. The title of each course attended;
 - d. A description of each course's content;
 - e. The name of the instructor;
 - f. The instructor's education, training, and experience background, if applicable; and
 - g. The number of continuing education hours earned for each course; and
 - 3. A \$200 license renewal fee.
 - B.** According to A.R.S. § 36-1904, the Department shall allow a speech-language pathologist assistant to renew a license within 30 calendar days after the expiration date of the license by submitting to the Department:
 - 1. The renewal application packet required in subsection (A), and
 - 2. A \$25 late fee.
 - C.** An individual who does not submit a renewal application packet required according to subsection (A) or (B) shall reapply for an initial license according to R9-16-502.
- 7. American Academy of Audiology,
 - 8. Academy of Doctors of Audiology,
 - 9. Arizona Society of Otolaryngology-Head and Neck Surgery,
 - 10. American Academy of Otolaryngology-Head and Neck Surgery, or
 - 11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).
 - D.** An applicant may request approval for a continuing education course by submitting the following to the Department:
 - 1. The applicant's name, address, telephone number, and e-mail address, as applicable;
 - 2. If a licensee, the licensee's license number;
 - 3. The title of the continuing education course;
 - 4. A brief description of the course;
 - 5. The name, educational background, and teaching experience of the individual presenting the course, if available;
 - 6. The educational objectives of the course; and
 - 7. The date, time, and place of presentation of the course, if applicable.
 - E.** If an applicant submits the information in subsection (D), the Department shall review the request for approval for a continuing education course according to R9-16-505 and Table 5.1.
 - F.** The Department shall approve a continuing education course if the Department determines that the continuing education course:
 - 1. Is designed to provide current developments, skills, procedures, or treatment in diagnostic and therapeutic procedures in speech-language pathology;
 - 2. Is developed and presented by individuals knowledgeable and experienced in the presented subject area; and
 - 3. Contributes directly to the professional competence of a licensee.
 - G.** A speech-language pathologist assistant shall comply with the requirements in A.R.S. § 36-1904.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-503 renumbered to R9-16-502; new Section R9-16-503 renumbered from R9-16-504 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-504. Continuing Education

- A.** According to A.R.S. § 36-1904, a licensee shall complete at least 20 continuing education hours.
- B.** Continuing education shall:
 - 1. Directly relate to the practice of speech-language pathology;
 - 2. Have educational objectives that exceed an introductory level of knowledge of speech-language pathology; and
 - 3. Consist of courses that include advances within the last five years in:
 - a. Practice of speech-language pathology,
 - b. Auditory rehabilitation,
 - c. Ethics, or
 - d. Federal and state statutes or rules.
- C.** A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
 - 1. Hearing Healthcare Providers of Arizona,
 - 2. Arizona Speech-Language-Hearing Association,
 - 3. American Speech-Language-Hearing Association,
 - 4. International Hearing Society,
 - 5. International Institute for Hearing Instrument Studies,
 - 6. American Auditory Society,

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-504 renumbered to R9-16-503; new Section R9-16-504 renumbered from R9-16-506 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-505. Time-frames

- A.** For each type of license or approval issued by the Department under this Article, Table 5.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
 - 1. A regular license is valid for two years.
 - 2. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
 - 3. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B.** For each type of license or approval issued by the Department under this Article, Table 5.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
 - 1. The administrative completeness review time-frame begins on the date the Department receives:
 - a. An application packet required in R9-10-502 and R9-10-503, or
 - b. A request for continuing education course approval according to R9-10-504.

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2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
 - a. If a license application packet or request for continuing education course approval is not complete, the notice of deficiencies shall list each deficiency and the documents or information needed to complete the license application packet or request for continuing education course approval.
 - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing documents or information.
 - c. If the applicant does not submit to the Department all the documents and information listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the license application packet or request for continuing education course approval withdrawn.
3. If the Department issues a license or approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. For each type of license or approval issued by the Department under this Article, Table 5.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date of the notice of administrative completeness.
 1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department issued or denied the license or continuing education course approval.
 2. During the substantive review time-frame:
 - a. The Department may make one comprehensive written request for additional information or documentation; and
 - b. If the Department and the applicant agree in writing to allow one or more supplemental requests for additional information or documentation, the Department may make the number of supplemental requests agreed to between the Department and the applicant.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the documents and information requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for information or documentation within 30 calendar days after the date of the request, the Department shall deny the license or approval.
- D. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Table 1. Renumbered

Historical Note

New Table 1 made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Table 1 renumbered to Table 5.1 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Table 5.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Initial License (R9-16-502)	A.R.S. §§ 36-1904 and 36-1904.04	60	30	30	30	30
Renewal License (R9-16-503)	A.R.S. § 36-1904	60	30	30	30	30
Continuing Education (R9-16-504)	A.R.S. § 36-1904	45	30	30	15	30

Historical Note

Table 5.1 renumbered from Table 1 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-506. Disciplinary Actions

- A. The Department may, as applicable:
 1. Deny, revoke, or suspend a speech-language pathologist assistant license under A.R.S. § 36-1934;
 2. Request an injunction under A.R.S. § 36-1937; or
 3. Assess a civil money penalty under A.R.S. § 36-1939.
- B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
 1. The type of violation,
 2. The severity of the violation,
 3. The danger to public health and safety,
 4. The number of violations,
 5. The number of clients affected by the violations,
 6. The degree of harm to a client,
 7. A pattern of noncompliance, and
 8. Any mitigating or aggravating circumstances.
- C. A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-506 renumbered to R9-16-504; new Section R9-16-506 renumbered from R9-16-507 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1,

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2014 (Supp. 14-2).

R9-16-507. Changes Affecting a License or a Licensee; Request for a Duplicate License

- A.** A licensee shall submit a notice to the Department in writing within 30 calendar days after the effective date of a change in:
1. The licensee's home address or e-mail address, including the new home address or e-mail address;
 2. The licensee's name, including one of the following with the licensee's new name:
 - a. Marriage certificate,
 - b. Divorce decree, or
 - c. Other legal document establishing the licensee's new name; or
 3. The place or places, including address or addresses, where the licensee engages in the practice of speech-language pathology.
- B.** A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a format provided by the Department that contains:

1. The licensee's name and address,
2. The licensee's license number and expiration date,
3. The licensee's signature and date of signature, and
4. A \$25 duplicate license fee.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-507 renumbered to R9-16-506; new Section R9-16-507 renumbered from R9-16-508 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-508. Renumbered**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). R9-16-508 renumbered to R9-16-507 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Statutes Pertaining to 9 A.A.C. 16, Article 6

32-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Certificate" means a certificate that is granted and issued by the department.
2. "Certified technologist" means a person holding a certificate that is granted and issued by the department.
3. "Computed tomography technologist" means a person who applies ionizing radiation to a human using a computed tomography machine for diagnostic purposes.
4. "Department" means the department of health services.
5. "Direction" means responsibility for and control of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.
6. "Director" means the director of the department of health services.
7. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear particles or rays.
8. "Leg" means that part of the lower limb between the knee and the foot.
9. "Licensed practitioner" means a person who is licensed or otherwise authorized by law to practice medicine, dentistry, osteopathic medicine, podiatry, chiropractic or naturopathic medicine in this state.
10. "Mammographic technologist" means a person who applies ionizing radiation to the breasts of a human being for diagnostic purposes.
11. "Nuclear medicine technologist" means a person who uses radiopharmaceutical agents on humans for diagnostic or therapeutic purposes as set forth in rules adopted pursuant to section 32-2815.
12. "Practical technologist in bone densitometry" means a technologist who holds a certificate to apply ionizing radiation to a person's hips, spine and extremities through the use of a bone density machine.
13. "Practical technologist in podiatry" means a person holding a practical technologist in podiatry certificate that is granted and issued by the department.
14. "Practical technologist in podiatry certificate" means a certificate that is issued to a person, other than a licensed practitioner, who applies ionizing radiation to the foot and leg for diagnostic purposes while under the specific direction of a licensed practitioner.

15. "Practical technologist in radiology" means a person holding a practical technologist in radiology certificate that is granted and issued by the department.

16. "Practical technologist in radiology certificate" means a certificate that is issued to a person, other than a licensed practitioner, who applies ionizing radiation to specific parts of the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

17. "Radiation therapy technologist" means a person who uses radiation on humans for therapeutic purposes.

18. "Radiologic technologist" means a person who holds a certificate that is issued by the department and that allows that person to apply ionizing radiation to individuals at the direction of a licensed practitioner for general diagnostic or therapeutic purposes.

19. "Radiologic technology" means the science and art of applying ionizing radiation to human beings for general diagnostic or therapeutic purposes.

20. "Radiologic technology certificate" means a certificate that is issued in radiologic technology to a person with at least twenty-four months of full-time study or its equivalent through an approved program and who has successfully completed an examination by a national certifying body.

21. "Radiologist" means a licensed practitioner of medicine or osteopathic medicine who has undertaken a course of training that meets the requirements for admission to the examination of the American board of radiology or the American osteopathic board of radiology.

22. "Radiologist assistant" means a person who holds a certificate pursuant to section 32-2819 and who performs independent advanced procedures in medical imaging and interventional radiology under the guidance, directions, supervision and discretion of a licensed practitioner of medicine or osteopathic medicine specializing in radiology as set forth in section 32-2819 and the rules adopted pursuant to that section.

23. "Unethical professional conduct" means the following acts, whether occurring in this state or elsewhere:

(a) Intentionally betraying a professional confidence or intentional violation of a privileged communication except as required by law. This subdivision does not prevent the department from exchanging information with the radiologic licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries.

(b) Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401 or hypnotic drugs, derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects or the use of alcohol to the extent that it affects the ability of the certificate or permit holder to practice his profession.

(c) Using drugs for other than accepted therapeutic purposes.

(d) Committing gross malpractice.

(e) Procuring or attempting to procure a certificate or license by fraud or misrepresentation.

(f) Having professional connection with or lending one's name to an illegal practitioner of radiologic technology or any other health profession.

(g) Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

(h) Refusing to divulge to the department, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity. This subdivision does not apply to communication between a technologist or permit holder and a patient with reference to a disease, injury, ailment or infirmity, or as to any knowledge obtained by personal examination of the patient.

(i) Giving or receiving, or aiding or abetting the giving or receiving, of rebates, either directly or indirectly.

(j) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of radiologic technology.

(k) Having a certificate or license refused, revoked or suspended by any other state, territory, district or country for reasons that relate to the person's ability to safely and skillfully practice radiologic technology or to any act of unprofessional conduct.

(l) Engaging in any conduct or practice that does or would constitute a danger to the health of the patient or the public.

(m) Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

(n) Employing uncertified persons to perform or aiding and abetting uncertified persons in the performance of work that can be done legally only by certified persons.

(o) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate this chapter or a rule adopted by the department.

24. "Unlimited practical technologist in radiology" means a person holding an unlimited practical technologist in radiology certificate that is granted and issued by the department.

25. "Unlimited practical technologist in radiology certificate" means a certificate that was issued to a person in 1977 or 1978, other than a licensed practitioner, who applies ionizing radiation to the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

32-2803. Rules

The director may adopt rules as may be needed to carry out the purposes of this chapter. The rules shall include:

1. Minimum standards of training and experience for persons to be certified pursuant to this chapter and procedures for examining applicants for certification.

2. Provisions identifying the types of applications of ionizing radiation for a practical technologist in podiatry, practical technologist in radiology, practical technologist in bone densitometry, radiologic technologist, radiation therapy technologist, mammographic technologist, nuclear medicine technologist, computed tomography technologist and radiologist assistant and any new radiologic modality technologist and those minimum standards of education and training to be met by each type of applicant.

32-2804. School approval; standards; considerations

A. The department may approve a school of radiologic technology as maintaining a satisfactory standard if its course of study:

1. Is for a period of at least twenty-four months of full-time study or its equivalent and is accredited by the committee on allied health accreditation or meets or exceeds the standards of this chapter.

2. Includes at least four hundred hours of classroom work, including radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy and physiology, radiographic positioning, radiation therapy and professional ethics.

3. Includes at least one thousand eight hundred hours devoted to clinical experience.

4. Includes demonstrations, discussions, seminars and supervised practice.

5. Includes at least eighty hours of regularly scheduled supervised film critiques.

B. An approved school of radiologic technology may be operated by a medical or educational institution or other public or private agency or institution and, for the purpose of providing the requisite clinical experience, shall be affiliated with one or more hospitals that the department determines are likely to provide this experience.

C. In approving a school of radiologic technology, the department shall consider the standards adopted by appropriate professional organizations, including the joint review committee on education in radiologic technology, and may accept the certification of a school of radiologic technology or the accreditation of a hospital to provide requisite clinical experience if the department finds that certification or accreditation was granted on the basis of standards that will afford the same protection to the public as the standards provided by this chapter.

32-2805. Fees; deposit

The department shall deposit all fees collected pursuant to this chapter as prescribed by section 30-654, subsection C.

32-2811. Prohibitions and limitations; exceptions

A. No person may use ionizing radiation on a human being unless the person is a licensed practitioner or the holder of a certificate as provided in this chapter.

B. A person holding a certificate may use ionizing radiation on human beings only for diagnostic or therapeutic purposes while operating in each particular case at the direction of a licensed practitioner, except that a person holding a certificate may use ionizing radiation on human beings

for diagnostic purposes only while operating in each particular case at the direction of a licensed practitioner who is licensed in any other state, territory or district of the United States. The application of ionizing radiation and the direction to apply ionizing radiation are limited to those persons or parts of the human body specified in the law under which the practitioner is licensed. The provisions of the technologist's certificate govern the extent of application of ionizing radiation.

C. Nothing in this chapter relating to technologists shall be construed to limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.

D. The requirement of a certificate shall not apply to:

1. A hospital resident specializing in radiology who is not a licensed practitioner in this state or a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, naturopathic medicine, chiropractic or radiologic technology who applies ionizing radiation to a human being while under the specific direction of a licensed practitioner.

2. A person engaged in performing the duties of a technologist in that person's employment by an agency, bureau or division of the government of the United States.

3. Dental hygienists licensed in the state of Arizona and dental assistants holding a valid certificate in dental radiology from a course approved by the state board of dental examiners.

4. Persons providing assistance during an ionizing radiation procedure, apart from such procedures conducted in a health care institution, under the direction of a person licensed for the use of an ionizing radiation machine.

5. A person who is employed by or acting on behalf of the state department of corrections or a county jail and who uses a low-dose ionizing radiation body scanning device to detect contraband, as defined in section 13-2501, in or on an inmate.

E. Subsection B of this section does not apply to ionizing radiation ordered by a licensed practitioner for other than diagnostic or therapeutic purposes pursuant to section 13-2505, subsection E.

32-2812. Applications for certificate; qualifications; fees; examination; denial

A. An applicant for a certificate shall submit an application for certification or an application for examination for certification, accompanied by a nonrefundable fee established by the director. An applicant who has practiced radiography without certification shall pay a prorated fee retroactively to the earliest date of uncertified practice. The fee for a replacement certificate is ten dollars. The application for examination fee is seventy dollars and shall not be prorated. An application shall contain information that the applicant:

1. Is at least eighteen years of age.

2. Is of good moral character.

3. Meets one of the following requirements:

(a) In the case of an application for radiologic technologist, radiation therapy technologist or nuclear medicine technologist certification, has successfully completed a course of study at a school of

radiologic technology that is approved by the department or an out-of-state school of radiologic technology that is approved by the joint review committee on education in radiologic technology, the American registry of radiologic technologists or the nuclear medicine technology certification board.

(b) In the case of an application for practical technologist in podiatry certification, practical technologist in bone densitometry certification and practical technologist in radiology certification, satisfactorily meets the basic requisites determined by the department pursuant to section 32-2803.

(c) In the case of an application for radiologist assistant certification, has obtained a baccalaureate degree or postbaccalaureate certificate from an advanced academic program that encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship. An applicant for certification before April 1, 2009 is not required to have a baccalaureate degree or postbaccalaureate certificate, but must have completed an advanced academic program that encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship.

B. If the application is in proper form and it appears that the applicant meets the eligibility requirements, the applicant shall be notified of the time and place of the next examination.

C. The department may accept, in lieu of its own examination, a certificate issued on the basis of an examination by a certificate-granting body recognized by the department or a certificate, registration or license issued by another state if that state's standards for certification, registration or licensure are satisfactory to the department.

D. The department may deny a certificate to an applicant who has committed an act or engaged in conduct in any jurisdiction that resulted in a disciplinary action against the applicant or that would constitute grounds for disciplinary action under this chapter.

32-2813. Examination; contents; subsequent examinations

A. Examinations for certification shall include the subjects of radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy terminology, radiological mathematics, professional ethics and such other subjects as the department may deem appropriate.

B. The department shall prepare lists of examination questions or problems and administer the examinations.

C. Examinations shall include written questions but may also include practical and oral portions. Following each examination, the papers and the practical and oral examinations shall be graded and the standing of each applicant shall be recorded. The department shall either pass or reject each applicant.

D. An applicant who fails to pass an examination may reapply for examination in the manner prescribed by section 32-2812. The department shall require a candidate who fails the examination three times to successfully complete additional training prescribed by the department before accepting the candidate for reexamination.

32-2814. Initial certificates; special permits; temporary certificates

A. The department shall issue an initial certificate that is valid for two years to each candidate who has paid the prescribed fee and who either has successfully passed the examination or has been accepted pursuant to section 32-2812.

B. The department, on application, may issue a special permit to exempt a person from this chapter if the department finds to its satisfaction that there is substantial evidence that the people in the locality of the state in which such an exemption is sought would be denied adequate medical care because of the unavailability of certified licensed practitioners or persons holding certificates pursuant to this chapter. The department shall issue a special permit for a limited period of time, not to exceed one year, to be prescribed by the department in accordance with the purposes of this chapter. The department may renew a special permit if the permittee's circumstances have not changed.

C. The department may issue a temporary certificate to any person whose certification or recertification is pending and in whose case the issuance of a temporary certificate may be justified by reason of special circumstances.

D. A temporary certificate shall be issued only if the department finds that its issuance will not violate the purposes of this chapter or tend to endanger the public health and safety. A temporary certificate expires thirty days after the date of the next examination if the applicant is required to take the examination or, if the applicant does not take the examination, on the date of the examination. In all other cases, a temporary certificate expires when the determination is made either to issue or to deny the issuance of a certificate. A temporary certificate shall not be valid for more than one year and may not be renewed.

E. A person shall submit an application for certification in a form prescribed by the department.

32-2815. Rules; bone densitometry certification; nuclear medicine certification; continuing education

A. The department shall adopt rules regarding the certification of practical technologists in bone densitometry to allow the certificate holder to apply ionizing radiation to a person's extremities through the use of a bone densitometry machine. The rules shall prescribe:

1. The minimum education and training qualifications for certification. The qualifications prescribed by the department shall allow a person who does not meet the education and training requirements of a radiologic technologist or a practical technologist in radiology to obtain a certificate as a practical technologist in bone densitometry.

2. The application and renewal fees.

B. Subsection A of this section does not prohibit a radiologic technologist or a practical technologist in radiology from operating a bone densitometry machine.

C. A person who wishes to practice as a nuclear medicine technologist must apply to the department for certification as prescribed by rule. The department shall adopt rules to establish minimum educational and training requirements for nuclear medicine technologists.

D. The department shall adopt rules to prescribe the following minimum continuing education requirements for the renewal of the following certificates:

1. Practical technologist in podiatry, two hours every two years.
2. Practical technologist in radiology, six hours every two years.
3. Practical technologist in bone densitometry, two hours every two years.
4. Unlimited practical technologist in radiology, twenty-four hours every two years.
5. Nuclear medicine technologist, twenty-four hours every two years.
6. Radiologist assistant, fifty hours every two years.
7. Radiologic technologist, twenty-four hours every two years.
8. Radiation therapy technologist, twenty-four hours every two years.

E. The department may require an applicant for renewal to document compliance with the appropriate continuing education requirements of subsection D of this section.

32-2816. Certificates; fee; terms; registration; renewal; cancellation; waiver

- A. Except as provided in section 32-4301, a certificate issued under this section is valid for two years.
- B. The department may renew a certificate for two years on payment of a renewal fee established by the director and submission of a renewal application containing information the department requires to show that the applicant for renewal is a technologist in good standing. The applicant for renewal shall also present evidence satisfactory to the department of having completed the required continuing education in radiologic technology within the preceding two years. If a radiologic technologist is certified by the American registry of radiologic technologists or nuclear medicine technology certification board, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry.
- C. A certificate holder who fails to renew the certificate on or before the certificate's expiration as prescribed in subsection B of this section shall pay a penalty fee of fifty dollars for late renewal.
- D. A certificate holder who does not renew a certificate within thirty days after the certificate expires and who continues the active practice of radiologic technology without adequate cause satisfactory to the department is subject to censure, reprimand or denial of right to renew the certificate pursuant to section 32-2821.
- E. On the request of a certificate holder in good standing, the department shall cancel a certificate.
- F. The department shall waive the renewal fee if a certificate holder submits an affidavit to the department stating that the certificate holder is retired from the practice of radiologic technology or wishes to be placed on inactive status. A retired or inactive technologist who practices is subject to the same penalties imposed pursuant to this chapter on a person who practices radiologic technology without a certificate.

G. The department may reinstate a technologist on retired or inactive status on payment of the renewal fee pursuant to subsection B of this section.

32-2817. Use of title; display of certificate or permit

A. A person holding a certificate may use the title "certified radiologic technologist", "certified nuclear medicine technologist", "certified radiation therapy technologist", "certified computed tomography technologist", "certified mammographic technologist", "certified radiologist assistant", "certified practical technologist in podiatry", "certified practical technologist in bone densitometry" or "certified practical technologist in radiology", as applicable. No other person shall be entitled to use such titles or title or letters after such person's name that indicates or implies that such person is a certified technologist or to represent the person in any way, whether orally or in writing, expressly or by implication, as being so certified.

B. Every technologist or special permit holder shall display a certificate or permit at the technologist's or permit holder's place of employment.

32-2818. Lapsed certification; inactive status; reinstatement

A person who was an unlimited practical technologist in radiology under this chapter from and after December 31, 1992 and whose certificate was not suspended or revoked but who failed to renew the certificate, on application to the department, may be placed on inactive status or reinstated pursuant to section 32-2816.

32-2819. Radiologist assistants; certification; rules; scope of practice

A. A person who wishes to practice as a radiologist assistant must apply to the department for a certificate on a form and in the manner prescribed by the department pursuant to the requirements of section 32-2812.

B. The department shall adopt rules to implement this section. The rules shall include the following:

1. Continuing education requirements.
2. Any other requirements the department considers appropriate to implement this section.

C. Pursuant to rules adopted by the department, a radiologist assistant may do the following under the direct supervision of a radiologist:

1. Perform fluoroscopic procedures.
2. Assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures.
3. Evaluate image quality, make initial image observations and communicate observations to the supervising radiologist.
4. Administer contrast media or other medications prescribed by the supervising radiologist.

5. Perform any other procedures consistent with rules adopted by the department.

D. In adopting rules pursuant to subsection C of this section, the department shall consider guidelines established by the the American society of radiologic technologists and the American registry of radiologic technologists.

E. A radiologist assistant shall not interpret images, make diagnoses or prescribe medications or therapies.

F. A radiologist who supervises a radiologist assistant may authorize the assistant to perform only those radiologic procedures described in this section.

G. A person shall not do any of the following without a certificate issued pursuant to this section:

1. Perform the radiologic procedures described in subsection C of this section.

2. Claim to be a radiologist assistant, including using any sign, advertisement, card, letterhead, circular or other writing, document or design to induce others to believe the person is authorized to practice as a radiologist assistant.

H. Subsection G of this section does not apply to either of the following:

1. A person engaging in the scope of practice for which the person holds a valid license or certificate.

2. A person performing a task as part of an advanced academic program.

32-2821. Revocation or suspension of certificate or permit; civil penalties; enforcement; appeals; hearings

A. The director may revoke or suspend a certificate or permit issued under this chapter if the holder of the certificate or permit:

1. Is guilty of any fraud or deceit in activities as a technologist or radiologist assistant or has been guilty of any fraud or deceit in procuring or maintaining a certificate.

2. Has been convicted in a court of competent jurisdiction of a crime involving moral turpitude. If the conviction has been reversed and the holder of the certificate or permit has been discharged or acquitted or if the holder of the certificate or permit has been pardoned or the holder's civil rights have been restored, the certificate may be restored.

3. Is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect, is insane or uses hallucinogens.

4. Has knowingly aided or abetted a person, not otherwise authorized, who is not a certified technologist or radiologist assistant or has not been issued a special permit in engaging in the activities of a technologist or radiologist assistant.

5. Has undertaken or engaged in any practice beyond the scope of the authorized activities of a certified technologist, radiologist assistant or permit holder pursuant to this chapter.
 6. Has impersonated a duly certified technologist, radiologist assistant or permit holder or former duly certified technologist, radiologist assistant or permit holder or is engaging in the activities of a technologist, radiologist assistant or permit holder under an assumed name.
 7. Has been guilty of unethical professional conduct.
 8. Has continued to practice without obtaining a certificate renewal or a special permit renewal.
 9. Has applied ionizing radiation to a human being when not operating in each particular case under the direction of a duly licensed practitioner or to any person or part of the human body other than specified in the law under which the practitioner is licensed.
 10. Has acted or is acting as an owner, co-owner or employer in any enterprise engaged in the application of ionizing radiation to human beings for the purpose of diagnostic interpretation or the treatment of disease, without being under the direction of a licensed practitioner.
 11. Has used or is using the prefix "Dr.", the word "doctor" or any prefix or suffix to indicate or imply that the person is a duly licensed practitioner if this is not true.
 12. Is or has been guilty of incompetence or negligence in activities as a technologist.
 13. Is or has been afflicted with any medical problem, disability or addiction that the department determines impairs the certificate or permit holder's professional competence.
 14. Has interpreted a diagnostic image for a physician, a patient, the patient's family or the public.
 15. Has violated any provision of this chapter or rule adopted pursuant to this chapter.
- B. A person may appeal the revocation or suspension under subsection A of this section by requesting a hearing pursuant to title 41, chapter 6, article 10. If the revocation or suspension is appealed, the director may not take further action to enforce the revocation or suspension until after the hearing.
- C. If the certificate of any person has been revoked or suspended, the department, after the expiration of two years, may consider an application for restoration of the certificate.
- D. The director may assess a civil penalty against a person in an amount not to exceed two hundred fifty dollars for each violation of this chapter or a rule adopted pursuant to this chapter. Each day a violation occurs constitutes a separate violation.
- E. The director shall issue a notice of assessment that includes the proposed amount of the assessment. In determining the amount of a civil penalty assessed against a person under this subsection, the department shall consider all of the following:
1. Repeated violations of statutes and rules.

2. Patterns of noncompliance.
3. Types of violations.
4. The severity of violations.
5. The potential for and occurrences of actual harm.
6. Threats to health and safety.
7. The number of persons affected by the violations.
8. The number of violations.
9. The length of time the violations have been occurring.

F. A person may appeal the civil penalty assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. If an assessment is appealed, the director may not take further action to enforce and collect the assessment until after the hearing.

G. Actions to enforce the collection of civil penalties assessed pursuant to this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

H. The department shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

I. The department shall conduct any hearing to revoke or suspend a certificate or permit or impose a civil penalty under this section pursuant to title 41, chapter 6, article 10.

J. The department may issue a nondisciplinary order requiring the certificate holder or permit holder to complete a prescribed number of hours of continuing education in an area or areas prescribed by the department to provide the certificate holder or permit holder with the necessary understanding of current developments, skills, procedures or treatment. The department may also file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a certificate or permit holder.

32-2824. Inspections

A. The department or its duly authorized representatives may enter during scheduled work hours on private or public property for the purpose of:

1. Ensuring that only certified individuals or individuals who are exempt from certification are operating ionizing radiation machines.
2. Determining whether a certified individual is practicing beyond the scope of the person's certificate.
3. Determining whether a certified individual has violated the provisions of this chapter.

4. Auditing ionizing radiation logbooks.

5. Determining compliance with this chapter and the rules adopted pursuant to this chapter.

B. The department may enter areas under the jurisdiction of the federal government only with its permission.

32-2841. Mammographic technologists; computed tomography technologists; certification; renewal

A. A person who wishes to perform diagnostic mammography or screening mammography as defined in section 30-651 shall obtain a mammographic technologist certificate from the department. A person who wishes to perform computed tomography shall obtain a computed tomography technologist certificate from the department. The department shall issue a certificate to an applicant who:

1. Pays a twenty dollar application fee.

2. Holds a current radiologic technology certificate issued by the department.

3. For a mammographic certification, completes the training and education requirements of subsection B of this section and passes an examination as prescribed in subsection D of this section.

4. For a computed tomography technologist certification, provides documentation of two years of experience in computed tomography and completion of twelve hours of computed tomography specific education or passes an examination as prescribed in subsection D of this section.

B. To satisfy the education requirements of subsection A of this section, an applicant shall meet the initial training and education requirements of the mammography quality standards act regulations for quality standards of mammographic technologists, 21 Code of Federal Regulations section 900.12.

C. The department shall issue a student mammography permit, preceptorship or temporary certificate to a person who is in training and meets the requirement of subsection A, paragraph 2 of this section if the applicant also provides the department with verification of employment and the name of the radiologist who agrees to be responsible for the applicant's supervision and training. A student mammography permit, preceptorship or temporary certificate is valid for one year from the date it is issued and may not be renewed. If the holder completes all of the requirements of subsection A of this section within the permitted period, the department shall issue a mammographic or computed tomography technologist certificate. The mammographic or computed tomography technologist certificate shall be renewed as prescribed under subsection E of this section.

D. To satisfy the examination requirements of this section an applicant shall pass an examination in mammography or computed tomography administered by the department or, in lieu of its own examination, the department may accept a certificate issued on the basis of an examination by a certificate-granting body recognized by the department.

E. Except as provided in section 32-4301, a certificate that is issued under this section is valid for two years. The department shall notify a certificate holder thirty days before the expiration date of the certificate. An applicant for renewal of a mammographic technologist certificate shall meet the continuing education requirements of the mammography quality standards act regulations for quality

standards of mammographic technologists, 21 Code of Federal Regulations section 900.12. If a radiologic technologist is certified by the American registry of radiologic technologists, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry. The applicant shall also pay a twenty dollar renewal fee to the department.

F. A person or facility that employs a person certified under this section shall report any suspected violations of section 32-2821 to the department. The department shall investigate the complaint. If in the course of its investigation the department determines that a person regulated by another regulatory agency of this state may have violated that agency's laws, the department shall report the violation to the other agency for disciplinary action.

32-2842. Mammographic images; physicians; requirements

A physician licensed under chapter 13 or 17 of this title who reads or interprets mammographic images shall meet the following requirements:

1. Have completed forty hours of medical education credits in mammography.
2. Be certified by either the American board of radiology in diagnostic radiology or the American osteopathic board of radiology in diagnostic radiology, as applicable, or meet the requirements of the mammography quality standards act regulations for quality standards of interpreting physicians, 21 Code of Federal Regulations section 900.12.

32-2843. Facilities; requirements

A. A facility that wishes to conduct patient self-referral mammographic screening examinations after January 1, 1994 shall submit the following to the department:

1. The physician-approved guide for accepting self-referrals by patients.
2. A copy of the facility's quality assurance program.
3. The medical physicist's evaluation report of the facility.

B. A facility that does not have a darkroom on-site or that does not develop the films within one hour of exposure shall submit the following to the department:

1. A description of how the facility plans to ensure that the equipment is operating properly at the start of each day.
2. Information regarding the darkroom that develops the film that demonstrates to the department's satisfaction that transportation conditions will not adversely affect a person's ability to interpret the films.

C. The director shall prescribe requirements for the documents required to be submitted to the department under subsections A and B of this section.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any

revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead

human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler

training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer

camp, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

D-3

INDUSTRIAL COMMISSION OF ARIZONA (R20-0202)

Title 20, Chapter 5, Article 5, Elevator Safety

Amend: R20-5-507



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: January 9, 2020

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA (R20-0202)
Title 20, Chapter 5, Article 5, Elevator Safety

Amend: R20-5-507

Summary:

This regular rulemaking from the Industrial Commission of Arizona (Commission) seeks to amend one rule in Title 20, Chapter 5, Article 5 related to elevator safety. Specifically, the Commission is amending R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) by adding a subsection (B), which adopts the national consensus clearance standard contained in requirement 5.3.1.7.2 of ASME A17.1-2016, replacing the existing clearance standard contained in Section 5.3 of ASME A17.1-2007.

The Commission indicates this amendment will reduce the permissible clearance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill to 19 mm for swinging doors and 57 mm for sliding doors in residential elevators. The Commission indicates that this updated standard is intended to protect users of residential elevators from a potential safety hazard associated with a larger clearance.

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

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

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

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

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

No. The Commission did not review or rely on any study in conducting this rulemaking.

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

The rulemaking incorporates by reference national consensus standards contained in the American Society of Mechanical Engineers (ASME) A17.1-2016 (Performance-Based Safety Code for Elevators and Escalators). The proposed amendment would reduce the permissible clearance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill to 19mm (0.75 in.) for swinging doors and 57 mm (2.25 in.) for sliding doors, consistent with the most recent ASME A17.2-2016 standards. The Commission indicates that the economic impact is expected to be minimal because the majority of residential elevators are already built, designed and installed in accordance with the ASME A17.1-2016 standards. Stakeholders include the Commission, and all persons who use residential elevators constructed with the reduced clearance, and businesses that engage in the design, construction, installation, inspection, and maintenance of residential elevators.

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 impact on those regulated is expected to be nominal because the majority of the businesses are already operating in accordance with the ASME A17.1-2016 standards.

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

The proposed rule may have nominal obligations, costs, or time constraints on political subdivisions, businesses, small businesses and private persons that engage in the design, construction, installation, inspection, and maintenance of residential elevators. Users of residential elevators, including homeowners and visitors, will benefit for the mitigation of a potential safety hazard.

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

No. The Commission added one word to clarify that the new standard applies only to residential elevators

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

The Commission indicates that 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?**

No. The proposed amendment does not require issuance of a regulatory permit or license.

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 federal law applicable to the subject of the proposed rulemaking.

11. **Conclusion**

The Commission is conducting this rulemaking to adopt the national consensus clearance standard contained in requirement 5.3.1.7.2 of ASME A17.1-2016, replacing the existing clearance standard contained in Section 5.3 of ASME A17.1-2007 reducing the permissible clearance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill to 19 mm for swinging doors and 57 mm for sliding doors in residential elevators. The Commission indicates that this updated standard is intended to protect users of residential elevators from a potential safety hazard associated with a larger clearance.

The Commission is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1), arguing the rulemaking is “to preserve the public peace, health or safety.” Council staff finds the Commission has provided adequate justification for an immediate effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

**THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR**



DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
SCOTT P. LEMARR, MEMBER
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JAMES ASHLEY, DIRECTOR
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December 13, 2019

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Request for Approval of Rulemaking: A.A.C. Title 20, Chapter 5, Article 5
("Elevator Safety") Rulemaking

Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") requests that the Governor's Regulatory Review Council (the "Council") approve the above-referenced rulemaking. Pursuant to A.A.C. R1-6-201(A)(1), the Commission provides the following information:

a. The close of record date.

October 15, 2019.

b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council.

The subject rulemaking activity does not relate to a five-year review report.

c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee.

The subject rulemaking does not establish a new fee.

d. Whether the rule contains a fee increase.

The subject rulemaking does not contain a fee increase.

e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032.

The Commission is requesting an immediate effective date pursuant to A.R.S. § 41-1032 (A)(1) because the rule is intend to protect public safety.

- f. **A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.**

The Commission did not rely on a study for justification of the subject rulemaking.

- g. **If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.**

The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement or enforce the subject rulemaking.

- h. **A list of all documents enclosed.**

Governor's Office Approval of Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
General and Specific Statutes Authorizing Rulemaking

Thank you for your consideration. Should you have any questions regarding the amendments, please contact Gaetano Testini, Chief Legal Counsel, at 602-542-5905.

Sincerely,



James Ashley
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

- | | |
|---|---------------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R20-5-507 | Amend |
- 2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:**

Authorizing statute: A.R.S. § 23-491.04(A)(2)

Implementing statute: A.R.S. § 23-491.06

Note: An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, Policy Advisor in the Office of the Arizona Governor, by e-mail dated August 16, 2019.

3. The effective date of the rules:

The Industrial Commission of Arizona (the “Commission”) requests an immediate effective date under A.R.S. § 41-1032(A)(1) (“To preserve the public peace, health or safety.”).

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):

The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(1) (“To preserve the public peace, health or safety.”) The proposed amendment reduces the permissible clearance between a hoistway face of the hoistway doors and the hoistway edge of the landing sill to 19mm for swinging doors and 57 mm for sliding elevator doors. The updated standard is intended to protect users of residential elevators from a potential safety hazard associated with a larger clearance.

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: 25 A.A.R. 37, September 13, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 37, September 13, 2019

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

Name: Gaetano Testini, Chief Counsel
Address: Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-5905
Fax: (602) 542-6783
E-mail: gaetani.testini@azica.gov

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

Pursuant to A.R.S. §§ 23-491.04(A)(2) and 23-491.06, the Commission is required to promulgate standards and regulations necessary to carry out Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances), including adopting national consensus standards. The Commission is amending A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) by adding a subsection (B), which adopts the national consensus clearance standard contained in requirement 5.3.1.7.2 of ASME A17.1-2016, replacing the existing clearance standard contained in Section 5.3 of ASME A17.1-2007. The amendment will reduce the permissible clearance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill to 19mm for swinging doors and 57 mm for sliding doors in residential elevators. The updated standard is intended to protect users of residential elevators from a potential safety hazard associated with a larger clearance.

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

The Commission did not review or rely on any study relevant to the proposed amended rule.

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

Not applicable.

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

The Commission anticipates that impact on businesses that engage in the design, construction, installation, inspection, and maintenance of residential elevators is expected to be nominal because the majority of these businesses are already operating in accordance with the ASME A17.1-2016 standards. Users of residential elevators, including the homeowner and visitors, will benefit from the mitigation of a potential safety hazard.

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

A word was added to clarify that the new standard applies only to residential elevators.

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

No written or oral comments were received by the Commission.

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:

Not 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 proposed amendment does not require issuance of a regulatory permit or license.

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 not a federal law applicable to the subject of the proposed rulemaking.

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

No analysis was submitted.

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

The Commission is amending R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standard 5.3.1.7.2 contained in ASME A17.1-2016 (Performance-Based Safety Code for Elevators and Escalators). A copy of ASME A17.1-2016 (Performance-Based Safety Code for Elevators and Escalators) is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, Arizona 85007, or may be obtained from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>.

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 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. ELEVATOR SAFETY

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices

A. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after ~~the effective date of this Section~~ August 6, 2009 shall comply with the ASME A17.1-2007 (Safety Code for Elevators and Escalators) or ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) as referenced in ASME A17.1-2007, which are incorporated by reference. Except as stated in subsection B, ~~t~~his incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this

referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed between May 5, 2009 and ~~the effective date of this Section~~ August 6, 2019, shall comply with ASME A17.1- 2007 or, as an alternative, may comply with ASME A17.7- 2007. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before May 5, 2009, shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1- 2007 or ASME 17.7-2007.

- B. For installations of a residential elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed after the effective date of this subsection, the distance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill shall not exceed 19 mm (0.75 in.) for swinging doors and 57 mm (2.25 in.) for sliding doors.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. ELEVATOR SAFETY

1. Identification of the proposed rulemaking:

The Commission is proposing to amend A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer by adding a subsection (B) to adopt the national consensus clearance standard contained in requirement 5.3.1.7.2 of ASME A17.1-2016, replacing the existing clearance standard contained in Section 5.3 of ASME A17.1-2007. The proposed amendment would reduce the permissible clearance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill to 19 mm (0.75 in.) for swinging doors and 57 mm (2.25 in.) for sliding doors, consistent with the most recent ASME A17.1-2016 standards. This amendment is intended to protect users of residential elevators from a potential safety hazard.

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

The amendment will primarily benefit the all persons who use residential elevators constructed with the reduced clearance. Persons who will be directly affected will include businesses that engage in the design, construction, installation, inspection, and maintenance of residential elevators. However, the cost of the proposed amendment is expected to be nominal because the majority of residential elevators are already built, designed, and installed in accordance with the ASME A17.1-2016 standards.

3. A cost benefit analysis of the following:

(a) Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission does not anticipate significant costs to any state agency and only nominal costs to the Commission related to the training of elevator inspectors, since the Commission already engages in continuous training of inspectors.

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

To the extent any political subdivision engages in the design, construction, installation, inspection, and maintenance of residential elevators, their costs would be similar to those endured by similarly situated private sector businesses.

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

The impact on businesses that engage in the design, construction, installation, inspection, and maintenance of residential elevators is expected to be nominal because the majority of these businesses are already operating in accordance with the ASME A17.1-2016 standards. Users of residential elevators, including the homeowner and visitors, will benefit from the mitigation of a potential safety hazard.

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

The Commission does not anticipate that the rulemaking will have any direct impact on private and public employment in businesses, agencies, and political subdivisions.

5. Impact on small businesses:

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

The proposed rulemaking applies to small businesses that engage in the design, construction, installation, inspection, and maintenance of residential elevators; the expected economic impact is nominal upon these small businesses. See *supra* 2

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

The proposed rulemaking does not impose new administrative costs on small businesses. The proposed rule may have nominal obligations, costs, or time constraints on small businesses that engage in the design, construction, installation, inspection, and maintenance of residential elevators

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

The prospective nature of the rule and the applicability of the rule to only residential elevators, reduces the impact on small businesses.

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

The proposed rule may have nominal obligations, costs, or time constraints on private persons that engage in the design, construction, installation, inspection, and maintenance of residential elevators. Users of residential elevators, including the homeowners and visitors, will benefit from the mitigation of a potential safety hazard.

6. Probable effect on state revenues:

The Commission does not anticipate that the proposed rules will have any direct effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

Not applicable.

8. Data on which the rule is based:

The rulemaking incorporates by reference national consensus standards contained in ASME A17.1-2016 (Performance-Based Safety Code for Elevators and Escalators). A copy of ASME A17.1-2016 (Performance-Based Safety Code for Elevators and Escalators) is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, Arizona 85007, or may be obtained from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>.



Administrative Rules Division
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TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

(Authority: A.R.S. § 23-101 et seq.)

20 A.A.C. 5, consisting of R20-5-101 through R20-5-164, R20-5-201 through R20-5-224, R20-5-301 through R20-5-318, R20-5-401 through R20-5-428, R20-5-501 through R20-5-512, R20-5-601 through R20-5-682, R20-5-801 through R20-5-829, R20-5-901 through R20-5-914, and R20-5-1001 through R20-5-1007 recodified from 4 A.A.C. 13, consisting of R4-13-101 through R4-13-164, R4-13-201 through R4-13-224, R4-13-301 through R4-13-318, R4-13-401 through R4-13-428, R4-13-501 through R4-13-512, R4-13-601 through R4-13-682, R4-13-801 through R4-13-829, R4-13-901 through R4-13-914, and R4-13-1001 through R4-13-1007, pursuant to R1-1-102 (Supp. 95-1).

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Historical Note

Former Rule E-5. R20-5-505 recodified from R4-13-505 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-506. Recordkeeping

- A. The Elevator Safety Section shall assign a State Serial Number to every elevator, dumbwaiter, escalator, and moving walk for recordkeeping purposes. The State Serial Number shall be on a tag that is affixed to the controller or mainline disconnect in the elevator machine room.
- B. The owner or operator shall notify the Elevator Safety Section at least 90 days before installation, relocation, or major alteration of a dumbwaiter with automatic transfer device within the state, elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.
- C. The building owner or operator shall notify the Elevator Safety Section within 24 hours of every accident involving personal injury or disabling damage to a dumbwaiter with automatic transfer device, an elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.

Historical Note

Former Rule E-6. Amended effective November 9, 1979 (Supp. 79-6). R20-5-506 recodified from R4-13-506 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 Safety Code for Elevators and Escalators, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before the effective date of this Section shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007.

Historical Note

Former Rule R4-13-507 repealed, new Section R4-13-507 adopted effective November 9, 1979 (Supp. 79-6). Amended effective March 30, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Amended effective July 24, 1985 (Supp. 85-4). Amended effective September 5, 1989 (Supp. 89-3). Amended effective March 20, 1992 (Supp. 91-2). R20-5-507 recodified from R4-13-507 (Supp. 95-1). Amended effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2935, effective August 4, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009

(Supp. 09-2).

R20-5-508. Safety Standards for Belt Manlifts

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Standard for Belt Manlifts, ASME A90.1-2003, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). R20-5-508 recodified from R4-13-508 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations, ANSI, A10.4-2007, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-509 recodified from R4-13-509 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-510. Safety Requirements for Material Hoists

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Material Hoists, ANSI, A10.5-2006, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-510 recodified from R4-13-510 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-511. Guide for Inspection of Elevators, Escalators, and Moving Walks

Every Elevator Inspector under A.R.S. § 23-491.05 shall use the American National Standard Institute, Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME, A17.2-2004, which is incorporated by reference. This incorporation by reference does

Statutory Authority

23-491.04. Commission Powers and Duties

- A. The commission shall:
 - 1. Administer this article through the division of occupational safety and health.
 - 2. Promulgate standards and regulations pursuant to § 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out this article.
- B. The commission, by rule and regulation, may set fees not to exceed the actual cost for inspections performed pursuant to this article.

23-491.06. Development of Standards and Regulations

- A. Safety standards and regulations shall be formulated in the following manner:
 - 1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with other persons knowledgeable in the business for which the standards or regulations are being formulated.
 - 2. Proposed standards or regulations, or both, shall be submitted to the commission for approval.
- B. Any person who may be adversely affected by a standard or regulation issued under this article may, at any time within sixty days after such standard or regulation is promulgated by the commission, file a complaint challenging the validity of such standard or regulation with the superior court in the county in which the person resides or has the person's principal place of business, for a judicial review of such standard or regulation. The filing of a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.
- C. In case of conflict between standards and regulations, the regulations shall take precedence.

D-4

ARIZONA STATE BOARD OF ACCOUNTANCY (R20-0204)

Title 4, Chapter 1, Articles 1-4, Board of Accountancy

Amend: R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-229, R4-1-341,
R4-1-344, R4-1-345, R4-1-346, R4-1-453, R4-1-454, R4-1-455, R4-1-455.01, R4-1-456

Repeal: R4-1-228

New Section: R4-1-228



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: January 9, 2020

SUBJECT: **ARIZONA STATE BOARD OF ACCOUNTANCY (R20-0204)**
Title 4, Chapter 1, Articles 1-4, Board of Accountancy

Amend: R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-229, R4-1-341,
R4-1-344, R4-1-345, R4-1-346, R4-1-453, R4-1-454, R4-1-455,
R4-1-455.01, R4-1-456

Repeal: R4-1-228

New Section: R4-1-228

Summary:

This regular rulemaking from the Arizona State Board of Accountancy (Board) seeks to amend several rules in Title 4, Chapter 1, Articles 1 through 4 as well as repeal and replace R4-1-228.

Specifically, the Board proposes amendments to the following rules:

- **R4-1-101:** The Board proposes amending this rule to omit the definition of "Compilation services" as it was replaced in statute by Laws 2018, Ch. 268 (SB 1443) under A.R.S. § 32-701(8).
- **R4-1-104:** The Board proposes to amend this rule to omit the term "public accountant" as it was eliminated in Laws 2018, Ch. 268 (SB 1443).

- **R4-1-115.03:** The Board proposes to amend this rule related to the duties of the Peer Review Oversight Advisory Committee (PROAC) to: 1) conform it to Laws 2018, Ch. 268 (SB 1443) which provided the Board the power to delegate to its Executive Director the authority to approve compliance with peer review requirements, 2) conform it with rules effective January 1, 2018, which eliminated educational enhancement reviews, and 3) clarify that the committee has the advisory responsibility to make a recommendation to the Board for initial analysis, wherein the Board can act on the committee's recommendation under its authority provided in A.R.S. § 32-742.01.
- **R4-1-226.01:** The Board proposes to amend this rule to make clarifying changes, remove an unnecessary procedural provision, and conform the rule with existing business processes which currently provide an applicant notice of their right to an appeal of the Board's decision.
- **R4-1-228:** The Board proposes to repeal this rule because it is not regulatory in nature; and, add a new rule to provide appeal rights for applicants whose application for examination is denied. Examination applicants are already afforded appeal rights through Title 41, Chapter 6, Article 10, and the Board's existing business processes. The addition of this rule codifies these rights, similar to R4-1-344 as it relates to certification denials.
- **R4-1-229:** The Board indicates that by June 2020, the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) want to provide "continuous testing" of the Uniform Certified Public Accountant Examination (Exam), which allows applicants to retake a test section of the Exam once their grade for any previous attempt of the same test section during that window has been released. The Board indicates that this change is pro-applicant as it provides greater flexibility to complete the Exam and proposes to amend this rule to allow for continuous testing.
- **R4-1-341, R4-1-341 and R4-1-343** enumerate specific documents that applicants are required to submit with their application for certification. One such document is a signed and dated letter of recommendation, which is meant to highlight the applicant's overall character and fitness qualifications. Pursuant to R4-1-341(A)(2)(c), currently, the letter of recommendation must be signed by a certified public accountant (CPA). Another document that applicants are required to submit are certificates of experience (COE), which verifies whether the applicant has met the experience hours required in statute. Pursuant to R4-1-343, the COE must be signed by a CPA or an individual who, "...has accounting education and experience similar to that of a certified public accountant." The Board indicates this allows applicants an opportunity to demonstrate experience, even if they do not know or work with a CPA. In order to allow more flexibility for applicants, the Board is proposing to amend this rule to allow the letter of recommendation to be completed by either a CPA or an individual who has accounting education and experience similar to that of a CPA. The Board indicates this change will be beneficial for applicants and will allow the letter of recommendation to be consistent with the COE requirement.

- The Board indicates that, while **R4-1-341** currently outlines the process for certification of an individual’s certificate and provides accountability time frames within the process, the same does not exist for CPA firm registration. A.R.S. § 32-731 enumerates the requirements for firm registration but the absence of rules leads to confusion for firm applicants who want to know the process and requirements to become a registered CPA firm. Further, the Board’s rules do not comply with time frame requirements, as specified in Title 41, Chapter 6, Article 7.1. Accordingly, the Board seeks to amend this rule to establish a firm registration process and registration time frame. Lastly, the Board proposes to amend this rule to reduce the licensing time frames associated with individual certification from 180 to 150-days and modify language for greater clarity and compliance with the requirements specified in Title 41, Chapter 6, Article 7.1.
- **R4-1-344.** The Board proposes to amend this rule to clarify that applicants may appeal the denial of not only certification, but also firm registration and reinstatement, pursuant to Title 41, Chapter 6, Article 10.
- **R4-1-345.** The Board proposes to amend this rule to make clarifying changes and to institute a temporary registration fee reduction from \$300 to \$275 for registrations due during the period from July 1, 2020 to June 30, 2022.
- **R4-1-346.** The Board proposes to amend this rule to eliminate an unnecessary regulatory requirement.
- **R4-1-453.** The Board proposes to amend this rule to make technical and clarifying changes.
- **R4-1-454.** The Board indicates its peer review rule conflicts with the incorporated Standards for Performing and Reporting on Peer Reviews. The Board proposes to amend this rule to eliminate those conflicts and eliminate archaic language. The Board indicates the changes will bring greater clarity to the rules, reduce confusion for CPA firms that are subject to peer review, better support firms in their effort to maintain compliance and streamline the Board’s administrative procedures.
- **R4-1-455.** The Board proposes to amend this rule to update the incorporation by reference of the AICPA’s Code of Professional Conduct.
- **R4-1-455.01.** The Board proposes to amend this rule to conform with Laws 2018, Ch. 268 (SB 1443) which omitted the term “practice of public accounting”.
- **R4-1-456.** The Board proposes to amend this rule to make technical and clarifying changes.

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?

Yes. R4-1-341(B) establishes a new fee of \$100 related to firm reinstatement applications. Pursuant to A.R.S. § 41-1008(A)(1), “an agency shall not charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by

statute....” Here A.R.S. § 32-729(5) expressly authorizes the Board to establish and collect a uniform application fee in an amount to be determined by the Board to reinstate pursuant to this chapter. As such, the new fee for firm reinstatement applications is in compliance with A.R.S. § 41-1008(A)(1).

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

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

4. Summary of the agency’s economic impact analysis:

Most of the changes to the rules are either technical, conforming or clarifying in nature, or they reduce regulatory burdens. Changes to R4-1-341 establishes a firm reinstatement application fee of \$100 as authorized by statute. The Board indicates only 20 firms submitted reinstatement applications in FY 2019 and the nominal increase in revenue will not be enough to recoup the costs involved in the administrative review of firm reinstatement applications from the new fee. The Board states that they currently regulate 1,209 firms and that reinstated firms only represent 1.6% of the total firms. The proposed rules also will institute a temporary registration fee reduction from \$300 to \$275 for registrations due during the period from July 1, 2020 to June 30, 2020. The Board will bear the costs of the temporary registration fee reduction through reduced biennial registration revenue in the amount of approximately \$260,000 for fiscal years 2021 and 2022 as well as the associated opportunity costs in implementing this provision.

Stakeholders include the Board and private persons that are certified with the Board as a Certified Public Accountant (CPA) or plan to apply to sit for the Exam or obtain certification.

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

The Board believes this is the least costly and least intrusive method. The Board indicates that most changes are either technical, conforming, or clarifying in nature, or they reduce regulatory burdens.

6. What are the economic impacts on stakeholders?

The Board is the only state agency directly affected by this rulemaking and no political subdivisions are directly affected. Businesses and small businesses that are registered with the Board as CPA firms may be affected by the reinstatement fee but should benefit from the temporary reduction in the registration fee. Most changes are not expected to have any economic, small business or consumer impact. Members of the public, registrants, and the Board will benefit from increased clarity in the rules. Registrants will benefit from the removal of unnecessary regulatory requirements.

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

No. The Board made no substantive changes between the notice of proposed rulemaking and final rulemaking, only technical or formatting changes.

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

The Board indicates that it did not receive any public comments regarding this rulemaking. The Board indicates it held an oral proceeding on December 2, 2019, at which no comments were presented.

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

Not applicable.

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

Not applicable. There are no corresponding federal laws.

11. **Conclusion**

The Board is conducting this rulemaking to comply with state statutes as well as implement technical and clarifying changes. The Board is also removing redundant regulations and temporarily reducing fees as outlined above. While this rulemaking establishes a new fee, the Board has cited specific statutory authority for establishing a new fee related to firm reinstatement applications pursuant to A.R.S. § 32-729(5). The Board accepts the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



ARIZONA STATE BOARD OF ACCOUNTANCY

100 North 15th Avenue, Suite 165
Phoenix, Arizona 85007
Phone (602) 364-0804
Fax (602) 364-0903
www.azaccountancy.gov

December 23, 2019

The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: Request for Approval - Notice of Final Rulemaking

Council Members:

I am pleased to submit the Notice of Final Rulemaking on behalf of the Arizona Board of Accountancy. Pursuant to A.A.C. R1-6-201(A)(1), I have addressed the following:

- a. **The close of record date** – December 2, 2019
- b. **Whether the rulemaking activity relates to a five-year rule review report and, if applicable, the date the report was approved by Council** – The rulemaking relates to the five-year rule review report approved by the Council on December 3, 2019.
- c. **Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee** – The rules do establish a new fee of \$100 in A.A.C. R4-1-341(B) related to firm reinstatement applications. A.R.S. § 32-729(5) expressly authorizes the Board to establish and collect a uniform application fee in an amount to be determined by the Board to reinstate pursuant to this chapter.
- d. **Whether the rule contains a fee increase** – The rules do not contain a fee increase.
- e. **Whether an immediate effective date is requested under A.R.S. §41-1032** – An immediate effective date is not being requested.
- f. **A certification that the preamble discloses a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation or justification for the rule** – I certify that the Board did not review or rely on any study for this rulemaking.
- g. **If one or more full time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule** – No new FTEs are required to enforce the rules in the Notice of Final Rulemaking.

The Americans with Disabilities Act: Persons with disabilities may request reasonable accommodations, such as sign language interpreters. Requests should be made as early as possible to allow time to arrange the accommodation.

This document is available in alternative format upon request.

- h. **A list of all the documents enclosed** – Notice of Final Rulemaking (including preamble); text of rules; economic, small business, and consumer impact statement; material incorporated by reference; and general and specific statutes authorizing the rules.

Thank you for your consideration and approval of the Board's Notice of Final Rulemaking.

Sincerely,

A handwritten signature in blue ink, appearing to read "Monica L. Petersen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Monica L. Petersen
Executive Director

Enclosures

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 1. BOARD OF ACCOUNTANCY

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R4-1-101	Amend
R4-1-104	Amend
R4-1-115.03	Amend
R4-1-226.01	Amend
R4-1-228	Repeal; New Section
R4-1-229	Amend
R4-1-341	Amend
R4-1-344	Amend
R4-1-345	Amend
R4-1-346	Amend
R4-1-453	Amend
R4-1-454	Amend
R4-1-455	Amend
R4-1-455.01	Amend
R4-1-456	Amend

2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 32-703(B)(7) and (13)

Implementing statute: A.R.S. § 32-703(B)(8)

3. The effective date of the rule:

The agency accepts the standard effective date of 60 days as specified in A.R.S. § 41-1032(A).

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: 25 A.A.R. 3259, November 1, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 3213, November 1, 2019

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

Name: Monica L. Petersen, Executive Director

Address: Board of Accountancy, 100 N. 15th Ave., Suite 165, Phoenix, AZ 85007

Telephone: (602) 364-0870

Fax: (602) 364-0903

E-mail: mpetersen@azaccountancy.gov

Website: www.azaccountancy.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:

R4-1-101. This rule is amended to omit the definition of "Compilation services" as it is no longer needed in rule because it was placed in statute by Laws 2018, Ch. 268 (SB 1443) under Arizona Revised Statutes (A.R.S.) § 32-701(8).

R4-1-104. This rule is amended to omit the term "public accountant" as it was eliminated in Laws 2018, Ch. 268 (SB 1443).

R4-1-115.03. This rule related to the duties of the Peer Review Oversight Advisory Committee (PROAC) is amended to: 1) conform it to Laws 2018, Ch. 268 (SB 1443) which provided the Board the power to delegate to its Executive Director the authority to approve compliance with peer review requirements, 2) conform it with rules effective January 1, 2018, which eliminated educational enhancement reviews, and 3) clarify that the committee has the advisory responsibility to make a recommendation to the Board for initial analysis, wherein the Board can act on the committee's recommendation under its authority provided in A.R.S. § 32-742.01.

R4-1-226.01. This rule is amended to make clarifying changes, remove an unnecessary procedural provision, and conform the rule with existing business processes which currently provide an applicant notice of their right to an appeal of the Board's decision.

R4-1-228. This rule is repealed because it is not regulatory in nature; and, a new rule is added to provide appeal rights for applicants whose application for examination is denied. Examination applicants are already afforded appeal rights through Title 41, Chapter 6, Article 10, and the Board's existing business processes. The addition of this rule codifies these rights, similar to Arizona Administrative Code (A.A.C.) R4-1-344 as it relates to certification denials.

R4-1-229. By June 2020, the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) want to provide "continuous testing" of the Uniform Certified Public Accountant Examination (Exam), which allows applicants to retake a test section of the Exam once their grade for any previous attempt of the same test section during that window has been released. This change is pro-applicant as it provides greater flexibility to complete the Exam. This rule is amended to allow for continuous testing.

R4-1-341. R4-1-341 and R4-1-343 enumerate specific documents that applicants are required to submit with their application for certification. One such document is a signed and dated letter of recommendation, which is meant to highlight the applicant's overall character and fitness qualifications. Pursuant to R4-1-341(A)(2)(c), currently, the letter of recommendation must be signed by a certified public accountant (CPA). Another document that applicants are required to submit are certificates of experience (COE), which verifies whether the applicant has met the experience hours required in statute. Pursuant to R4-1-343, the COE must be signed by a CPA or an individual who, "*...has accounting education and experience similar to that of a certified public accountant.*" This allows applicants an opportunity to demonstrate experience, even if they do not know or work with a CPA. In order to allow more flexibility for applicants, this rule is amended to allow the letter of recommendation to be completed by either a CPA or an individual who has accounting education and experience similar to that of a CPA. This change will be beneficial for applicants and will allow the letter of recommendation to be consistent with the COE requirement.

While R4-1-341 currently outlines the process for certification of an individual's certificate and provides accountability time frames within the process, the same does not exist for CPA firm registration. A.R.S. §

32-731 enumerates the requirements for firm registration but the absence of rules leads to confusion for firm applicants who want to know the process and requirements to become a registered CPA firm. Further, the Board's rules do not comply with time frame requirements, as specified in Title 41, Chapter 6, Article 7.1. Accordingly, this rule is also amended to establish a firm registration process and registration time frame.

Lastly, this rule is further amended to reduce the licensing time frames associated with individual certification from 180 to 150-days and modify language for greater clarity and compliance with the requirements specified in Title 41, Chapter 6, Article 7.1.

R4-1-344. This rule is amended to clarify that applicants may appeal the denial of not only certification, but also firm registration and reinstatement, pursuant to Title 41, Chapter 6, Article 10.

R4-1-345. This rule makes clarifying changes and is amended to institute a temporary registration fee reduction from \$300 to \$275 for registrations due during the period from July 1, 2020 to June 30, 2022.

R4-1-346. This rule is amended to eliminate an unnecessary regulatory requirement.

R4-1-453. This rule is amended to make technical and clarifying changes.

R4-1-454. The Board's peer review rule conflicts with the incorporated Standards for Performing and Reporting on Peer Reviews. This rule is amended, in large measure, to eliminate those conflicts and eliminate archaic language. The changes will bring greater clarity to the rules, reduce confusion for CPA firms that are subject to peer review, better support firms in their effort to maintain compliance and streamline the Board's administrative procedures.

R4-1-455. This rule is amended to update the incorporation by reference of the AICPA's Code of Professional Conduct.

R4-1-455.01. This rule is amended to conform with Laws 2018, Ch. 268 (SB 1443) which omitted the term "practice of public accounting".

R4-1-456. This rule is amended to make technical and clarifying changes.

Additional technical and conforming changes are also made to the 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:

The Board did not review or rely on a study in its evaluation of or justification for a rule in this rulemaking.

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

Not applicable.

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

Amendments to R4-1-229 allow for continuous testing of the Exam which will benefit applicants wishing to sit for it. Once implemented by the AICPA and NASBA, continuous testing will allow applicants to retake an exam section once their grade from their previous attempt during that window has been released. This will provide applicants additional testing opportunities which in turn provides a better chance to complete all four sections of the Exam within the required 18-month period.

Amendments to R4-1-341 will:

- Broaden the criteria of who can submit a letter of recommendation on behalf of a certification applicant from a CPA to include an individual who has accounting education and experience similar to that of a CPA. This will benefit certification applicants who may not know or who have not gained their work experience under the supervision of a CPA.
- Eliminate the requirement for a certification applicant applying by substantial equivalency to provide verification that they have passed the Exam. Applicants are required to provide a license verification from each jurisdiction in which the applicant has ever been issued a certificate as a CPA. All jurisdictions require the passage of the Exam as a requirement to be certified as a CPA. As such, the license verification provides enough evidence to demonstrate that the applicant has passed the Exam.
- Codify the Board's existing procedures regarding CPA firm registration or reinstatement requirements in rule which are required to implement A.R.S. § 32-731. It is expected to provide a benefit to firm applicants as the process will be enumerated in rule.
- Establish a firm reinstatement application fee in the amount of \$100.
- Improve compliance with administrative timeframes enumerated in Title 41, Chapter 6, Article 7.1. The updating of time frames for certification and the establishment of time frames for firm registration will benefit both the Board and its applicants. Certification applicants will receive

improved customer service through reduced administrative timeframes. The establishment of administrative timeframes for CPA firms will establish expectations for both the Board and its applicants and ensure compliance with Title 41.

Amendments to R4-1-345 to implement a temporary registration fee reduction of \$25 will benefit CPAs submitting biennial renewals and reduce Board revenues and its fund balance. No additional FTE's will be necessary to implement this rule but there will be opportunity costs in that human resources will be tasked with the implementation of this rule rather than other Board projects. The temporary fee reduction will have a biennial fiscal impact through reduced biennial registration revenue in the amount of approximately \$260,000 for fiscal years 2021 and 2022.

Amendments to R4-1-454 will benefit both the Board and CPA firms subject to peer review. The amendments eliminate a myriad of conflicts between the rule and the Peer Review Standards. The result is that CPA firms will follow a single peer review administration process which will assist firms with staying in compliance with peer review requirements. The Board will benefit from more streamlined administrative procedures.

Amendments to R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-344, R4-1-346, R4-1-453, R4-1-455, R4-1-455.01, R4-1-456, and the repeal and assignment of a new section to R4-1-228 are not expected to have any economic, small business or consumer impact. Most changes to these rules are technical, conforming, or clarifying in nature, or remove unnecessary regulatory requirements. Members of the public, registrants, and the Board will benefit from increased clarity in the rules. Registrants will benefit from the removal of unnecessary regulatory requirements.

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

No substantive changes were made. Only technical or formatting changes were made between the proposed rulemaking and final rulemaking.

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

No comments were received regarding the Noticed of Proposed Rulemaking. No one presented oral or written comments at the oral proceeding held on December 2, 2019. The record closed at 5:00 p.m. on December 2, 2019.

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:

There is no federal law regarding CPAs or any other subjects of 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:

R4-1-454(A) – Standards for Performing and Reporting on Peer Reviews

<https://www.aicpa.org/content/dam/aicpa/research/standards/peerreview/downloadabledocuments/peerreviewstandards.pdf>

R4-1-455(A) – Code of Professional Conduct

<https://pub.aicpa.org/codeofconduct/ethicsresources/et-cod.pdf>

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

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 1. BOARD OF ACCOUNTANCY

ARTICLE 1. GENERAL

- R4-1-101. Definitions
- R4-1-104. Board Records; Public Access; Copying Fees
- R4-1-115.03. Peer Review Oversight Advisory Committee

ARTICLE 2. CPA EXAMINATION

- R4-1-226.01. Applications; Examination – Computer-based
- R4-1-228. ~~Examination Scores; Review and Appeal of Scores~~ Denial of Examination
- R4-1-229. Conditioned Credit

ARTICLE 3. CERTIFICATION AND REGISTRATION

- R4-1-341. CPA Certificates; Firm Registration; Reinstatement
- R4-1-344. Denial of Certification, Firm Registration, or Reinstatement
- R4-1-345. Registration; Fees
- R4-1-346. Notice of Change of Address

ARTICLE 4. REGULATION

- R4-1-453. Continuing Professional Education
- R4-1-454. Peer Review
- R4-1-455. Professional Conduct and Standards
- R4-1-455.01. Professional Conduct: Definitions; Interpretations
- R4-1-456. Reporting Practice Suspensions and Violations

Article 1 – General

R4-1-101. Definitions

- A. The definitions in A.R.S. § 32-701 apply to this chapter.
- B. In this chapter, unless the context otherwise requires:
- ~~1.~~ “~~Compilation services~~” means ~~services, the objective of which is defined in Section 80.04 of the Statement on Standards for Accounting and Review Services No. 21, issued October 2014 and published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 8775, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.~~
 21. “Contested case” means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by any agency after an opportunity for hearing.
 32. “CPE” or “continuing professional education” means attending classes, writing articles, conducting or teaching courses, and taking self-study courses if the activities contribute to maintaining and improving of professional competence in accounting.
 43. “Facilitated State Board Access (FSBA)” means the sponsoring organization’s process for providing the Board access to peer review results via a secured website.
 54. “Party” means each person or agency named or admitted as a party, or properly seeking and entitled, as of right, to be admitted as a party.
 65. “Peer review” means an assessment, conducted according to R4-1-454(~~J~~A), of one or more aspects of the professional work of a firm.
 76. “Peer review program” means the sponsoring organization’s entire peer review process, including but not limited to the standards for administering, performing and reporting on peer reviews, oversight procedures, training, and related guidance materials.
 87. “Person” may include any individual, and any form of corporation, partnership, or professional limited liability company.
 98. “Sponsoring organization” means a Board-approved professional society, or other organization approved by the Board responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards.
 109. “Upper level course” means a course taken beyond the basic level, after any required prerequisite or introductory accounting course and does not include principals of accounting or similar introductory accounting courses.

R4-1-104. Board Records; Public Access; Copying Fees

- A. The Board shall maintain all records, subject to A.R.S. Title 39, Chapter 1, reasonably necessary or appropriate to maintain an accurate knowledge of the Board’s official activities including, but not limited to:
1. Applications for C.P.A. ~~and P.A.~~ certificates and supporting documentation and correspondence;
 2. Applications to take the Uniform Certified Public Accountant Examination;
 3. Registration for registrants;
 4. Documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a certificate; and;
 5. Investigative reports; staff memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.
- B. Except as provided in R4-1-105, all records of the Board are available for public inspection and copying as provided in this Section.
- C. Any person desiring to inspect or obtain copies of records of the Board available to the public under this section shall make a request to the Board's Executive Director or the Director's designee. The Executive Director or the director’s designee shall, as soon as possible within a reasonable time, advise the person making the request whether the records sought can be made available, or, if the Executive Director or the director’s designee is unsure whether a record may be made available for public inspection and copying, the

Executive Director or the director's designee shall refer the matter to the Board for final determination.

- D. A person shall not remove original records of the Board from the office of the Board unless the records are in the custody and control of a board member, a member of the Board's committees or staff, or the Board's attorney. The Executive Director or the director's designee may designate a staff member to observe and monitor any examination of Board records.
- E. The Board shall provide copies of all records available for public inspection and copying shall be provided according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.
- F. Any person aggrieved by a decision of the Executive Director or the director's designee denying access to records of the Board may request a hearing before the Board to review the action of the Executive Director or the director's designee by filing a written request for hearing. Within 60 days of receipt of the request, the Board shall conduct a hearing on the matter. If the person requires immediate access to Board records, the person may request and may be granted an earlier hearing, if the person sets forth sufficient grounds for immediate access.

R4-1-115.03. Peer Review Oversight Advisory Committee

A. The Board may appoint an advisory committee to monitor and conduct the peer review program. Upon appointment the committee shall:

- 1. Advise the Board on matters relating to the peer review program;
- 2. Report to the Board on effectiveness of the peer review program;
- 3. ~~Provide the Board with a list of firms that have met the peer review requirements;~~ Make a recommendation to the Board to direct an authorized committee to conduct an initial analysis.
- 4. ~~Update the Board on the status of participating firms' noncompliance with the requirements of R4-1-454;~~
- 5. ~~Maintain documents in a manner that preserves the confidentiality of persons, including information pertaining to a specific business organization which may be disclosed to the committee during the course of its business; and~~
- 6. ~~Report to the Board and obtain approval of any modification to the peer review program.~~

B. The Board may accept, reject, or modify recommendations of the Peer Review Oversight Advisory Committee.

Article 2 – CPA Examination

R4-1-226.01. Applications; Examination - Computer-based

A. A person desiring to take the Uniform Certified Public Accountant Examination who is qualified under A.R.S. § 32-723 may apply by submitting an initial application. A person whose initial application has already been approved by the Board to sit for the Uniform CPA Examination may apply by submitting an application for re-examination.

- 1. The requirements for initial application for examination are:
 - a. A completed application for initial examination,
 - b. A \$100 initial application fee if:
 - i. The applicant has not previously filed an application for initial examination in Arizona, or
 - ii. The Board administratively closed a previously submitted application, or
 - iii. The applicant has been previously denied by the Board.
 - c. University or college transcripts to verify that the applicant meets the educational requirements and if necessary for education taken outside the United States an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES).
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
- 2. The requirements for application for re-examination are:
 - a. A completed application for re-examination, and
 - b. A \$50 re-examination application fee.

B. Within 30 days of receiving an initial application, ~~the board~~ Board staff shall provide written notify notice to the applicant that the application is either complete or incomplete. If the application is incomplete, the notice

shall specify what information is missing. The applicant has 30 days from the date of the Board's letter to respond to the Board's request for additional information or the Board or its designee may administratively close the file. An applicant whose file is administratively closed and who later wishes to apply shall reapply under subsection (A)(1).

- C. The Board's certification advisory committee (CAC) shall evaluate the applicant's file and make a recommendation to the Board to approve or deny the application. The CAC may defer a decision on the applicant's file to a subsequent CAC meeting to provide the applicant opportunity to submit any information requested by written notice by the CAC that the CAC believes is relevant to make a recommendation to the Board. The applicant has 30 days from the date of the Board's letter to respond to the CAC's request for additional information or the Board or its designee may administratively close the file. ~~If the CAC recommends approval, the application shall be put on a future board meeting agenda for consent. If the CAC recommends denial, the application will be put on a future board meeting agenda and the CAC shall provide the Board with the reasons for the recommendation of denial.~~
- D. If the Board approves the application, the Board shall notify the applicant in writing and send an authorization to test (ATT) to the National Association of State Boards of Accountancy (NASBA) to permit the applicant to take the specified section or sections of the examination for which the applicant applied. If the Board denies the application, the Board shall ~~notify the applicant in writing of the reasons the application was denied~~ 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; and
 - 3. The time periods for appealing the denial.
- E. If the applicant does not timely pay to the NASBA the fees owed for the examination section or sections for which the applicant applied, the ATT expires. An applicant that still wishes to take a section or sections of the Uniform CPA Examination shall submit an application for re-examination under subsection (A)(2).
- F. After an applicant has paid NASBA, NASBA shall issue a notice to schedule (NTS) to the applicant. A NTS enables an applicant to schedule testing at an approved examination center. The NTS is effective on the date of issuance and expires when the applicant sits for all sections listed on the NTS or six months from the date of issuance, whichever occurs first. Upon written request to the Board and showing good cause that prevents the applicant from appearing for the examination, an applicant may be granted by the Board a one-testing-window extension to a current NTS.
- G. The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

R4-1-228. Examination Scores; Review and Appeal of Scores Denial of Examination

- ~~A. The National Association of State Boards of Accountancy (NASBA) shall mail or email examination scores to each applicant based upon the applicant's contact preference.~~
- ~~B. Examination scores~~
 - 1. ~~An applicant may request a score review by submitting NASBA'S CPA Examination Score Review form to NASBA.~~
 - 2. ~~An applicant may appeal an exam score by submitting NASBA's CPA Examination Score Appeal form to NASBA.~~

An applicant whose application for examination is denied by the Board is entitled to a hearing before the Board or an ALJ.

- 1. Written application. The applicant shall file a notice of appeal under A.R.S. § 41-1092.03 within 30 days after receipt of the notice of denial.
- 2. Hearing notice. The Board shall provide the applicant with notice of the hearing in the manner prescribed by A.R.S. § 41-1092.05.
- 3. Conduct of hearing. The Board or the ALJ shall conduct the hearing in accordance with A.R.S. Title 41, Chapter 6, Article 10 and applicable rules governing hearings.
- 4. Burden of persuasion. At the hearing, the applicant is the moving party and has the burden of persuasion.
- 5. Matters limited. At the hearing, the Board or ALJ shall limit the issues to those originally presented to the

Board.

R4-1-229. Conditioned Credit

- A. An applicant is allowed to sit for each section individually and in any order.
- ~~1. An applicant is given conditioned credit for each section of the examination passed. A conditioned credit is valid for 18 months from the date of the examination.~~
 - ~~2. The applicant shall not retake a failed section in the same examination window. An examination window is the three-month period in which the applicant has an opportunity to take an examination section or sections.~~
- B. Transfer of conditioned credit. The Board shall give an applicant credit for all sections of an examination passed in another jurisdiction if the credit has been conditioned. If an applicant transfers conditioned credit from another jurisdiction, the applicant shall pass the remaining sections of the examination within the 18-month period from the date that the first section was passed. An applicant who fails to pass all sections of the Uniform CPA Examination within 18 months shall retake previously passed sections of the Uniform CPA Examination to ensure passage of all sections within an 18-month period.

Article 3 – Certification and Registration

R4-1-341. CPA Certificates; Firm Registration; Reinstatement

- A. An applicant may apply for a certificate of certified public accountant or for reinstatement of a certificate by submitting:
1. An application fee of \$100; and
 2. For an applicant applying for certification under A.R.S. § 32-721(A) and (B), a completed application including:
 - a. Verification that the applicant passed the Uniform CPA Examination,
 - b. Verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. One signed and dated letter of recommendation by a CPA or an individual who has accounting education and experience similar to that of a CPA,
 - d. Proof of a score of at least 90% on the American Institute of Certified Public Accountants (AICPA) examination in professional ethics taken within the two years immediately before the application is submitted,
 - e. Evidence of lawful presence in the United States, and
 - f. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 3. For an applicant applying for certification under A.R.S. § 32-721(A) and (C), a completed application including:
 - a. Verification that the applicant has passed ~~the Uniform CPA Examination or~~ the International Qualification Examination (IQEX),
 - b. License verification from each jurisdiction in which the applicant has ever been issued a certificate as a certified public accountant of which at least one must be an active certification from a jurisdiction with requirements determined by the Board to be substantially equivalent to the requirements in A.R.S. § 32-721(B) or verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 4. For an applicant applying for certification under A.R.S. § 32-721(A) and (D) for mutual recognition agreements adopted by the Board a completed application including:
 - a. Verification that the applicant has passed the International Qualification Examination (IQEX),
 - b. License verification from the applicant's country which has a mutual recognition agreement with the

- National Association of State Boards of Accountancy that has been adopted by the Board,
- c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
5. For an applicant applying for reinstatement from cancelled or expired status under A.R.S. §§ ~~32-730.02 or 32-730.03~~ respectively § 32-732(B) a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(~~68~~) and (E), and
 - b. Evidence of lawful presence in the United States.
 6. For an applicant applying for reinstatement from ~~expired, relinquished, or revoked or relinquished~~ status under ~~A.R.S. §§ 32-741.03 or 32-741.04~~ respectively A.R.S. § 32-732(C), a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(~~68~~) and (E),
 - b. Evidence of lawful presence in the United States,
 - c. If not waived by the Board as part of a disciplinary order, evidence from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution that the individual has completed at least one hundred fifty semester hours of education as follows:
 - i. At least 36 semester hours are accounting courses of which at least 30 semester hours are upper level courses.
 - ii. At least 30 semester hours are related courses.
 - d. If prescribed by the Board as part of a disciplinary order, evidence that the individual has retaken and passed the Uniform Certified Public Accountant Examination.

B. An applicant may apply for a certified public accountant firm registration or for reinstatement of a registration by submitting:

1. For an applicant applying for a new firm under A.R.S. § 32-731, a completed application including:
 - a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - b. If applicable, peer review results as prescribed by R4-1-454(A); and
 - c. Other information or documents requested by the Board to determine compliance with eligibility requirements.
2. For an applicant applying for reinstatement from cancelled under A.R.S. § 32-732(E) a completed application including:
 - a. An application fee of \$100;
 - b. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - c. If applicable, peer review results as prescribed by R4-1-454(A); and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
3. For an applicant applying for reinstatement from expired, relinquished, or revoked status under A.R.S. § 32-732(F) a completed application including:
 - a. An application fee of \$100;
 - b. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - c. If applicable, peer review results as prescribed by R4-1-454(A);

- d. If applicable, substantial evidence that the applicant has been completely rehabilitated with respect to the conduct that was the basis of the expiration, relinquishment or revocation of the firm's registration; and
- e. Other information or documents requested by the Board to determine compliance with eligibility requirements.

~~BC. Within 30 days of receiving an application, the~~ Pursuant to Title 41, Chapter 6, Article 7.1, the Board's licensing time frames are as follows:

1. Certification

a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 30 days from the receipt of the application that the application is either complete or incomplete.

i. If the application is incomplete, the an incomplete notice shall specify what information is missing.

~~1. The Board shall make service of written notice regarding an incomplete application in accordance with R4-1-117(E)(1) or (2). If the Board issues an incomplete notice, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date the Board receives the missing information from the applicant.~~

ii. The applicant has 30 days from the date of the incomplete notice to respond in writing to the Board's notice and provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed and who later wishes to become certified shall reapply under subsection (A).

~~2. Within 60 days of receipt of all the missing information, the Board shall notify the applicant that the application is complete.~~

~~3. The Board shall issue a certification decision no later than 150 days after receipt of a completed application.~~

4b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.

i. If the Board finds deficiencies during the substantive review of the application, the Board may issue a one comprehensive written request to the applicant for additional information.

~~5. The 150 day time frame in subsection (B)(3) for a substantive review for the issuance of a certificate is suspended from the date of the written request for additional information made under subsection (B)(4) until the date that all information is received. The Board shall serve a written request under subsection (B)(4) in accordance with R4-1-117(E)(1) or (2). The applicant has 30 days to respond to the Board's request for additional information. If the applicant fails to timely respond to the Board's request, the Board shall finish its substantive review based upon the information the applicant has presented. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.~~

ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (A).

c. Overall Time Frame. The Board has 150 days to issue a written notice to an applicant approving or denying an application.

2. Firm Registration

a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 10 days from the receipt of the application that the application is complete.

i. If the application is incomplete, an incomplete notice shall specify what information is missing. If the Board issues an incomplete notice, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date the Board receives the missing information from the applicant.

ii. The applicant has 30 days from the date of the incomplete notice to respond in writing and

provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).

- b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.
 - i. If the Board finds deficiencies during the substantive review of the application, the Board may issue one comprehensive written request to the applicant for additional information. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.
 - ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).

c. Overall Time Frame. The Board has 90 days to issue a written notice to an applicant approving or denying an application.

~~6. When the applicant and the Board mutually agree in writing, the substantive review time frame specified in subsection (B)(3) may be extended in accordance with A.R.S. § 41-1075.~~

~~C.D.~~ If the Board denies an applicant's request for certification under this section, 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; and
- 3. The time periods for appealing the denial.

~~D.~~ The Board establishes the following licensing time frames for the purpose of A.R.S. § 41-1073:

- ~~1. Administrative completeness review time frame: 30 days;~~
- ~~2. Substantive review time frame: 150 days; and~~
- ~~3. Overall time frame: 180 days.~~

E. The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

R4-1-344. Denial of Certification, Firm Registration, or Reinstatement

An applicant who is denied whose application for certification, or firm registration, or reinstatement of a certificate or registration is denied by the Board is entitled to a hearing before the Board or an ALJ.

- 1. Written application. The applicant shall file a notice of appeal under A.R.S. § 41-1092.03 within 30 days after receipt of the notice of denial.
- 2. Hearing notice. The Board shall provide the applicant with notice of the hearing in the manner prescribed by A.R.S. § 41-1092.05.
- 3. Conduct of hearing. The Board or the ALJ shall conduct the hearing in accordance with A.R.S. Title 41, Chapter 6, Article 10 and applicable rules governing hearings.
- 4. Burden of persuasion: At the hearing, the applicant is the moving party and has the burden of persuasion.
- 5. Matters limited. At the hearing, the Board or ALJ shall limit the issues to those originally presented to the Board.

R4-1-345. Registration; Fees

A. Initial registration: After the Board approves an applicant's request for certification or firm registration, the applicant registrant shall file an application for initial a registration in a format prescribed by the Board and pay a registration fee under subsection (C).

B. Renewal registration: A registrant shall file an application for renewal registration in a format prescribed by the Board no later than 5:00 p.m. on the last business day of the month. A renewal registration is deemed filed on the date and time received in the Board office. The Board shall record the date and time either by electronic date stamp in Arizona time or on physical receipt in the board's office. The Board shall not accept a postmark as evidence of timely filing. It is the sole responsibility of the registrant to complete the renewal registration requirements at the following times:

- 1. Individual registrant: An individual registrant shall renew registration at the following times:

- a. A registrant born in an even-numbered year shall renew registration during the month of birth in each even-numbered year.
 - b. A registrant born in an odd-numbered year shall renew registration during the month of birth in each odd-numbered year.
2. Firm registrant: A firm shall renew registration at the following times:
- a. A business organization firm that initially registered with the Board in an even-numbered year shall renew registration during the board-approved month of the initial registration in each even-numbered year.
 - b. A business organization firm that initially registered with the Board in an odd-numbered year shall renew registration during the board-approved month of the initial registration in each odd-numbered year.
 - c. An individual or a sole proprietorship firm shall renew its registration pursuant to paragraph (B)(1).
- C. Registration fees: ~~The biennial registration fee is:~~
- 1. Initial Registration Fee –
 - a. Certification - \$300 and, if applicable, a late fee of \$50 for each certified public accountant and, each public accountant. For a certified public accountant or public accountant, the
 - b. The registration fee shall be prorated by month for an initial registration period of less than two years.
 - 2. Biennial Registration Fee –
 - a. Certification – \$300 and, if applicable, a late fee of \$50.
 - i. For registrations due during the period from July 1, 2020 to June 30, 2022, the biennial registration fee will be reduced temporarily to \$275.
 - ii. For registrations due beginning July 1, 2022, the biennial registration fee will revert to \$300.
 - b. Firm Registration - \$300 and, if applicable, a late fee of \$50 for a firm. Under A.R.S. § 32-729, the Board shall not charge a fee for the registration of additional offices of the same firm or for the registration of a sole practitioner.

R4-1-346. Notice of Change of Address

- ~~A. Within 30 days of any business, mailing, or residential change of address, a registrant shall notify the Board of the new address by filling out the change of address form prescribed by the Board.~~
- ~~B. Within 30 days of the opening of any new or additional office, or the closing of any existing office, a registrant shall notify the Board in a letter signed by the registrant.~~

Article 4 – Regulation

R4-1-453. Continuing Professional Education

- A. Measurement Standards. The Board shall use the following standards to measure the hours of credit given for CPE programs completed by an individual registrant.
- 1. CPE credit shall be given in one-fifth or one-half increments for periods of not less than one class hour except as noted in paragraph 8. The computation of CPE credit shall be measured as follows:
 - a. A class hour shall consist of a minimum of 50 continuous minutes of instruction
 - b. A half-class hour shall consist of a minimum of 25 continuous minutes of instruction
 - c. A one-fifth class hour shall consist of a minimum of 10 continuous minutes of instruction.
 - 2. Courses taken at colleges and universities apply toward the CPE requirement as follows:
 - a. Each semester - system credit hour is worth 15 CPE credit hours,
 - b. Each quarter - system credit hour is worth 10 CPE credit hours, and
 - c. Each noncredit class hour is worth one CPE credit hour.
 - 3. Each correspondence program hour is worth one CPE credit hour.
 - 4. Acting as a lecturer or discussion leader in a CPE program, including college courses, may be counted as CPE credit. The Board shall determine the amount of credit on the basis of actual presentation hours, and shall allow CPE credit for preparation time that is less than or equal to the presentation hours. A registrant

may only claim as much preparation time as is actually spent for a presentation. Total credit earned under this subsection for service as a lecturer or discussion leader, including preparation time may not exceed 40 credit hours of the renewal period's requirement. Credit is limited to only one presentation of any seminar or course with no credit for repeat teaching of that course.

5. Writing and publishing articles or books that contribute to the accounting profession may be counted for a maximum of 20 hours of CPE credit during each renewal period.
 - a. Credit may be earned for writing accounting material not used in conjunction with a seminar if the material addresses an audience of certified public accountants, is at least 3,000 words in length, and is published by a recognized third-party publisher of accounting material or a sponsor.
 - b. For each 3,000 words of original material written, the author may earn two credit hours. Multiple authors may share credit for material written.
 6. A registrant may earn a combined maximum of 40 hours of CPE credit under subsections (A)(4) and (5) above during each renewal period.
 7. A registrant may earn a maximum of 20 hours of CPE during each renewal period by completing introductory computer-related courses. Computer-related courses may qualify as consulting services pursuant to subsection (C).
 8. A registrant may earn a maximum of 4 hours of CPE during each renewal period by completing nano-learning courses. A nano-learning program is a tutorial program designed to permit a participant to learn a given subject in a ten-minute time-frame through the use of electronic media and without interaction with a real time instructor.
 9. CPE credit shall be given in one-fifth or one-half hour increments if the CPE is a segment of a continuing series related to a specific subject as long as the segments are connected by an overarching course that is a minimum of one hour and taken within the same CPE reporting period.
 10. Credit shall not be allowed for repeat participation in any seminar or course during the registration period.
- B. Programs that Qualify.** CPE credit may be given for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.
1. The Board shall accept a CPE course as qualified if it:
 - a. Is developed by persons knowledgeable and experienced in the subject matter,
 - b. Provides written outlines or full text,
 - c. Is administered by an instructor or organization knowledgeable in the program, and
 - d. Uses teaching methods consistent with the study program.
 2. The Board shall accept a correspondence program which includes online or computer-based programs if the sponsors maintain written records of each student's participation and records of the program outline for three years following the conclusion of the program.
 3. An ethics program taught or developed by an employer or co-worker of a registrant does not qualify for the ethics requirements of subsection (C)(4).
- C. Hour Requirement.** As a prerequisite to registration pursuant to A.R.S. § 32-730(C) or to reactivate from inactive status pursuant to A.R.S. § ~~32-730.01~~ 32-732(A), a registrant shall complete the CPE requirements during the two-year period immediately before registration or application respectively as specified under subsections (C)(1) through (C)(5). For registration periods of less than two years CPE may be prorated by quarter, with the exception of ethics.
1. A registrant whose last registration period was for two years shall complete 80 hours of CPE.
 2. A registrant shall complete a minimum of ~~50 percent of the required~~ 40 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 16 hours in the subject areas of accounting, auditing, or taxation.
 3. A registrant shall complete a minimum of 16 of the required hours:
 - a. In a classroom setting,
 - b. Through an interactive live webinar, or
 - c. By acting as a lecturer or discussion leader in a CPE program, including college courses
 4. A registrant shall complete four hours of CPE in the subject area of ethics. The four hours required by this subsection shall include a minimum of one hour of each of the following subjects:

- a. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants, and
 - b. Board statutes and administrative rules.
5. A registrant shall report, at a minimum, the CPE hours required for the registration period.
 6. Hours that exceed the number required for the current registration period may not be carried forward to a subsequent registration period.
 7. Any CPE hours completed to vacate a suspension for nonregistration or for noncompliance with CPE requirements may not be used to meet CPE requirements for the registration period.
 8. As a prerequisite to reactivate from retired status or reinstate from cancelled, expired, relinquished or revoked status, a registrant or an applicant shall complete up to 160 hours of CPE during the four-year period immediately before application to reactivate or reinstate. For periods of less than four years CPE may be prorated by quarter, with the exception of ethics.
 - a. A registrant or an applicant shall complete a minimum of ~~50 percent of the required~~ 80 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 32 hours in the subject areas of accounting, auditing or taxation.
 - b. A registrant or an applicant shall complete a minimum of 32 hours of the required hours:
 - i. In a classroom setting,
 - ii. Through an interactive live webinar, or
 - iii. By acting as a lecturer or discussion leader in a CPE program, including college courses.
 - c. A registrant or an applicant shall complete CPE in the subject area of ethics. Four hours of ethics CPE shall be required if 1 – 24 months have passed since the last registration due date for which CPE was completed. Eight hours of ethics CPE shall be required if 25 – 48 months have passed since the last registration due date for which CPE was completed. The hours required by this subsection shall include a minimum of one hour of each of the following subjects. The following subjects shall be completed during the two-year period immediately preceding application for reactivation or reinstatement:
 - i. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants; and
 - ii. Board statutes and administrative rules.
- D. Reporting:** A registrant or an applicant for reactivation or reinstatement, a registrant who is subject to an audit, or a registrant completing their registration must report the following details about their completed CPE:
1. Sponsoring organization₂;
 2. Number of CPE credit hours₂;
 3. Title of program or description of content₂; **and**
 4. Dates attended₂;
 5. Subject, and
 6. Method.
- E.** In addition to the information required under subsection (D), a registrant or an applicant for reactivation or reinstatement from cancelled, expired, relinquished or revoked status, or a registrant subject to a CPE audit pursuant to subsection (G) shall provide the Board the following CPE records at its request: copies of transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- F. CPE Record Retention:** A registrant shall maintain CPE records for three years from the date the registration was dated as received by the Board the following documents for all CPE completed for the registration period, even if not reported on the registration: transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- G. CPE audits:** The Board, at its discretion, may conduct audits of a registrant's CPE and require that the registrant provide the CPE records that the registrant is required to maintain under subsection (F) to verify compliance with CPE requirements.
- H.** The Board may grant a full or partial exemption from CPE requirements on demonstration of good cause for a

disability for only one registration period.

- I. A non-resident registrant seeking renewal of a certificate in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a certificate in the jurisdiction in which the registrant's principal place of business is located.
 1. Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the jurisdiction in which the registrant's principal place of business is located by signing a statement to that effect on the renewal application of this state.
 2. If a non-resident registrant's principal place of business jurisdiction has no CPE requirements for renewal of a certificate or license, the non-resident registrant must comply with all CPE requirements for renewal of a certificate in this state.

R4-1-454. Peer Review

~~A. Each firm that performs attest services or compilation services shall have a peer review performed and reported on within the three years immediately preceding the firm's registration date. Each firm, review team, and member of a review team shall comply with the Standards for Performing and Reporting on Peer Reviews, issued April 2019 and published June 1, 2019 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.~~

~~1. **B.** Firms shall submit a copy of the results of their most recently accepted peer review pursuant to R4-1-345 or by a Board approved extension date to the Board which includes the following documents. A firm must allow the sponsoring organization to make the following documents accessible to the Board via the FSBA process:~~

- ~~a1. Peer review report which has been accepted by the sponsoring organization,~~
- ~~b2. Firm's letter of response accepted by the sponsoring organization, if applicable,~~
- ~~c3. Completion letter from the sponsoring organization,~~
- ~~d4. Letter(s) accepting the documents signed by the firm with the understanding that the firm agrees to take any actions required by the sponsoring organization, if applicable, and~~
- ~~e5. Letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.~~

~~2. For firms whose peer reviews are scheduled before January 1, 2018, the firm shall submit the peer review documents pursuant to R4-1-454(A)(1) to the Board prior to its next firm registration renewal via mail, electronic transmission or, if available, the AICPA Facilitated State Board Access (FSBA).~~

~~3. For firms whose peer reviews are scheduled after January 1, 2018, the firm must allow the sponsoring organization to make the documents pursuant to R4-1-454(A)(1) accessible to the Board via the FSBA process.~~

~~4. The Board may grant, upon written request and demonstration of good cause, excluding financial hardship pursuant to A.R.S. §32-701(15)(E), an extension of time for completing the peer review or submitting the peer review documents to the Board.~~

~~**B.** Only a peer reviewer or a review team approved by the sponsoring organization may conduct a peer review. In approving a peer reviewer or a review team, the sponsoring organization shall ensure that each peer reviewer or member of a review team holds a certificate or license in good standing to practice public accounting, and is not affiliated with the firm under review.~~

~~**C.** The Peer Review Oversight Advisory Committee (PROAC) shall review the peer review results to determine whether the firm is complying with the standards in subsection (J). If the results of peer review indicate that a firm is complying with the standards in subsection (J), PROAC shall recommend to the Board that it accept the firm's peer review and that the firm be notified of its compliance with this Section.~~

~~**D.** If the results of the peer review indicate that a firm is not complying with the standards in subsection (J), the Board may take disciplinary action.~~

~~**E.** If the results of the peer review suggest one or more violations of A.R.S. Title 32 Chapter 6 or Board rules, the Board may conduct or direct an authorized committee to conduct an initial analysis and take other action as authorized by A.R.S. §32-742.01.~~

~~FC.~~ Information discovered solely as a result of a peer review is not grounds for suspension or revocation of a certificate.

~~G.~~ Failure of a firm to complete a peer review under this Section may constitute grounds for disciplinary action.

~~H.~~ A firm is exempt from the requirements of this Section if the firm submits to the Board a written statement that it meets at least one of the following grounds for exemption:

~~1.~~ The firm has not previously practiced public accounting in this state, any other state, or a foreign country and the firm shall enroll in a Board approved peer review program with a peer review due date, in compliance with the peer review standards referenced in R4-1-454(J) of 18 months from the year end of the first engagement performed.

~~2.~~ The firm submits to the Board an affidavit, on a form prescribed by the Board, that states that all of the following apply:

~~a.~~ Within the previous three years, the firm did not perform any attest services or compilation services; and

~~b.~~ The firm agrees to notify the Board within 90 days after accepting an attest services or compilation services engagement and shall enroll in a Board approved peer review program with a due date, in compliance with the peer review standards referenced in R4-1-454(J) of 18 months from the year end of the initial engagement accepted.

~~ID.~~ Firms that reorganize a current firm, rename a firm, or create a new firm, within which at least one of the prior CPA owners remains an owner or employee, shall remain subject to the provisions of this Section. If a firm is merged, combined, dissolved, or separated, the sponsoring organization shall determine which resultant firm shall be considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

~~J.~~ Each firm, review team, and member of a review team shall comply with the Standards for Performing and Reporting on Peer Reviews, issued January 2009 and published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.

~~K.~~ Peer review record retention. A firm shall maintain for five years, and provide the Board upon request, the documents referenced in R4-1-454(A)(1), if applicable and however denominated, for the peer reviews required by this Section.

R4-1-455. Professional Conduct and Standards

A. It is the Board's policy that the rules governing registrants be consistent with the rules governing the accounting profession generally. Except as otherwise set forth in these regulations, registrants shall conform their conduct to the Code of Professional Conduct, published June 1, ~~2017~~ 2019 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), available from the AICPA.

B. The AICPA Code of Professional Conduct, and any interpretations and ethical rulings by the issuing body, shall apply to all registrants, including those who are not members of the AICPA. The version specified above, including any interpretations and ethical rulings in effect shall apply. Any later amendments, additions, interpretations, or ethical rulings shall not apply.

R4-1-455.01. Professional Conduct: Definitions; Interpretations

~~A.~~ Interpretation of definitions: All terms defined in A.R.S. § 32-701 et seq. shall be construed, to the extent possible, to be consistent with corresponding definitions in the professional standards adopted in R4-1-455. The foregoing notwithstanding, for purposes of R4-1-455 and the professional standards adopted therein:

~~1.~~ The term "practice of public accounting" shall be defined as set forth in A.R.S. § 32-701; and

~~2.~~ References ~~references~~ to "member" shall be to "registrant" as defined in A.R.S. § 32-701.

R4-1-456. Reporting Practice Suspensions and Violations

A. A registrant, ~~individual, or firm~~ shall report to the Board:

1. Any suspension or revocation of the right to practice accounting before the federal Securities and

- Exchange Commission, the Internal Revenue Service, or any other state or federal agency;
2. Any final judgment in a civil action or administrative proceeding in which the court or public agency makes findings of violations, by the registrant, of any fraud provisions of the laws of this state or of federal securities laws;
 3. Any final judgment in a civil action in which the court makes findings of accounting violations, dishonesty, fraud, misrepresentation, or breach of fiduciary duty by the registrant;
 4. Any final judgment in a civil action involving negligence in the practice of public accounting by the registrant; and
 5. All convictions of the registrant of any felony, or any crime involving accounting or tax violations, dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, or breach of fiduciary duty.
- B.** A registrant, ~~individual, or firm~~ required to report under subsection (A) shall make the report in the form of a written letter and ensure that the report is received by the Board within 30 days after the entry of any judgment or suspension or revocation of the registrant's right to practice before any agency. The registrant, ~~individual, or firm~~ shall ensure that the letter contains the following information:
1. Description of the registrant's activities that resulted in a suspension or revocation;
 2. Final judgment or conviction;
 3. Name of the state or federal agency that restricted the registrant's right to practice;
 4. Effective date and length of any practice restriction;
 5. Case file number of any court action, civil or criminal;
 6. Name and location of the court rendering the final judgment or conviction; and
 7. Entry date of the final judgment or conviction.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

1. Identification of the rulemaking:

Arizona Administrative Code (A.A.C.) R4-1-101 incorporates definitions contained in Arizona Revised Statutes (A.R.S.) § 32-701 and defines additional terms that are used in rule. The rule is amended to omit the definition of “Compilation services” as it is no longer needed in rule because it was placed in statute by Laws 2018, Ch. 268 (SB 1443) under A.R.S. § 32-701(8).

R4-1-104 describes Arizona State Board of Accountancy (Board) records and procedures for public access. The rule is amended to omit the term “public accountant” as it was eliminated by Laws 2018, Ch. 268 (SB 1443).

R4-1-115.03 establishes the Peer Review Oversight Advisory Committee (PROAC). The rule is amended to:

1. Conform it to Laws 2018, Ch. 268 (SB 1443) which provided the Board the power to delegate to its Executive Director the authority to approve compliance with peer review requirements;
2. Conform it with rules effective January 1, 2018, which eliminated educational enhancement reviews; and
3. Clarify that the Committee has the advisory responsibility to make a recommendation to the Board for initial analysis, where thereafter the Board can act on the Committee’s recommendation under its authority provided in A.R.S. § 32-742.01.

R4-1-226.01 outlines the Uniform Certified Public Accountant (CPA) Examination (Exam) process and requirements. It is being amended to make clarifying changes, remove an

unnecessary procedural provision, and conform the rule with existing business processes of sending Denial Orders to applicants explaining the reason for denial, the applicant's right and time period in which to challenge the denial.

R4-1-228 outlines how applicants are to receive Exam scores and how they may be reviewed or appealed. The rule is being repealed because it is not regulatory in nature and does not need to be in the rules. The information in this rule could be more appropriately located in a frequently-asked-questions webpage regarding the Exam. In lieu of this unnecessary language, a new rule is added to reiterate appeal rights for applicants whose application for examination is denied. Examination applicants are already afforded appeal rights through Title 41, Chapter 6, Article 10, and the Board's existing business processes. The addition of this rule codifies these rights in the Board's rules, similar to R4-1-344 as it relates to certification denials.

R4-1-229 clarifies how conditioned credit is earned by an applicant and how it may be transferred to Arizona from another jurisdiction¹. The rule is being amended to allow for "continuous testing" of the Exam, which allows applicants to retake a test section of the Exam once their grade for any previous attempt of the same test section during that window has been released.

R4-1-341 outlines the certification and reinstatement process and requirements. The rule is amended to:

1. Allow individuals who have accounting education and experience similar to that of a CPA to sign letters of recommendation for applicants for certification;

¹ Per A.R.S. § 32-701(18), "Jurisdiction" means, for the purposes of examination, certification, firm registration or limited reciprocity privilege, the fifty states of the United States, the District of Columbia, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands or the Commonwealth of Puerto Rico.

2. Eliminate the requirement for a certification applicant applying by substantial equivalency to provide verification that they have passed the Exam, as a license verification would provide sufficient evidence that the applicant has passed the Exam²;
3. Codify the existing firm registration process and establish an appropriate registration time frame to ensure compliance with Title 41, Chapter 6, Article 7.1;
4. Establish a firm reinstatement application fee in the amount of \$100; and
5. Reduce the licensing time frame for certification from 180 to 150-days and modify language for greater clarity and compliance with Title 41, Chapter 6, Article 7.1.

R4-1-344 outlines the appeal process for the denial of a certificate or registration. The rule is amended to clarify that applicants may also appeal the denial of a firm registration of reinstatement, pursuant to Title 41, Chapter 6, Article 10.

R4-1-345 outlines initial and renewal registration due dates and registration fees. The rule is amended to make clarifying changes and institute a temporary registration fee reduction from \$300 to \$275 for CPA registrations due during the period from July 1, 2020 to June 30, 2022.

R4-1-346 outlines change of address notice requirements and when a registrant³ should notify the Board of a new or additional office, or the closing of an existing office. The rule is amended to eliminate the requirement to notify the Board of the opening of any new or additional office, or the closing of any existing office.

R4-1-453 outlines continuing professional education (CPE) requirements. The rule is amended to make technical and clarifying changes.

² Applicants are required to provide a license verification from each jurisdiction in which the applicant has ever been issued a certificate as a CPA. All jurisdictions require the passage of the Exam as a requirement to be certified as a CPA. As such, the license verification provides evidence that demonstrates the applicant passed the Exam.

³ Per A.R.S. § 32-701(24), “Registrant” means any CPA or firm that is registered with the Board.

R4-1-454 outlines peer review requirements. The rule is amended to eliminate conflicts between the rule and the incorporated Standards for Performing and Reporting on Peer Review (Peer Review Standards) and archaic language. Amendments made to the rule will bring greater clarity, reduce confusion for CPA firms that are subject to peer review, better support CPA firms in their effort to maintain compliance and streamline the Board's administrative procedures.

R4-1-455 incorporates the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct. The rule is amended to update the incorporation by reference to the Code of Professional Conduct published on June 1, 2019.

R4-1-455.01 explains how definitions will be interpreted within the AICPA's Code of Professional Conduct. The rule is amended to conform with Laws 2018, Ch. 268 (SB 1443) which omitted the term "practice of public accounting".

R4-1-456 outlines when and how a registrant must report final judgments, convictions, and violations to the Board. The rule is amended to make technical and clarifying changes.

- a. The conduct and its frequency of occurrence⁴ that the rule is designed to change:
R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-344, R4-1-453, R4-1-455.01, and R4-1-456. Amendments are designed to make technical, conforming, or clarifying changes. Over time, rules may develop technical or conforming deficiencies due to evolving statutes and rules or previously unidentified inconsistencies. Many technical and conforming changes identified in this rulemaking are meant to omit terms no longer used by the Board and correct legal citations that are incorrect due to recently updated statutes or rules. Opportunities

⁴ A qualitative response is offered in lieu of quantitative data if it is not available or not applicable.

were also identified during the Board’s Five-Year Review Report process to clarify language.

R4-1-228. This rule outlines how applicants are to receive Exam scores and how they may be reviewed or appealed. While the rule may be helpful in terms of informing applicants of the National Association of State Board of Accountancy’s (NASBA) process, the Board has no role and it does not serve a regulatory purpose and accordingly should not be in the Board’s rules. A more appropriate location for this information would be, for example, the frequently-asked-questions webpage for examination applicants. The rule is being purposed with language that will benefit applicants for examination by better informing them of their appeal rights should their application for examination be denied.

R4-1-229. The current language does not permit applicants to retake a test section of the Exam once their grade for any previous attempt of the same test section during that window has been released. While this is not an issue at this time as the AICPA and NASBA have not yet implemented continuous testing, it will become an issue as soon as it is implemented in June 2020 as applicants would be unable to take advantage of this improvement. The Exam is offered each calendar quarter, with the months known as testing windows. The Exam is not given at the end of each calendar quarter to allow for systems and databank maintenance. A candidate can take any or all



four sections of the Exam during any testing window and in any order. However, currently an applicant cannot take the same section of the exam more than once during any one window, but this will change once continuous testing is implemented. In calendar year 2018, Arizona had 1,292 exam candidates. The positive impact

cannot be identified because the percentage of applicants that would reapply in the same testing window is unknown. The Exam is challenging, and an applicant does a lot of studying to prepare for each section of the Exam. The ability for an applicant to take the exam section sooner rather than later while their preparation is still fresh is to their benefit and aids in their effort to reach their goal to become a CPA. The target release scores do provide for ample opportunities during a testing window to retake a failed section. The following is an example of 2019 quarter one and all other quarters have similar timelines.

If an applicant takes their Exam on/before:	Their target score release date is:
January 20	February 5
February 14	February 26
February 28	March 8
March 10	March 19

R4-1-341. This rule outlines the certification and reinstatement processes and requirements. The rule currently:

1. Does not permit an applicant to submit a letter of recommendation submitted by individual who has accounting education and experience similar to that of a CPA. This is inconsistent with a similar requirement in R4-1-343 wherein certificates of experience (COE) may be signed by a CPA or an individual who has accounting education and experience similar to that of a CPA. In FY 2019, the Board received 312 exam or grade transfer type of certification applications which require a letter of recommendation. Of those, 30 or 9.6% had COE signers who were not a CPA but had accounting and experience similar to that of a CPA. Therefore, these same applicants may not know a

CPA to provide a letter of recommendation and would benefit from this rule change.

2. Requires certification applicants applying by substantial equivalency to provide verification that they have passed the Exam, even though the license verification, a separate requirement, would provide sufficient evidence to demonstrate that the applicant has passed the Exam. In FY 2019, the Board received 192 substantial equivalency type of certification applications. These applicants, which represent 37% of the total certification applications received, would benefit from this rule change.
3. Does not codify the firm registration process, which is inconsistent with processes such as examination and certification which are codified.
4. Does not have a firm reinstatement application fee.
5. Addresses licensing time frames but does not address firm registration time frames as the firm registration process has not been codified. Establishment of reasonable licensing time frames are important to ensure compliance with the requirements specified in Title 41, Chapter 6, Article 7.1. In FY 2019, the Board received 80 new applications for firm registration and 20 applications for firm reinstatement. The applicant will benefit from the licensing time frames because it provides an assurance for an expected level of service. The Board will benefit from the licensing time frames by being able to administratively close a file when an applicant fails to respond timely.

R4-1-345. This rule outlines initial and renewal registration due dates and registration fees. Amendments are designed to clarify language and institute a temporary registration fee reduction from \$300 to \$275 for CPA registrations due during the period from July 1, 2020 to June 30, 2022.

R4-1-346. This rule outlines change of address notice requirements and when a registrant should notify the Board of a new or additional office, or the closing of an existing office. The Board has identified that the requirement to report a new or additional office, or the closing of an existing office, does not serve a practical regulatory purpose at this time and should be repealed.

R4-1-454. This rule outlines the Board's peer review requirements. Amendments are designed to eliminate conflicts between the rule and Peer Review Standards. An example of such a conflict is how compliance with peer review requirements would be determined. The Peer Review Standards state that the due date for a peer review is the date by which the peer review report, and if applicable, letter of response and the peer reviewer's materials are submitted to CalCPA. The Board's rule has a much higher standard which requires the peer review report to be accepted by the sponsoring organization and if the firm has any corrective actions a letter from the sponsoring organization notifying the firm that the actions have been completed. In short, the Board's rule expects a firm to be totally through the entire peer review process within the three years immediately preceding the firm's registration date. From the Board's experience, most peer reviews will be timed in a manner that allows for compliance with the peer review program and the Board's peer review rule. However, there have been instances where a CPA firm meets the Peer Review Standards due date but not meet the Board's rule as completion of the peer review did not occur until after the CPA firm's registration date even though it was in progress at the time of the firm's registration date. The goal of the rule is to make sure that firms are enrolled and participating in peer review and are doing so consistently on a three-year cycle. The Board does not want the literal language of the rule to lead to non-compliance regulatory outcomes when a CPA firm is in compliance with the spirit of the rule. Another example of a conflict between the rule and the Peer Review

Standards are requests for peer review extensions. CPA firms must remain mindful when requesting peer review extensions that extensions made to the sponsoring organization⁵ apply solely to the sponsoring organization. If the CPA firm would like to request an extension to comply with peer review requirements of the Board, a separate request would have to be made to the Board. Though sponsoring organizations are cognizant of this and communicate accordingly to applicable CPA firms, CPA firms can still fail to request a peer review extension with the Board, which may lead to non-compliance and discipline. As such, the rule eliminates the conflict and the Board will defer to the decision making of the sponsoring organization to ensure that firms, even if they request an extension with the Board, do not get caught between differing decisions between the sponsoring organization and the Board.

R4-1-455. Amendments are designed to update the incorporation by reference of the AICPA's Code of Professional Conduct, which ensures that registrants are held accountable to the most current version of the Code of Professional Conduct.

- 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:

R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-344, R4-1-453, R4-1-455.01, and R4-1-456. If technical, conforming, and clarifying changes are not made to these rules, the rules risk being incorrect or not as comprehensive and easy to understand as they could be. The Board and registrants always benefit from a regulatory framework that remains up-to-date and effective.

⁵ Per A.A.C. R4-1-101(9), "Sponsoring organization" means a Board-approved professional society, or other organization approved by the Board responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards. Currently, the sponsoring organization for Arizona CPA firms is the California Society of CPAs (CalCPA.)

R4-1-228. If the rule is not amended as proposed, the Board risks keeping in its regulatory framework a rule that serves no regulatory purpose. Additionally, since the rule number is repurposed to fulfill a new objective, not including the new language may lead to applicants not fully understanding the appeal rights entitled to them pursuant to Title 41, Chapter 6, Article 10.

R4-1-229. If the rule is not amended to allow for continuous testing, once implemented by the AICPA and NASBA, up to 1,292 exam applicants would be unable to take advantage of a more flexible approach to complete the required Exam.

R4-1-341. If the rule is not amended as proposed:

1. Applicants' choices regarding who can draft and sign their letter of recommendation would remain restricted to CPAs only, which may serve as a disadvantage for those approximately 30 applicants who have not had the opportunity to work and/or connect with a CPA.
2. Up to approximately 200 (variable by year) certification applicants for substantial equivalency would continue to be required to provide verification that they have passed the Exam, in addition to their license verification⁶.
3. The firm registration process would remain not codified, which would be inconsistent with processes such as examination and certification which are codified in our rules (R4-1-226.01 and R4-1-341 respectively). Additionally, if the firm registration process was not codified, applicants may not fully understand what is required of them when registering a firm with the Board.

⁶ While this may not be as burdensome for some applicants due to some jurisdictions combining license and exam verification into a single form, there may be other jurisdictions that do not have the records required to provide exam verification, which could be detrimental for an applicant's application.

4. The Board would not be able to recoup the costs involved in the administrative review of firm reinstatement applications. With only 20 firm reinstatement applications in FY 2019, the amount is nominal at \$2,000. Since the Board currently regulates 1,209 firms, reinstated firms only represent 1.6% of the total firms. Most firms end up having to reinstate due to not being able to maintain firm qualifications. This most typically happens when a sole proprietorship or sole owner business organization (partnership, PC, PLLC, LLC, or LLP) fails to renew their individual CPA license and therefore their license isn't in good standing to allow the firm to meet qualifications. Therefore, the reinstatement process is largely avoidable for those individuals that simply maintain compliance with their individual registration requirements.
5. The Board would risk not being in compliance with Title 41, Chapter 6, Article 7.1, which requires the establishment of reasonable time frames to issue firm registrations.

R4-1-345. If the rule is not amended as proposed, registrants would not benefit from clarified language and CPAs would not benefit from a temporary registration fee reduction from \$300 to \$275 for registrations due during the period from July 1, 2020 to June 30, 2022. Additionally, the Board's fund balance would continue to unnecessarily grow.

R4-1-346. If paragraph B is not omitted, firms would be inconvenienced with a reporting requirement that serves no regulatory purpose.

R4-1-454. If the rule is not amended as proposed, CPA firms may receive discipline due to non-compliance with the Board's peer review requirements, even though they meet the requirements of the Peer Review Standards.

R4-1-455. Failure to update the incorporation by reference of the AICPA's Code of Professional Conduct would create confusion for registrants as they look to the current standards and not old standards for guidance. The CPA profession is constantly evolving, and standard-setting bodies make diligent efforts to modernize applicable standards to support the ability of regulators to protect the public. Updating the incorporation by reference ensures that registrants are held accountable to current standards and the public is protected.

- c. The estimated change in frequency of the targeted conduct expected from the rule change:

R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-344, R4-1-453, R4-1-455.01, and R4-1-456. It is expected that technical, conforming, and clarifying changes would produce more accurate, effective, and easier to understand rules, which benefit the Board and its registrants.

R4-1-228. Amendments are expected to remove an unnecessary rule that does not serve a regulatory purpose and replace with language that will benefit applicants for examination by better informing them of their appeal rights should their application for examination be denied.

R4-1-229. Amendments are expected to allow for continuous testing of the Exam, which will result in applicants being able to take advantage of it once implemented

by the AICPA and NASBA in June 2020. This change is pro-applicant as it provides greater flexibility to complete the Exam.

R4-1-341. Amendments are expected to:

1. Provide applicants for certification greater flexibility in terms of who can sign a letter of recommendation, which will assist applicants who may have not obtained their experience through a CPA;
2. Eliminate the requirement for certification applicants applying by substantial equivalency to provide verification that they have passed the Exam, as their license verification would provide sufficient evidence to demonstrate that the applicant has passed the Exam;
3. Better inform applicants of the firm registration process;
4. Establish a firm reinstatement application fee in the amount of \$100; and
5. Ensure better compliance with certificate and registration time frames pursuant to Title 41, Chapter 6, Article 7.1.

R4-1-345. Amendments are expected to clarify language allowing registrants to better understand requirements. Additionally, amendments would allow CPAs to benefit from a temporary registration fee reduction from \$300 to \$275 for registrations due during the period from July 1, 2020 to June 30, 2022.

R4-1-346. Amendments are expected to eliminate an unnecessary regulatory requirement, which will benefit registrants.

R4-1-454. Amendments are expected to better conform the Board's peer review rule with the Peer Review Standards which are incorporated by reference. This would benefit CPA firms as they would only have to demonstrate that they have enrolled in

peer review and met the due date of the sponsoring organization rather than demonstrating that the peer review has been accepted by the sponsoring organization or completed, if corrective action was required which will reduce disciplinary action regarding non-compliance with peer review. CPA firms would no longer have to request a peer review extension with the Board in addition to the sponsoring organization.

R4-1-455. Amendments are expected to update the AICPA's Code of Professional Conduct incorporation by reference, which will allow the Board to hold registrants accountable to current standards. This serves as a benefit to the Board and the public it protects.

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

Amendments to R4-1-229 allow for continuous testing of the Exam which will benefit applicants wishing to sit for it. Once implemented by the AICPA and NASBA, continuous testing will allow applicants to retake an exam section once their grade from their previous attempt during that window has been released. This will provide applicants additional testing opportunities which in turn provides a better chance to complete all four sections of the Exam within the required 18-month period.

Amendments to R4-1-341 will:

- Broaden the criteria of who can submit a letter of recommendation on behalf of a certification applicant from a CPA to include an individual who has accounting education and experience similar to that of a CPA. This will benefit certification applicants who may not know or who have not gained their work experience under the supervision of a CPA.
- Eliminate the requirement for a certification applicant applying by substantial equivalency to provide verification that they have passed the Exam. Applicants are required to provide a license verification from each jurisdiction in which the applicant has ever been issued a certificate as a CPA. All jurisdictions require the passage of the Exam as a requirement to be certified as a CPA. As such, the license verification provides enough evidence to demonstrate that the applicant has passed the Exam.
- Codify the Board's existing procedures regarding CPA firm registration or reinstatement requirements in rule which are required to implement A.R.S. § 32-731. It is expected to provide a benefit to firm applicants as the process will be enumerated in rule.
- Establish a firm reinstatement application fee in the amount of \$100.

- Improve compliance with administrative timeframes enumerated in Title 41, Chapter 6, Article 7.1. The updating of time frames for certification and the establishment of time frames for firm registration will benefit both the Board and its applicants. Certification applicants will receive improved customer service through reduced administrative timeframes. The establishment of administrative timeframes for CPA firms will establish expectations for both the Board and its applicants and ensure compliance with Title 41.

Amendments to R4-1-345 to implement a temporary registration fee reduction of \$25 will benefit CPAs submitting biennial renewals and reduce Board revenues and its fund balance. No additional FTE's will be necessary to implement this rule but there will be opportunity costs in that human resources will be tasked with the implementation of this rule rather than other Board projects. The temporary fee reduction will have a biennial fiscal impact through reduced biennial registration revenue in the amount of approximately \$260,000 for fiscal years 2021 and 2022.

Amendments to R4-1-454 will benefit both the Board and CPA firms subject to peer review. The amendments eliminate a myriad of conflicts between the rule and the Peer Review Standards. The result is that CPA firms will follow a single peer review administration process which will assist firms with staying in compliance with peer review requirements. The Board will benefit from more streamlined administrative procedures.

Amendments to R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-344, R4-1-346, R4-1-453, R4-1-455, R4-1-455.01, R4-1-456, and the repeal and assignment of a new section to R4-1-228 are not expected to have any economic, small business or consumer impact. Most changes to these rules are technical, conforming, or clarifying in nature, or remove unnecessary regulatory requirements. Members of the public, registrants, and the Board will

benefit from increased clarity in the rules. Registrants will benefit from the removal of unnecessary regulatory requirements.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Monica L. Petersen, Executive Director
Address: Board of Accountancy, 100 N. 15th Ave., Suite 165, Phoenix, AZ 85007
Telephone: (602) 364-0870
Fax: (602) 364-0903
E-mail: mpetersen@azaccountancy.gov
Website: www.azaccountancy.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-344, R4-1-453, R4-1-455.01, and R4-1-456. The Board, registrants, and applicants will be directly affected by and benefit from the technical, conforming, and clarifying changes proposed in these rules. The Board, registrants, and applicants benefit from a regulatory framework that is comprehensive, accurate, and easy to understand

R4-1-228. The Board and applicants will be directly affected from the proposed rule changes. The Board will benefit from the removal of a rule that does not serve a regulatory purpose and applicants will benefit from language that better clarifies an applicant's right to appeal the Board's decision for denial to sit for the Exam.

R4-1-229. Applicants will be directly affected by and benefit from the Board allowing for continuous testing, once implemented by the AICPA and NASBA. Continuous testing will

allow applicants to retake a test section of the Exam once their grade for any previous attempt of the same test section during that window has been released. This change would provide applicants greater flexibility to complete the Exam within the required 18-month period.

R4-1-341. The Board and applicants will be directly affected by amendments proposed in this rule:

1. Proposed changes in R4-1-341(A)(2)(c) related to letters of recommendation will benefit certification applicants who may not know or who have not gained their work experience under the supervision of a CPA, as such applicants would have not been able to submit a letter of recommendation signed by an individual who has accounting education and experience similar to that of a CPA. The Board will benefit from this change by ensuring that similar certification requirements (e.g. certificates of experience and letters of recommendation) are consistent with each other.
2. Proposed changes in R4-1-341(A)(3)(a) related to Exam verifications will benefit certification applicants applying by substantial equivalency as such applicants would no longer be required to submit additional documentation, separate from their license verification, to demonstrate that they have completed the Exam. This is especially beneficial for applicants who were licensed in another jurisdiction wherein exam grade records have been purged. All jurisdictions require the passage of the Exam as a requirement to be certified as a CPA. As such, the license verification provides enough evidence to demonstrate that the applicant has passed the Exam.
3. Proposed changes in R4-1-341(B) and (C) related to the firm registration process and time frame will benefit the Board and applicants. The Board will benefit from codifying its firm registration process, which is currently absent from its rules, and from better compliance with Title 41, Chapter 6, Article 7.1 by establishing a time frame for firm registration. Applicants will benefit from being able to better

understand the Board's firm registration process and from knowing time frames for firm registration.

4. The Board will benefit through the ability to recoup some of its administrative costs relating to processing firm reinstatement applications. Those few applicants wishing to reinstate their firm's registration will bare the cost of the reinstatement application fee.
5. Proposed changes in R4-1-341(C) related to the certification time frame will benefit the Board and applicants. The Board will benefit from a shortened certification time frame which will allow for better compliance with Title 41, Chapter 6, Article 7.1. Applicants will benefit from a shortened certification time frame⁷.

R4-1-345. The Board and registrants will be directly affected by the proposed amendments. The Board and registrants will benefit from clarified language in the rule regarding registration renewal time periods for firms. CPAs will also financially benefit from a temporary registration fee reduction from \$300 to \$275 for registrations due during the period from July 1, 2020 to June 30, 2022. The Board will bear the costs of the temporary registration fee reduction through reduced biennial registration revenue in the amount of approximately \$260,000 for fiscal years 2021 and 2022 as well as the associated opportunity costs in implementing this provision.

R4-1-346. The Board and registrants will be directly affected by the removal of paragraph B from this rule. The Board will benefit from the removal of a requirement that has no regulatory purpose and therefore should be removed. Registrants will benefit from no longer having to notify the

⁷ Rarely does the certification process require the full time frame for completion. Due to authority delegated by the Board to the Executive Director per Laws 2018, Ch. 268 (SB 1443) to approve applicants recommended for approval, it often takes less time for the process to come to a conclusion. This is because the time frames are designed to consider situations where applications may be recommended for denial, and therefore must be presented to the Board, or if unforeseen circumstances occur that cause delay for review and consideration.

Board within 30 days of the opening of any new or additional office, or the closing of any existing office.

R4-1-454. The Board and CPA firms subject to peer review will be directly affected by the proposed amendments. The Board and applicable CPA firms will benefit from a rule that is simplified and does not conflict with Peer Review Standards. The Board will benefit from streamlined administrative processes and applicable CPA firms will benefit from being able to more easily maintain compliance with peer review requirements.

R4-1-455. The Board, registrants, and the public at large will be directly affected by updating the incorporation by reference of the AICPA's Code of Professional Conduct. The Board will benefit from being able to hold registrants accountable to the most current version of the AICPA's Code of Professional Conduct, which directly ties to the Board's mission to protect the public⁸. As this change will assist the Board in better fulfilling its mission, the public will also benefit from the more effective protection. Registrants will be affected by being held accountable to these more current standards.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by this rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above. The Board will not require a new full-time employee to implement and enforce the rulemaking, but there

⁸ Per A.R.S. § 32-703(A), the primary duty of the Board is to protect the public from unlawful, incompetent, unqualified, or unprofessional CPA through certification, regulated, and rehabilitation.

will be opportunity costs in that human resources will be tasked with the implementation of this rule rather than other Board initiatives.

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

No political subdivision is directly affected by this rulemaking.

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

Businesses that are registered with the Board as CPA firms will be directly affected by the rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above. No other businesses are expected to be affected by this rulemaking.

6. Impact on private and public employment:

The Board expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses:

a. Identification of the small business subject to the rulemaking:

Similar to Item 5.c, small businesses that are registered with the Board as CPA firms (Small Business CPA Firms) will be directly affected by the rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above.

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

Small Business CPA Firms whose firm registrations are cancelled, expired, relinquished, or revoked may be affected by the firm reinstatement application fee, should they choose to reinstate their firm's registration.

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

As noted in question 1.b related to R4-1-341, most firms end up having to reinstate due to not being able to maintain firm qualifications. This most typically happens when a sole proprietorship or sole owner business organization (partnership, PC, PLLC, LLC, or LLP) fails to renew their individual CPA license and therefore their license is not in good standing to allow the firm to meet qualifications. Therefore, the reinstatement process is largely avoidable for those individuals that simply maintain compliance with their individual registration requirements.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

Private persons that are certified with the Board as a CPA or plan to apply to sit for the Exam or obtain certification will be directly affected by the rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above.

Individuals who are not certified with the Board as CPAs but have accounting education and experience similar to that of a CPA, will now be able to sign letters of recommendation for applicants.

As shared in Item 4 regarding R4-1-455, the public, which includes consumers, will benefit from registrants being held accountable to current standards.

9. Probable effects on state revenues:

As shared in Item 4 regarding R4-1-345, the Board anticipates that the temporary registration fee reduction will result in reduced biennial registration revenue in the amount of approximately \$260,000 for fiscal years 2021 and 2022.

All other amendments are not expected to affect state revenues.

10. Less intrusive or less costly alternative methods considered:

The Board believes this is the least costly and least intrusive method. Most changes are either technical, conforming, or clarifying in nature, or they reduce regulatory burdens.

11. Description of data used:

a. Data regarding effects of temporary registration fee reduction on state revenue

This data was compiled by estimating the population of CPAs that would be eligible for the temporary registration fee reduction over the span of fiscal years 2021 and 2022 and applicable revenue and multiplying that population by the applicable fee. The data accounts for three scenarios: the fees as they are today, the fees reduced by 8.3%, and the difference between the two scenarios. The data is empirical, replicable, and testable, as the information was gathered and compiled in the course of normal business.

Arizona Administrative CODE

4 A.A.C. 1 Supp. 18-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2018 through December 31, 2018

Title 4



ARD Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

[R4-1-226.01. Applications; Examination - Computer-based 7](#) [R4-1-453. Continuing Professional Education 12](#)
[R4-1-343. Education and Accounting Experience 10](#)

Questions about these rules? Contact:

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The release of this Chapter in Supp. 18-4 replaces Supp. 17-4, 16 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

Authority: A.R.S. § 32-701 et seq.

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CHAPTER 1. BOARD OF ACCOUNTANCY

ARTICLE 1. GENERAL

R4-1-101. Definitions

- A.** The definitions in A.R.S. § 32-701 apply to this chapter.
- B.** In this chapter, unless the context otherwise requires:
1. "Compilation services" means services, the objective of which is defined in Section 80.04 of the Statement on Standards for Accounting and Review Services No. 21, issued October 2014 and published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.
 2. "Contested case" means any proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by any agency after an opportunity for hearing.
 3. "CPE" or "continuing professional education" means attending classes, writing articles, conducting or teaching courses, and taking self-study courses if the activities contribute to maintaining and improving of professional competence in accounting.
 4. "Facilitated State Board Access (FSBA)" means the sponsoring organization's process for providing the Board access to peer review results via a secured website.
 5. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled, as of right, to be admitted as a party.
 6. "Peer review" means an assessment, conducted according to R4-1-454(J), of one or more aspects of the professional work of a firm.
 7. "Peer review program" means the sponsoring organization's entire peer review process, including but not limited to the standards for administering, performing and reporting on peer reviews, oversight procedures, training, and related guidance materials.
 8. "Person" may include any individual, and any form of corporation, partnership, or professional limited liability company.
 9. "Sponsoring organization" means a Board-approved professional society, or other organization approved by the Board responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards.
 10. "Upper level course" means a course taken beyond the basic level, after any required prerequisite or introductory accounting course and does not include principals of accounting or similar introductory accounting courses.

Historical Note

Former Rule 1A; Amended effective February 22, 1978 (Supp. 78-1). Former Section R4-1-01 renumbered as Section R4-1-101 without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-102. Powers of the Board: Applicability; Excuse; Extension

- A.** This chapter applies to all actions and proceedings of the Board and is deemed part of the record in every action or proceeding without formal introduction or reference. All parties are deemed to have knowledge of this chapter, which the Board shall make available on the Board's website.
- B.** The Board, when within the Board's jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with any part of this chapter.
- C.** The Board, or in case of an emergency, the President or Executive Director, when within the Board's jurisdiction, may grant an extension of time to comply with this chapter.

Historical Note

Former Rules 1B, 1C, 1D, 1E; Former Section R4-1-02 renumbered as Section R4-1-102 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-103. Repealed**Historical Note**

Former Rule 2E; Former Section R4-1-03 renumbered as Section R4-1-103 without change effective July 1, 1983 (Supp. 83-4). Repealed effective August 21, 1986 (Supp. 86-4).

R4-1-104. Board Records; Public Access; Copying Fees

- A.** The Board shall maintain all records, subject to A.R.S. Title 39, Chapter 1, reasonably necessary or appropriate to maintain an accurate knowledge of the Board's official activities including, but not limited to:
1. Applications for C.P.A. and P.A. certificates and supporting documentation and correspondence;
 2. Applications to take the Uniform Certified Public Accountant Examination;
 3. Registration for registrants;
 4. Documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a certificate; and;
 5. Investigative reports; staff memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.
- B.** Except as provided in R4-1-105, all records of the Board are available for public inspection and copying as provided in this Section.
- C.** Any person desiring to inspect or obtain copies of records of the Board available to the public under this section shall make a request to the Board's Executive Director or the Director's designee. The Executive Director or the director's designee shall, as soon as possible within a reasonable time, advise the person making the request whether the records sought can be made available, or, if the Executive Director or the director's designee is unsure whether a record may be made available for public inspection and copying, the Executive Director or the director's designee shall refer the matter to the Board for final determination.
- D.** A person shall not remove original records of the Board from the office of the Board unless the records are in the custody and control of a board member, a member of the Board's committees or staff, or the Board's attorney. The Executive Director or the director's designee may designate a staff member to observe and monitor any examination of Board records.
- E.** The Board shall provide copies of all records available for public inspection and copying shall be provided according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.

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- F. Any person aggrieved by a decision of the Executive Director or the director's designee denying access to records of the Board may request a hearing before the Board to review the action of the Executive Director or the director's designee by filing a written request for hearing. Within 60 days of receipt of the request, the Board shall conduct a hearing on the matter. If the person requires immediate access to Board records, the person may request and may be granted an earlier hearing, if the person sets forth sufficient grounds for immediate access.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1).
Amended effective February 22, 1978 (Supp. 78-1).
Amended effective July 17, 1978 (Supp. 78-4). Former Section R4-1-04 renumbered as Section R4-1-104 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-105. Confidential Records

- A. Complaints, reports, photographs, transcripts, correspondence and other documents relating to an investigation by the Board of possible violations of the Arizona State Board of Accountancy statutes or this chapter shall not be made available for public inspection and copying, except that investigative records shall be made available for public inspection and copying when a civil enforcement or disciplinary proceeding against the person who is the subject of the investigation is instituted.
- B. Correspondence between the Board, members of the Board or staff members, or members of the Board's committees and the Board's attorney shall not be made available for public inspection and copying.
- C. An examinee's scores on the Uniform Certified Public Accountant Examination shall not be made available for public inspection and copying, except that the Board may disclose the identity of those who pass the examination after the date set by it for the release of scores.
- D. Letters of reference received in connection with applications for certificates shall not be made available for public inspection and copying.
- E. Resumes, employment applications, personnel evaluations and injury reports regarding employees of the Board or applicants for employment shall not be made available for public inspection and copying, except that the records shall be disclosed as directed by the employee or applicant concerned.
- F. Minutes of executive sessions of the Board and its advisory committees and executive session agendas containing confidential information shall not be made available for public inspection or copying.
- G. The Board may, in the case of a record not otherwise made confidential by this Section, order that the record not be made available for public inspection or copying whenever the Board determines that public disclosure of the record would have a significant and adverse effect on the Board's ability to perform its duties or would otherwise be detrimental to the best interests of the state.
- H. Notwithstanding subsections (A) through (G), the Board may order that any record of the Board made confidential under this Section be made available for public inspection and copying when it determines that the reasons justifying the confidentiality of the record no longer exist.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R4-1-05 renumbered as Section R4-1-105 and amended in subsections (C) and (D) effective July 1,

1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-106. Reserved**R4-1-107. Reserved****R4-1-108. Reserved****R4-1-109. Reserved****R4-1-110. Reserved****R4-1-111. Reserved****R4-1-112. Reserved****R4-1-113. Meetings**

The Board and Board committees shall conduct meetings in accordance with the current edition of Robert's Rules of Order if the rules are compatible with the laws of the state of Arizona or the Board's own resolutions regarding meetings.

1. Regular and special meetings of the Board for the purpose of conducting business shall be called by the President or a majority of the board members.
2. Regular and special meetings of the committees shall be called by the chairperson or a majority of the committee members.

Historical Note

Former Rules 2A, 2B, 2C, 2D; Former Section R4-1-13 renumbered as Section R4-1-113 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-114. Hearing; Rehearing or Review

- A. Hearing: The Board or an Administrative Law Judge (ALJ) employed by the Office of Administrative Hearings (OAH) shall hear all contested cases and appealable agency actions. The Board shall conduct hearings according to the provisions of A.R.S. Title 41, Chapter 6, Article 10 as supplemented by R4-1-117. The OAH shall conduct hearings according to A.R.S. Title 41, Chapter 6, Article 10 and the rules and procedures established by the OAH. To the extent that there is no conflict with A.R.S. Title 41, Chapter 6, Article 10, the provisions of A.R.S. § 32-743 apply to hearings conducted by the Board and the OAH. The following subsections apply to hearings conducted by the Board and hearings conducted by the OAH where applicable.
1. Power to join any interested party: Any board member or the ALJ may join as a party applicant or as a party defendant, any person, firm or corporation, that appears to have an interest in the matter before the Board.
 2. Stipulation at hearing: The parties may stipulate to facts that are not in dispute. The stipulation may be in writing or may be made orally by reading the stipulation into the record at the hearing. The stipulation is binding upon the parties unless the Board or the ALJ grants permission to withdraw from the stipulation. The Board or the ALJ may set aside any stipulation.
 3. Settlements and consent orders: At any time before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of conditional settlement to avoid formal disciplinary proceedings by the Board. In the offer of conditional settlement, the registrant shall agree to take specific remedial steps such as enrolling in CPE courses,

CHAPTER 1. BOARD OF ACCOUNTANCY

limiting the scope of the registrant's practice, accepting limitation on the filing of public reports, and submitting the registrant's work product for peer review. If the Board determines that the proposed conditional settlement will protect the public safety and welfare and is more likely to rehabilitate or educate the registrant than formal disciplinary action under A.R.S. § 32-741, the Board may accept the offer and enter an order that incorporates the registrant's proposed conditional settlement and to which the registrant consents. A consent order issued under this subsection shall provide that, upon successful compliance by the registrant with all provisions of the order, the disciplinary proceedings shall be terminated and any notice of hearing previously issued shall be vacated. The consent order shall further provide that, upon failure of the registrant to comply with all provisions of the order, or upon the discovery of material facts unknown to the Board at the time the Board issued the order, formal disciplinary proceedings against the registrant may be instituted or resumed. The consent order additionally may provide that, upon failure of the registrant to comply with all provisions of the order, the Board may immediately and summarily suspend the registrant's certificate for not more than one year. Within 30 days after the summary suspension, the registrant may request a hearing solely concerning the issue of compliance with the consent order.

4. Decisions and orders: The Board shall make all decisions and orders by a majority vote of the members considering the case. The Board shall issue a final written decision in a contested case or state the decision on the record. The decision shall state separately the findings of fact and conclusions of law on which the decision is based, and the Board's order to implement the decision. All written decisions and orders of the Board shall be signed by the President or Secretary of the Board. When the Board suspends or revokes the certificate of a registrant, the Board may order the registrant to return the registrant's certificate within 30 days after receipt of the order. The Board shall serve each party, each attorney of record, and the Attorney General with a copy of each decision or order of the Board, as provided in R4-1-117.
- B. ALJ: In hearings conducted by the OAH, the ALJ shall provide the Board with written findings of fact, conclusions of law, and a recommended order within 20 days after the conclusion of the hearing or as otherwise provided by A.R.S. Title 41, Chapter 6, Article 10. The Board's decision approving or modifying the ALJ's recommendations is the final decision of the Board, subject to the filing of a motion for rehearing or review as provided in subsection (C).
- C. Rehearing or Review: Any party aggrieved by a decision of the Board may file with the Board a written motion for rehearing or review within 30 days after service of the decision specifying the particular grounds for the motion. The Attorney General may file a response to the motion for rehearing within 15 days after service of the motion. The Board may require the filing of written briefs upon issues raised in the motion for rehearing or review and provide for oral argument. Upon review of the documents submitted, the Board may modify the decision or vacate it and grant a rehearing for any of the following causes materially affecting a party's rights:
 1. Irregularity in the administrative proceedings or any order or abuse of discretion, that deprived a party of a fair hearing;
 2. Misconduct of the Board or the ALJ;

3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence, that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing, or during the progress of the proceeding; or
7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

Historical Note

Former Rules 5A, 5B, 5C; Amended effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Former Section R4-1-14 renumbered as Section R4-1-114 without change effective July 1, 1983 (Supp. 83-4). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115. Accounting and Auditing and Tax Advisory Committees

- A. The Board may appoint advisory committees concerning accounting reports, taxation and other areas of public accounting as the Board deems appropriate. The committees shall evaluate investigation files referred by the Board, hold voluntary informal interviews and make advisory recommendations to the Board concerning settlement, dismissal or other disposition of the reviewed matter.
- B. The Board, in its discretion, may accept, reject, or modify the recommendation of the advisory committee.

Historical Note

Adopted effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.01. Law Review Advisory Committee

- A. The Board may appoint an advisory committee to assist in the evaluation of statutory and regulatory provisions. The committee shall make advisory recommendations to the Board.
- B. The Board, in its discretion, may accept, reject, or modify the recommendations of the advisory committee.

Historical Note

Adopted effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.02. Continuing Professional Education Advisory Committee

- A. The Board may appoint an advisory committee to assist in the evaluation of CPE. The committee shall make advisory recommendations to the Board concerning the following:
 1. CPE programs;
 2. A registrant's satisfaction of CPE requirements; and
 3. A registrant's compliance with disciplinary orders requiring CPE.
- B. The Board, in its discretion, may accept, reject, or modify the recommendations of the advisory committee.

Historical Note

Adopted effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.03. Peer Review Oversight Advisory Committee

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- A. The Board may appoint an advisory committee to monitor and conduct the peer review program. Upon appointment the committee shall:
1. Advise the Board on matters relating to the peer review program;
 2. Report to the Board on effectiveness of the peer review program;
 3. Provide the Board with a list of firms that have met the peer review requirements;
 4. Update the Board on the status of participating firms' noncompliance with the requirements of R4-1-454;
 5. Maintain documents in a manner that preserves the confidentiality of persons, including information pertaining to a specific business organization which may be disclosed to the committee during the course of its business; and
 6. Report to the Board and obtain approval of any modification to the peer review program.
- B. The Board may accept, reject, or modify recommendations of the Peer Review Oversight Advisory Committee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004 (04-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.04. Certification Advisory Committee

- A. The Board may appoint an advisory committee to assist in the evaluation of applicants for the Uniform Certified Public Accountant Examination and for certified public accountant. The committee shall review applications, transcripts, and related materials, and make advisory recommendations to the Board concerning the qualifications of applicants for the Uniform Certified Public Accountant Examination and for certification of certified public accountants.
- B. The Board, in its discretion, may accept, reject, or modify the advisory recommendation in determining the qualifications of applicants.

Historical Note

New Section R4-1-115.04 renumbered from R4-1-116 and amended by final rulemaking, effective February 4, 2014 (Supp. 14-1).

R4-1-116. Renumbered**Historical Note**

Adopted effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Section R4-1-116 renumbered to R4-1-115.04 by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-117. Procedure: Witnesses; Service

- A. Pleadings; depositions; briefs; and related documents. A party shall print or type all pleadings, depositions, briefs, and related documents and use only one side of the paper.
- B. Witness' depositions. If a party wants to take the oral deposition of a witness residing outside the state, the party shall file with the Board a petition for permission to take the deposition stating the name and address of the witness and describing in detail the nature and substance of the testimony expected to be given by the witness. The petition may be denied if the testimony of the witness is not relevant and material. If the petition is granted, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure. The party applying to the Board for permission to take a deposition shall bear the expense of the deposition.
- C. Witness' interrogatories. A party desiring to take the testimony of a witness residing outside the state by means of interrogato-

ries may do so by serving the adverse party as in civil matters and by filing with the Board a copy of the interrogatories and a statement showing the name and address of the witness. The adverse party may file in duplicate cross-interrogatories with a copy of the statement within 10 days following service on the adverse party. A party that objects to the form of an interrogatory or cross-interrogatory may file a statement of the objection with the Board within five days after service of the interrogatories or cross-interrogatories and may suggest to the Board any amendment to an interrogatory or cross-interrogatory. The Board may amend, add, or strike out an interrogatory or cross-interrogatory when the Board determines it is proper to do so.

1. Notwithstanding the fact that a party may petition for permission to take the oral deposition of a witness, the Board may require that the information be provided through written interrogatories and vice versa.
2. A party shall provide a copy of answers to the interrogatories to the Board within 45 days after the interrogatories are answered.

- D. Subpoenas. The Board officer presiding at a hearing may authorize subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and shall administer oaths. A party desiring the Board to issue a subpoena for the production of evidence, documents or to compel the appearance of a witness at a hearing shall apply for the subpoena in writing stating the substance of the witness's testimony. If the testimony appears to be relevant and material, the Board shall issue the subpoena. Affixing the seal of the Board and the signature of a Board officer is sufficient to show that the subpoena is genuine. The party applying for the subpoena shall bear the expense of service.

E. Service.

1. Service of any decision, order, subpoena, notice, or other document may be made personally in the same manner as a summons served in a civil action. If a document is served personally, service is deemed complete at the time of delivery.
2. Except as provided in subsection (E)(5), service of any document may also be made by personal service or by enclosing a copy of the document in a sealed envelope and depositing the envelope in the United States mail, with first-class postage prepaid, addressed to the party, at the address last provided to the Board.
3. Service by mail is deemed complete when the document to be served is deposited in the United States mail. If the distance between the place of mailing and the place of address is more than 100 miles, service is deemed complete one day after the deposit of the document for each 100 miles to a maximum of six days after the date of mailing.
4. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted. If the last day falls on a Sunday or holiday, that day is not counted and service is considered completed on the next business day.
5. The Board shall mail each notice of hearing and final decision by certified mail to the last known address reflected in the records of the Board.
6. Service on attorney. Service on an attorney who has appeared for a party constitutes service on the party.
7. Proof of service. A party shall demonstrate proof of service by filing an affidavit, as provided by law, proof of mailing by certified mail, or an affidavit of first-class mailing.

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Historical Note

Former Rules 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D; Amended effective January 3, 1977 (Supp. 77-1). Former Section R4-1-15 renumbered as Section R4-1-117 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-118. Repealed**Historical Note**

Former Rule 8; Amended effective January 3, 1977 (Supp. 77-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-16 renumbered as Section R4-1-118 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 1, 1995 (Supp. 95-4). Repealed by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

ARTICLE 2. CPA EXAMINATION

- R4-1-201. Reserved
- R4-1-202. Reserved
- R4-1-203. Reserved
- R4-1-204. Reserved
- R4-1-205. Reserved
- R4-1-206. Reserved
- R4-1-207. Reserved
- R4-1-208. Reserved
- R4-1-209. Reserved
- R4-1-210. Reserved
- R4-1-211. Reserved
- R4-1-212. Reserved
- R4-1-213. Reserved
- R4-1-214. Reserved
- R4-1-215. Reserved
- R4-1-216. Reserved
- R4-1-217. Reserved
- R4-1-218. Reserved
- R4-1-219. Reserved
- R4-1-220. Reserved
- R4-1-221. Reserved
- R4-1-222. Reserved
- R4-1-223. Reserved
- R4-1-224. Reserved
- R4-1-225. Reserved
- R4-1-226. Expired

Historical Note

Former Rules 6A, 6B, 6C; Amended effective January 15, 1976 (Supp. 76-1). Amended effective December 1, 1976 (Supp. 76-5). Amended effective July 17, 1978 (Supp. 78-4). Amended effective November 5, 1980

(Supp. 80-5). Former Section R4-1-26 renumbered as Section R4-1-226 and amended in subsections (B) and (C) effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended subsection (C) effective May 25, 1989 (Supp. 89-2). Amended effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 4575, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4815, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 372, effective December 31, 2008 (Supp. 09-1).

R4-1-226.01. Applications; Examination - Computer-based

- A.** A person desiring to take the Uniform Certified Public Accountant Examination who is qualified under A.R.S. § 32-723 may apply by submitting an initial application. A person whose initial application has already been approved by the Board to sit for the Uniform CPA Examination may apply by submitting an application for re-examination.
1. The requirements for initial application for examination are:
 - a. A completed application for initial examination,
 - b. A \$100 initial application fee if:
 - i. The applicant has not previously filed an application for initial examination in Arizona, or
 - ii. The Board administratively closed a previously submitted application, or
 - iii. The applicant has been previously denied by the Board.
 - c. University or college transcripts to verify that the applicant meets the educational requirements and if necessary for education taken outside the United States an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES).
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 2. The requirements for application for re-examination are:
 - a. A completed application for re-examination, and
 - b. A \$50 re-examination application fee.
- B.** Within 30 days of receiving an initial application, board staff shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing. The applicant has 30 days from the date of the Board's letter to respond to the Board's request for additional information or the Board or its designee may administratively close the file. An applicant whose file is administratively closed and who later wishes to apply shall reapply under subsection (A)(1).
- C.** The Board's certification advisory committee (CAC) shall evaluate the applicant's file and make a recommendation to the Board to approve or deny the application. The CAC may defer a decision on the applicant's file to a subsequent CAC meeting to provide the applicant opportunity to submit any information requested by the CAC that the CAC believes is relevant to make a recommendation to the Board. The applicant has 30 days from the date of the Board's letter to respond to the CAC's request for additional information or the Board or its designee may administratively close the file. If the CAC recommends approval, the application shall be put on a future board meeting agenda for consent. If the CAC recommends

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denial, the application will be put on a future board meeting agenda and the CAC shall provide the Board with the reasons for the recommendation of denial.

- D.** If the Board approves the application, the Board shall notify the applicant in writing and send an authorization to test (ATT) to the National Association of State Boards of Accountancy (NASBA) to permit the applicant to take the specified section or sections of the examination for which the applicant applied. If the Board denies the application, the Board shall notify the applicant in writing of the reasons the application was denied.
- E.** If the applicant does not timely pay to the NASBA the fees owed for the examination section or sections for which the applicant applied, the ATT expires. An applicant that still wishes to take a section or sections of the Uniform CPA Examination shall submit an application for reexamination under subsection (A)(2).
- F.** After an applicant has paid NASBA, NASBA shall issue a notice to schedule (NTS) to the applicant. A NTS enables an applicant to schedule testing at an approved examination center. The NTS is effective on the date of issuance and expires when the applicant sits for all sections listed on the NTS or six months from the date of issuance, whichever occurs first. Upon written request to the Board and showing good cause that prevents the applicant from appearing for the examination, an applicant may be granted by the Board a one-testing-window extension to a current NTS.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 24 A.A.R. 3413, effective February 4, 2019 (Supp. 18-4).

R4-1-227. Repealed**Historical Note**

Former Rule 6D; Amended effective July 17, 1978 (Supp. 78-4). Former Section R4-1-27 renumbered and amended as Section R4-1-227 effective July 1, 1983 (Supp. 83-4). Section R4-1-227 repealed effective November 20, 1998 (Supp. 98-4).

R4-1-228. Examination Scores; Review and Appeal of Scores

- A.** The National Association of State Boards of Accountancy (NASBA) shall mail or email examination scores to each applicant based upon the applicant's contact preference.
- B.** Examination scores
1. An applicant may request a score review by submitting NASBA'S CPA Examination Score Review form to NASBA.
 2. An applicant may appeal an exam score by submitting NASBA's CPA Examination Score Appeal form to NASBA.

Historical Note

Former Rules 6E, 6F; Former Section R4-1-28 renumbered as Section R4-1-228 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-229. Conditioned Credit

- A.** An applicant is allowed to sit for each section individually and in any order.
1. An applicant is given conditioned credit for each section of the examination passed. A conditioned credit is valid for 18 months.

2. The applicant shall not retake a failed section in the same examination window. An examination window is the three-month period in which the applicant has an opportunity to take an examination section or sections.

- B.** Transfer of conditioned credit. The Board shall give an applicant credit for all sections of an examination passed in another jurisdiction if the credit has been conditioned. If an applicant transfers conditioned credit from another jurisdiction, the applicant shall pass the remaining sections of the examination within the 18-month period from the date that the first section was passed. An applicant who fails to pass all sections of the Uniform CPA Examination within 18 months shall retake previously passed sections of the Uniform CPA Examination to ensure passage of all sections within an 18-month period.

Historical Note

Former Rules 6G, 6H; Former Section R4-1-29 renumbered as Section R4-1-229 without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Section repealed, new Section adopted effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-230. Expired**Historical Note**

Former Rule 6I; Former Section R4-1-30 renumbered as Section R4-1-230 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 372, effective December 31, 2008 (Supp. 09-1).

R4-1-231. Expired**Historical Note**

Former Rule 6J; Former Section R4-1-31 renumbered as Section R4-1-231 without change effective July 1, 1983 (Supp. 83-4). Section repealed, new Section adopted effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 419, effective December 31, 2003 (Supp. 04-1).

ARTICLE 3. CERTIFICATION AND REGISTRATION**R4-1-301. Reserved****R4-1-302. Reserved****R4-1-303. Reserved****R4-1-304. Reserved****R4-1-305. Reserved****R4-1-306. Reserved****R4-1-307. Reserved****R4-1-308. Reserved****R4-1-309. Reserved****R4-1-310. Reserved****R4-1-311. Reserved**

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- R4-1-312. Reserved
- R4-1-313. Reserved
- R4-1-314. Reserved
- R4-1-315. Reserved
- R4-1-316. Reserved
- R4-1-317. Reserved
- R4-1-318. Reserved
- R4-1-319. Reserved
- R4-1-320. Reserved
- R4-1-321. Reserved
- R4-1-322. Reserved
- R4-1-323. Reserved
- R4-1-324. Reserved
- R4-1-325. Reserved
- R4-1-326. Reserved
- R4-1-327. Reserved
- R4-1-328. Reserved
- R4-1-329. Reserved
- R4-1-330. Reserved
- R4-1-331. Reserved
- R4-1-332. Reserved
- R4-1-333. Reserved
- R4-1-334. Reserved
- R4-1-335. Reserved
- R4-1-336. Reserved
- R4-1-337. Reserved
- R4-1-338. Reserved
- R4-1-339. Reserved
- R4-1-340. Reserved
- R4-1-341. CPA Certificates; Reinstatement**
- A. An applicant may apply for a certificate of certified public accountant or for reinstatement by submitting:
1. An application fee of \$100; and
 2. For an applicant applying for certification under A.R.S. § 32-721(A) and (B), a completed application including:
 - a. Verification that the applicant passed the Uniform CPA Examination,
 - b. Verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. One signed and dated letter of recommendation by a CPA,
 - d. Proof of a score of at least 90% on the American Institute of Certified Public Accountants (AICPA) examination in professional ethics taken within the two years immediately before the application is submitted,
 - e. Evidence of lawful presence in the United States, and
- f. Other information or documents requested by the Board to determine compliance with eligibility requirements.
3. For an applicant applying for certification under A.R.S. § 32-721(A) and (C), a completed application including:
 - a. Verification that the applicant passed the Uniform CPA Examination or the International Qualification Examination (IQEX),
 - b. License verification from each jurisdiction in which the applicant has ever been issued a certificate as a certified public accountant of which at least one must be an active certification from a jurisdiction with requirements determined by the Board to be substantially equivalent to the requirements in A.R.S. § 32-721(B) or verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 4. For an applicant applying for certification under A.R.S. § 32-721(A) and (D) for mutual recognition agreements adopted by the Board a completed application including:
 - a. Verification that the applicant has passed the International Qualification Examination (IQEX),
 - b. License verification from the applicant's country which has a mutual recognition agreement with the National Association of State Boards of Accountancy that has been adopted by the Board,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 5. For an applicant applying for reinstatement from cancelled or expired status under A.R.S. §§ 32-730.02 or 32-730.03 respectively a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(6) and (E), and
 - b. Evidence of lawful presence in the United States.
 6. For an applicant applying for reinstatement from revoked or relinquished status under A.R.S. §§ 32-741.03 or 32-741.04 respectively a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(6) and (E),
 - b. Evidence of lawful presence in the United States,
 - c. If not waived by the Board as part of a disciplinary order, evidence from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution that the individual has completed at least one hundred fifty semester hours of education as follows:
 - i. At least 36 semester hours are accounting courses of which at least 30 semester hours are upper level courses.
 - ii. At least 30 semester hours are related courses.
 - d. If prescribed by the Board as part of a disciplinary order, evidence that the individual has retaken and passed the Uniform Certified Public Accountant Examination.
- B. Within 30 days of receiving an application, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.

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1. The Board shall make service of written notice regarding an incomplete application in accordance with R4-1-117(E)(1) or (2). The applicant has 30 days from the date of the notice to respond in writing to the Board's notice or the Board may administratively close the file. An applicant whose file is administratively closed and who later wishes to become certified shall reapply under subsection (A).
 2. Within 60 days of receipt of all the missing information, the Board shall notify the applicant that the application is complete.
 3. The Board shall issue a certification decision no later than 150 days after receipt of a completed application.
 4. If the Board finds deficiencies during the substantive review of the application, the Board may issue a written request to the applicant for additional information.
 5. The 150-day timeframe in subsection (B)(3) for a substantive review for the issuance of a certificate is suspended from the date of the written request for additional information made under subsection (B)(4) until the date that all information is received. The Board shall serve a written request under subsection (B)(4) in accordance with R4-1-117(E)(1) or (2). The applicant has 30 days to respond to the Board's request for additional information. If the applicant fails to timely respond to the Board's request, the Board shall finish its substantive review based upon the information the applicant has presented.
 6. When the applicant and the Board mutually agree in writing, the substantive review time frame specified in subsection (B)(3) may be extended in accordance with A.R.S. § 41-1075.
- C.** If the Board denies an applicant's request for certification, 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; and
 3. The time periods for appealing the denial.
- D.** The Board establishes the following licensing time-frames for the purpose of A.R.S. § 41-1073:
1. Administrative completeness review time-frame: 30 days;
 2. Substantive review time-frame: 150 days; and
 3. Overall time-frame: 180 days.

Historical Note

Former Rule 7A; Amended effective December 1, 1976 (Supp. 76-5). Amended effective November 5, 1980 (Supp. 80-5). Former Section R4-1-41 renumbered as Section R4-1-341 without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended effective September 24, 1997 (Supp. 97-3). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-341.01. Repealed**Historical Note**

Adopted effective November 1, 1995 (Supp. 95-4). Amended effective September 24, 1997 (Supp. 97-3). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section repealed by final

rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2).

R4-1-342. Repealed**Historical Note**

Former Rule 7B; Amended effective December 1, 1976 (Supp. 76-5). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-42 renumbered as Section R4-1-342 without change effective July 1, 1983 (Supp. 83-4). Amended effective March 26, 1987 (Supp. 87-1). Amended effective September 24, 1997 (Supp. 97-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Repealed by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-343. Education and Accounting Experience

- A.** To demonstrate compliance with the experience requirements of A.R.S. § 32-721(B), an applicant for certification by examination or grade transfer shall submit to the Board:
1. One or more certificates of experience, completed, signed and dated by an individual who:
 - a. Possesses personal knowledge of the applicant's work, and
 - b. Is able to confirm the applicant's accounting experience, and
 - c. Is a certified public accountant; or
 - d. Has accounting education and experience similar to that of a certified public accountant; and
 2. Other information requested by the Board for explanation or clarification of experience.
- B.** To demonstrate compliance with the experience requirements of A.R.S. § 32-721(C), an applicant for certification by reciprocity shall submit to the Board:
1. One or more certificates of experience, completed, signed and dated by an individual who:
 - a. Possesses personal knowledge of the applicant's work, and
 - b. Is able to confirm the applicant's accounting experience, and
 - c. Is a certified public accountant; or
 - d. Has accounting education and experience similar to that of a certified public accountant; or
 2. If the applicant is self-employed, the applicant shall provide a signed and dated statement indicating self-employment and three signed and dated client letters, confirming years of work experience, and
 3. Other information requested by the Board for explanation or clarification of experience.
- C.** To demonstrate compliance with the education requirements of Title 32, Chapter 6, an applicant for certification or reinstatement shall submit to the Board:
1. University or college transcripts verifying that the applicant meets the educational requirements and if necessary for education taken outside the United States, an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES), and
 2. Other information requested by the Board for explanation or clarification of education.

Historical Note

Former Rule 7C; Former Section R4-1-43 repealed, new Section R4-1-43 adopted effective February 22, 1978 (Supp. 78-1). Former Section R4-1-43 renumbered as Section R4-1-343 without change effective July 1, 1983

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(Supp. 83-4). Amended effective May 31, 1991 (Supp. 91-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 24 A.A.R. 3413, effective February 4, 2019 (Supp. 18-4).

R4-1-344. Denial of Certification

An applicant who is denied certification or registration by the Board is entitled to a hearing before the Board or an ALJ.

1. Written application. The applicant shall file a notice of appeal under A.R.S. § 41-1092.03 within 30 days after receipt of the notice of denial.
2. Hearing notice. The Board shall provide the applicant with notice of the hearing in the manner prescribed by A.R.S. § 41-1092.05.
3. Conduct of hearing. The Board or the ALJ shall conduct the hearing in accordance with A.R.S. Title 41, Chapter 6, Article 10 and applicable rules governing hearings.
4. Burden of persuasion: At the hearing, the applicant is the moving party and has the burden of persuasion.
5. Matters limited. At the hearing, the Board or ALJ shall limit the issues to those originally presented to the Board.

Historical Note

Former Rule 7D; Former Section R4-1-44 renumbered as Section R4-1-344 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-345. Registration; Fees

- A. Initial registration: After the Board approves an applicant's request for certification or firm registration, the applicant shall file an application for initial registration in a format prescribed by the Board and pay a registration fee under subsection (C).
- B. Renewal registration: A registrant shall file an application for renewal registration in a format prescribed by the Board no later than 5:00 p.m. on the last business day of the month. A renewal registration is deemed filed on the date and time received in the Board office. The Board shall record the date and time either by electronic date stamp in Arizona time or on physical receipt in the board's office. The Board shall not accept a postmark as evidence of timely filing. It is the sole responsibility of the registrant to complete the renewal registration requirements at the following times:
 1. Individual registrant: An individual registrant shall renew registration at the following times:
 - a. A registrant born in an even-numbered year shall renew registration during the month of birth in each even-numbered year.
 - b. A registrant born in an odd-numbered year shall renew registration during the month of birth in each odd-numbered year.
 2. Firm registrant: A firm shall renew registration at the following times:
 - a. A firm that initially registered with the Board in an even-numbered year shall renew registration during the board-approved month of the initial registration in each even-numbered year.
 - b. A firm that initially registered with the Board in an odd-numbered year shall renew registration during the board-approved month of the initial registration in each odd-numbered year.
- C. Registration fees: The biennial registration fee is:
 1. \$300 and, if applicable, a late fee of \$50 for each certified public accountant and, each public accountant. For a cer-

tified public accountant or public accountant, the registration fee shall be prorated by month for an initial registration period of less than two years.

2. \$300 and, if applicable, a late fee of \$50 for a firm. Under A.R.S. § 32-729, the Board shall not charge a fee for the registration of additional offices of the same firm or for the registration of a sole practitioner.

Historical Note

Former Rule 7E; Amended effective December 1, 1976 (Supp. 76-5). Amended effective February 22, 1978 (Supp. 78-1). Amended effective July 17, 1978 (Supp. 78-4). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-54 renumbered and amended as Section R4-1-345 effective July 1, 1983 (Supp. 83-4). Amended effective March 26, 1987 (Supp. 87-1). Amended effective July 1, 1991; filed May 2, 1991 (Supp. 91-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 4575, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4815, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-346. Notice of Change of Address

- A. Within 30 days of any business, mailing, or residential change of address, a registrant shall notify the Board of the new address by filling out the change of address form prescribed by the Board.
- B. Within 30 days of the opening of any new or additional office, or the closing of any existing office, a registrant shall notify the Board in a letter signed by the registrant.

Historical Note

Former Rule 7F; Amended effective January 3, 1977 (Supp. 77-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-55 renumbered and amended as Section R4-1-346 effective July 1, 1983 (Supp. 83-4). Amended effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

ARTICLE 4. REGULATION

- R4-1-401. Reserved
- R4-1-402. Reserved
- R4-1-403. Reserved
- R4-1-404. Reserved
- R4-1-405. Reserved
- R4-1-406. Reserved
- R4-1-407. Reserved
- R4-1-408. Reserved
- R4-1-409. Reserved
- R4-1-410. Reserved
- R4-1-411. Reserved
- R4-1-412. Reserved

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R4-1-413.	Reserved	
R4-1-414.	Reserved	
R4-1-415.	Reserved	
R4-1-416.	Reserved	
R4-1-417.	Reserved	
R4-1-418.	Reserved	
R4-1-419.	Reserved	
R4-1-420.	Reserved	
R4-1-421.	Reserved	
R4-1-422.	Reserved	
R4-1-423.	Reserved	
R4-1-424.	Reserved	
R4-1-425.	Reserved	
R4-1-426.	Reserved	
R4-1-427.	Reserved	
R4-1-428.	Reserved	
R4-1-429.	Reserved	
R4-1-430.	Reserved	
R4-1-431.	Reserved	
R4-1-432.	Reserved	
R4-1-433.	Reserved	
R4-1-434.	Reserved	
R4-1-435.	Reserved	
R4-1-436.	Reserved	
R4-1-437.	Reserved	
R4-1-438.	Reserved	
R4-1-439.	Reserved	
R4-1-440.	Reserved	
R4-1-441.	Reserved	
R4-1-442.	Reserved	
R4-1-443.	Reserved	
R4-1-444.	Reserved	
R4-1-445.	Reserved	
R4-1-446.	Reserved	
R4-1-447.	Reserved	
R4-1-448.	Reserved	
R4-1-449.	Reserved	
R4-1-450.	Reserved	
R4-1-451.	Reserved	
R4-1-452.	Reserved	
R4-1-452.	Reserved	
R4-1-453.	Continuing Professional Education	<p>A. Measurement Standards. The Board shall use the following standards to measure the hours of credit given for CPE programs completed by an individual registrant.</p> <ol style="list-style-type: none"> 1. CPE credit shall be given in one-fifth or one-half hour increments for periods of not less than one class hour except as noted in subsection (A)(8). The computation of CPE credit shall be measured as follows: <ol style="list-style-type: none"> a. A class hour shall consist of a minimum of 50 continuous minutes of instruction, b. A half-class hour shall consist of a minimum of 25 continuous minutes of instruction, and c. A one-fifth class hour shall consist of a minimum of 10 continuous minutes of instruction. 2. Courses taken at colleges and universities apply toward the CPE requirement as follows: <ol style="list-style-type: none"> a. Each semester - system credit hour is worth 15 CPE credit hours, b. Each quarter - system credit hour is worth 10 CPE credit hours, and c. Each noncredit class hour is worth one CPE credit hour. 3. Each correspondence program hour is worth one CPE credit hour. 4. Acting as a lecturer or discussion leader in a CPE program, including college courses, may be counted as CPE credit. The Board shall determine the amount of credit on the basis of actual presentation hours, and shall allow CPE credit for preparation time that is less than or equal to the presentation hours. A registrant may only claim as much preparation time as is actually spent for a presentation. Total credit earned under this subsection for service as a lecturer or discussion leader, including preparation time may not exceed 40 credit hours of the renewal period's requirement. Credit is limited to only one presentation of any seminar or course with no credit for repeat teaching of that course. 5. Writing and publishing articles or books that contribute to the accounting profession may be counted for a maximum of 20 hours of CPE credit during each renewal period. <ol style="list-style-type: none"> a. Credit may be earned for writing accounting material not used in conjunction with a seminar if the material addresses an audience of certified public accountants, is at least 3,000 words in length, and is published by a recognized third-party publisher of accounting material or a sponsor. b. For each 3,000 words of original material written, the author may earn two credit hours. Multiple authors may share credit for material written. 6. A registrant may earn a combined maximum of 40 hours of CPE credit under subsections (A)(4) and (5) above during each renewal period. 7. A registrant may earn a maximum of 20 hours of CPE during each renewal period by completing introductory computer-related courses. Computer-related courses may qualify as consulting services pursuant to subsection (C). 8. A registrant may earn a maximum of 4 hours of CPE during each renewal period by completing nano-learning courses. A nano-learning program is a tutorial program designed to permit a participant to learn a given subject in a ten-minute time-frame through the use of electronic media and without interaction with a real time instructor. 9. CPE credit shall be given in one-fifth or one-half hour increments if the CPE is a segment of a continuing series related to a specific subject as long as the segments are connected by an overarching course that is a minimum of

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- one hour and taken within the same CPE reporting period.
10. Credit shall not be allowed for repeat participation in any seminar or course during the registration period.
- B. Programs that Qualify.** CPE credit may be given for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.
1. The Board shall accept a CPE course as qualified if it:
 - a. Is developed by persons knowledgeable and experienced in the subject matter,
 - b. Provides written outlines or full text,
 - c. Is administered by an instructor or organization knowledgeable in the program, and
 - d. Uses teaching methods consistent with the study program.
 2. The Board shall accept a correspondence program which includes online or computer based programs if the sponsors maintain written records of each student's participation and records of the program outline for three years following the conclusion of the program.
 3. An ethics program taught or developed by an employer or co-worker of a registrant does not qualify for the ethics requirements of subsection (C)(4).
- C. Hour Requirement.** As a prerequisite to registration pursuant to A.R.S. § 32-730(C) or to reactivate from inactive status pursuant to A.R.S. § 32-730.01, a registrant shall complete the CPE requirements during the two-year period immediately before registration as specified under subsections (C)(1) through (C)(5). For registration periods of less than two years CPE may be prorated, with the exception of ethics.
1. A registrant whose last registration period was for two years shall complete 80 hours of CPE.
 2. A registrant shall complete a minimum of 50 percent of the required hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 16 hours in the subject areas of accounting, auditing, or taxation.
 3. A registrant shall complete a minimum of 16 of the required hours:
 - a. In a classroom setting,
 - b. Through an interactive live webinar, or
 - c. By acting as a lecturer or discussion leader in a CPE program, including college courses
 4. A registrant shall complete four hours of CPE in the subject area of ethics. The four hours required by this subsection shall include a minimum of one hour of each of the following subjects:
 - a. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants, and
 - b. Board statutes and administrative rules.
 5. A registrant shall report, at a minimum, the CPE hours required for the registration period.
 6. Hours that exceed the number required for the current registration period may not be carried forward to a subsequent registration period.
 7. Any CPE hours completed to vacate a suspension for nonregistration or for noncompliance with CPE requirements may not be used to meet CPE requirements for the registration period.
 8. As a prerequisite to reactivate from retired status or reinstate from cancelled, expired, relinquished or revoked status, a registrant or an applicant shall complete up to 160 hours of CPE during the four-year period immediately before application to reactivate or reinstate. For periods of less than four years CPE may be prorated by quarter, with the exception of ethics.
 - a. A registrant or an applicant shall complete a minimum of 50 percent of the required hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 32 hours in the subject areas of accounting, auditing or taxation.
 - b. A registrant or an applicant shall complete a minimum of 32 hours of the required hours:
 - i. In a classroom setting,
 - ii. Through an interactive live webinar, or
 - iii. By acting as a lecturer or discussion leader in a CPE program, including college courses.
 - c. A registrant or an applicant shall complete CPE in the subject area of ethics. Four hours of ethics CPE shall be required if 1 – 24 months have passed since the last registration due date for which CPE was completed. Eight hours of ethics CPE shall be required if 25 – 48 months have passed since the last registration due date for which CPE was completed. The hours required by this subsection shall include a minimum of one hour of each of the following subjects. The following subjects shall be completed during the two-year period immediately preceding application for reactivation or reinstatement:
 - i. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants; and
 - ii. Board statutes and administrative rules.
- D. Reporting:** A registrant or an applicant for reactivation or reinstatement, a registrant who is subject to an audit, or a registrant completing their registration must report the following details about their completed CPE:
1. Sponsoring organization;
 2. Number of CPE credit hours;
 3. Title of program or description of content; and
 4. Dates attended.
- E.** In addition to the information required under subsection (D), a registrant or an applicant for reactivation or reinstatement from cancelled, expired, relinquished or revoked status, or a registrant subject to a CPE audit pursuant to subsection (G) shall provide the Board the following CPE records at its request: copies of transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- F. CPE Record Retention:** A registrant shall maintain CPE records for three years from the date the registration was dated as received by the Board the following documents for all CPE completed for the registration period, even if not reported on the registration: transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- G.** CPE audits: The Board, at its discretion, may conduct audits of a registrant's CPE and require that the registrant provide the CPE records that the registrant is required to maintain under subsection (F) to verify compliance with CPE requirements.
- H.** The Board may grant a full or partial exemption from CPE requirements on demonstration of good cause for a disability for only one registration period.
- I.** A non-resident registrant seeking renewal of a certificate in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a certificate in the jurisdiction in which the registrant's principal place of business is located.

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1. Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the jurisdiction in which the registrant's principal place of business is located by signing a statement to that effect on the renewal application of this state.
2. If a non-resident registrant's principal place of business jurisdiction has no CPE requirements for renewal of a certificate or license, the non-resident registrant must comply with all CPE requirements for renewal of a certificate in this state.

Historical Note

Adopted effective December 19, 1979 (Supp. 79-6). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-53 renumbered as Section R4-1-453 and amended in subsections (A) and (B) effective July 1, 1983 (Supp. 83-4). Former Section R4-1-453 repealed, new Section R4-1-453 adopted effective July 15, 1988 (Supp. 88-3). Correction, Historical Note for Supp. 88-3 should read "Former Section R4-1-453 repealed, new Section R4-1-453 adopted effective January 1, 1990, filed July 15, 1988" (Supp. 89-1). Section repealed, new Section adopted effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 1886, effective January 1, 2005 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 2927, effective January 1, 2009 (Supp. 08-3). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 24 A.A.R. 3413, effective February 4, 2019 (Supp. 18-4).

R4-1-454. Peer Review

- A. Each firm that performs attest services or compilation services shall have a peer review performed and reported on within the three years immediately preceding the firm's registration date.
 1. Firms shall submit a copy of the results of their most recently accepted peer review pursuant to R4-1-345 or by a Board approved extension date to the Board which includes the following documents:
 - a. Peer review report which has been accepted by the sponsoring organization,
 - b. Firm's letter of response accepted by the sponsoring organization, if applicable,
 - c. Completion letter from the sponsoring organization,
 - d. Letter or letters accepting the documents signed by the firm with the understanding that the firm agrees to take any actions required by the sponsoring organization, if applicable, and
 - e. Letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.
 2. For firms whose peer reviews are scheduled before January 1, 2018, the firm shall submit the peer review documents pursuant to R4-1-454(A)(1) to the Board prior to its next firm registration renewal via mail, electronic transmission or, if available, the AICPA Facilitated State Board Access (FSBA).
 3. For firms whose peer reviews are scheduled after January 1, 2018, the firm must allow the sponsoring organization to make the documents pursuant to R4-1-454(A)(1) accessible to the Board via the FSBA process.
 4. The Board may grant, upon written request and demonstration of good cause, excluding financial hardship pursuant to A.R.S. § 32-701(15)(E), an extension of time for completing the peer review or submitting the peer review documents to the Board.
- B. Only a peer reviewer or a review team approved by the sponsoring organization may conduct a peer review. In approving a peer reviewer or a review team, the sponsoring organization shall ensure that each peer reviewer or member of a review team holds a certificate or license in good standing to practice public accounting, and is not affiliated with the firm under review.
- C. The Peer Review Oversight Advisory Committee (PROAC) shall review the peer review results to determine whether the firm is complying with the standards in subsection (J). If the results of peer review indicate that a firm is complying with the standards in subsection (J), PROAC shall recommend to the Board that it accept the firm's peer review and that the firm be notified of its compliance with this Section.
- D. If the results of the peer review indicate that a firm is not complying with the standards in subsection (J) the Board may take disciplinary action.
- E. If the results of the peer review suggest one or more violations of A.R.S. Title 32 Chapter 6 or Board rules, the Board may conduct or direct an authorized committee to conduct an initial analysis and take other action as authorized by A.R.S. § 32-742.01.
- F. Information discovered solely as a result of a peer review is not grounds for suspension or revocation of a certificate.
- G. Failure of a firm to complete a peer review under this Section may constitute grounds for disciplinary action.
- H. A firm is exempt from the requirements of this Section if the firm submits to the Board a written statement that it meets at least one of the following grounds for exemption:
 1. The firm has not previously practiced public accounting in this state, any other state, or a foreign country and the firm shall enroll in a Board approved peer review program with a peer review due date, in compliance with the peer review standards referenced in R4-1-454(J) of 18 months from the year end of the first engagement performed.
 2. The firm submits to the Board an affidavit, on a form prescribed by the Board, that states that all of the following apply:
 - a. Within the previous three years, the firm did not perform any attest services or compilation services; and
 - b. The firm agrees to notify the Board within 90 days after accepting an attest services or compilation services engagement and shall enroll in a Board approved peer review program with a due date, in compliance with the peer review standards referenced in R4-1-454(J) of 18 months from the year-end of the initial engagement accepted.
- I. Firms that reorganize a current firm, rename a firm, or create a new firm, within which at least one of the prior CPA owners remains an owner or employee, shall remain subject to the provisions of this Section. If a firm is merged, combined, dissolved, or separated, the sponsoring organization shall determine which resultant firm shall be considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.
- J. Each firm, review team, and member of a review team shall comply with the Standards for Performing and Reporting on Peer Reviews, issued January 2009 and published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), which is incorporated by reference. This incorporation by ref-

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erence does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.

- K. Peer review record retention. A firm shall maintain for five years, and provide the Board upon request, the documents referenced in R4-1-454(A)(1), if applicable and however denominated, for the peer reviews required by this Section.

Historical Note

Adopted effective July 1, 1983 (Supp. 83-4). Repealed effective November 20, 1998 (Supp. 98-4). New Section made by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004. Amended by final rulemaking at 12 A.A.R. 2823, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455. Professional Conduct and Standards

- A. It is the Board's policy that the rules governing registrants be consistent with the rules governing the accounting profession generally. Except as otherwise set forth in these regulations, registrants shall conform their conduct to the Code of Professional Conduct, published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), available from the AICPA.
- B. The AICPA Code of Professional Conduct, and any interpretations and ethical rulings by the issuing body, shall apply to all registrants, including those who are not members of the AICPA. The version specified above, including any interpretations and ethical rulings in effect shall apply. Any later amendments, additions, interpretations, or ethical rulings shall not apply.

Historical Note

Former Rule 9; Amended effective January 15, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-56 renumbered as Section R4-1-455 and amended in subsections (B) and (D) effective July 1, 1983 (Supp. 83-4). Section R4-1-455 amended and divided into R4-1-455 and R4-1-455.01 thru R4-1-455.04 effective April 22, 1992 (Supp. 92-2). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.01. Professional Conduct: Definitions; Interpretations

Interpretation of definitions: All terms defined in A.R.S. § 32-701 et seq. shall be construed, to the extent possible, to be consistent with corresponding definitions in the professional standards adopted in R4-1-455. The foregoing notwithstanding, for purposes of R4-1-455 and the professional standards adopted therein:

1. The term "practice of public accounting" shall be defined as set forth in A.R.S. § 32-701; and
2. References to "member" shall be to "registrant" as defined in A.R.S. § 32-701.

Historical Note

Section R4-1-455.01 renumbered from R4-1-455(B) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4,

2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.02. Professional Conduct: Competence and Technical Standards

- A. In reporting on financial statements for which a registrant has performed attest services (as defined in A.R.S. § 32-701) any of the following will constitute a violation of A.R.S. § 32-741(A)(4):
1. In an audit engagement, failing to:
 - a. Prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:
 - i. The nature, timing, and extent of the audit procedures performed;
 - ii. The results of the audit procedures performed, and the audit evidence obtained; and
 - iii. Significant findings or issues arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions;
 - b. Obtain sufficient appropriate evidence to conclude that the financial statements taken as a whole are free from material misstatement; or
 - c. Modify the opinion in the auditor's report when:
 - i. The financial statements as a whole are materially misstated; or
 - ii. Sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement has not been obtained.
 2. In a review engagement, failing to:
 - a. Accumulate sufficient review evidence to provide a reasonable basis for obtaining limited assurance that there are no material modifications that should be made to the financial statements in order to be in conformity with the applicable financial reporting framework; or
 - b. Modify the accountant's review report for a departure from the applicable financial reporting framework, including inadequate disclosure, that is material to the financial statements.
 3. In an examination of prospective financial statements engagement, failing to:
 - a. Obtain sufficient evidence to provide a reasonable basis for the conclusion that is expressed in the report; or
 - b. Modify the report when:
 - i. One or more significant assumptions do not provide a reasonable basis for the prospective financial statements; or
 - ii. The examination is affected by conditions that preclude application of one or more procedures considered necessary in the circumstances.
- B. The provisions of this subsection are not intended to be all inclusive or to limit the application of A.R.S. § 32-741(A)(4).

Historical Note

Section R4-1-455.02 renumbered from R4-1-455(C) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.03. Professional Conduct: Specific Responsibilities and Practices

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- A.** Discreditable acts: In addition to any other acts prohibited by any standards incorporated in these rules, a registrant shall not commit an act that reflects adversely on the registrant's fitness to engage in the practice of public accounting, including and without limitation:
1. Violating a provision of R4-1-455, R4-1-455.01, R4-1-455.02, R4-1-455.03 or R4-1-455.04;
 2. Violating a fiduciary duty or trust relationship with respect to any person; or
 3. Violating a provision of A.R.S. Title 32, Chapter 6, Article 3, or this Chapter.
- B.** Advertising practices and solicitation practices: A registrant has violated A.R.S. § 32-741(A)(4) and engaged in dishonest or fraudulent conduct in the practice of public accounting in connection with the communication or advertising or solicitation of accounting services through any media, if the registrant willfully engages in any of the following conduct:
1. Violates A.R.S. § 44-1522 and a court finds the violation willful;
 2. Engages in fraudulent or misleading practices in the advertising of accounting services that leads to a conviction pursuant to A.R.S. § 44-1481; or
 3. Engages in fraudulent practices in the advertising of accounting services that leads to a conviction for a violation of any other state or federal law.
- C.** Form of practice and name: A registrant shall not use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. A firm name or designation shall not include words such as "& Company," "& Associates," or "& Consultants" unless the terms refer to additional full-time CPAs that are not otherwise mentioned in the firm name.
- D.** Communications: When requested, a registrant shall file a written response to a communication from the Board within 30 days of the date of the mailing of such communication by certified mail. A written response is deemed filed on the date and time received in the Board office. The Board shall record the date and time either by electronic date stamp in Arizona time or on physical receipt in the Board's office. The Board shall not accept a postmark as evidence of timely filing.
- E.** The provisions of R4-1-455.03(A) through (C) are not intended to be all inclusive or to limit the application of any standards incorporated by R4-1-455.

Historical Note

Section R4-1-455.03 renumbered from R4-1-455(D) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 12 A.A.R. 2823, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 1807, effective June 15, 2017 (Supp. 17-2). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.04. Professional Conduct: Records Disposition

Document retention policies. Except as set forth in A.R.S. § 32-744(D), a registrant may retain and dispose of documents prescribed in A.R.S. § 32-744(C) in compliance with a reasonable document retention policy.

Historical Note

Section R4-1-455.04 renumbered from R4-1-455(E) and amended effective April 22, 1992 (Supp. 92-2). Section

number corrected (Supp. 97-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-456. Reporting Practice Suspensions and Violations

- A.** A registrant, individual, or firm shall report to the Board:
1. Any suspension or revocation of the right to practice accounting before the federal Securities and Exchange Commission, the Internal Revenue Service, or any other state or federal agency;
 2. Any final judgment in a civil action or administrative proceeding in which the court or public agency makes findings of violations, by the registrant, of any fraud provisions of the laws of this state or of federal securities laws;
 3. Any final judgment in a civil action in which the court makes findings of accounting violations, dishonesty, fraud, misrepresentation, or breach of fiduciary duty by the registrant;
 4. Any final judgment in a civil action involving negligence in the practice of public accounting by the registrant; and
 5. All convictions of the registrant of any felony, or any crime involving accounting or tax violations, dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, or breach of fiduciary duty.
- B.** A registrant, individual, or firm required to report under subsection (A) shall make the report in the form of a written letter and ensure that the report is received by the Board within 30 days after the entry of any judgment or suspension or revocation of the registrant's right to practice before any agency. The registrant, individual, or firm shall ensure that the letter contains the following information:
1. Description of the registrant's activities that resulted in a suspension or revocation;
 2. Final judgment or conviction;
 3. Name of the state or federal agency that restricted the registrant's right to practice;
 4. Effective date and length of any practice restriction;
 5. Case file number of any court action, civil or criminal;
 6. Name and location of the court rendering the final judgment or conviction; and
 7. Entry date of the final judgment or conviction.

Historical Note

Adopted effective November 5, 1980 (Supp. 80-6). Former Section R4-1-57 renumbered as Section R4-1-456 without change effective July 1, 1983 (Supp. 83-4). Amended effective February 23, 1993 (Supp. 93-1). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

Appendix A. Repealed**Historical Note**

Adopted effective February 22, 1978 (Supp. 78-1). Amended effective December 19, 1979 (Supp. 79-6). Editorial correction, Footnote**, Rules reference corrected (Supp. 83-4). Repealed effective May 31, 1991 (Supp. 91-2).

Appendix B. Repealed**Historical Note**

Adopted effective February 22, 1978 (Supp. 78-1). Repealed effective April 22, 1992 (Supp. 92-2).

32-703. Powers and duties; rules; executive director; advisory committees and individuals

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants through certification, regulation and rehabilitation.

B. The board may:

1. Investigate complaints filed with the board or on its own motion to determine whether a certified public accountant has engaged in conduct in violation of this chapter or rules adopted pursuant to this chapter.

2. Establish and maintain high standards of competence, independence and integrity in the practice of accounting by a certified public accountant as required by generally accepted auditing standards and generally accepted accounting principles and, in the case of publicly held corporations or enterprises offering securities for sale, in accordance with state or federal securities agency accounting requirements.

3. Establish reporting requirements that require registrants to report:

(a) The imposition of any discipline on the right to practice before the federal securities and exchange commission, the internal revenue service, any state board of accountancy, other government agencies or the public company accounting oversight board.

(b) Any criminal conviction, any civil judgment involving negligence in the practice of accounting by a certified public accountant and any judgment or order as described in section 32-741, subsection A, paragraphs 7 and 8.

4. Establish basic requirements for continuing professional education of certified public accountants, except that the requirements shall not exceed eighty hours in any registration renewal period.

5. Adopt procedures concerning disciplinary actions, administrative hearings and consent decisions.

6. Issue to qualified applicants certificates executed for and on behalf of the board by the signatures of the president and secretary of the board.

7. Adopt procedures and rules to administer this chapter.

8. Require peer review pursuant to rules adopted by the board on a general and random basis of the professional work of a registrant engaged in the practice of accounting.

9. Subject to title 41, chapter 4, article 4, employ an executive director and other personnel that it considers necessary to administer and enforce this chapter.

10. Appoint accounting and auditing, tax, peer review, law, certification, continuing professional education or other committees or individuals as it considers necessary to advise or assist the board or the board's executive director in administering and enforcing this chapter. These committees and individuals serve at the pleasure of the board.

11. Take all action that is necessary and proper to effectuate the purposes of this chapter.

12. Sue and be sued in its official name as an agency of this state.

13. Adopt and amend rules concerning the definition of terms, the orderly conduct of the board's affairs and the effective administration of this chapter.

14. Delegate to the executive director the authority to:

(a) Approve an applicant to take the uniform certified public accountant examination pursuant to section 32-723.

(b) Issue a certificate of certified public accountant pursuant to section 32-721.

- (c) Approve an application for firm registration pursuant to section 32-731.
- (d) Approve a registrant's name change and reissue a certificate of certified public accountant due to the name change.
- (e) Approve a registrant's cancellation request pursuant to section 32-730.02.
- (f) Approve a request for retired status pursuant to section 32-730.04.
- (g) Approve reactivation from inactive status or retired status pursuant to section 32-732.
- (h) Approve compliance with peer review requirements pursuant to this section.
- (i) Approve compliance with continuing professional education audits.
- (j) Approve continuing professional education compliance with decisions and orders.
- (k) Terminate decisions and orders based on a registrant's successful completion of all order requirements.

C. The board or an authorized agent of the board may:

1. Issue subpoenas to compel the attendance of witnesses or the production of documents. If a subpoena is disobeyed, the board may invoke the aid of any court in requiring the attendance and testimony of witnesses and the production of documents.
2. Administer oaths and take testimony.
3. Cooperate with the appropriate authorities in other jurisdictions in investigation and enforcement concerning violations of this chapter and comparable statutes of other jurisdictions.
4. Receive evidence concerning all matters within the scope of this chapter.

ARIZONA DEPARTMENT OF TRANSPORTATION (F20-0101)

Title 17, Chapter 3, Articles 2, 3, 5, 7, and 9, Department of Transportation Highways



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 7, 2020

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

FROM: Council Staff

DATE: January 3, 2020

SUBJECT: Arizona Department of Transportation
Title 17, Chapter 3, Articles 2, 3, 5, 7, and 9

This 5YRR from the Department of Transportation relates to rules in Title 17, Chapter 3, regarding highways. The rules cover the following:

- **Article 2** - Management of Contractor Bidding
- **Article 3** - Relocation Assistance
- **Article 5** - Highway Encroachments and Permits
- **Article 7** - Highway Beautification
- **Article 9** - Highway Traffic Control Devices

In the previous 5YRR indicated it would amend several of the rules in Articles 2, 3, 5, and 7. ADOT did not complete their previous proposed course of action.

The Department is not reviewing the following rules with the intention that the rules expire under A.R.S. 41-1056(J):

- **Article 8**
- **R17-3-801** - Arizona Parkways and Historic Scenic Roads
- **R17-3-802** - General Provisions
- **R17-3-803** - Request to Designate a Road
- **R17-3-804** - PHSRAC's Process

- **R17-3-805** - Reconsideration of PHSRAC's Decision
- **R17-3-806** - Review of Existing Designated Parkway or Historic Scenic Road
- **R17-3-807** - Approvals and Agreements Between Agencies Designation
- **R17-3-808** - Construction and Maintenance Standards; Signing

Proposed Action

The Department indicated some of the rules need to be amended to improve clarity, conciseness, understandability, effectiveness, enforcement and consistency with other rules and statutes. The Department plans to submit a rulemaking to amend the rules and address the issues identified in the report by June 30, 2020.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department has determined that the economic impact of each rule within the Articles listed above does not differ significantly from what was determined by the economic, small business, and consumer impact statement (EIS) that was prepared on the last amendment of each rule.

The stakeholders include the Department, companies in the construction and transportation industry, and the public.

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

The Department indicates that they routinely adopt the least costly and least burdensome option for any process or procedure required of the regulated public or industry. Therefore, the Department has determined that the benefits of all the rules in this Chapter outweigh the costs.

The Department intends to further clarify rules in Articles 2, 3, 5, and 7 by making minor technical corrections that could possibly provide additional regulatory relief and ensure that the rules are more clear, concise, and understandable. Once the Department receives Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completion of all the amendments indicated for these articles, before June 30, 2020.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates it did not receive any written criticisms in the last five years. The Department notes, that they will still consider a comment received in 2012, and will still consider it when moving forward with a rulemaking.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons stated in the report, the Department indicates the following rules could be amended to improve their clarity, conciseness, understandability, and consistency with other rules and statutes.

- R17-3-202 - Contractor Prequalification
- R17-3-302 - Relocation Assistance; 49 CFR 24, Subpart A - General
- R17-3-501 - Definitions
- R17-3-504 - General Application Procedures
- R17-3-507 - Review Procedures
- R17-3-701 - Outdoor Advertising Control
- R17-3-701.01 - Outdoor Advertising Control: Restrictions on the Erection of Billboards and Signs and Restrictions on the Issuance Permits
- R17-3-703 - Arizona Junkyard Control

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

Yes. The Department indicates that the following rules are not completely enforced as written:

- R17-3-301 - Relocation Assistance; Adoption of Federal Regulations
- R17-3-502 - Applicability
- R17-3-701 (B) - Outdoor Advertising Control

For R17-3-301, the Department states it enforces all 34 sections of the federal regulations as incorporated by reference. However, the Department indicates that in order to determine the maximum statutory benefit allowed in Arizona, the Department must use limits provided under Title 28, Arizona Revised Statutes, Chapter 20, Article 7, which were amended by Laws 2014, Ch. 28. §§ 6 through 8.

For R17-3-502, the Department states the rule is enforced as written except for the provision located under subsection (D).

For R17-3-701 (B), the Department states the rule is generally enforced as written, except for subsection (B)(10) which stipulates that the Department shall charge a fee of \$20 in addition to the regular permit fee, if a sign is illegally erected prior to the issuance of the permit.

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

No, the Department indicates the rules are not more stringent than corresponding federal law; Title 23, U.S.C. 109(d), 23 U.S.C. 111(b), 23 U.S.C. 131, 23 U.S.C. 156, 23 U.S.C. 402, 23 CFR 1.23(b), 23 CFR 655 Subpart F, 23 CFR 655.603, 23 CFR Part 750, 49 CFR 1.85, FHWA Order 5160.1A.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes, the Department indicates they comply with A.R.S. § 41-1037.

9. **Conclusion**

As mentioned above, and for the reasons specified in the report, the Department proposes to amend its rules in articles 2, 3, 5, 7, and 9 to improve clarity, conciseness, understandability, effectiveness, enforcement and consistency with other rules and statutes by June 30, 2020. Council staff recommends approval of this report.

September 26, 2019

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Transportation, 17 A.A.C. Chapter 3, Articles 2, 3, 5, 7, and 9, Five-year Review Report

Dear Ms. Sornsins:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering all rules located under 17 A.A.C. Chapter 3, Articles 2, 3, 5, 7, and 9, which is due on September 30, 2019.

The Department did not review the following rules with the intention that the rules will expire under A.R.S. § 41-1056(J):

- | | |
|------------|--|
| Article 8. | Arizona Parkways and Historic and Scenic Roads |
| R17-3-801. | General Provisions |
| R17-3-802. | Meetings and Organization of PHSRAC |
| R17-3-803. | Request to Designate a Road |
| R17-3-804. | PHSRAC's Process |
| R17-3-805. | Reconsideration of PHSRAC's Decision |
| R17-3-806. | Review of Existing Designated Parkway or Historic or Scenic Road |
| R17-3-807. | Approvals and Agreements Between Agencies for Designation |
| R17-3-808. | Construction and Maintenance Standards; Signing |

This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (602) 712-8804 or email JLindley@azdot.gov.

Sincerely,



John S. Halikowski
Director

Enclosure



**Rules & Policy Development
Office of the Director**

Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 3. Department of Transportation

Highways

Article 2. Management of Contractor Bidding

Article 3. Relocation Assistance

Article 5. Highway Encroachments and Permits

Article 7. Highway Beautification

Article 9. Highway Traffic Control Devices

Douglas A. Ducey *Governor*

John S. Halikowski *ADOT Director*

Governor’s Regulatory Review Council
Five-Year-Review Report
Arizona Department of Transportation
17 A.A.C. Chapter 3, Department of Transportation - Highways, Articles 2, 3, 5, 7, and 9

1. Authorization of the rule by existing statutes

General Statutory Authority:

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ [28-366](#) and [28-7045](#) for these rules. This authority allows the Department to adopt rules for the collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and the use of state highways and routes to prevent abuse and unauthorized use of all highways and routes under the jurisdiction of the Department.

The Arizona State Transportation Board has general rulemaking authority for the administration of its powers, duties, and responsibilities as provided under A.R.S. § [28-305](#).

Specific Statutory Authority:

<p>R17-3-201 R17-3-202 R17-3-203 R17-3-204</p>	<p>As required under A.R.S. § 28-7365, R17-3-202 provides the prequalification procedures developed by the Department and the Arizona State Transportation Board for use by contractors seeking eligibility to bid on certain advertised projects involving the construction or reconstruction of transportation facilities. A.R.S. § 41-2501(J) specifically exempts the State Transportation Board and the Department from strict adherence to the Arizona Procurement Code in relation to the subject matter contained in these rules. However, all procurement activities conducted by the Department under these rules are subject to A.R.S. Title 28, Chapter 20, and 2 CFR 200.317.</p> <p>A.R.S. § 28-7363(E) provides that, “[to] ensure fair, uniform, clear and effective procedures that will deliver a quality project on time and within budget, the director, in conjunction with the appropriate and affected professionals and contractors, may adopt procedures for procuring a project using the design-build method of project delivery.” Additionally, A.R.S. § 28-6923(M)(2) references “contractors who are prequalified by the Department to perform a contract...”.</p> <p>2 CFR 200.317 provides that, “[w]hen procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including sub-recipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.”</p>
<p>R17-3-301 R17-3-302 R17-3-303 R17-3-304</p>	<p>A.R.S. § 28-7148 provides specific statutory authority for the Department to adopt rules for the administration of relocation payments and assistance to displaced persons, businesses, or farm operations affected by a program or project undertaken by the Department under A.R.S. §§ 28-7141 to 28-7149 and 28-7152, and that involves state financial assistance. These rules are also consistent with federal statutes regarding the administration of relocation assistance on federal and federally-assisted programs and projects where the U.S. Department of Transportation has designated the Department as the lead agency for the administration of programs and projects subject to 42 U.S.C. 4601, et seq., 5304, and 12705(b).</p>

R17-3-501 R17-3-502 R17-3-503 R17-3-504	A.R.S. §§ 28-7045 , 28-7053 , and 28-7054 provide specific statutory authority for the Director to grant prior authorization in writing to any person who demonstrates a valid and reasonable need to acquire access to a public highway right-of-way under the jurisdiction of the Department before placing or maintaining any encroachment or obstruction on, making any use of, or otherwise occupying a public highway right-of-way for any purpose other than for authorized public travel, communication, transportation or transmission.
R17-3-701 R17-3-702 R17-3-703 R17-3-704	Specific statutory authority for these rules is as provided under A.R.S. §§ 28-7908 and 28-7909 , the federal and state agreement authorized under A.R.S. § 28-7907 , and the authorizing federal statutes and regulations provided under 23 U.S.C. 131 and 23 CFR 750 for outdoor advertising and junkyard control.
R17-3-901 R17-3-902 R17-3-903 R17-3-904	A.R.S. § 28-7311 provides specific statutory authority for the Department to operate a rural and an urban logo sign program and requires that the Department adopt rules to implement the logo sign programs.

2. The objective of each rule:

The stated objectives for each rule maintained by the Department under 17 A.A.C. 3, are as follows:

Article 2. Management of Contractor Bidding

R17-3-201	To clarify the Department’s intended meaning for certain terms and phrases used throughout the Article, and to describe the Department’s Contractor Prequalification Board.
R17-3-202	To provide a uniform prequalification process for use by contractors seeking eligibility to bid on major projects advertised by the Department that will involve construction or reconstruction of state transportation facilities. The prequalification process allows the Department and its Contractor Prequalification Board to verify each contractor’s experience, organization, and other pertinent and material facts that may help to justify a bidder’s qualifications for performing work of the type and magnitude required for large-scale transportation projects.
R17-3-203	To provide the factors and processes used by the Contractor Prequalification Board for either reducing a previously approved prequalification amount or disqualifying a contractor from bidding.
R17-3-204	To provide for the confidentiality of a contractor's prequalification file, and to list those entities not subject to the confidentiality regulations.

Article 3. Relocation Assistance

R17-3-301	To provide the public with official citations to the regulations needed to gain a general understanding of how the Department has implemented certain provisions of the federal Uniform Relocation Assistance Act as applicable to programs and projects administered by the Department with state-level funding.
R17-3-302	To clarify the Department's intended meaning for certain terms and phrases contained in 49 CFR 24.2 , which were incorporated by reference as amended here for applicability to the relocation assistance program administered by the Department in this state.
R17-3-303	To inform the public about the state's eviction for cause statutes, as applicable to the Department's process for administering its relocation assistance program in this state.
R17-3-305	To inform the public about the amendments to the replacement housing payment provisions for homeowner occupants.

Article 5. Highway Encroachments and Permits

R17-3-501	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-3-502	To inform the public that any person who requires access to any part of a state highway system right-of-way shall first apply for and receive permission from the Department in the form of an encroachment permit, and to clarify which types of encroachments are either authorized or unauthorized.
R17-3-503	To specify that any person seeking to encroach upon a state highway right-of-way shall first apply to the Department for an encroachment permit, and to clarify who may apply for an encroachment permit involving access, landscaping, and utility installation.
R17-3-504	To provide the general application requirements for obtaining an encroachment permit.
R17-3-505	To provide the requirement that an application for an encroachment permit shall include the supporting documentation necessary for the Department to properly analyze the proposed encroachment's impact on any state highway rights-of-way.
R17-3-506	To provide the requirements and responsibilities a permittee shall follow once an encroachment permit is issued.
R17-3-507	To inform the public of the factors the Department may use when determining whether to approve or deny an encroachment permit application, and to establish that an applicant has the right to appeal the Department's decision if an encroachment permit application is denied.

R17-3-508	To inform the public of the types of encroachment activities that are unauthorized, the requirement for removal of unauthorized encroachments, and the remedies for enforcement and violation.
R17-3-509	To inform the public that an encroachment permit applicant is entitled to a hearing if the Department denies the application or determines that the proposed encroachment is unauthorized.

Article 7. Highway Beautification

R17-3-701	<p>(A). To present the meaning of specialized terms used by the Department in this Article to describe outdoor advertising signs and matters relating to outdoor advertising signs.</p> <p>(B). To provide the public with the information and procedures required of an applicant seeking permission from the Department to erect an outdoor advertising structure.</p> <p>(C). To provide the public with information on the Department’s authority and obligation to maintain control of outdoor advertising activities conducted in close proximity to any highway under the jurisdiction of the Department, and to ensure that such activities do not adversely affect the efficient operation of transportation facilities throughout the state.</p> <p>(D). To provide the public with information regarding the standards that must be followed when placing signs on any highway right-of-way under the jurisdiction of the Department.</p>
R17-3-701.01	This rule implements federal requirements to ensure that a local jurisdiction does not create commercial or industrial zoning merely to allow outdoor advertising.

Article 9. Highway Traffic Control Devices

R17-3-901	To define terms relating to highway signage for colleges and universities and to explain the process a college or university may use to request the placement of such signs on any highway under the jurisdiction of the Department.
R17-3-902	To define terms used in the logo sign rules and to specify eligibility and administrative requirements for the logo sign programs.
R17-3-904	To inform the public about the Department’s obligation to follow all federal guidelines provided in the Manual on Uniform Traffic Control Devices when placing a sign on any highway that is part of the State Highway System, and the maintenance of which is under the jurisdiction of the Department.

R17-3-905	To inform the public of the rural logo sign spacing requirements and written agreements that pertain to rural logo signs.
R17-3-906	To inform the public and current logo sign leaseholders that any changes made to these rules would not impact a responsible operator's lease prior to the expiration of that operator's existing lease.

3. **Are the rules effective in achieving their objectives?**

Yes X

No ___

If not, please identify the rules that are not effective and provide an explanation for why the rules are not effective.

Rule	Explanation
R17-3-701	<p>(A). Purpose</p> <p>While this rule is generally effective in meeting the stated objective, new definitions are needed to clarify existing language.</p> <p>(B). Authority and responsibility</p> <p>While this rule is generally effective in meeting the stated objective, a definition of what constitutes a complete application, to include supporting documentation, is necessary in order to enforce the rule, as well as the licensing time-frame rules under A.A.C. R17-1-102(B).</p> <p>(B)(12) provides an initial time frame and a subsequent extension period during which an applicant can build a sign, which requires additional and unnecessary administrative effort since the Department needs to monitor two different time frames for the construction of a sign, instead of initially allowing up to 180 days for construction.</p> <p>(D). Administrative Rules</p> <p>While this rule is generally effective in meeting the stated objective, the rule would be more effective if amendments were made to encompass modern technologies, such as geospatial locating by Geographic Information Systems (GIS), and to ensure ongoing consistency with national standards as required under the Federal and State Agreement and authorizing regulations provided under 23 U.S.C. 131 and 23 CFR 750.</p>

4. **Are the rules consistent with other rules and statutes?**

Yes X

No ___

If not, please identify the rules that are not consistent. Also, provide an explanation and identify

the provisions that are not consistent with the rules.

Rule	Explanation
R17-3-201	A.R.S. § 41-2501(J) specifically exempts the State Transportation Board and the
R17-3-202	Department from strict adherence to the Arizona Procurement Code in relation to the
R17-3-203	subject matter contained in these rules. All procurement activities conducted by the
R17-3-204	Department under these rules are subject to A.R.S. Title 28, Chapter 20 , and 2 CFR 200.317 .

R17-3-301	<p>This rule is consistent with A.R.S. §§ 28-7141 to 28-7149 and 28-7152 and federal statutes, 42 U.S.C. 4601, et seq., except as described under items 5 and 8 below. Additionally, the Department intends to seek legislation to raise the statutory limit provided under A.R.S. § 28-7143(A)(4) for reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site from \$25,000 to \$50,000, which is the amount up to which the Federal Highway Administration will reimburse the state in Title 23 grant funding under 23 CFR 710.203.</p> <p>The rules incorporated by reference, as amended under this Article for programs and projects undertaken by the Department at the state level are also in compliance with other applicable federal laws and implementing regulations, including, but not limited to, the following:</p> <ul style="list-style-type: none"> (a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1981 et seq.). (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). (c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended. (d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). (e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.). (f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234). (g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). (h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892. (i) Executive Order 11246—Equal Employment Opportunity, as amended. (j) Executive Order 11625—Minority Business Enterprise. (k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands. (l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws. (m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights. (n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.). (o) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).
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R17-3-701	<p>(B). Outdoor advertising permit application procedure</p> <p>The rules are generally consistent with federal and state laws, and the Federal and State Agreement. However, subsection (B)(10) is not consistent with A.R.S. § 28-7906, in that a sign that is erected prior to the issuance of a permit is unlawful and the Director shall begin the process of having the sign removed, not just charging a nominal fee.</p> <p>(C). Administrative Rules</p> <p>The rules are generally consistent with federal and state statutes and regulations, except that the highway classification terminology provided (primary or secondary highway), needs to be updated to conform to current highway classifications (principal or minor arterial) as designated by the Federal Highway Administration.</p>
R17-3-701.01	<p>This rule is generally consistent with state statutes and other rules made by the Department, except that the reference to A.R.S. § 28-2102(A)(4) or (5) was renumbered to A.R.S. § 28-7912 and amended after promulgation of the rule. An incorporated city or town or a county may control outdoor advertising along interstate, secondary and primary highways by enacting comprehensive zoning ordinances as provided under A.R.S. § 28-7912.</p> <p>23 U.S.C. 131(d) provides that “[t]he States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority.”</p>
R17-3-703	<p>This rule is consistent with state statutes and other rules made by the Department, except that A.R.S. § 28-7901(11) was renumbered and amended as A.R.S. § 28-7901(14) after promulgation of the rule.</p> <p>The authorizing statutes and this rule are fully consistent with the federal guidelines established for junkyard control programs under 23 U.S.C. 136.</p>
R17-3-901 R17-3-902 R17-3-904 R17-3-905 R17-3-906	<p>These rules are consistent with A.R.S. §§ 28-642 and 28-7311 and other rules made by the Department.</p>

5. **Are the rules enforced as written?**

Yes X

No

If not, please identify the rules that are not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issues.

Rule	Explanation
R17-3-301	The Department enforces all 34 sections of the federal regulations as incorporated by reference under these rules. However, to determine the maximum statutory benefit allowed in Arizona, the Department must use the benefit allowance limits provided under Title 28, Arizona Revised Statutes, Chapter 20, Article 7, which were amended by Laws 2014, Ch. 28, §§ 6 through 8 to match the increased amounts now permitted at the federal level as described under Item 8 below.

R17-3-502	<p>The Department enforces this rule as written. However, the Department’s enforcement efforts are limited if the previous owner of the property with an existing permitted encroachment fails to properly inform the new owner of the requirement to apply for a new encroachment permit under R17-3-502(D). Since the Department is not generally involved in sales or transfers of real property abutting a state highway right-of-way, there is no way for the Department to determine who recently purchased the property, or to verify whether or not the previous property owner appropriately disclosed to the new property owner that a new encroachment permit would be required under R17-3-502(D).</p> <p><i>Here is an example of why this notification process is so important:</i></p> <p>When a landowner requests access to a property from US60 (driveway, could be gravel, could be paved, etc.), the Department may issue an encroachment permit detailing specific requirements that the landowner must abide by when constructing and maintaining such access. If Department engineers conclude that a proposed driveway will likely cause a drainage issue, the encroachment permit issued by the Department will provide detailed instructions that the property owner must follow to appropriately mitigate the drainage issue and successfully maintain that access. The property owner may agree to clear any culvert(s) built under the driveway on a monthly basis, and acknowledge that a certain type of cattle guard gate will be installed, maintained, and inspected at least quarterly if a Department right-of-way fence is cut to allow the driveway. The permit is the contract and agreement between the abutting property owner and the Department. However, if that property is subsequently sold, the new owner may have no idea that the gate and the culvert need to be maintained. The new property owner may not need that access point or even know to whom it belongs. Gone unchecked, mud, rocks, and other debris can build up and create a drainage issue that may trigger flooding along the US60, the fence may break, cows can get onto US60, mayhem and chaos ensue closing down the highway while the Department and the highway patrol work diligently to wrangle and remove the unwary cattle from the roadway.</p> <p>Although this rule technically has no teeth for enforcement, each encroachment permit issued by the Department references the notification requirement for safety reasons. The Department is actively seeking an electronic solution that may improve the notification process, and if determined by the Department to be a feasible solution, the rule will be amended accordingly.</p>
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R17-3-701(B)	The rules are generally enforced as written except for subsection (B)(10), which stipulates that the Department shall charge a fee of \$20 in addition to the regular permit fee if a sign is illegally erected prior to the issuance of a permit. In this scenario, the Department would initiate a process by which the sign owner is required to remove the sign at the owner's expense, as signs erected in this manner would be deemed unlawful and found to be in violation of federal and state laws and regulations. The Department does not have statutory authority to charge a fee for signs erected prior to issuance of a permit. However, the Department will afford an unlawful sign owner the opportunity to apply for an appropriate permit on payment of the \$20 application fee authorized under A.R.S. § 28-7909 . If, after processing the application, the Department determines that the sign cannot be allowed to remain, and the applicant refuses to remove the sign, the Department will begin the process of having the sign removed as provided under A.R.S. § 28-7906 .
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6. **Are the rules clear, concise, and understandable?**

Yes

No

If not, please identify the rules not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rules to improve clarity, conciseness, and understandability.

The Department intends to further clarify the following rules by making minor technical corrections that may provide additional regulatory relief for some of the industry and ensure that the rules are more clear, concise, and understandable.

R17-3-202	<p>While the rules are generally clear, concise, and understandable, the Department believes that the regulated community and the Department may benefit by amendments to the rules concerning financial statements, as follows:</p> <p>(B)(l) Clarify that all amounts stated in the financial statements shall be in US currency, and consider adding other standards for financial statements if necessary in light of changing accounting standards.</p> <p>Consider amending the rule to change, from 15 months to 16 months, the period of time within which prequalification remains valid.</p> <p>(E)(1) Amend to require contractors requesting prequalification to submit individual statements in addition to the combined statements currently required by generally accepted accounting principles.</p> <p>Clarify that financial statements shall cover a fiscal year, and that the Department will not consider a financial statement that does not comply with that requirement without a showing of good cause.</p> <p>Amend to clarify that the Board, in considering working capital (current assets minus current liabilities), will exclude the following items from current assets in calculating adjusted current assets:</p> <ul style="list-style-type: none"> • 50 percent of Inventory • Receivables from owners, employees, or related parties • Prepaid insurance <p>Clarify that adjusted working capital shall equal adjusted current assets minus current liabilities.</p> <p>(E)(3) Consider adjusting the maximum prequalification limit prescribed in the year 2001 to a more current value using the Federal Highway Administration's National Highway Construction Cost Index.</p> <p>(F)(4) Amend to specify that the maximum prequalification amount authorized by the Board for a contractor prequalification is the lesser of 20 times a contractor's adjusted working capital or 10 times a contractor's net worth.</p> <p>Amend to provide for stated prequalification amounts of up to \$250 million. A prequalification amount of greater than \$250 million will be considered "unlimited."</p> <p>(G)(1) Amend to additionally reference the Department's administrative hearing procedures under 17 A.A.C. 1, Article 5.</p>
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R17-3-302	<p>(A) The words “federal agency or state” should be removed from the definition of “Decent, safe, and sanitary dwelling,” since the funding agency for any project applicable to these rules would be the Arizona Department of Transportation, as indicated under the definition of “agency” in this Section.</p> <p>(C) Similarly, the words “federal funding” should be removed from the last sentence of this subsection.</p>
R17-3-501	<p>The phrase “unless otherwise defined,” is unnecessary and should be removed from the introductory paragraph.</p> <p>The term “State highway” was renumbered under A.R.S. § 28-101. Delete subsection (47) reference.</p>
R17-3-504	<p>(B)(5) Amend to require that an application include a legal description of the location (i.e. GPS coordinates or highway station markers).</p>
R17-3-507	<p>(A) Amend by striking, “under A.R.S. §§ 41-1072 through 41-1077 and A.A.C. R17-1-102,” and inserting “within the time-frames established by the Department under A.A.C. R17-1-102.”</p> <p>(C) Amend for clarity and conciseness.</p> <p>(C)(3) Insert “and 17 A.A.C. 1, Article 5” at the end of the sentence.</p>

R17-3-701

(A)(1) The term “abandoned sign” is not used within the rule. Additionally, the definition is inconsistent with the federal regulatory definition.

(A)(8) The phrase “Federal or state law” is unnecessary.

(A)(9) The term “illegal sign” is defined but not used within the text of the rule.

(A)(10) The definition of “Intended to be read from the main traveled way” contains regulatory criteria inappropriate for a definition Section.

(A)(13) The term “lease” is unnecessary.

(A)(14) The definition of “maintain” is vague. Additionally, included within the definition are the terms “of good repair,” “safe condition,” and “copy,” which are not defined in the rule.

(A)(20) The definition of “on-premise sign” is confusing and contains regulatory criteria inappropriate for a definition Section. Additionally, the independent clause “(such signs are not controlled by state statutes),” which was once necessary for clarification purposes, is no longer a true statement and should be deleted. Blinking and flashing are now controlled by statute.

(A)(26) The phrase “scenic overlook or rest area” is not used in the text of the rule language, but different variations of the phrase are used.

(A)(29) The definition of “Within the view of and directed at the main-traveled way” contains regulatory criteria inappropriate for a definition Section.

Subsection (B) would be more clear, concise, and understandable if it were divided into smaller, more manageable subsections consistent with the subject areas.

(B)(1) This subsection is unnecessary.

(B)(3) The current rule incorrectly specifies that new permit applications should be mailed to the maintenance permit engineer. The permit application process is centralized through the Maintenance Permits Services Section, located in Phoenix, thereby making the availability of assistance at District offices incorrect.

(B)(5) This subsection specifies that the application must indicate the legal description of the sign site, but does not indicate what constitutes a legal description.

(B)(9) This subsection is more appropriately placed within Department policies and procedures.

(B)(10) Strike the last sentence requiring a \$20 noncompliance fee. If the sign was illegally erected the Department would immediately initiate a process by which the sign owner would be required to remove the sign at the owner’s expense.

Subsection (C) would be more clear, concise, and understandable if it were divided into smaller, more manageable subsections consistent with the subject areas.

(C)(1) This subsection is unnecessary.

R17-3-701.01	(A) Strike “A.R.S. § 28-2102(A)(4) or (5),” and insert “A.R.S. § 28-7902(A)(4) or (A)(5) .” (B) Strike “A.R.S. § 28-2106(4),” and insert “A.R.S. § 28-7909 .” Define “comprehensive zoning plan” to include how the Department determines that the zoning is “created primarily to permit outdoor advertising structures.” Define “limited commercial or industrial activities,” to include how the Department determines that the use is “incident to other primary land uses.”
R17-3-703	(B)(5) Strike “A.R.S. § 28-7901(11) ,” and insert “A.R.S. § 28-7901 , “Unzoned commercial or industrial area.”

7. **Has the agency received written criticisms of the rules within the last five years?** Yes

No

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response
N/A	N/A	N/A

The Department has not received any written criticisms of R17-3-701 in the last five years, however, two of the comments the Department received during its last rulemaking effort at [18 A.A.R. 2347, September 28, 2012](#), will still be considered if the Department is eventually able to move forward with any anticipated rule amendments:

Scenic Arizona requested that the Department add in R17-3-701(A)(1)(s) (now R17-3-701(A)(16)) after “such maintenance will not” the word “cumulatively,” suggesting that this change will prevent someone from replacing a nonconforming sign by scheduling maintenance in at least two phases to stay within the required 50%. The Department believes that this comment merits further analysis and will consider the suggested language in a future, more comprehensive, rulemaking.

Scenic Arizona requested that the Department also strike the language “beyond normal maintenance” in R17-3-701(D)(3)(c) (now R17-3-701(C)(3)(c)), suggesting that normal maintenance does not include changes in configuration or materials used in the sign. The Department believes that this comment also merits further analysis and will consider the suggested change in a future, more comprehensive, rulemaking.

Scenic Arizona is a Tucson branch of Scenic America, which describes itself as the only national 501(c)(3) nonprofit organization dedicated to preserving and enhancing the visual character of the country’s roadways, countryside, and communities.

8. Economic, small business, and consumer impact comparison:

The economic impact of each of these rules has been the same as estimated by the Department in the economic impact statement prepared on the last amendment of each rule.

<p>Article 2. Management of Contractor Bidding</p>	<p>Currently, there are 127 prequalified contractors interested in doing business with the Department. The economic impact of the following rules has been the same as estimated in the economic impact statement prepared on the last amendment of the rules.</p>
<p>Article 3. Relocation Assistance</p>	<p>Although the economic impact of the rules in this Article remains the same as estimated by the Department in the economic impact statement prepared on the last amendment of the rules, Laws 2014, Ch. 28, §§ 6 through 8, incorporated several of the amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), which increased the allowable maximum statutory benefit effective October 1, 2014, as follows:</p> <ul style="list-style-type: none"> • Replacement housing payments for displaced <u>homeowners</u> under A.R.S. § 28-7144(A) increased from \$22,500 to \$31,000; • Replacement housing payments for displaced <u>tenants</u> under A.R.S. § 28-7146(B) increased from \$5,250 to \$7,200; • Reestablishment payments for displaced <u>businesses</u> under A.R.S. § 28-7143(A)(4) increased from \$10,000 to \$25,000; • Fixed payments for nonresidential moves under A.R.S. § 28-7143(C) increased from \$20,000 to \$40,000; and • Length of occupancy requirement for homeowners under A.R.S. § 28-7144(A) was reduced from 180 days to 90 days in occupancy before the initiation of negotiations. <p>Additionally, where ADOT previously reported having 14 state employees and 2 consultants directly involved with relocation and property management activities, the Department now has 12 state employees and 6 consultants involved with these activities.</p>

<p>Article 5. Encroachment Permits</p>	<p>Costs to persons regulated by this rule are minimal and include the costs associated with completing an application or request form provided by the Department and providing the Department with all required documentation in support of the request. The Department believes that this rule imposes no significant burden or costs to persons regulated by the rule. In FY 2019, the Department's Statewide Permits Services unit:</p> <ul style="list-style-type: none"> • Received 2504 encroachment permit applications; • Issued 2055 encroachment permits (permits are to be issued within 150 days of receipt; unless the clock stops due to required information on the applicant's part, meetings, etc.; some projects are extensive in scope and, in some cases, may take years to finalize); and • Denied 5 encroachment permit applications.
<p>Article 7. Highway Beautification</p>	<p>In FY 2019, the Department's Statewide Permits Services unit has processed:</p> <ul style="list-style-type: none"> • Outdoor Advertising permit applications received: 32 • Outdoor Advertising permits issued: 28 (permits are to be issued within 60 days of receipt; unless the clock stops due to required information on the applicant's part) • Outdoor Advertising applications denied: 3 • Outdoor Advertising Permits cancelled: 47 • Current signs in inventory renewed and/or monitored annually: 2071 (permitted conforming requiring renewal of permit: 1678; permitted nonconforming requiring renewal of permit: 140; grandfathered nonconforming monitored to comply with regulations: 253) <p>ADOT continues to employ a contractor to perform a semiannual inventory of current signs, and inspect new signs for new permit requests received by the Outdoor Advertising program (currently under contract for \$365,465). ADOT receives \$20 per new application and \$5 per annual renewal (28 x \$20 = \$560 and 1818 x \$5 = \$9,090 for a total reimbursement of \$9,650 for the state highway fund). This program is an unfunded federal mandate. If Arizona does not effectively control outdoor advertising, the FHWA may withhold 10% of the state's transportation budget for the year. The probable benefits of the rules outweigh the probable costs of the rules.</p>

Article 9. Highway Traffic Control Devices	In FY 2015, the Department's cash flow to the State Highway Fund from Urban/Rural Logo Sign Programs was as follows:			
		FY 15 Estimate	FY 15 Actual	Variance
	Total Infrastructure Investment	5,967,239 (136 traffic interchanges, 1,146 leases, 11.08 leases per traffic interchange)	2,308,868 (20 traffic interchanges, 92 leases, 4.6 leases per traffic interchange)	3,658,371
	Cash Flow Before Operating Expenses	4,329,444	(971,348)	(5,300,791)
	Operating Expenses	1,970,244	830,681	(1,139,563)
	Cash Flow - Urban	2,359,200	(1,802,028)	(4,161,228)
	Cash Flow - Rural	1,500,000	(1,558,587)	58,587
	Total Cash Flow - Highway Fund	3,859,200	(243,441)	(4,102,641)
	In FY 2019, the Department's cash flow to the State Highway Fund from Urban/Rural Logo Sign Programs was as follows:			
		FY 15 Actual	FY 19 Actual	Variance
Total Infrastructure Investment	2,308,868 (20 traffic interchanges, 92 leases, 4.6 leases per traffic interchange)	1,472,854 (352 traffic interchanges, 1863 leases, 5.29 leases per traffic interchange)	836,014	
Cash Flow Before Operating Expenses	(971,348)	3,876,950	2,905,602	
Operating Expenses	830,681	806,829	23,852	
Cash Flow - Urban	(1,802,028)	950,655	(851,373)	
Cash Flow - Rural	(1,558,587)	2,119,465	560,878	
Total Cash Flow - Highway Fund	(243,441)	3,070,121	2,826,680	

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___
No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year review report?**

Yes ___ No X *Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Department did not complete the course of action indicated in its previous five-year review report for any of the following rules because the indicated amendments (as outlined under item 6) were noncritical and did not have a significant impact on the enforceability of the rules. The indicated amendments (to provide additional clarification, update statutory references, and ensure conformity with rulemaking format and style requirements) were intended only to improve rule clarity, conciseness, and understandability, but did not rise to the level of importance necessary for the Department to seek special permission from the Governor's Office to proceed with rulemaking while under a rulemaking moratorium. The rules generally met objectives and were effective, consistent with statute, and enforceable. However, the Department does anticipate moving forward with the anticipated amendments as outlined in this report.

Article 2. Management of Contractor Bidding: The Department did not complete the course of action indicated in the previous five-year review report for the following rules:

R17-3-202. Contractor Prequalification

The Department's previous five-year review of these rules indicated that the Department would seek an exception from the Governor's Office to proceed with this rulemaking by March 31, 2015, and if approved, would amend the rules by December 2015.

The Department remains committed to completing all of the amendments indicated above under item 6, but those amendments cannot be completed until June 30, 2020, pending approval from the Governor's Office.

Article 3. Relocation Assistance: The Department did not complete the anticipated course of action indicated in the previous five-year review report for the following rules:

R17-3-301. Relocation Assistance; Adoption of Federal Regulations

R17-3-302. Relocation Assistance; 49 CFR 24, Subpart A - General

R17-3-303. Relocation Assistance; 49 CFR 24, Subpart C - General Relocation Requirements

R17-3-305. Relocation Assistance; 49 CFR 24, Subpart E - Replacement Housing

Payments

Although the Department anticipated amending these rules to incorporate by reference any new federal regulations made under [49 CFR 24](#), and anticipated submitting those amendments to the Council by September 2016, the agency is unable to move forward with the anticipated incorporations by reference because there has been no indication at the federal level that [49 CFR 24](#) will even be updated to reflect the increased maximum statutory benefit amounts prescribed in Section 1521 of the [Moving Ahead for Progress in the 21st Century Act \(MAP-21\)](#). The Department's implementing statutes were updated by [Laws 2014, Ch. 28, §§ 6 through 8](#), to reflect the increased benefit amounts. The Department will request permission from the Governor's Office to proceed with this rulemaking as soon as [49 CFR 24](#) is updated.

Article 5. Highway Encroachments and Permits: The Department did not complete the course of action indicated in the previous five-year review report for the following rules:

- R17-3-501. Definitions
- R17-3-502. Applicability
- R17-3-503. Who Can Apply for an Encroachment Permit
- R17-3-504. General Application Procedures
- R17-3-505. Supporting Documentation
- R17-3-506. Encroachment Permit Requirements
- R17-3-507. Review Procedures
- R17-3-508. Unauthorized Encroachments; Enforcement Actions
- R17-3-509. Hearings

The Department's previous five-year review of these rules indicated that the Department would amend the rules by December 2015, to improve clarity, conciseness, and understandability as indicated under item 6 above.

The Department remains committed to completing all of the amendments indicated above under item 6, but those amendments cannot be completed until June 30, 2020, pending approval from the Governor's Office.

Article 7. Highway Beautification: The Department did not complete the course of action indicated in the previous five-year review report for the following rules:

- R17-3-701. Outdoor Advertising Control
- R17-3-701.01. Outdoor Advertising Control: Restrictions on the Erection of Billboards and Signs and Restrictions on the Issuance of Permits
- R17-3-703. Arizona Junkyard Control

The Department's previously stated course of action indicated that amendments would be completed on these three rules by December 31, 2015, to improve clarity, conciseness, and understandability as indicated under item 6 above.

The Department has noted the suggestions received from Scenic Arizona as indicated under item 7 above and remains committed to completing all of the amendments indicated above under item 6, but those amendments cannot be completed until June 30, 2020, pending approval from the Governor's Office.

Article 9. Highway Traffic Control Devices: The Department indicated no course of action in the previous five-year review report for the following rules:

- R17-3-901. Signing for Colleges and Universities
- R17-3-902. Logo Sign Programs
- R17-3-904. MUTCD Requirements for Logo Signs
- R17-3-905. Rural Logo Sign Requirements
- R17-3-906. Existing Leases

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

In rulemaking, the Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or industry. Therefore, the Department has determined that the benefits of all the rules in this Chapter outweigh the costs.

Article 2. Management of Contractor Bidding

<p>R17-3-201 R17-3-202 R17-3-203 R17-3-204</p>	<p>Although a contractor must pay a public accountant or CPA to prepare the financial statement, the rules do not require a contractor to submit a more costly “examined” financial statement. Instead, a contractor may submit a compiled financial statement that does not give an accountant’s professional opinion as to the contractor’s financial stability. The rules in this Article are designed to minimally impact small business contractors and the Department believes that the probable benefits of the rules outweigh the probable costs of the rules.</p> <p>The Department believes that these rules already provide the least burdensome process, other than eliminating the contractor prequalification process altogether. Many firms have expressed a deep appreciation for the Department’s prequalification process, and each time the Department begins to openly consider eliminating the process, many of the contractors protest the idea. The Department’s prequalification process allows contractors to feel confident that if they submit a bid on a project, they will not be underbid by a disreputable firm that does not have proven work experience or the financial stability needed to carry through on any awarded contract. Additionally, some contractors are proud of their ADOT prequalification status and have successfully used that status as a good reference to help them qualify for large projects offered by other clients.</p> <p>The not readily quantifiable benefits of avoiding contractor default while also promoting confidence in the Department’s competitive bidding process appear to be greater than any costs associated with these rules. Contractor costs are low since any sort of business information or documentation required of a contractor for compliance with the rules is much of the same business information or documentation already maintained in other business contexts, such as financial statements used to maintain insurance policies or as support for fiscal tax filings, etc. The business information and documentation accepted by the Department is generally readily available.</p>
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Article 3. Relocation Assistance

R17-3-301	
R17-3-302	
R17-3-303	
R17-3-304	<p>The relocation assistance rules in this Article mirror the federal standards and guidelines provided under 49 CFR 24, but are prescribed by the Department for use when the program or project is not currently, or intended to be, part of the National Highway System and would not otherwise qualify for federal funding.</p> <p>However, as provided in 23 U.S.C. 109, the U.S. Department of Transportation holds the Department in strict compliance with all existing federal standards and guidelines when administering any program or project funded, in whole or in part, by federal-aid. Adherence to well-established federal standards and guidelines for any proposed highway program or project that may eventually involve a portion of the Federal-aid Highway System provides certain assurances that all possible adverse economic, social, or environmental impacts of the proposed highway program or project will be fully considered in the development stage, and that the final decisions on the program or project will be made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects, including:</p> <ol style="list-style-type: none"> (1) Air, noise, and water pollution; (2) Destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services; (3) Adverse employment effects, and tax and property value losses; (4) Injurious displacement of people, businesses and farms; and (5) Disruption of desirable community and regional growth. <p>Adopting the federal uniform relocation assistance guidelines for use on state-level transportation programs and projects has encouraged procedural uniformity for the Department and individuals, families, businesses, and farm operations displaced as a result of programs and projects undertaken by the Department. Although the rules in this Article represent only a small portion of the Department’s exhaustive transportation planning processes, the uniform procedures allow the Department to: ensure the fair and equitable treatment of displaced persons; minimize the hardship of displacement on such persons; and ensure that those persons do not suffer disproportionate injuries as a result of any program or project designed for the benefit of the public as a whole, as required under A.R.S. § 28-7142.</p>

Article 5. Highway Encroachments and Permits

R17-3-501	Costs to persons regulated by the rules in this Article are minimal and include the costs
R17-3-502	associated with completing an encroachment permit application and providing the
R17-3-503	Department with all required documentation in support of the permit application. The
R17-3-504	Department believes that these rules impose no significant burden or costs to persons
	regulated by the rules other than the minimal costs involved with any necessary correspondence between the Department and the permit applicant.
	<p>No fees are authorized by statute, or collected by the Department, for reviewing and acting on an encroachment permit application. ADOT employees, at no charge to the customer, perform the required engineering analyses, inspections, review, etc. The process used by Department engineers and permit technicians for deciding whether to approve or deny an encroachment permit application is complex and varies depending on the type of encroachment permit requested. Some encroachment permit applications involve portions of highways that may conflict with scheduled ADOT construction projects, or portions of highways identified as part of a joint project agreement between the Department and a county or political subdivision, which may delay issuance of the requested permit for several months. Due to obvious concerns for public safety, these permits cannot be issued until the entire analysis process is complete. ADOT does not recover costs or charge any other fees in connection with this process. The probable benefits of these rules outweigh the probable costs of the rules.</p>

Article 7. Highway Beautification

R17-3-701 R17-3-702 R17-3-703 R17-3-704	<p>Costs to persons regulated by the rules in this Article are minimal and include the costs associated with completing an Outdoor Advertising Permit application and providing the Department with all required documentation in support of the permit application. The Department believes that these rules impose no significant burden or costs to persons regulated by the rules other than the minimal costs involved with any necessary correspondence between the Department and the permit applicant.</p> <p>23 U.S.C. 131 requires states to provide effective control of the erection and maintenance of outdoor advertising signs, displays, and devices along the interstate system and the primary system within 660 feet of the nearest edge of the right-of-way if visible from the main-traveled way of the system and erected with the purpose of the message being read from that main-traveled way. The Federal Highway Administration may withhold 10% of the federal-aid highway funds apportioned to the state under 23 U.S.C. 104 if it determines that the Department has not provided effective control. The probable benefits of these rules outweigh the probable costs of the rules.</p>
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Article 9. Highway Traffic Control Devices

R17-3-901 R17-3-902 R17-3-903 R17-3-904	<p>All costs incurred by the Department and any sponsor participating in the Department’s logo sign program are paid under agreements negotiated between the Department and the sponsors who seek to join the Department in providing information about motor vehicle- and motorist-related goods and services directly to the motoring public throughout the state. Federal regulations limit participation in the logo sign program to certain types of travel-related businesses (e.g. gas, food, lodging, etc.), however, participation in the program is completely voluntary and subject to the availability of logo sign space.</p> <p>The Department has only minor flexibility regarding the design and placement of these types of highway signs due to strict federal standards and regulations, state rules, and other highway traffic engineering considerations. Current program design, logo sign size, and locations are very dependent on traffic engineering and must comply with the current edition of the Manual on Uniform Traffic Control Devices, which specifically outlines the types of businesses that can actually qualify for participation in such programs, limits the number of logos and signs that can be erected, and controls where these types of signs are located.</p> <p>The Department has determined that these rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.</p>
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12. Are the rules more stringent than corresponding federal laws?

Yes

No X

Please provide a citation for the federal laws. And if the rules are more stringent, is there statutory authority to exceed the requirements of federal laws?

<p>All Articles</p>	<p>All of the rules contained in this Chapter are either in conformance with corresponding federal laws, or no corresponding federal law exists. The Department is obligated to follow all federal laws, rules, and guidelines relating to highways built or maintained with federal-aid funding. Where highways or other transportation facilities are built and maintained solely with state and local funding, all state laws, rules, and guidelines apply. The following references to federal laws, rules, and guidelines apply to the subject matter of these rules; however, the rules are not more stringent than any of the federal laws, rules, and guidelines:</p> <p>Title 23, United States Code (U.S.C.), Section 109(d), Standards for Federal-Aid Highways;</p> <p>23 U.S.C. 111(b), Rest Areas;</p> <p>23 U.S.C. 131, Control of Outdoor Advertising;</p> <p>23 U.S.C. 156, Proceeds from the Sale or Lease of Real Property;</p> <p>23 U.S.C. 402, Highway Safety Programs;</p> <p>23 Code of Federal Regulations (CFR), Section 1.23(b), Rights-of-way;</p> <p>Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), published by the Federal Highway Administration (FHWA) as prescribed under 23 CFR 655, Subpart F, Traffic Control Devices on Federal-Aid and Other Streets and Highways;</p> <p>23 CFR 655.603, Standards for Traffic Control Devices on Federal-Aid and Other Streets and Highways;</p> <p>23 CFR Part 750, Highway Beautification (for controlled routes);</p> <p>49 CFR 1.85, Delegations to Federal Highway Administrator; and</p> <p>FHWA Order 5160.1A, Policy on Sponsorship Acknowledgment and Agreements within the Highway Right-of-Way (April 7, 2014); and</p> <p>IRC Sec. 170(c)(1) Charitable, etc., contributions and gifts.</p>
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Article 2. Management of Contractor Bidding

<p>R17-3-201 R17-3-202 R17-3-203 R17-3-204</p>	<p>The rules in this Article are applicable to “state-funded” transportation facility construction or reconstruction projects and have no corresponding federal law. However, the rules are not more stringent than the federal-aid procurement regulations maintained by the Federal Highway Administration for “federally-funded” transportation facility construction or reconstruction projects.</p> <p>While the federal government does not require a prequalification process in order to receive federal aid, the Federal Highway Administration recognizes that, “A State Transportation Agency’s (STA’s) procedures for soliciting and awarding construction contracts are an important part of the competitive bidding process. To ensure a competitive contracting environment, STAs should develop effective prequalification programs and other procedures to ensure fairness in the pre-bid solicitation process and post award review of construction bids.” <i>Guidelines on preparing engineer’s estimate, bid reviews and evaluation</i>, dated January 20, 2004.</p> <p>[Source: http://www.fhwa.dot.gov/programadmin/contracts/ta508046.pdf]</p> <p>The FHWA federal-aid procurement regulations are applicable to traditional construction, engineering and design services, non-engineering/non-architectural, and innovative contracts on certain construction projects involving “federally-funded” transportation facilities, and are not intended to address potential procurement issues that are particular to a specific state or local agency's procurement legislation, regulations, or practices. Therefore, state and local agency regulations for “state-funded” transportation facility construction or reconstruction projects may be more restrictive. State and local agencies must consider their respective statutory requirements and pertinent case law in determining the legal feasibility of utilizing a particular contracting technique, feature, or provision. The following state statutes were used in determining the consistency: A.R.S. §§ 28-6923, 28-7363(E), and 41-2501(J) and (N).</p>
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Article 3. Relocation Assistance

R17-3-301	
R17-3-302	
R17-3-303	The federal relocation assistance laws, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the federal regulations in 49 CFR Part 24 , Subparts A, C, and E, and Appendix A (October 1, 2010), are applicable to
R17-3-304	these rules as incorporated by reference. The Department has determined that these rules
	are no more stringent than any corresponding federal law. All federal regulations incorporated by reference under this Article have been amended for applicability to “state-funded” transportation programs and projects, which have no corresponding federal law. However, the rules are not more stringent than the regulations maintained by the Federal Highway Administration for relocation assistance activities involved with programs and projects involving “federally-funded” transportation facility construction or reconstruction.
	FHWA regulations are applicable to relocation assistance provided for construction projects involving “federally-funded” transportation facilities, and are not intended to address transportation program and project issues that are particular to a specific state or local agency's authorizing legislation, regulations, or practices. Therefore, state and local agency regulations for “state-funded” transportation facility construction or reconstruction programs or projects may be more restrictive. State and local agencies must consider their respective statutory requirements and pertinent case law in determining the legal feasibility of utilizing a particular process for providing appropriate relocation assistance. The following state statutes were used in determining consistency: A.R.S. §§ 28-7141 to 28-7149 and 28-7152 and federal statutes under 42 U.S.C. 4601, et seq.

Article 5. Highway Encroachments and Permits

R17-3-501	
R17-3-502	
R17-3-503	The rules in this Article have no corresponding federal law that is applicable to an
R17-3-504	encroachment activity proposed or conducted on a state highway or route under the
	jurisdiction of the Department. However, an encroachment activity involving the right-of-way on any federal highway or route would be subject to the requirements provided under 23 USC 111 .

Article 7. Highway Beautification

<p>R17-3-701 R17-3-702 R17-3-703 R17-3-704</p>	<p>The Department is obligated by statute, and by agreement with the Federal Highway Administration, to adhere to all acceptable standards for effective control of outdoor advertising signs, displays, and devices. The agreement does not prohibit the state, a municipality, or county from adopting standards that are more restrictive in controlling outdoor advertising than the provisions of the agreement. Additionally, the federal regulations that implement outdoor advertising control provide the necessary authority for states to exceed the requirements of the federal regulations (see 23 U.S.C. 131(k) and 23 CFR 750.155).</p> <p>Based on public comments received from outdoor advertising owners during the Department’s last rulemaking, the definition of normal maintenance for nonconforming signs was adjusted to allow repairs to a sign when damaged if less than 60% of the uprights require replacement for wood uprights or less than 30% of the length of each upright support above ground for metal uprights require replacement. The FHWA Destroyed Sign Guidance Memorandum dated September 9, 2009, allows for more restrictive repair and replacement percentages, 40% and 20%, respectively. At least one state, Illinois, uses the same percentages. Even with the 60% and 30% figures, fewer signs will be allowed to be repaired than under the previous rules. The rules in this Article are not more stringent than federal law.</p>
<p>R17-3-701.01</p>	<p>This rule is generally consistent with state statutes and other rules made by the Department, except that the statute was renumbered and amended after promulgation of the rule. An incorporated city or town or a county may control outdoor advertising along interstate, secondary and primary highways by enacting comprehensive zoning ordinances as provided under A.R.S. § 28-7912.</p> <p>23 U.S.C. 131(d) provides that “[t]he States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority.”</p>

R17-3-703	The Department is obligated by statute, and by 23 U.S.C. 136 , to maintain effective control of junkyards located within 1000 feet of the right-of-way of the Interstate or primary systems if visible from the main-traveled way. Additionally, the federal regulations that implement outdoor junkyard control provide the necessary authority for states to exceed the requirements of the federal regulations (see 23 U.S.C. 136(l)). However, this rule is not more stringent than federal law.
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Article 9. Highway Traffic Control Devices

R17-3-901 R17-3-902 R17-3-903 R17-3-904	The rules in this Article are not more stringent than any corresponding federal law. The Department is required under A.R.S. § 28-641 to use a uniform system that correlates with and as far as possible conforms to the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways . The MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel. The MUTCD is published by the Federal Highway Administration (FHWA) in accordance with the authority provided under 23 Code of Federal Regulations (CFR), Part 655, Subpart F .
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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:

Each regulatory permit, license, or agency authorization provided by the Department under these rules is specifically authorized by statute and falls within the criteria provided under A.R.S. § [41-1037](#).

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Article 2. Management of Contractor Bidding: On receiving Council approval and permission from the Governor’s Office to proceed with rulemaking, the Department anticipates completion of all amendments indicated for this Article under Item 6, before June 30, 2020.

Article 3. Relocation Assistance: On receiving Council approval and permission from the Governor’s Office to proceed with rulemaking, the Department anticipates completion of all amendments indicated for this Article under Item 6, before June 30, 2020.

Article 5. Highway Encroachments and Permits: On receiving Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completion of all amendments indicated for this Article under Item 6, before June 30, 2020.

Article 7. Highway Beautification: On receiving Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completion of all amendments indicated for this Article under Item 6, before June 30, 2020.

Article 9. Highway Traffic Control Devices: No action is necessary. All rules located in this Article were last amended by Final Rulemaking at 19 A.A.R. 1324, effective July 6, 2013, and generally meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

Arizona Administrative CODE

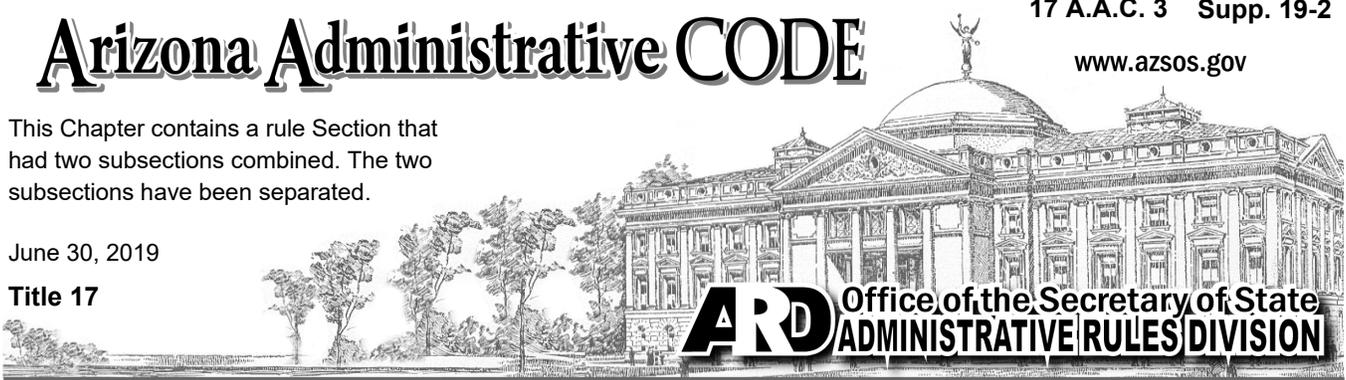
17 A.A.C. 3 Supp. 19-2

www.azsos.gov

This Chapter contains a rule Section that had two subsections combined. The two subsections have been separated.

June 30, 2019

Title 17



TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Subsection R17-3-303(3) was inadvertently included with subsection R17-3-303(2) as one paragraph in Supp. 13-2. The pagination error has been corrected.

This Chapter has been updated to the codification layout which includes a digital signature. No other changes have been made to this Chapter since Supp. 13-2 (Supp. 19-2).

Questions about these rules? Contact:

Agency: Arizona Department of Transportation
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The release of this Chapter in Supp. 19-2 replaces Supp. 13-2, 1-25 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

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Editor's Note: The Article 5 heading "Highway Encroachments and Permits" is published as submitted by the Department (Supp. 04-4).

ARTICLE 5. HIGHWAY ENCROACHMENTS AND PERMITS

Article 5, consisting of Sections R17-3-501 through R17-3-509, made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

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CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS

ARTICLE 1. REPEALED**R17-3-101. Reserved****R17-3-102. Repealed****Historical Note**

Former Rule, ASHC Resolution. Former Section R17-3-10 renumbered without change as Section R17-3-102 (Supp. 88-4). Repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 2. MANAGEMENT OF CONTRACTOR BIDDING**R17-3-201. General****A. Definitions.**

1. "Application" means a request for contractor prequalification, consisting of an application booklet available from the Department's office of Contracts and Specifications, and a financial statement prepared according to the requirements of this subsection and R17-3-202.
2. "Board" means the Contractor Prequalification Board.
3. "Compiled financial statement" means a financial statement prepared for form, appropriateness, and arithmetic accuracy. It does not express an opinion or provide any assurance regarding the financial statement.
4. "Contractor" means the individual, partnership, firm, corporation, joint venture, or any combination acceptable to the Department, that seeks to contract with the Department for constructing or reconstructing state transportation facilities, unless the context requires otherwise.
5. "Contractor prequalification" means the Department's process of review and evaluation of a contractor's work history and current financial condition before a contractor is allowed to submit a proposal for constructing or reconstructing state transportation facilities.
6. "Department" means the Arizona Department of Transportation.
7. "Examined financial statement" means a financial statement that includes the amounts and disclosures in the firm's financial statement, an assessment of the accounting principles used and the significant estimates made by management, and an evaluation of the overall financial statement presentation.
8. "Financial statement" means a financial report prepared according to generally accepted accounting principles by an independent certified public accountant or an independent public accountant. The financial statement includes a cover letter on the accountant's letterhead, a balance sheet, a statement of cash flows, an income statement, and all notes and appropriate supporting schedules.
9. "Joint venture" means the combination of two or more contractors for the purpose of submitting a proposal to the Department and performing a contract for constructing or reconstructing state transportation facilities.
10. "Prequalification amount" means the dollar limitation of each contract, based on the Department's estimate of contract value, for which a contractor may submit a proposal to the Department for constructing or reconstructing state transportation facilities.
11. "Reviewed financial statement" means a financial statement that includes an inquiry of company personnel, and a review of the analytical procedures applied to the financial data. It does not express an opinion regarding the financial statement taken as a whole.
12. "State Engineer" has the meaning in A.R.S. § 28-6901(3).

B. Contractor Prequalification Board.

1. The State Engineer shall appoint the Board to consider and decide on applications for contractor prequalification.

2. The Board will be comprised of three Department employees, one of whom shall be a professional engineer, registered by the Arizona Board of Technical Registration, and one a certified or licensed public accountant.
3. The Board's authority to determine prequalification does not limit the Department's ability to establish additional criteria for contracts.

Historical Note

Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

R17-3-202. Contractor Prequalification

- A. Criteria.** An applicant for contractor prequalification shall include on the application and the Board shall consider the following information in determining the prequalification amount for a contractor:
 1. Key personnel and their work experience,
 2. Organizational structure,
 3. History of past or current projects and contracts,
 4. Company affiliations,
 5. Equipment owned or controlled,
 6. Any applicable licenses,
 7. Type of work requested,
 8. Individuals authorized to act on behalf of the contractor,
 9. Any prequalification or bidding disputes with a government agency, and
 10. Financial condition.
- B. Prequalification Expiration and Extension.**
 1. Prequalification expires 15 months after the end of a contractor's fiscal year, as reflected on the financial statement. Due to the time necessary to prepare an examined financial statement, the Board may grant up to a 60 day extension on the expiration of prequalification, if:
 - a. The contractor submits a letter from its accountant stating the reasons for delay in preparing the examined financial statement,
 - b. The letter from the accountant states the anticipated completion date of the examined financial statement, and
 - c. The contractor submits an interim compiled or reviewed financial statement that was prepared within the previous six months.
 2. The Board will notify each contractor in writing of its decision on the contractor's prequalification amount.
- C. Joint Ventures.**
 1. Each contractor in a proposed joint venture shall be prequalified. The joint venture shall submit a joint venture statement of intent at least five calendar days before the applicable bid opening date.
 2. If one or more of the parties to the joint venture are corporations, a copy of a resolution from the Board of Directors authorizing the corporation to enter into the joint venture and execute all contract documents shall be submitted with the statement of intent.
 3. Contractors operating as a joint venture on a continuing basis may file for prequalification as a joint venture.
 4. The Board may allow a contractor operating as a joint venture to prequalify for a pro rata share of the entire contract amount. The percentage share of work shall not exceed each individual contractor's prequalification amount.
- D. Classification of Contractors.** The Board shall categorize contractors into the following classifications:
 1. Inexperienced firms: Firms that have no experience as contractors in transportation facilities construction work;

CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS

2. New firms: Recently organized firms that have officers with experience with other contractors in positions of responsibility for transportation facilities construction;
 3. Unknown firms: Firms that have experience as contractors but have not completed a transportation facilities construction contract as a contractor for the Department within the past five years or at any time;
 4. Known firms: Firms that have successfully completed at least one transportation facilities construction contract within the past five years as a contractor for the Department.
- E. Classification of Financial Statements.**
1. All financial statements shall be examined, reviewed, or compiled according to generally accepted accounting principles, by either an independent certified public accountant or an independent public accountant, registered and licensed under the laws of any state. A contractor shall not submit a financial statement prepared by either a certified or public accountant who is directly or indirectly interested in or affiliated with the business of the contractor.
 2. A contractor that desires a prequalification amount in excess of \$1.5 million shall submit an examined financial statement.
 3. A contractor that submits a reviewed financial statement will be limited to a maximum prequalification amount of \$1.5 million.
 4. A contractor that submits a compiled financial statement will be limited to a maximum prequalification amount of \$300,000.
- F. Prequalification Limits.** In determining the prequalification amount for each contractor, the amount set by the Board may be less than the maximum amount set out in this subsection due to the Board's evaluation of the contractor's information under R17-3-202(A).
1. Inexperienced firms. An inexperienced firm will be limited to a maximum prequalification amount of \$300,000 until the contractor has satisfactorily completed at least one transportation facilities construction contract for any public agency.
 2. New firms. A new firm will be limited to a maximum prequalification amount of five times the firm's net worth.
 3. Unknown firms. An unknown firm will be limited to a maximum prequalification amount of five times the firm's net worth or the amount of the largest transportation facilities construction contract it has successfully completed as a contractor for any other public agency, whichever is larger.
 4. Known firms. A known firm will be limited to a maximum prequalification amount of ten times the firm's net worth. An unlimited prequalification amount may be granted if the product of ten times the firm's net worth exceeds \$100 million.
 5. All firms. Evidence of additional assets pledged in behalf of a contractor or letters from a contractor's surety company may be considered in establishing higher prequalification amounts than stated in subsections (F)(2) through (F)(4). A parent company that pledges assets in behalf of a contractor shall submit a financial statement.
- G. Reconsideration of Prequalification Determination.**
1. If a contractor is dissatisfied with the Board's decision, the contractor may request in writing a hearing, within 15 days of receiving the Board's decision. The hearing shall be conducted under A.R.S. § 41-1062. The letter shall indicate the basis for the request and shall provide supportive data. The Board shall review the request and accompanying information and decide on the request within 30 calendar days of its receipt.
 2. If the contractor is still dissatisfied with the decision of the Board, the contractor may appeal to the State Engineer. The Board shall notify the contractor about the appeal procedures.
- H. Issuance of Bidding Documents.** A contractor shall not request bid documents for a contract for which it is not prequalified.
- I. The Department may waive the prequalification requirement on an individual contract when it is in the best interest of the state. The advertisement for bids shall identify if prequalification is waived.**

Historical Note

Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

R17-3-203. Reduced Prequalification Amounts or Disqualifications

- A.** The Board may reduce the prequalification amount of a contractor already prequalified or disqualify a contractor from bidding if a contractor:
1. Falsifies any document or misrepresents any material fact in the information furnished to the Department;
 2. Fails to enter into a contract with the Department;
 3. Defaults on a previous contract with any public agency;
 4. Has an unsatisfactory work performance record with the Department on the basis of workmanship, competent superintendence, adequate and proper equipment, timely completion, or failure to submit required documentation for closing out a contract; or
 5. Fails to provide notification to the Board, within 30 calendar days of occurrence, of any change in ownership, corporate officers or general partners, bankruptcy, receivership, court supervised reorganization, or the entry of a judgment in a judicial or administrative proceeding adverse to the contractor.
- B.** The Board shall notify a contractor in writing of its intention to reduce the prequalification amount or to disqualify a contractor. The Board's notice to reduce prequalification or to disqualify a contractor shall become a final determination unless the contractor requests a hearing with the Board within 20 calendar days after receiving such notification. The Board shall notify the contractor about the hearing procedures.
- C.** The contractor may appeal the Board's decision to the State Engineer. The Board shall notify the contractor about the appeal procedures.

Historical Note

Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

R17-3-204. Access to Department Prequalification Files

- Prequalification files are considered to be strictly confidential. The files will be available only to:
1. Members of the Board,
 2. The Director of the Department or any authorized agents of the Department,
 3. Members of the Arizona State Transportation Board,
 4. The division administrator of the Federal Highway Administration or any authorized representatives,
 5. Agents of surety upon the filing of an application for bond duly signed by an authorizing party of the prequalified contractor,

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6. Members of the Arizona State Board of Accountancy or their duly authorized representatives, and
7. The contractor that is the subject of the file.

Historical Note

Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

ARTICLE 3. RELOCATION ASSISTANCE

Article 3, consisting of Sections R17-3-301 through R17-3-304, repealed; new Article 3, consisting of Sections R17-3-301 through R17-3-306, made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1).

R17-3-301. Relocation Assistance; Adoption of Federal Regulations

- A.** The Department incorporates by reference 49 CFR 24.1 through 24.10, 49 CFR 24.201 through 24.209, 49 CFR 24.301 through 24.305, 49 CFR 24.401 through 24.404, 49 CFR 24.501 through 24.503, 49 CFR 24.601 through 24.603, and Appendix A to Part 24 as it relates to Subparts A, C, D, and E, revised as of October 1, 2010, and no later amendments or editions, as amended by this Article. These sections apply to relocation assistance activity provided by the Department. The incorporated material is on file with the Arizona Department of Transportation and is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov> or is available free of charge at <http://gpo.gov>.
- B.** The following definition applies for the purpose of this Article unless indicated otherwise.

“Department” means the Arizona Department of Transportation.

Historical Note

Former Rule, Right of Way Resolution 70-60. Former Section R17-3-12 renumbered without change as Section R17-3-301 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

R17-3-302. Relocation Assistance; 49 CFR 24, Subpart A - General

- A.** 49 CFR 24.2, “Definitions and acronyms” is amended as follows:

“Agency” means the Arizona Department of Transportation.”

“Contribute materially” in paragraph (a)(7) is amended to read:

The term “contribute materially” means that during the two taxable years before the taxable year in which displacement occurs, a business contributed at least 33 1/3% of the owner’s or operator’s average annual gross income from all sources.

“Decent, safe, and sanitary dwelling” in paragraph (a)(8) is amended to read:

The term decent, safe, and sanitary dwelling means a dwelling that meets applicable housing and occupancy codes. However, any of the following standards that are not met by an applicable code shall apply unless waived for good cause by the federal agency or state agency funding the project. The dwelling shall:

Be structurally sound, weathertight, and in good repair;

Contain a safe electrical wiring system adequate for lighting and other devices; and

Contain heating and cooling systems capable of sustaining a healthful temperature for a displaced person, except in those areas where local climatic conditions do not require such systems.

“Initiation of negotiations” has the same meaning as prescribed in A.R.S. § 28-7141.

“Notice of intent to acquire or notice of eligibility for relocation assistance” as described in 49 CFR 24.203(d) and 49 CFR 24.203(b) means:

Written notice furnished to a person to be displaced that establishes eligibility for relocation benefits before the initiation of negotiations.

“Persons not displaced” in paragraph (a)(9)(ii)(A) is amended to read:

A person who moves before the initiation of negotiations, unless this requirement is waived by the Department due to a move necessitated for reasons beyond the person’s control.

“Program or project” in paragraph (a)(22) is amended to read:

The phrase “program” or “project” means any displacing activity or series of activities undertaken by the Department, related to construction or reconstruction of a transportation facility, or a facility necessary for maintaining a transportation facility.

“Salvage value” in paragraph (a)(23) is deleted.

“Uneconomic remnant” in paragraph (a)(27) is deleted.

“Uniform Act” in paragraph (a)(28) is amended to read:

The term “Uniform Act” means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.).

“Utility facility” in paragraph (a)(31) is deleted.

“Utility relocation” in paragraph (a)(32) is deleted.

- B.** 49 CFR 24.5 “Manner of notices” is amended to read: Each notice which the agency is required to provide to a property owner or occupant under this part shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person to contact for answers to questions or other needed help.
- C.** 49 CFR 24.9 “Recordkeeping and reports” is amended to read: Paragraph (a) Records. The agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least three years after each owner of a property and each person displaced from the property receives the final payment to which each owner of property is entitled under this part, or in accordance with the applicable regulations of the federal funding agency, whichever is later.
- D.** 49 CFR 24.10 “Appeals” is amended to read: In addition to the provisions of A.R.S. §§ 41-1061 through 41-1067, the following provisions apply:

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1. Actions that may be appealed. A person who believes the Department has failed to properly determine the person's eligibility for, or the amount of, a relocation payment may file a written appeal. A person shall include all contested issues in one appeal.
2. Process. To appeal, a person shall submit a letter stating name and address and the reasons for disagreeing with the Department's decision to the Right-of-Way Group, Arizona Department of Transportation, 205 S. 17th Ave., MD 612E, Phoenix, AZ 85007-3212.
3. Time limit. The person shall file the written appeal within 60 days after receiving notice of the Department's determination on the person's claim. The date the appeal request is received begins the official time limit constraints, as prescribed in subsections (D)(4) and (8) of this Section. Filing the appeal does not extend any eligibility periods or a required date to vacate a property.
4. Hearing date. Within 45 days of receipt of the appeal request, the Department shall set a mutually agreeable date for a hearing before a hearing officer.
5. Review of files. After making a written request to the Department at the address in subsection (D)(2) of this Section, the person may review and receive a copy of any non-confidential documentation contained in the Department's files regarding the person's appeal.
6. Scope of review. The Department shall consider and review the person's arguments, statements, and documents in support of the appeal, allowing reasonable latitude for the hearing of relevant material.
7. Right to representation. The person has a right to be represented by legal counsel or another representative in connection with the person's appeal, but solely at the person's own expense.
8. Determination. Within 30 days of the hearing, the hearing officer shall make a recommendation to the Chief Right-of-Way Agent. The Department shall promptly issue a written decision and provide a copy to the person by certified mail. The Department shall explain the basis on which its decision was made, and what relief, if any, is to be provided.
9. Judicial review. If the Department does not grant the relief requested, the Department shall advise the person of the right to seek judicial review.

Historical Note

Former Rule, Right of Way Resolution 71-42. Former Section R17-3-13 renumbered without change as Section R17-3-302 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

R17-3-303. Relocation Assistance; 49 CFR 24, Subpart C - General Relocation Requirements

49 CFR 24.206 "Eviction for cause" is amended to read:

1. Eviction for cause must conform to A.R.S. §§ 12-1171 through 12-1183. The Department may determine that a person who is an unlawful occupant (as defined in 49 CFR 24.2) is still eligible for advisory relocation assistance. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the

agency determines that the factors in subsections (1)(a) or (b) apply. The Department shall use the following factors to determine eligibility of an unlawful occupant for advisory relocation assistance:

- a. The person received an eviction notice before the initiation of negotiations and, as a result of that notice, is later evicted; or
 - b. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
 - c. The eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part;
 - d. The person occupying the property and the owner dispute the issue of lawful occupancy;
 - e. The duration of prior legal occupancy of the person occupying the property;
 - f. Financial or medical hardship of the person occupying the property; or
 - g. The cost of the relocation assistance is less than the cost of an appeal.
2. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available.
 3. The state may initiate eviction proceedings due to:
 - a. Unlawful activities being conducted on state-owned property,
 - b. Willful destruction of state-owned property,
 - c. Refusal to vacate state-owned property after all required notices to vacate have been delivered and appropriate assistance provided, or
 - d. Failure to pay rent when there is no hardship.

Historical Note

Former Rule, Right of Way Resolution 71-69. Former Section R17-3-14 renumbered without change as Section R17-3-303 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1). Subsections numbered 2 and 3 were inadvertently combined as one paragraph in Supp. 13-1; subsection 3 has been corrected as filed at 19 A.A.R. 141 (Supp. 19-2).

R17-3-304. Repealed**Historical Note**

Former Rule, Right of Way Resolution 70-51. Former Section R17-3-11 renumbered without change as Section R17-3-304 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section repealed by final rulemaking at 19 A.A.R. 141 effective March 10, 2013 (Supp. 13-1).

R17-3-305. Relocation Assistance; 49 CFR 24, Subpart E - Replacement Housing Payments

49 CFR 24.401 "Replacement housing payment for 180-day homeowner-occupants" in paragraph (d)(3) is amended to read:

The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. If a displaced person chooses to buy down the interest rate, the agency shall:

1. Require documents indicating the initial interest rate,

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2. Require documents indicating the final interest rate, and
3. Limit reimbursement to the lower of the amount the displaced person actually paid to buy down the interest rate or the amount for which the person qualified under the established market interest rate.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

R17-3-306. Repealed**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section repealed by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

ARTICLE 4. REPEALED**R17-3-401. Repealed****Historical Note**

Former Rule, Traffic Engineering Resolution; Repealed effective June 18, 1979 (Supp. 79-3). New Section R17-3-05 adopted effective August 4, 1982 (Supp. 82-4). Former Section R17-3-05 renumbered without change as Section R17-3-401 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 2750, effective June 7, 2001 (Supp. 01-2).

R17-3-402. Repealed**Historical Note**

Former Rule, ASHC Resolution. Repealed effective January 3, 1977 (Supp. 77-1). New Section R17-3-08 adopted effective March 25, 1982 (Supp. 82-2). Former Section R17-3-08 renumbered without change as Section R17-3-402 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 2748, effective June 7, 2001 (Supp. 01-2).

R17-3-403. Recodified**Historical Note**

Former Rule, Right of Way Resolution 71-15. Former Section R17-3-09 renumbered without change as Section R17-3-403 (Supp. 88-4). Section recodified to A.A.C. R17-4-428 at 7 A.A.R. 1260, effective February 20, 2001 (Supp. 01-1).

R17-3-404. Repealed**Historical Note**

Adopted as an emergency effective April 13, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-2). Former Section R17-3-20 renumbered without change as Section R17-3-404 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 2750, effective June 7, 2001 (Supp. 01-2).

R17-3-405. Reserved**R17-3-406. Repealed****Historical Note**

Former Rule, Traffic Engineering Report. Former Section R17-3-02 renumbered without change as Section R17-3-406 (Supp. 88-4). Section repealed by final rulemaking at 8 A.A.R. 849, effective February 8, 2002 (Supp. 02-1).

R17-3-407. Repealed**Historical Note**

Former Rule, ASHC Resolution; Former Section R17-3-06 repealed, new Section R17-3-06 adopted effective April 25, 1978 (Supp. 78-2). Former Section R17-3-06 renumbered without change as Section R17-3-407 (Supp. 88-4). Section repealed by final rulemaking at 8 A.A.R. 849, effective February 8, 2002 (Supp. 02-1).

R17-3-408. Repealed**Historical Note**

Former Rule, General Order 21. Former Section R17-3-08 renumbered without change as Section R17-3-408 (Supp. 88-4). Section repealed by final rulemaking at 8 A.A.R. 849, effective February 8, 2002 (Supp. 02-1).

ARTICLE 5. HIGHWAY ENCROACHMENTS AND PERMITS**R17-3-501. Definitions**

In this Article, unless otherwise defined, these terms have the following meanings:

“Abutting property” means real property or interest in real property bordering a state highway right-of-way.

“Adopt-a-highway” means a Department program that allows a group of persons access to a state highway right-of-way to conduct litter pickup on a designated portion of the state highway.

“Airspace” means the space above real property.

“Applicant” means a person or entity seeking to obtain an encroachment permit.

“Department” means the Arizona Department of Transportation.

“District Office” means one of the Department’s Engineering and Maintenance district offices.

“Encroachment” means any use of, intrusion upon, or construction of improvement within a state highway right-of-way by any person or entity other than the Department for any purpose, temporary or fixed, other than public travel authorized by state statute.

“Encroachment owner” means the person or entity responsible for creating or maintaining an encroachment on a state highway right-of-way.

“Encroachment permit” means a written approval granted by the Department for construction of a fixed or temporary improvement within a state highway right-of-way, or for any activity requiring the temporary use of or intrusion upon a state highway right-of-way.

“Engineering stationing” means the Department identification system to identify the location of a state highway feature.

“Improvement” means any constructed facility or object, or alteration to any existing physical facility or object, or change in the elevation, slope, or drainage of a state highway right-of-way.

“Permittee” means a person or entity to whom the Department issues an encroachment permit, and who is responsible for meeting the obligations, responsibilities, and specifications stated in the encroachment permit.

“Right-of-way” means the real property or interest in real property on which state transportation facilities and appurtenances to the facilities are constructed or maintained.

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“Special event” means any temporary organized or supervised activity that could affect the normal operation of a state highway.

“State highway” has the meaning prescribed in A.R.S. § 28-101(47).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-502. Applicability

- A. A person or entity shall not encroach on a state highway right-of-way without obtaining an encroachment permit.
- B. Only the following types of encroachments qualify for a Department encroachment permit:
 1. Access improvements to abutting properties, consistent with subsection (C)(6);
 2. Utility construction and maintenance, including underground and overhead;
 3. Drainage improvements;
 4. Airspace encroachments, such as overhanging signs, awnings, and banners;
 5. Landscaping;
 6. Special events;
 7. Removing or improving an existing encroachment;
 8. Rest area coffee breaks;
 9. Change in the principal activity or function of an abutting property where an access or utility encroachment has been constructed;
 10. Adopt-a-highway;
 11. Activities, such as surveying, performed to compile information about physical features in the highway right-of-way;
 12. Traffic control unrelated to the types of encroachments listed above for specific incidents, such as hazardous material removal, accident clean-up, or check points by government enforcement; and
 13. For such uses as the Director specifies.
- C. An encroachment not listed under subsection (B) is ineligible to qualify for an encroachment permit and is an unauthorized encroachment. An unauthorized encroachment also includes:
 1. Outdoor advertising signs, except as an overhang in subsection (B)(4);
 2. Parking areas;
 3. Sales of any service or thing;
 4. Bicycling, walking, horseback riding, or other activities prohibited under A.R.S. § 28-733;
 5. Any commercial or industrial activity; or
 6. Access to undeveloped property abutting a state highway, unless the applicant demonstrates a plan for:
 - a. Immediate development of the property evidenced by construction plans or building permits, or
 - b. Continuing maintenance of the undeveloped property.
- D. A new owner of an existing permitted encroachment shall apply for an encroachment permit in the new owner’s name within 30 days from the date of purchase of the abutting real property.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-503. Who Can Apply for an Encroachment Permit

- A. Any person or entity, other than the Department, seeking an encroachment upon a state highway right-of-way shall apply to the Department for an encroachment permit.

- B. Any person or entity is eligible to apply for an encroachment permit, except for an encroachment involving:
 1. Access, only an abutting property owner is eligible to apply.
 2. Landscaping and aesthetic enhancements, only an abutting property owner or a political subdivision is eligible to apply.
 3. Utility installation, only an ultimate owner who will be responsible for maintenance and liability of the utility after it is put into service is eligible to apply. An ultimate owner includes a utility company, improvement district, political subdivision, or abutting property owner. A contractor or developer may apply if the contractor or developer provides evidence that an ultimate owner has approved plans and agrees to obtain an encroachment permit as a new owner upon completion of the utility installation.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-504. General Application Procedures

- A. An applicant shall obtain an encroachment permit application form from the District Office serving the Department’s district in which the proposed encroachment will be located.
- B. An applicant shall include the following information on a District Office’s encroachment permit application:
 1. Name, address, city, state, zip code, telephone number, and signature of proposed encroachment owner;
 2. Name, address, city, state, zip code, telephone number, and signature of applicant, if different from proposed encroachment owner;
 3. Applicant’s legal relationship to proposed encroachment owner;
 4. City nearest to the proposed encroachment;
 5. Location of proposed encroachment from the nearest milepost (in feet), including state highway route number, side of highway, and engineering stationing (if applicable); and
 6. Purpose of proposed encroachment, as listed in R17-3-502(B), and a description of the proposed work or activity in the right-of-way.
- C. By signing an application, an applicant or proposed encroachment owner, or both, agree to accept the following general obligations and responsibilities:
 1. Assume all legal liability and financial responsibility for the encroachment activity for the duration of the permit;
 2. Be responsible for any repair or maintenance work to the encroachment for the duration of the permit;
 3. Comply with the Department’s traffic control standards;
 4. Obtain written approval from the abutting property owner if the encroachment encroaches on abutting property;
 5. Upon notice from the Department, repair any aspect or condition of the encroachment that causes danger or hazard to the traveling public;
 6. Remove the encroachment and restore the right-of-way to its original or better condition if the Department cancels the encroachment permit, and terminates all rights under the permit;
 7. Reimburse the Department for costs incurred or deposit with the Department money necessary to cover all costs incurred for activities related to the encroachment, such as inspections, restoring the right-of-way to its original or better condition, or removing the encroachment;
 8. Notify a new owner to apply for an encroachment permit, as required by R17-3-502(D);

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9. Apply for a new encroachment permit if the use of the permitted encroachment changes;
10. Keep a copy of the encroachment permit at the work site or site of encroachment activity;
11. Construct the encroachment according to plans that the Department approves as part of the final permit;
12. Obtain required permits from other government agencies or political subdivisions;
13. Remove any defective materials, or materials that fail to pass the Department's final inspection, and replace with materials the Department specifies.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-505. Supporting Documentation

An applicant for an encroachment permit shall provide supporting documentation relevant to the type of encroachment activity and necessary to allow the Department to analyze the proposed encroachment's impact on the state highway and right-of-way, using such criteria as:

1. Whether the proposed encroachment is for commercial or residential access;
2. The proposed encroachment's impact on roadway features within the right-of-way;
3. The amount of traffic the proposed encroachment will generate;
4. Duration of the proposed encroachment;
5. The proposed encroachment's potential to disrupt traffic or change traffic patterns;
6. The surrounding terrain and physical features of the right-of-way and the abutting property; and
7. The number, size, and intended use of any buildings that would be accessed via the proposed encroachment.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-506. Encroachment Permit Requirements

- A. An encroachment permit consists of the materials submitted by an applicant under R17-3-504 and R17-3-505, and additional requirements from the Department as described in subsection (B). An encroachment permit will list in detail the requirements with which the permittee shall comply in order to perform the requested encroaching activity. Some of the requirements are general and apply to every encroachment permit. Others are specific to a particular encroachment activity.
- B. The Department shall set encroachment permit requirements to:
 1. Maintain the integrity of the Department's right-of-way and transportation facilities;
 2. Mitigate the risk to traffic safety;
 3. Improve traffic movement, efficiency, and capacity;
 4. Mitigate adverse drainage on state property or abutting property affecting state property;
 5. Mitigate environmental impacts;
 6. Mitigate maintenance costs to transportation facilities;
 7. Mitigate potential liability for the Department or the state; and
 8. Mitigate potential harms to national or state security.
- C. By accepting an encroachment permit, a permittee agrees to the requirements described in the permit. If the permittee disagrees with the requirements, the permittee shall return the permit immediately to the District Office.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-507. Review Procedures

- A. The Department shall conduct an administrative completeness review and substantive review of an application for an encroachment permit under A.R.S. §§ 41-1072 through 41-1077 and A.A.C. R17-1-102.
- B. The Department shall decide whether to grant an encroachment permit based solely on the documents and information before the Department.
- C. Decision.
 1. The Department shall approve an encroachment permit if:
 - a. The proposed encroachment use is lawful,
 - b. The applicant provides complete and accurate information,
 - c. The proposed encroachment use qualifies under R17-3-502(B), and
 - d. The applicant agrees to comply with the Department's requirements as set out in the permit.
 2. The Department shall deny an encroachment permit application if:
 - a. The proposed encroachment use is unlawful,
 - b. The applicant provides incomplete or inaccurate information,
 - c. The proposed encroachment use does not qualify under R17-3-502(B), or
 - d. The permittee disagrees with the requirements in the permit.
 3. An applicant may appeal the Department's denial decision on an encroachment permit application as prescribed in R17-3-509.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-508. Unauthorized Encroachments; Enforcement Actions

- A. An encroachment is unauthorized if:
 1. A permittee fails to comply with the permit requirements,
 2. A permittee provides false or inaccurate information on the encroachment permit application,
 3. A person or entity fails to obtain an encroachment permit, or
 4. The encroachment is unauthorized under R17-3-502(C).
- B. An encroachment owner shall remove any unauthorized encroachment at the owner's own cost.
- C. After considering the totality of the circumstances and in consultation with the Office of the Attorney General, the Department may refer a matter to the Office of the Attorney General according to A.R.S. §§ 28-7053 and 28-7054 for:
 1. Enforcement against the owner of an unauthorized encroachment, or
 2. Recovery of costs from the encroachment owner for the Department removing an unauthorized encroachment if the encroachment owner fails to remove the unauthorized encroachment.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-509. Hearings

The Department shall inform an applicant or permittee of the hearing procedures when the Department:

1. Denies an application for an encroachment permit, or
2. Determines that an encroachment is unauthorized.

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Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

ARTICLE 6. RESERVED**ARTICLE 7. HIGHWAY BEAUTIFICATION****R17-3-701. Outdoor Advertising Control**

- A.** Purpose. The purpose of this subsection is to present the definitions of specialized terms used in describing outdoor advertising signs and matters relating to outdoor advertising signs. Terms used in this rule are defined as follows:
1. "Abandoned sign" means a sign for which neither the sign owner nor the landowner claim any responsibility.
 2. "Back-to-back sign" means a sign that carries faces attached on each side of the structure and is read from opposite directions.
 3. "Directional" means signs containing directional information about public places owned or operated by federal, state, or local government or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, religious, and rural activity sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.
 4. "Directional and other official signs and notices" includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.
 5. "Double-faced sign" means a sign that has two faces facing in the same direction.
 6. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any way bring into being or establish.
 7. "Face" means the surface of an outdoor advertising structure on which the design is posted or painted, usually made of galvanized metal sheets, fiberboard, plywood or plastic.
 8. "Federal or state law" means a federal or state constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a state or federal agency or a political subdivision of a state pursuant to a federal or state constitution or statute.
 9. "Illegal sign" means a sign that was erected or maintained, or both, in violation of the state law.
 10. "Intended to be read from the main-traveled way" is defined by any of the following criteria:
 - a. More than 80% of the average daily traffic (as determined by traffic counts) viewing the outdoor advertising is traveling in either or both directions along the main-traveled way.
 - b. Message content is of such a nature that it would be only of interest for the traffic using the main-traveled way.
 - c. The sales value of the outdoor advertising is directly attributable to advertising circulation generated by traffic along the main-traveled way.
 11. "Interchange" means a junction of two or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams.
 12. "Landmark sign" means a sign of historic or artistic significance that existed on October 22, 1965, which may be preserved or maintained as determined by the Director and approved by the Secretary of Transportation.
 13. "Lease" means an agreement, oral or in writing, by which possession or use of land or interests in land is given by the owner to another person for a specified period of time.
 14. "Maintain" means to allow to exist, including such activities necessary to keep the sign in good repair, safe condition, and change of copy.
 15. "Nonconforming sign" means a sign that was lawfully erected but does not comply with the provisions of state law or state laws passed at a later date or later fails to comply with state law or state regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.
 16. "Normal maintenance (nonconforming sign)" means the maintenance customary to keep a sign in ordinary repair, upkeep or refurbishing. The maintenance does not include:
 - a. Maintenance that exceeds 50% of the appraised value using current appraisal schedules for a sign, or
 - b. Repairs to a sign damaged to such an extent that 60% or more of the uprights require replacement for wood uprights, or 30% or more of the length of each upright support above ground requires replacement for metal uprights.
 17. "Obsolete sign" means a directional or other official sign the purpose of which is no longer pertinent.
 18. "Official signs and notices" means signs and notices, other than traffic regulatory signs and notices, erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies are official signs.
 19. "Off-premise sign" means an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which the activity or service occurs or the product is sold or manufactured.
 20. "On-premise sign" means any sign that meets the following requirements (such signs are not controlled by state statutes):
 - a. Premises. The sign must be located on the same premises as the activity or property advertised.
 - b. Purpose. The sign must have as its purpose:
 - i. The identification of the activity, or its products or services, or
 - ii. The sale or lease of the property on which the sign is located, rather than the purpose of general advertising.
 - c. In the case of an on-premise sign advertising an activity, the premises must include all actual land used or occupied for the activity, including its buildings, parking, storage and service areas, streets, driveways and established front, rear, and side yards constituting an integral part of such activity, provided the sign is located on property under the same ownership or lease as the activity. Uses of land that serve no reasonable or integrated purpose related to the activity other than to attempt to qualify the land for signing purposes are not premises. Generally these will be inexpensive facilities, such as picnic grounds, playgrounds, walking paths, or fences.
 21. "Parkland" means any publicly owned land that is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
 22. "Public service signs" means signs that are located on school bus stop shelters and that:

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- a. Identify the donor, sponsor, or contribution of the shelters;
 - b. Contain safety slogans or messages, which must occupy not less than 60% of the area of the sign;
 - c. Contain no other message;
 - d. Are located on school bus shelters that are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and
 - e. May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.
23. "Public utility signs" means warning markers that are customarily erected and maintained by publicly or privately owned public utilities to protect their facilities.
 24. "Re-erection" means the placing of any sign in a vertical position subsequent to its initial erection. Re-erection shall only occur in the event the sign has been damaged by tortious acts, or in the course of normal maintenance.
 25. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the federal, state, or local officials having jurisdiction of the area, and includes interests in land that have been acquired for the restoration, preservation, and enhancement of scenic beauty.
 26. "Scenic overlook or rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.
 27. "Service club and religious notices" means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious service, that do not exceed eight square feet in area.
 28. "V-type signs" means signs that are oriented at an angle to each other, the nearest points of which are not more than 10 feet apart.
 29. "Within the view of and directed at the main-traveled way" means any sign that is readable from the main-traveled way for more than five seconds traveling at the posted speed limit or for such a time as the whole message can be read, whichever is less.
- B. Outdoor advertising permit application procedure.**
1. Purpose. The purpose of this subsection is to present the procedures to be followed by applicants in requesting permits for the erection of outdoor advertising facilities.
 2. Permit form and fee required. Each application for a permit to erect an outdoor advertising facility must be made on the appropriate Arizona Department of Transportation form and shall be accompanied by a check or money order in the amount of \$20.00 payable to the Arizona Department of Transportation.
 - a. The initial application fee shall be valid for a period of one year from date of issuance. It shall be renewable annually upon payment of a \$5.00 fee.
 - b. Renewal fees will become delinquent 30 days after the annual renewal date. On becoming delinquent, such sign structures will be in violation and a new initial application fee of \$20.00 will be required.
 3. Applications mailed to maintenance permit engineer. Applications for outdoor advertising permits should be mailed to: Arizona Department of Transportation, Intermodal Transportation Division; 206 South 17th Avenue; Phoenix, Arizona 85007; Attention: Maintenance Permits Section. Assistance to applicants is available at District offices.
 4. Separate application for each sign. Each outdoor advertising sign, display or device requires a separate application with fee. All required information describing the location of the sign, the sign qualification standards, and the permitted area identification shall be completely entered on the permit form.
 5. Legal description of sign site required. Applicants shall be required to obtain a certification from the governing zoning authority certifying that the zoning is correct for the legal description of the proposed sign location. In cases where the legal description is listed incorrectly on the application, a new certification must be obtained for the correct legal description. Legal descriptions shall adequately describe the property for which the application is made.
 6. Location diagram required. Applicants shall submit a location diagram indicating highway route number and such physical features as: buildings, bridges, culverts, poles, mileposts and other stationary land marks necessary to adequately describe the location. The sketch will also indicate the distance in feet the sign is to be erected from the nearest milepost or a street intersection and other off-premise signs in the same vicinity.
 7. Applicants must mark site locations. Applicants are required to place an identifiable device or object bearing applicant's name at the proposed sign location to aid field inspectors in site evaluations.
 8. Landowner's permission mandatory. Applicants shall be required to obtain a signed certification stating that the applicant has the permission of the landowner to erect the sign at the noted legal description, or in lieu of the signed certification, furnish a copy of an executed lease.
 9. Each pending application field checked. Each pending application will be field checked for compliance with the state act and regulations by the district. The findings of the field check will be forwarded to the Maintenance Permit Engineer, Maintenance Section, for final examination and, if approved, permit issuance.
 10. Noncompliance. Each application for a permit to erect an outdoor advertising facility which does not comply with all requirements of the law and the Arizona Department of Transportation regulations, will be denied and the application fee may be retained by the state. Exception will be made in cases where applicants did not have knowledge of previous applications or permits for the same site. An additional \$20.00 fee shall be added to the regular permit fee for signs illegally erected prior to the issuance of a permit.
 11. Permit decals on sign structures. Applicants shall affix permit decals on a permanent surface near the portion of the sign structure closest to the main-traveled way and clearly visible from the roadway. Permit decals to replace any which have been issued and were improperly affixed, lost or destroyed, whether before or after attaching to the sign structure, may be purchased at a cost of \$5.00. Signs bearing permit decals for signs other than the sign for which they were issued shall be in violation.
 12. Forfeiture of permit fee. Outdoor advertising facilities for which permits have been issued shall be erected within 120 days and shall bear the official permit identification issued for the specific facility. If the applicant mails a written request for extension of time prior to expiration of the 120 days, an additional 60-day extension may be granted. Any permit canceled because no sign was

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erected within the prescribed time will result in forfeiture of the \$20.00 fee.

13. Denial of permit renewals. An existing permit will not be renewed for an approved location on which no sign structure exists.
 14. Removal and re-erection time limits. If an outdoor advertising sign is removed from a permitted location for any reason, the permit shall expire within 30 days from date of removal, except that the permittee may notify the Arizona Department of Transportation, Intermodal Transportation Division; Maintenance Permits Section, of intent to re-erect which will allow 120 days for re-erection. Failure to re-erect which will allow 120 days for re-erection. Failure to re-erect within the 120 days allowed will cancel the existing permit.
 15. Transfer of permits. Permits are transferable upon sale of sign provided a new owner furnishes the Arizona Department of Transportation with notification of sale within 30 days after date of sale.
 16. Calendar days. All references to days made in this permit application procedure, as well as those references in all rules and regulations applying to outdoor advertising control, shall mean calendar days.
- C. Administrative rules.**
1. Purpose. The purpose of this subsection is to present administrative rules developed by the Arizona Department of Transportation for control of outdoor advertising.
 2. Restrictions on rights-of-way use. No sign shall be erected or maintained from or by use of interstate highway rights-of-way. Any observed action of this type will result in cancellation of the permit. Signs may be erected and maintained from primary and secondary highways only if no other access is available and an encroachment permit is issued.
 3. Nonconforming signs shall be in violation if:
 - a. A sign is enlarged (increased in any dimensions of the sign face or structural support),
 - b. A sign is replaced (an existing sign is removed and replaced with a completely different sign),
 - c. A sign is rebuilt to a different configuration or material composition beyond normal maintenance,
 - d. A sign is relocated (moved to a new position or location without being lawfully permitted), or
 - e. A sign which was previously non-illuminated has lighting added.
 4. Commercial or industrial activities. Commercial or industrial activities which define a business area, or an unzoned commercial or industrial area must be in operation at the time the permit application is made. Should any commercial or industrial activity, which has been used in defining or delineating a business area, or an unzoned commercial or industrial area, cease to operate for a period of six continuous months, any signs qualified by such activity shall become nonconforming.
 5. On premise. Should any activity which has been used in defining an on-premise sign cease to operate for a period of six continuous months any signs qualified by that activity shall be considered as off premise and will require appropriate permits. If the signs are then not permissible they will be in violation.
 6. Municipal limit between signs. When a municipal limit falls between signs the spacing requirement shall be 300 feet between signs on primary or secondary highways.
 7. Proposed interstate alignment locations. Signs existing or to be erected on primary or secondary highway systems which have been declared by the Director of Transportation as an interstate freeway alignment prior to construction of such interstate or freeway shall be classified as though the Interstate or Freeway already exists, requiring spacing criteria for Interstate or other freeways.
 8. Double-faced, back-to-back, and V-type signs. Double-faced, back-to-back and V-type sign structure permits will be limited to a single sign ownership for each site. No more than two faces will be allowed facing each direction of travel. Double-faced signs shall not exceed 350 square feet per face. V-type signs will be limited to a 10' spacing between faces at the apex. V-type sign spacing from other signs shall be measured from the middle of the apex.
 9. Multifaced community signs. Local chambers of commerce may obtain permits to erect signs with more than two faces. These signs shall not exceed 1,200 square feet in area with a maximum overall vertical facing of 25 feet and a maximum overall horizontal facing of 60 feet, including border and trim, and excluding base or apron supports and other structural members. All other laws, rules and regulations will apply to multifaced community signs as to other off premise signs.
 10. New sign making existing sign nonconforming. If a new sign which would otherwise be conforming will make an existing sign nonconforming, the new sign shall not be allowed.
 11. Hearing requests. The land owner or sign owner may request a hearing in connection with a permit application denied or other action taken by the Arizona Department of Transportation in connection with the rules prescribed in this Section. Within seven days after notice of the action is mailed or posted, the land owner or sign owner may make written request for a hearing on the action. The Director of the Department of Transportation shall designate a hearing officer, who shall be an administrative employee of the Department of Transportation, to conduct and preside at the hearings. When a hearing is requested, the hearing shall be held within 30 days after the request, and the party requesting the hearing shall be given at least five days notice of the time of the hearing. All hearings shall be conducted at Department of Transportation administrative offices. A full and complete record and transcript of the hearing shall be taken. The presiding officer shall within 10 days after the hearing make a written determination of the presiding officer's findings of fact, conclusions and decision and shall mail a copy of the same, by certified mail, to the owner or the party who requested the hearing.
 12. Landmark signs. The Director will submit a one-time declaration listing all landmark signs to the Secretary of Transportation. The preservation of these signs would be consistent with the purposes of state highway beautification laws.
 13. Blanked out or discontinued nonconforming signs. When an existing nonconforming sign ceases to display advertising matter for a period of one year the use of the structure as a nonconforming outdoor advertising sign is terminated.
 14. Vandalized signs. Legal nonconforming signs may be rebuilt to their original configuration and size when they are destroyed due to vandalism and other criminal or tortious acts.
- D. Standards for directional and other official signs.**
1. Purpose. The purpose of this subsection is to present standards applicable to directional and other official signs.

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2. Scope and application. The standards presented in this Chapter apply to directional and other official signs and notices which are erected and maintained within 660 feet of the nearest edge of the right-of-way of the interstate, federal-aid primary and secondary highway systems and which are visible from the main-traveled way of the systems. These types of signs must conform to national standards, promulgated by the Secretary of Transportation under authority set forth in 23 U.S.C. 131(c). These standards do not apply, however, to directional and other official signs erected on the highway right-of-way.
3. Standards for directional signs. The following apply only to directional signs:
 - a. General. The following signs are prohibited:
 - i. Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities.
 - ii. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
 - iii. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
 - iv. Obsolete signs.
 - v. Signs which are structurally unsafe or in disrepair.
 - vi. Signs which move or have any animated or moving parts.
 - vii. Signs located in rest areas, parklands or scenic areas.
 - b. Size. No sign shall exceed the following limits, which include border and trim, but exclude supports.
 - i. Maximum area -- 150 square feet.
 - ii. Maximum height -- 20 feet.
 - iii. Maximum length -- 20 feet.
 - c. Lighting. Signs may be illuminated, subject to the following:
 - i. Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited.
 - ii. Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
 - iii. No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.
 - d. Spacing.
 - i. Each location of a directional sign must be approved by the Arizona Department of Transportation.
 - ii. No directional sign may be located within 2,000 feet of an interstate, or intersection at grade along the interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).
 - iii. No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.
 - (1) No two directional signs facing the same direction of travel shall be spaced less than one mile apart;
 - (2) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;
 - (3) Directional signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and
 - (4) Directional signs located adjacent to the Primary System shall be within 50 air miles of the activity.
 - (5) No directional signs shall be located within 500 feet of an off-premise outdoor advertising sign on any state highway.
 - e. Message content. The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit number. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.
 - f. Selection methods and criteria for privately owned activities or attractions to obtain directional sign approval.
 - i. Privately owned activities are attractions eligible for directional signing are limited to the following categories:
 - (1) Natural phenomena,
 - (2) Scenic attractions,
 - (3) Historic sites,
 - (4) Educational sites,
 - (5) Cultural sites,
 - (6) Scientific sites,
 - (7) Religious sites, and
 - (8) Outdoor recreational areas.
 - ii. To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.
 - iii. The Director, Arizona Department of Transportation, will appoint a Selection Board for Directional Signing Qualifications consisting of three administrative or professional employees of the Department of Transportation, one of whom shall be designated as chairperson, to judge and approve the qualifications for directional signing of privately owned activities or attractions as limited to the categories in subsection (D)(3)(f)(i) and the qualification in subsection (D)(3)(f)(ii).
 - iv. Applicants for directional signs involving privately owned activities or attractions, shall first qualify the activity or attraction by submitting an official qualification form to the attention of the maintenance permit engineer, highways division, Arizona Department of Transportation. The maintenance permit engineer will forward the application for qualification, along with any technical data which may assist the

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- selection board in making the selection board's determination, to the selection board.
- v. Applicant shall indicate one or more categories (as listed in subsection (D)(3)(f)(i) that is applicable to the activity or attraction for which qualification is sought. Applicants shall submit a statement and supporting evidence that the activity or attraction is nationally or regionally known and is of outstanding interest to the traveling public.
 - vi. The selection board will, upon approval or rejection of an application, give notification of the selection board's determination in writing, to the applicant and to the maintenance permit engineer.
 - vii. The maintenance permit engineer will not issue any permits for directional signs for any privately owned activity or attraction until receipt of qualification approval by the selection board. All directional sign permits issued for the Department of Transportation by the maintenance permit engineer will meet the standards for directional and other official signs as incorporated in the "Rules and Regulations for Outdoor Advertising along Arizona Highways" approved and issued by the Director, Arizona Department of Transportation.
- g. Rural activity signs are intended to give directions to rural activity sites located along rural roads connecting to state highways. The signs must be located in areas primarily rural in nature. Rural activities that may qualify include ranches, recreational areas and mines. Signs for private residences, subdivisions, and commercial activities are not permitted. Industrial activities that are located in primarily rural areas such as mines or material pits may be allowed. The signs shall not be located in business areas, unzoned commercial or industrial areas, or within municipal limits. The selection board may make final determination of eligibility for those signs when necessary. Not more than one sign pertaining to a rural activity facing the same direction of travel may be erected along a single route approaching the rural connecting road. Signs will be limited to 10 square feet in area. All other standards for directional signs shall apply.
- h. No application fee is required for official signs and notices, public utility signs, service club and religious notices, public service signs or directional signs erected by federal, state or local governments. Other directional signs require a permit application and \$20.00 fee.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R17-3-711 renumbered without change as Section R17-3-701 (Supp. 88-4). Amended by final rulemaking at 18 A.A.R. 2347, effective November 10, 2012 (Supp. 12-3).

Exhibit 1. Expired**Historical Note**

Exhibit 1 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 2. Expired**Historical Note**

Exhibit 2 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 3. Expired**Historical Note**

Exhibit 3 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 4. Expired**Historical Note**

Exhibit 4 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 5. Expired**Historical Note**

Exhibit 5 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 6. Expired**Historical Note**

Exhibit 6 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 7. Expired**Historical Note**

Exhibit 7 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 8. Expired**Historical Note**

Exhibit 8 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 9. Expired**Historical Note**

Exhibit 9 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

R17-3-701.01. Outdoor Advertising Control: Restrictions on the Erection of Billboards and Signs and Restrictions on the Issuance of Permits

- A. Outdoor advertising shall not be erected under A.R.S. § 28-2102(A)(4) or (5) in a zoned area:
 1. Which is not part of a comprehensive zoning plan and which is created primarily to permit outdoor advertising structures, or
 2. In which limited commercial or industrial activities are permitted as an incident to other primary land uses.
- B. A permit for outdoor advertising shall not be issued under A.R.S. § 28-2106(4) in a zoned area:
 1. Which is not part of a comprehensive zoning plan and which is created primarily to permit outdoor advertising structures, or
 2. In which limited commercial or industrial activities are permitted as an incident to other primary land uses.

Historical Note

Emergency rule adopted effective May 17, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-2). Permanently adopted without change effective August 12, 1994 (Supp. 94-3).

R17-3-702. Repealed**Historical Note**

Adopted effective September 9, 1977 (Supp. 77-5).

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Amended effective May 11, 1981 (Supp. 81-3). Former Section R17-3-712 renumbered without change as Section R17-3-702 (Supp. 88-4). Section R17-3-702 and Exhibits 1-9 repealed by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-703. Arizona Junkyard Control

- A.** Purpose. The purpose of this Section is to describe the Arizona Department of Transportation's responsibility to effectively control junkyards within 1000 feet of the right-of-way on interstate highways under A.R.S. §§ 28-7941 through 28-7946.
- B.** Definitions. For purposes of this Section:
1. "Department" means the Arizona Department of Transportation.
 2. "Director" means the Director, Arizona Department of Transportation or the Director's designated representative.
 3. "Screening" means the use of vegetative planting, fencing, masonry wall or other constructed structure, earthen embankment, or a combination of any of these that effectively hides from view a deposit of junk from the main-traveled way.
 4. "Screening license" means a license issued by the Director as required by A.R.S. § 28-7943 and as described in this Section.
 5. "Unzoned industrial area" means the same as in A.R.S. § 28-7901(11).
- C.** Screening license application procedure.
1. Screening license required. The Department requires a screening license for a junkyard that:
 - a. Was established or expanded after July 1, 1974;
 - b. Is located within 1000 feet of the nearest edge of the right-of-way of the interstate highway system;
 - c. Is within view of the main-traveled way of the interstate highway system; and
 - d. Is not located in a zoned or unzoned industrial area.
 2. Screening license form. An applicant shall use the Department "junkyard permit application" form to apply for a screening license, and provide the following information:
 - a. Name, address, and telephone number of the owner;
 - b. Legal description of the land where the junkyard to be screened is located;
 - c. Name and address of the junkyard business;
 - d. Location of the junkyard, including:
 - i. The highway route number,
 - ii. Distance, in feet, to nearest highway milestone,
 - iii. Distance, in feet, from the highway right-of-way to the junkyard boundaries.
 - e. Zoning classification of the land where the junkyard is located; and,
 - f. Type, size, and date of establishment of the junkyard.
 3. Application mailed to Permits Manager. An applicant shall mail the completed junkyard permit application, required documentation and the \$25.00 fee, in the form of a check or money order payable to the Arizona Department of Transportation, to:

Arizona Department of Transportation
Intermodal Transportation Division
206 South 17th Avenue, MD 004R
Phoenix, AZ 85007
Attention: Maintenance Permits Manager, Maintenance Section
 4. Required documentation. Along with the junkyard permit application, an applicant shall submit the following documentation:
 - a. A location diagram or plat of the junkyard area that indicates:
 - i. The highway route number;
 - ii. Distance, in feet, to nearest highway milestone;
 - iii. Physical features such as buildings, bridges, culverts, utility poles, and other stationary improvements or site features that adequately describe the location; and
 - iv. Distance, in feet, from the highway right-of-way to the junkyard boundaries.
 - b. A drawing or plan, drawn to scale, of the junkyard screening design to be used, that includes:
 - i. Plan view;
 - ii. Elevation;
 - iii. Construction details of fencing, berms, and plantings used alone or in combination;
 - iv. If applicable, plant pit size, backfill material to be used, planting and staking details, botanical names of plant materials, plant size at the time of planting, and the spacing between plants; and
 - v. Any details necessary to show design and construction materials to be used.
 5. Extensions. A request for an extension shall be in writing. The Department shall grant a 60 day extension in the following circumstances:
 - a. If an applicant requests an extension for completion of screening within 90 days after the Department approves a screening license; and
 - b. If the Department gives a junkyard owner a violation notice and the junkyard owner requests an extension to submit the screening application within 60 days of receiving the violation notice.
 6. License issuance or denial.
 - a. The Department shall grant an application for a screening license only if the application complies with all requirements of A.R.S. §§ 28-7941 through 28-7946 and this Section.
 - i. A junkyard owner has 180 days from the date of approval to screen the junkyard.
 - ii. The Department shall field check each approved license to ensure compliance with the screening requirements of A.R.S. §§ 28-7941 through 28-7946, and this Section.
 - b. If the Department denies an application because the screening plan does not comply with A.R.S. §§ 28-7942 through 28-7946 or this Section, an applicant may, within 10 days of the denial, request permission in writing to submit an amended application and amended screening plan without paying an additional fee.
 - c. A junkyard owner who fails to complete the junkyard screening within 180 days from approval of the screening license, or other prescribed period, may be found guilty under subsection (D)(9).
 7. Invalidation of screening license. An existing screening license shall become invalid at a previously approved location when the junkyard is enlarged or substantially changed in use so that the screening no longer adequately screens the junk. An owner shall apply for a new and separate screening license.
 8. Transfer of screening license. To transfer a screening license upon sale of a junkyard, a new owner shall submit

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to the Department written notification of sale within 30 days after date of sale. Upon sale of a junkyard, the new owner shall continue all screening maintenance.

D. Screening.

1. Purpose. This subsection describes the requirements governing the location, planting, construction, and maintenance, of materials used in screening junkyards as required in A.R.S. § 28-7942(D).
2. Junkyard expansions. A junkyard owner shall be responsible for any expense to expand an existing junkyard screen. Screening expansions shall be aesthetically compatible, as the Director determines, with existing screens.
3. Screening location. Fences and screens shall be located so as not to be hazardous to the traveling public. New junkyards and expansions shall have screens in place before any junk is deposited.
4. Acceptable screening. When fencing is used alone or in combination with plant material, the fencing shall be capable of screening the junk entirely from view. When planting is used alone or in combination with an earthen berm, the number, type, size, and spacing of the plants shall be capable of screening the junk entirely from view, as determined by the Department.
5. Acceptable fencing materials. Acceptable fencing includes: steel or other metals; durable woods such as heart cypress, redwood, or other wood treated with a preservative; and walls of concrete block, brick, stone, or other masonry. Metal fencing shall be stained, colored, coated, or painted to blend into surroundings and be aesthetically unobtrusive.
6. Acceptable plant materials. Plant materials used shall be predominantly evergreen. In general, the minimum size of plant materials used shall be equal to five-gallon containers. An applicant may obtain a list of acceptable plant materials from the Department.
7. Screening maintenance. A junkyard owner shall ensure that screening does not enter the right-of-way. A junkyard owner shall maintain all screening in good condition by:
 - a. Maintaining fences, walls, or other structural material in good appearance by timely painting and repair.
 - b. Adequately watering, cultivating, mulching, or giving other maintenance to plant material, including spraying for insect control, to keep the planting in healthy condition; and
 - c. Removing all dead plant material immediately and replacing it promptly during the following planting season. Replacement plants shall be at least as large as the initial planting as approved on the screening license.
8. Abandoned, destroyed, or voluntarily discontinued junkyards. A junkyard that ceases to operate for a period of one year or longer, shall comply with A.R.S. § 28-7943 and obtain a screening license to be reopened.
9. Violation.
 - a. The Department shall issue a violation notice to a junkyard owner for failing to comply with A.R.S. §§ 28-7941 through 28-7946. A junkyard owner shall have 60 days from the date the violation notice is issued to apply for a screening license and submit a screening plan for the Department's review and approval.
 - b. A person who violates any provision of A.R.S. §§ 28-7941 through 28-7946 or this Section for junkyard control can be found guilty of a misdemeanor under A.R.S. § 28-7946.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Amended effective June 13, 1980 (Supp. 80-3). Former Section R17-3-713 renumbered without change as Section R17-3-703 (Supp. 88-4). Amended by final rulemaking at 8 A.A.R. 844, effective February 8, 2002 (Supp. 02-1).

ARTICLE 8. ARIZONA PARKWAYS AND HISTORIC AND SCENIC ROADS**R17-3-801. General Provisions**

The following definitions apply:

“Corridor Management Plan (CMP)” means a written document developed with public involvement that specifies the actions, procedures, controls, operational practices, and administrative responsibilities and strategies to manage and protect the resources of a designated road.

“Department” means the Arizona Department of Transportation.

“Designate” means to grant status as a parkway, historic road, or scenic road to certain physical boundaries of a road or area under A.R.S. §§ 41-512 through 41-518.

“Interstate highway” has the meaning in A.R.S. § 28-7901(4).

“PHSRAC” means the Arizona Parkways, and Historic and Scenic Roads Advisory Committee.

“Road” means any federal, state, county, Indian, or municipality roadway or right-of-way.

“Request” means a written statement submitted to PHSRAC by an agency, group, or individual to ask PHSRAC to consider an initial assessment to recommend certain road segments for a designated road.

“Resources” means the cultural, natural, scenic, or historic qualities of a requested parkway or historic or scenic road.

“State highway” has the meaning in A.R.S. § 28-101(47).

“Viewshed” means the three visual areas that can be seen from a specific stopping point on or near a roadway, comprised of the:

Foreground (the area up to one-third mile from the edge of the roadway where individual parts of a plant are distinguishable);

Middleground (the area beginning one third from the edge of the roadway and extending to three miles from the roadway where individual plants are distinguishable); and

Background (the area more than three miles from the roadway, where individual plants are indistinguishable but are visible as vegetative cover).

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-802. Meetings and Organization of PHSRAC**A. Chairperson.**

1. At the first meeting of the fiscal year, PHSRAC shall elect a chairperson and vice chairperson. The chairperson and vice chairperson shall assume the duties of office at the close of the first meeting.
2. If the chairperson or vice chairperson resigns or vacates the office before the term expires, PHSRAC shall elect a replacement to serve the remainder of the term at the next scheduled meeting.

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3. The chairperson shall preside at all meetings, appoint subcommittees of PHSRAC, and perform other duties as necessary to the office of chairperson.
 4. If the chairperson is absent or incapacitated, the vice chairperson shall exercise the duties of the chairperson.
- B. Meetings.**
1. PHSRAC shall meet at least once each six months at a time and place designated by the chairperson.
 2. The chairperson, the vice chairperson with the chairperson's approval, or any six members of PHSRAC may call a meeting as necessary to conduct PHSRAC's business.
 3. PHSRAC shall notice all meetings as prescribed in A.R.S. Title 38, Article 3.1.
- C. PHSRAC's decisions become effective by a majority vote of attending members if a quorum is present. A quorum consist of six or more members of PHSRAC present at a meeting convened under A.R.S. Title 38, Article 3.1.**

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-803. Request to Designate a Road

- A.** Any agency, group, or individual may request PHSRAC to recommend that the Transportation Board designate a road. An applicant agency, group, or individual shall submit a written request to the Chairman of PHSRAC, care of the Department. The request shall identify the applicant and state the road segment to be included in a proposed designated road.
- B.** At a meeting convened under A.R.S. Title 38, Article 3.1, PHSRAC shall conduct an initial assessment of the request based on the factors in R17-3-804(A). PHSRAC shall decide by majority vote whether to allow the applicant to submit an application and report as described in subsection (C).
- C.** If PHSRAC approves an initial assessment, PHSRAC shall provide the applicant with a copy of the "Application Procedures for Designation of Parkways and Historic or Scenic Roads in Arizona." The applicant shall submit the following:
1. A written letter of support for designation of the road by the entity having jurisdiction over the road. If the proposed designated road is a state highway, a local community group shall submit the letter of support; and
 2. A report that includes the following for the proposed designated road:
 - a. Recommended road segment to be designated;
 - b. Area on either side of the road necessary to protect the historic, cultural, or visual resources of the proposed designated road;
 - c. Adjacent land ownerships;
 - d. Existing major land use along the proposed designated road;
 - e. Area zoning;
 - f. Still photos or other supportive material of outstanding and representative scenery, or other resources;
 - g. Recommendations to protect or enhance the historic, cultural, or visual resources of the proposed designated road;
 - h. Visual impact of existing outdoor advertising; and
 - i. Inventory of resources as prescribed in subsection (D).
- D.** An inventory of resources includes the following, as applicable to the proposed designated road:
1. Natural resources such as geology, hydrology, climate, biota, and topography;
 2. Visual resources, including a systematic:
 - a. Selection of appropriate viewsheds,
 - b. Classification of the proposed designated road's scenic elements and viewsheds, and
 - c. Evaluation of the visual quality of each viewshed.
 3. Cultural resources, including:
 - a. Architectural resources, including structures, landscaping, or other human constructions, that possess artistic merit and represent the architectural class or time period of human achievement;
 - b. Historical resources, including sites, districts, structures, artifacts, or other evidence of human activities that represent aspects or events of national, state, or local history;
 - c. Archaeological resources, including sites, artifacts, or structures that date from
 - i. Prehistoric or aboriginal periods; or
 - ii. Historic periods, or non-aboriginal activities for which only vestiges remain; and
 - d. Cultural development resources, including:
 - i. Political or governmental development,
 - ii. Social or cultural impact on civilization in the proposed area, or
 - iii. Technological or economic impact of civilization in the proposed area.
- E.** For a proposed designated road that is part of the Arizona state highway system, the Department shall prepare the report required in subsection (C)(2).
- F.** The Department shall submit the inventory of resources to the Arizona Historical Advisory Committee of the Arizona State Library, Archives, and Public Records for its evaluation of the value of any historical resource of a proposed designated road.

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-804. PHSRAC's Process

- A.** After receiving all information requested in R17-3-803(C) and (D), PHSRAC shall evaluate the extent and quality of the resources for the proposed designated road. PHSRAC shall consider the following factors in deciding to recommend designation to the Transportation Board:
1. The memorability of the visual impression from contrasting landscaping elements;
 2. The integrity of the visual order in the natural and human-built landscape, and the extent to which the landscape is free from visual encroachment;
 3. The degree to which visual aspects of the landscape elements join to form a harmonious, composite, and visual pattern;
 4. Degree of the historical or cultural contribution to the area, state, or nation;
 5. Proximity and access of the proposed designated road to the historical place or area;
 6. Sufficient land area for a parkway to accommodate visitor facilities; and
 7. Evaluation by the Arizona Historical Advisory Committee.
- B.** At a meeting convened under A.R.S. Title 38, Article 3.1, PHSRAC shall discuss and vote on a recommendation for designation of a road to the Transportation Board. PHSRAC shall:
1. Approve and recommend a designation by a majority vote, or
 2. Deny a request for designation.

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- C. If PHSRAC approves and recommends designation, PHSRAC shall submit the recommendation to the Director to present to the Transportation Board. The Transportation Board has sole authority to designate a road as a parkway, historic, or scenic road

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-805. Reconsideration of PHSRAC's Decision

- A. If PHSRAC denies a request to designate a proposed road at the initial assessment stage, as described in R17-3-803(B), the agency, group, or individual that requested designation may prepare and submit an application and report under R17-3-803(C) to PHSRAC at its own cost. The agency, group, or individual shall submit the application and report within one year from the date of PHSRAC's decision denying the request.
- B. If PHSRAC denies an application to designate a road, the agency, group, or individual may request that PHSRAC reconsider its decision:
1. The entity requesting reconsideration has 60 days from the date of PHSRAC's decision to present additional information to PHSRAC. Additional information includes data that emphasizes the factors PHSRAC considers in R17-3-804(A), and emphasizes the road's unique features or special qualities that could be protected or enhanced. The Department shall prepare the additional information if the road is a state highway.
 2. PHSRAC shall not reconsider its decision if the entity requesting reconsideration does not submit additional information.
- C. If additional information is presented, PHSRAC shall discuss and vote on the request for reconsideration at a meeting convened under A.R.S. Title 38, Article 3.1.

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Correction to subsection (C) (Supp. 88-4). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-806. Review of Existing Designated Parkway or Historic or Scenic Road

- A. Review.
1. PHSRAC shall review a designated road to compare and ensure that the present conditions and resources comply with the conditions and resources that existed at the time the road was designated in order to ensure continued designation.
 2. PHSRAC shall conduct a review:
 - a. At least every five years from initial designation,
 - b. At the design stage of any construction or reconstruction proposed by the Department or the entity having jurisdiction of the designated road, or
 - c. If the entity having jurisdiction or a local community group recommend deletion of the designated road.
- B. Corridor Management Plan ("CMP").
1. The Department incorporates by reference the Federal Highways Administration's Notice of FHWA interim policy, published in the Federal Register, 60 F.R. 26759, May 18, 1995, and no later amendments or editions. The incorporated material is on file with the Department.
 2. The entity having jurisdiction or any member of the public shall use the guidelines outlined in the Notice of

FHWA interim policy, incorporated by reference in R17-3-806(B)(1), to prepare a CMP.

3. The entity having jurisdiction or any member of the public shall submit a CMP to PHSRAC as stated in R17-3-803(A), for PHSRAC's review.
4. At a meeting convened under A.R.S. Title 38, Article 3.1, PHSRAC shall discuss and vote on whether to recommend to the Department or the entity having jurisdiction to adopt and implement the CMP, using the guidelines outlined in the Federal Highways Administration's Notice of FHWA interim policy.

C. Deletion.

1. Based on its review conducted under subsection (A), PHSRAC shall discuss and vote on a recommendation for deletion of a designated road at a meeting convened under A.R.S. Title 38, Article 3.1.
2. Reconsideration. The entity having jurisdiction of a designated road or a local community group may request that PHSRAC reconsider its decision if PHSRAC recommends deletion of a designated road.
 - a. The entity requesting reconsideration has 60 days from the date of PHSRAC's decision to present additional information to PHSRAC. Additional information includes data that emphasizes the factors PHSRAC considers in R17-3-804(A), and emphasizes the road's unique features or special qualities that could be protected or enhanced. The Department shall prepare the additional information if the road is a state highway.
 - b. PHSRAC shall not reconsider its decision if the entity requesting reconsideration does not submit additional information.
 - c. PHSRAC shall use the procedures described in R17-3-805 to reconsider its decision.
3. PHSRAC shall submit a recommendation for deletion to the Director for the Director to present to the Transportation Board.

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-807. Approvals and Agreements Between Agencies for Designation

If the Transportation Board designates a road that is not a state highway, the designation becomes effective after the Department and the entity having jurisdiction complete an interagency agreement and file the agreement with the Secretary of State. The agreement shall include the following:

1. PHSRAC's resource listing and evaluation for designation as recommended to the Director for the Director's presentation to the Transportation Board,
2. Requirements or recommendations for protecting unique features and resources,
3. Provisions for Department-approved signing,
4. Provisions for an access road or subdivision access to a parkway as restricted under A.R.S. § 41-514(F),
5. Statements regarding the conditions of the designation,
6. Provisions if the Transportation Board deletes a road and cancels an agreement, or
7. Provisions that the Department, the Arizona Parks Board, or the Arizona Historical Society do not have any financial or legal responsibility for another agency or government unit by designating a highway as a parkway or historic or scenic road.

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Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-808. Construction and Maintenance Standards; Signing

- A.** Under A.R.S. § 41-516, the Department or entity having jurisdiction may allow a design exception effecting construction or maintenance in order to protect and enhance a special feature or unique resource of the designated road, based on engineering judgment and the current standards of the American Association of State Highway and Transportation Officials.
- B.** The Department or entity having jurisdiction shall provide signing to identify the designated road, based on the current edition of the Manual on Uniform Traffic Control Devices adopted under A.R.S. § 28-641, and the following criteria:
1. A logo associated with a sign that identifies a designated road shall not be used without PHSRAC's written permission.
 2. The Department shall provide signing identifying a designated state highway depending on the level of fiscal constraint and available funding.
 3. The Department shall not allow signing identifying a designated road on an interstate highway.
 4. PHSRAC and the Director shall review any other signing related to identifying a designated road, such as historical markers, in order to ensure the signing conforms to Department standards and resource character of the road.
 5. A sign shall not visually interfere with or distract from an adjacent traffic control device, or the historic or scenic quality of an area.
 6. Signing identifying the designated road should be as close as practicable to the established termini. Within the designated road, signing shall be at least five miles apart. If the termini of the designated road are less than ten miles apart, no additional signing shall be installed within the designated road.
 7. If a designated road begins or ends at a point at a junction or intersection of another road, the signing for the designated road shall be located beyond the junction and beyond any signing that is installed immediately after the junction or intersection. Signing for the designated road may be incorporated with or into advance guide signing for the other road if spacing allows.
 8. If an intersecting road is a designated road, and the beginning or end is not immediately adjacent to the junction or intersection, any signing shall be located only on the designated road.
 9. If the Transportation Board deletes a road, the Department or entity having jurisdiction shall remove all designation signing.

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

R17-3-809. Repealed**Historical Note**

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES**R17-3-901. Signing for Colleges and Universities**

- A. Definitions.**
- “Community College” has the meaning as prescribed in A.R.S. § 15-1401.
- “Department” means the Arizona Department of Transportation.
- “FHWA” means the Federal Highway Administration of the U.S. DOT.
- “Major metro area” means an urban area with a population of at least 50,000.
- “Municipality” means an incorporated city or town.
- “MUTCD” means the Manual on Uniform Traffic Control Devices, a national standard for the design and application of traffic control devices that is published by the U.S. DOT/FHWA and that is the standard for traffic control devices on the streets and highways of this state as required by A.R.S. § 28-641.
- “Nonconforming sign” means an erected sign that does not comply with this Section or A.R.S. § 28-642(D) due to changes in the statutes, rules, or changed conditions. Examples of changed conditions include the reconstruction of a highway or physical deterioration of a sign.
- “Regionally accredited college or university” means a college or university accredited by a regional institutional accrediting association recognized by the Arizona State Board for Private Postsecondary Education.
- “Rural area” means all areas other than a major metro area or an urban area.
- “Signing” means standard highway supplemental guide signs as specified in the MUTCD.
- “State highway” has the same meaning as prescribed in A.R.S. § 28-101.
- “State University” means a university established and maintained by the Arizona Board of Regents under A.R.S. § 15-1601.
- “Trailblazing sign” means a sign installed by a local governmental agency, off the state highway, to guide traffic to a college or university.
- “Trip” means a one-way commute to or from a college or university, calculated by the Department based on the number of students or dorm beds, using the following equivalents:
- One student = 1 1/2 trips
One dorm bed = three trips.
- “Urban area” means a municipality having a population of at least 10,000 but less than 50,000.
- “U.S. DOT” means the United States Department of Transportation.
- B. Application for signing.** A college or university referenced in A.R.S. § 28-642(D) may request signing by submitting a letter on its letterhead to the Department's State Traffic Engineer. The letter shall contain the following information:
1. Name of college or university;
 2. Complete street address;
 3. Names of agencies granting accreditation;
 4. Number of students;
 5. Number of dormitory beds, if applicable; and

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6. Signature of a person authorized to sign for the college or university.
- C. Requirements. To be considered for signing, a college or university referenced in A.R.S. § 28-642(D) shall satisfy the following:
1. Is on a road that intersects a state highway. If a college or university is on a road that does not intersect a state highway, it still may qualify if:
 - a. The governing political subdivision submits to the Department, within 30 days from the Department's receipt of the request for signing, written confirmation stating that the governing political subdivision will install and maintain trailblazing signs; and
 - b. The governing political subdivision installs trailblazing signs before the Department places signing on the state highway.
 2. Meets all the requirements under subsection (C)(2)(a), (b), or (c) of this Section.
 - a. If in a major metro area:
 - i. Generates at least 4000 trips per weekday.
 - ii. Is three miles or less from a state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of five miles.
 - b. If in an urban area:
 - i. Generates at least 2000 trips per weekday.
 - ii. Is four miles or less from a state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of five miles.
 - c. If in a rural area:
 - i. Generates at least 1000 trips per weekday.
 - ii. Is five miles or less from the state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of 15 miles.
- D. Exceptions to standards. The Department may place supplemental guide signs on state highways to direct traffic to colleges and universities. The Department shall determine whether to place supplemental guide signs for a college or university based on the specific criteria and the guidelines in the MUTCD.
- E. Nonconforming signs. The Department may remove a nonconforming sign if:
1. Other signs have greater priority under the criteria in the MUTCD,
 2. Physical spacing of signs is limited for an upcoming interchange or intersection, or
 3. A greater number of trips are generated by the subject of other guide signs.
- F. College or university. Only the initial, main campus of a college or university referenced in A.R.S. § 28-642(D) may qualify for signing, unless otherwise permitted by statute.

Historical Note

Adopted effective May 7, 1991 (Supp. 91-2). Amended by final rulemaking at 8 A.A.R. 3838, effective August 12, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-902. Logo Sign Programs**A. Definitions.**

“Attraction” means any of the following:

“Arena” means a facility that has a capacity of at least 5000 seats, and is a:

Stadium or auditorium;

Track for automobile, boat, or animal racing; or

Fairground that has a tract of land where fairs or exhibitions are held and permanent buildings that include bandstands, exhibition halls, and livestock exhibition pens.

“Cultural” means an organized and permanent facility that is open to all ages of the public, and is a:

Facility for the performing arts, exhibits, or concerts; or

Museum with professional staff, and an artistic, historical, or educational purpose, that owns or uses tangible objects, cares for them, and exhibits them to the public.

“Domestic farm winery” means a site licensed by the Arizona Department of Liquor Licenses and Control under A.R.S. § 4-205.04 that produces at least 200 gallons and not more than 40,000 gallons of wine annually that is commercially packaged for off-premises sale, and is open to the public for tours to provide an educational format for informing visitors about wine.

“Domestic microbrewery” means a site licensed by the Arizona Department of Liquor Licenses and Control under A.R.S. § 4-205.08 that produces not less than 5000 gallons of beer in each calendar year following the first year of operation and not more than 1.24 million gallons of beer in a calendar year, and is open to the public for tours to provide an educational format for informing visitors about beer.

“Dude ranch” means a facility offering overnight lodging, meals, horseback riding, and activities related to cattle ranching;

“Farm-related” means an established area or facility where consumers can purchase directly from Arizona producers locally-grown, consumer-picked or pre-picked produce, or local products produced from locally-grown produce.

“Golf course” means a facility offering at least 18 holes of play. Golf course excludes a miniature golf course, driving range, chip-and-putt course, and indoor golf.

“Historic” means a structure, district, or site that is listed on the National or Arizona Register of Historic Places as being of historical significance, and includes an informational device to educate the public about the facility's historic features.

“Mall” means a shopping area with at least 1 million square feet of retail shopping space.

“Recreational” means a facility for physical exercise or enjoyment of nature that includes at least one of the following activities: walking, hiking, skiing, boating, swimming, picnicking, camping, fishing, playing tennis, horseback riding, skating, hang-gliding, and climbing;

“Scenic tours” means a business that offers guided tours of scenic areas in Arizona through various means, including air, motorized vehicle, animal, walking, or biking;

“Average annual daily traffic” means the total volume of traffic passing a point or segment of an interstate or other state highway in both directions for one year, divided by the number of days in the year, adjusted for hours of the day counted, days of the week, and seasons of the year.

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“Business” means an entity that provides a specific service open for the general public and is located on a roadway within the required distance of an interstate or other state highway.

“Contract” means a written agreement between a contractor and the Department to operate a logo sign program or any aspect of a logo sign program that describes the obligations and rights of both parties.

“Contractor” means a person or entity that enters into an agreement with the Department to operate a logo sign program or any aspect of a logo sign program, and that is responsible for those aspects of a logo sign program as provided in the contract.

“Department” means the Arizona Department of Transportation.

“Exit ramp” means a roadway by which traffic may leave a controlled access highway.

“FHWA” means the Federal Highway Administration of the U.S. DOT.

“Food court” means a collective food facility that exists in one contiguous area and contains a minimum of three separate food service businesses.

“Highway” has the same meaning as prescribed in A.R.S. § 28-101.

“Interchange” means the point at which traffic on a system of interconnecting roadways that have one or more grade separations, moves from one roadway to another at a different level.

“Intersection” has the same meaning as prescribed in A.R.S. § 28-601.

“Interstate system” has the same meaning as prescribed in A.R.S. § 28-7901.

“Lease agreement” means a written contract between a contractor and a responsible operator, or between the Department and a responsible operator, to lease space for a responsible operator’s logo on a contractor’s or the Department’s specific service information sign.

“Logo” means an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

“Logo sign” means a specific service information sign consisting of a lettered board attached to a separate rectangular panel that displays an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

“Logo sign panel” means a separate rectangular panel on which a logo is placed.

“Municipality” means an incorporated city or town.

“MUTCD” means the Manual on Uniform Traffic Control Devices, a national standard for the design and application of traffic control devices that is published by the U.S. DOT/FHWA and that is the standard for traffic control devices on the streets and highways of this state as required by A.R.S. § 28-641.

“Primary business” means:

A gas service business that is within three miles of an intersection or exit ramp; is in continuous operation to provide services at least 16 hours per day, seven days per week for the interstate system; and 12 hours per day, seven days per week, for other highways;

A food service business that is within three miles of an intersection or exit ramp terminal and is in continuous operation to serve at least two meals per day at least six days per week;

A lodging service business that is within three miles of an intersection or exit ramp terminal;

A camping service business that is within five miles of an intersection or exit ramp terminal;

An attraction service business, or staging area of that business, that is within three miles of an intersection or exit ramp terminal; or

A 24-hour pharmacy that is within three miles in any direction of an interchange or exit ramp terminal on the interstate system.

“Ramp terminal” means the area where an exit ramp intersects with a roadway.

“Responsible operator” means a person or entity that:

Owns or operates an eligible business, pursuant to subsection (C) of this Section,

Has authority to enter into a lease,

Enters into a lease for a logo sign through the rural or urban logo sign program, and

Has not become ineligible to participate.

“Rural logo sign program” means a system to install and maintain specific service information signs on a rural state highway outside of an urbanized area, as provided in A.R.S. § 28-7311(E)(2).

“Rural state highway” means any class of state highway, located outside of an urbanized area as provided in A.R.S. § 28-7311 (E)(2).

“Secondary business” means a business as follows:

A gas service business that is within three to 15 miles of an intersection or exit ramp terminal, and is in continuous operation to provide services at least eight hours per day, five consecutive days per week;

A food service business that is within three to 15 miles of an intersection or exit ramp terminal, and is in continuous operation to serve at least two meals per day (either breakfast and lunch, or lunch and dinner) for a minimum of five consecutive days per week;

A lodging service business that is within three to 15 miles of an intersection or exit ramp terminal;

A camping service business that is within five to 15 miles of an intersection or exit ramp terminal; or

An attraction service business, or staging area of that business, that is within three to 15 miles of an intersection or exit ramp terminal.

“Specific service” means gas, food, lodging, camping, attractions, or 24-hour pharmacies.

“Specific service information sign” means a rectangular sign panel that contains directional information, one or more logos, and the following words:

“GAS,” “FOOD,” “LODGING,” “CAMPING,”
“ATTRACTION,” OR “24-HOUR PHARMACY.”

“Staging area” means a regular, designated site where a scenic tour begins.

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“State highway” has the same meaning as prescribed in A.R.S. § 28-101.

“Trailblazing sign” means a specific service information sign that provides additional directional guidance to a location, route, or building from another highway or roadway.

“Urbanized area” has the same meaning as prescribed in A.R.S. § 28-7311(E)(2).

“Urban logo sign program” means a system to install and maintain specific service information signs on an interstate system or other state highway within an urbanized area, as provided in A.R.S. § 28-7311.

“U.S. DOT” means the United States Department of Transportation.

B. Administration.

1. The Department may operate an urban and a rural logo sign program, or may select a contractor to administer an urban and a rural logo sign program. An urban logo sign program may be implemented on state highways in any urbanized areas in the state. A rural logo sign program may be implemented on state highways located outside of urbanized areas in the state. If the Department utilizes a contractor to administer an urban and a rural logo sign program, the Department shall solicit offers, as provided in A.R.S. §§ 41-2501 through 41-2673, to select a contractor.
2. The Department may contract separately for an urban and a rural logo sign program.
3. A contract shall specify the standards that a contractor shall use, which are contained in the MUTCD, U.S. DOT/FHWA current edition as adopted by the Department under A.R.S. § 28-641 and any other requirements and standards prescribed by the Department.
4. The Department may propose its own form of a written lease agreement with a responsible operator. The Department shall prescribe the form of any written lease agreement between a contractor and a responsible operator. A contractor’s lease agreement with a responsible operator shall include, by reference, the terms and conditions of the Department’s contract with a contractor under A.R.S. §§ 41-2501 through 41-2673. A contractor or the Department may terminate program participation of any responsible operator under subsection (C)(1) of this Section.

C. Eligibility criteria for primary and secondary businesses.

1. Any business is ineligible to place a logo on a logo sign panel on a particular state highway if it already has a highway guide sign installed on that state highway by a contractor or the Department. Any business is ineligible for program participation if:
 - a. Thirty calendar days have elapsed since a contractor or the Department issued a notice of default to a business, during which time a business failed to cure the default, or
 - b. A business has defaulted on a lease.
2. Gas service business. To be eligible to place a logo on a logo sign panel, a gas service business shall:
 - a. Provide gasoline, diesel fuel, oil, and water for public purchase or use;
 - b. Provide sanitary restroom facilities and drinking water;
 - c. Provide a telephone available for public use; and
 - d. Meet the additional requirements for a primary or secondary gas service business in the definition of a primary or secondary business in subsection (A) of this Section.

3. Food service business. To be eligible to place a logo on a logo sign panel, a food service business shall:
 - a. Provide sanitary restroom facilities for customers;
 - b. Provide a telephone available for public use;
 - c. If a food service business is part of a food court located within a shopping mall, the shopping mall may qualify as the responsible operator if the food court:
 - i. Complies with this Section, and
 - ii. Has clearly identifiable, on-premise signing consistent with the logo sign that is sufficient to guide motorists directly to the entrance to the food court.
 - d. Have a license where required; and
 - e. Meet the additional requirements for a primary or secondary food service business in the definition of a primary or secondary business in subsection (A) of this Section.
4. Lodging service business. To be eligible to place a logo on a logo sign panel, a lodging service business shall:
 - a. Provide five or more units of sleeping accommodations;
 - b. Provide a telephone available for public use;
 - c. Have a license, where required;
 - d. Provide sanitary restroom facilities for customers; and
 - e. Meet the additional requirements for a primary or secondary lodging service business in the definition of a primary or secondary business in subsection (A) of this Section.
5. Camping service business. To be eligible to place a logo on a logo sign panel, a camping service business shall:
 - a. Be able to accommodate all common types of travel trailers and recreational vehicles;
 - b. Have a license, where required;
 - c. Provide sanitary restroom facilities and drinking water;
 - d. Be available on a year-round basis unless camping in the community is of a seasonal nature in which case, the facilities in question shall be open to the public 24 hours per day, seven days per week during the entire season; and
 - e. Meet the additional requirements for a primary or secondary camping service business in the definition of a primary or secondary business in subsection (A) of this Section.
6. Attraction service business. To be eligible to place a logo on a logo sign panel, an attraction service business shall meet the following requirements, if applicable:
 - a. Derive less than 50% of its sales from:
 - i. The sale of alcohol consumed on the premises, or
 - ii. Gambling.
 - b. Derive more than 50% of its sales or visitors during the normal business season from motorists who do not reside within a 25-mile radius of the business.
 - c. Provide at least 10 parking spaces.
 - d. Provide historical, cultural, amusement, or leisure activities to the public.
 - e. Be in continuous operation at least six hours per day, six days per week, except:
 - i. An arena attraction shall hold events at least 28 days annually;
 - ii. A cultural attraction shall be open at least 180 days annually;

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- iii. A domestic farm winery or domestic micro-brewery shall be open for tours at least 40 days annually;
 - iv. A farm-related attraction shall be open at least 120 days annually; or
 - v. A dude ranch shall be open at least 150 days annually.
 - f. Meet the additional requirements for a primary or secondary attraction service business in the definition of a primary or secondary business in subsection (A) of this Section.
7. Twenty-four hour pharmacy business. To be eligible to place a logo on a logo sign panel, a 24-hour pharmacy business shall:
- a. Operate continuously 24 hours per day, seven days per week;
 - b. Have a state-licensed pharmacist present and on duty at all times; and
 - c. Meet the additional requirements for a primary 24-hour pharmacy business in the definition of a primary business in subsection (A) of this Section.
- D. Responsible operator pricing and lease procedures.**
1. In the rural and urban logo sign programs, a contractor or the Department may use:
 - a. Rate schedules that are established and periodically adjusted by the Department; or
 - b. Competitive pricing established by one or more offers from potential or current responsible operators.
 2. A contractor or the Department may use competitive pricing or rate schedules to determine the ranking order of potential or current responsible operators who may be awarded a logo sign lease at each appropriate highway interchange or location.
 3. Along with the amount of available signage, competitive pricing or rate schedules may be based on any one or a combination of the following additional factors:
 - a. The average, annual, daily traffic at, or adjacent to, the highway location of the specific service information sign;
 - b. The population mix and relative distribution between primary and secondary businesses that appear to meet all the program requirements;
 - c. The ranking order determined by a contractor or the Department as established by competitive pricing proposed or offered by potential or current responsible operators, or rate schedules, at each appropriate highway interchange or location; or
 - d. The competitive market conditions, as well as economic, regulatory, logistical, and other related factors as determined by the Department.
 4. If any of the factors in subsection (D)(3) of this Section are used in competitive pricing or rate schedules, a contractor or the Department shall make information relevant to these factors available to businesses on the contractor's or the Department's website.
 5. If the factors in subsection (D)(3) of this Section do not resolve the business rankings at a location, a contractor or the Department shall prioritize the remaining requests for placement of a logo on a specific service information sign panel based on the following additional factors in the order listed below:
 - a. The responsible operator situated closest to the highway intersection or exit ramp terminal;
 - b. A gas service business or a food service business that provides the most days and hours of service to the public; and
 - c. The first-in-time, eligible responsible operator to request placement of a logo on a logo sign panel.
6. If a potential responsible operator requests placement of a logo on a specific service information sign panel at a highway intersection or interchange where there are no available placements, and does so no later than 90 calendar days before the first expiration of an existing lease with a lower-ranked responsible operator at that location, a contractor or the Department may award a lease to the highest-ranked responsible operator at that location. A contractor or the Department may establish a waiting list of requesting businesses and potential responsible operators.
7. A contractor or the Department may choose not to renew an existing lease or a lease expiring within the next 90 calendar days, if another eligible business with higher priority requests placement of a logo on a specific service information sign panel at the same location.
- E. Secondary businesses.**
1. Lease limitations. For a secondary business, a contractor or the Department may enter into a lease for up to five years or renew a lease for up to five years, with the following terms:
 - a. A contractor or the Department shall review the lease of a responsible operator at the beginning of the 24th month of the lease term to determine if the responsible operator complies with all other terms of the lease;
 - b. After the 24-month review, a contractor or the Department may terminate the lease and remove the appropriate logo from the logo sign panel if another eligible business with higher priority requests lease space for a logo on a logo sign panel; and
 - c. A contractor or the Department shall notify a responsible operator at least 90 calendar days before terminating the lease and removing a logo from the logo sign panel.
 2. A contractor or the Department may display the following additional information on a specific service information sign for a secondary business, as space allows, based on the following ranking order:
 - a. Distance,
 - b. Days and hours of operation, and
 - c. Seasonal operation.
- F. Contractor or Department responsibility.**
1. A contractor shall follow all Department design standards and specifications for all sign panels, supports, and materials, as provided in the contract and the MUTCD.
 2. A contractor or the Department shall ensure that a business complies with all criteria established in this Section. A contractor or the Department may choose not to enter into a lease agreement or renew a lease agreement if the eligibility criteria in subsection (C) of this Section are not met. If a responsible operator becomes ineligible to place a logo on a logo sign panel, a contractor or the Department shall remove a logo from a logo sign panel after notifying a responsible operator as provided in the lease.
 3. A contractor or the Department shall require that a responsible operator certify in writing as directed that a responsible operator will comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and contractual requirements of the rural or urban logo sign program.

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4. Nothing in these rules shall require a contractor or the Department to place or maintain a specific service information sign at any particular interchange or intersection. A contractor or the Department shall not place a specific service information sign that obstructs or interferes with a traffic control device.
 5. A contractor shall not remove or relocate an existing official traffic control device, as defined in A.R.S. § 28-601, to accommodate a specific service information sign without prior written approval by the Department, or a local authority under A.R.S. § 28-643.
 6. A contractor or the Department shall provide a copy of the signed lease agreement to a responsible operator. A responsible operator shall deliver a logo for the logo sign panel to a contractor or the Department for installation, or contract with a contractor to fabricate a logo for a logo sign panel to a responsible operator's, and the Department's, specifications.
 7. Within 30 calendar days after receipt of a written request from a responsible operator, a contractor or the Department shall return any pre-paid lease payments to a responsible operator if a responsible operator's logo is not installed on a logo sign panel within 90 calendar days of tendering the payments, for reasons solely caused by the Department or a contractor.
 8. A contractor shall obtain an encroachment permit under R17-3-501 through R17-3-509 before erecting or modifying a specific service information sign along a state highway.
 9. If a contractor requests an encroachment permit under R17-3-501 through R17-3-509, the Department's staff shall decide the best placement of a specific service information sign and shall cooperate with a contractor to provide information to the motoring public as prescribed in subsection (E)(2) of this Section.
 10. If an urban or rural logo sign program is terminated, a contractor or the Department shall:
 - a. Notify a responsible operator by certified mail, or a mutually agreed upon electronic communication method, of the program termination and the location where a responsible operator may claim its logo;
 - b. Remove all sign panels and supports, as directed by the Department; and
 - c. Refund any unused lease payments on a prorated basis to each responsible operator.
 11. A contractor or the Department shall solely determine the position and location of new or additional logos on logo sign panels or specific service information signs when logo sign vacancies occur on a logo sign panel or a specific service information sign panel, and a new responsible operator wishes to lease space on that panel, or a waiting list exists.
 12. In a lease agreement with a responsible operator, a contractor or the Department may collect all applicable taxes.
- G.** Urbanized or rural boundary changes. If the boundaries of an urbanized area, as identified in a subsequent decennial census, are relocated or adjusted, a contractor or the Department shall allow:
1. The logo signs within the urbanized area boundaries and outside of those boundaries to remain in place until the minimum lease obligations between a contractor or the Department and a responsible operator have been fulfilled; or
 2. Until lease termination, whichever occurs first.
- H.** Signage transition. Logo signage in place at the end of a lease term following boundary changes in subsection (G) of this Section may be transitioned from the urban to the rural logo sign program or from the rural to the urban logo sign program as appropriate.
- I.** Elimination of exit ramp or interchange. When the Department eliminates an exit ramp or interchange from the state highway system, a contractor or the Department may install and maintain a specific service information sign at an exit ramp or interchange directly preceding the exit ramp or interchange that the Department eliminates in each direction, as follows:
1. On request of a responsible operator, the Department may relocate a logo sign panel or a specific service information sign, as deemed appropriate by the Department.
 2. A business affected by exit ramp or interchange elimination shall meet all eligibility criteria for continued program participation as prescribed in Subsection C of this Section and the following:
 - a. Be located directly off the interstate or other state highway, and
 - b. Had previous routine access from the eliminated exit ramp or interchange with direct access from:
 - i. The crossroad at the eliminated exit ramp or interchange;
 - ii. The frontage road of the interstate or other state highway at the eliminated exit ramp or interchange, within 1000 feet of the crossroad; or
 - iii. The frontage road of the interstate or other state highway at the eliminated exit ramp or interchange, within 1000 feet of the crossroad, as the frontage road existed before the exit ramp or interchange was eliminated.

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2).
 Amended effective April 10, 1987 (Supp. 87-2). Former Section R17-3-911 renumbered without change as Section R17-3-909 (Supp. 88-4). Former Sections R17-3-902 through R17-3-909 renumbered without change as Section R17-3-902 (Supp. 89-1). Amended effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 5047, effective November 4, 2003 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 3856, effective September 15, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-903. Repealed**Historical Note**

Adopted effective March 22, 1985 (Supp. 85-2).
 Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Repealed by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-904. MUTCD Requirements for Logo Signs

- A.** Number of sign panels and services allowed. No more than four specific service information sign panels are allowed on an interstate or other state highway at the approach to an intersection, interchange, or exit ramp.

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1. Each specific service information sign panel shall contain a maximum of six logos as provided in Chapter 2J of the current version of the MUTCD.
 2. No more than two specific service information sign panels for each type of specific service are allowed on an interstate or other state highway at the approach to an intersection, interchange, or exit ramp. A contractor or the Department may combine types of specific services as prescribed in subsection (A)(3) of this Section.
 3. Except for existing logo signs displayed or approved for display as of July 6, 2012, no more than three types of services shall be represented on any specific service information sign panel. If three types of services are displayed on one specific service information sign panel, the panel shall have two logo sign panels for each service, or a total of six logo sign panels. If two types of services are displayed on one sign, the logo sign panels shall be limited to either three for each type, for a total of six logo sign panels, or four for one type and two for the other type, for a total of six logo sign panels.
 4. One service type shall appear on no more than two specific service information sign panels.
 5. When logos for more than six businesses of a specific service type are displayed at the same interchange or intersection approach, no more than 12 logos of a specific service type shall be displayed on no more than two specific service information sign panels.
- B.** Sign sequence. A contractor or the Department shall install successive specific service information signs for participating responsible operators in the direction of travel for the following as specified in the MUTCD:
1. Twenty-four hour pharmacies,
 2. Attractions,
 3. Camping,
 4. Lodging,
 5. Food, and
 6. Gas services.
- C.** Seasonal requirements. If a responsible operator operates on a seasonal basis, a contractor or the Department shall:
1. Remove or cover a logo on a logo sign panel during the off-season; or
 2. Display the dates of operation, if additional information is not required on the sign under R17-3-902(E)(2).
- D.** Sign standards. If the Department decides to move a specific service information sign because of construction or reconstruction of transportation facilities, or the placement of other signs or traffic control devices, the standards of the MUTCD apply regarding the new placement.
- E.** Trailblazing signs.
1. A contractor or the Department shall install a trailblazing sign for a responsible operator along a highway if a responsible operator's business is not located on, and is not visible from, an intersection with a highway as directed from the specific service information sign.
 2. A contractor or the Department may locate a trailblazing sign near all intersections where the direction of the route changes or where a motorist may be uncertain which road to follow.
 3. A trailblazing sign is limited to four or fewer logo sign panels.
 4. A contractor or the Department shall obtain written approval from a local governing authority to install and maintain a trailblazing sign along a highway that is not under the Department's maintenance jurisdiction.
 5. A contractor or the Department shall not install a logo on a specific service information sign panel until all necessary trailblazing signs have been installed.
 6. A trailblazing sign shall indicate by arrow the direction to a responsible operator's business.
 7. A trailblazing sign may:
 - a. Duplicate the logo sign or specific service information sign, or both;
 - b. Consist of two lines of text; or
 - c. Include the type of specific service and distance to a responsible operator's business.
- F.** Sign requirements. A logo sign shall comply with A.R.S. § 28-648. Descriptive advertising words, phrases, or slogans are prohibited on a logo sign, except:
1. If a responsible operator does not have an official trademark or logo, a responsible operator may display as its logo, on a logo sign panel, the name indicated in its partnership agreement, incorporation documents, or other documentation.
 2. A contractor or the Department may place supplemental wording on logo sign panels in accordance with the MUTCD.

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 4132, effective September 9, 2003 (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 5047, effective November 4, 2003 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

Appendix A. Repealed**Historical Note**

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Appendix A repealed by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1).

Appendix B. Repealed**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Appendix B repealed by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1).

R17-3-905. Rural Logo Sign Requirements

- A.** In addition to R17-3-902 through R17-3-904 and R17-3-906, the spacing between specific service information signs on a rural state highway shall be in accordance with the MUTCD based on engineering judgment.
- B.** Agreement. A community official designated by a municipality or town organized under Arizona law may sign a written agreement with a contractor or the Department to prohibit installation of logos on logo sign panels or specific service information sign panels on rural state highways within the recognized boundaries of the community.

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7,

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2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-906. Existing Leases

Any change to R17-3-902 through R17-3-905 does not affect a responsible operator's lease before the current lease expires.

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 5047, effective November 4, 2003 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

Illustration A. Repealed**Historical Note**

New Illustration made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Illustration repealed by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2).

Illustration B. Repealed**Historical Note**

New Illustration made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Illustration repealed by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2).

Illustration C. Repealed**Historical Note**

New Illustration made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Illustration repealed by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2).

R17-3-907. Repealed**Historical Note**

Adopted effective March 22, 1985 (Supp. 85-2). Former Section R17-3-907 repealed and a new Section R17-3-907 adopted effective June 18, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1).

R17-3-908. Repealed**Historical Note**

Adopted effective March 22, 1985 (Supp. 85-2). Former Section R17-3-908 repealed and a new Section R17-3-908 adopted effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1).

R17-3-909. Repealed**Historical Note**

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Former Section R17-3-911 renumbered without change as Section R17-3-909 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1).

28-305 . Powers and duties of the board; rules

The board may prescribe rules for the effective administration of its powers, duties and responsibilities, including rules relating to:

1. Priority programs.
2. Establishing, altering or vacating highways.
3. Construction contracts.
4. Revenue bonds.
5. Local government airport grants.
6. Prohibiting bid rigging.

28-366. [Director; rules](#)

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-7045. Director; state highway and route use; rules

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

28-7365. Design-build; two-phase solicitation

A. If the department determines that the design-build method of project delivery is appropriate, the department shall establish a two-phase procedure for awarding the design-build contract. The department shall limit each solicitation for a design-build contract to a specific single project.

B. During phase one, and before solicitation, the director shall appoint a selection team of at least three persons. At least one-half of the selection team shall be architects or engineers who are registered pursuant to section 32-121. The selection team members may be either department employees or outside consultants. The selection team shall also include at least one person who is a senior management employee of a licensed contractor who is not involved in the project. Any architect or engineer who is serving on the selection team and who is not a department employee shall not be otherwise involved in the project. The department shall prepare documents for a request for qualifications.

C. The request for qualifications shall include all of the following:

1. The minimum qualifications of the design-builder.
2. A scope of work statement and schedule.
3. Documents defining the project requirements.
4. The form of contract to be awarded.
5. The selection criteria for compiling a short list and the number of firms to be included on the short list. At least three but not more than five firms shall be included on the short list.
6. A description of the phase two requirements and subsequent management needed to bring the project to completion.
7. The maximum time allowable for design and construction.
8. The department's estimated cost of design and construction.

D. The selection team shall evaluate the design-build qualifications of responding firms and shall compile a short list of firms in accordance with technical and qualifications-based criteria. The number of firms on the short list shall be the number of firms specified in the request for qualifications, except that, if a smaller number of firms responds to the solicitation or if one or more of the firms on the short list drop out so that only two firms remain on the short list, the selection team may proceed with the selection process with the remaining firms if at least two firms remain or the department may readvertise as the department deems necessary.

E. During phase two, the department shall issue a request for proposals to the design-builders on the short list. The request shall include:

1. The scope of work, including programmatic, performance and technical requirements, conceptual design, specifications and functional and operational elements for the delivery of the completed project, which shall all be prepared by an architect or engineer, as appropriate, who is registered pursuant to section 32-121.
2. A description of the qualifications required of the design-builder and the selection criteria, including the weight or relative order, or both, of each criterion.
3. Copies of the contract documents that the successful proposer will be expected to sign.
4. The maximum time allowable for design and construction.
5. The department's estimated cost of design and construction.

6. The requirement that a proposal be segmented into two parts, a technical proposal and a price proposal. Each proposal shall be in a separately sealed, clearly identified package and shall include the date and time of the submittal deadline. The technical proposal shall include a schedule, schematic design plans and specifications, technical reports, calculations, permit requirements, applicable development fees and other data requested in the request for proposals. The price proposal shall contain all design, construction, engineering, inspection and construction costs of the proposed project.

7. The date, time and location of the public opening of the sealed price proposals.

8. Other information relevant to the project.

F. If stated in the request for proposals, in order to inform each firm whether the firm's concept is responsive to the request for proposals, the department may enter into a separate confidential discussion with each firm on the short list to discuss alternative technical concepts that the firm may propose.

G. The department shall proceed as follows:

1. The selection team shall review the technical proposals and score the technical proposals using the selection criteria in the request for proposals. The technical review team shall then submit a technical proposal score for each design-builder to the department. The technical review team shall reject any proposal it deems to be nonresponsive.

2. The department shall announce the technical proposal score for each design-builder, shall publicly open the sealed price proposals and shall divide each design-builder's price by the score that the selection team has given to it to obtain an adjusted score. The design-builder selected shall be that responsive and responsible design-builder whose adjusted score is the lowest.

3. If a time factor is included with the selection criteria in the request for proposals package, the department may also adjust the bids using a value of the time factor established by the department. The value of the time factor shall be a value per day. The adjustment shall be based on the total time value. The total time value is the design-builder's proposed number of days to complete the project multiplied by the factor. The time adjusted price is the total time value plus the bid amount. This adjustment shall be used for selection purposes only and shall not affect the department's liquidated damages schedule or incentive and disincentive program. An adjusted score shall then be obtained by dividing each design-builder's time adjusted price by the score given by the technical review team. The department shall select the responsive and responsible design-builder whose adjusted score is the lowest.

4. Unless all proposals are rejected, the board shall award the contract to the responsive and responsible design-builder with the lowest adjusted score. The board reserves the right to reject all proposals.

5. The department shall award a stipulated fee equal to two-tenths of one per cent of the department's estimated cost of design and construction to each short list responsible proposer who provides a responsive, but unsuccessful proposal. If the department does not award a contract, all responsive proposers shall receive the stipulated fee. If the department cancels the contract before reviewing the technical proposals, the department shall award each design-builder on the selected short list a stipulated fee equal to two-tenths of one per cent of the department's estimated cost of design and construction. The department shall pay the stipulated fee to each proposer within ninety days after the award of the contract or the decision not to award a contract. In consideration for paying the stipulated fee, the department may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful proposers. Notwithstanding the other provisions of this paragraph, an unsuccessful short list proposer may elect to waive the stipulated fee. If an unsuccessful short list proposer elects to waive the stipulated fee, the department may not use ideas and information contained in the proposer's proposal, except that this restriction does not prevent the department from using any idea or information if the idea or information is also included in a proposal of a short list proposer that accepts the stipulated fee.

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.

ARIZONA DEPARTMENT OF TRANSPORTATION (F20-0207)

Title 17, Chapter 4, Article 5, Safety



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 28, 2020

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

FROM: Council Staff

DATE: January 6, 2020

SUBJECT: Arizona Department of Transportation
Title 17, Chapter 4, Article 5

This Five-Year-Review Report from the Department of Transportation relates to rules in Title 17, Chapter 4, Article 5 regarding safety.

In the last Five-Year-Review Report of these rules, the Department proposed it would amend several rules in Article 5. ADOT indicates the proposed course of action was only completed in part, as they only amended R17-4-501, R17-4-507, and R17-4-508. The NFR was approved by the Council in May 2018.

Proposed Action

For the reasons mentioned in the report the Department is proposing to amend the following rules to improve their clarity, conciseness, understandability, effectiveness and consistency with other rules and statutes.

- **R17-4-501** - Definitions
- **R17-4-502** - General Provisions for Visual, Physical and Psychological Ability to Operate a Motor Vehicle Safely
- **R17-4-503** - Visions standards
- **R17-4-504** - Medical Alert Conditions
- **R17-5-506** - Neurological Standards

- **R17-4-510** - Motorcycle noise level limits
- **R17-4-512** - Child-restraint Systems in Motor Vehicles

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

Yes. The Department cites both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department believes that the economic impact of the rules has essentially remained the same as estimated in the various economic impact statements prepared for the rules. Stakeholders include the Department and Arizona driver license applicants and licensees.

As of November 1, 2019, there are a total of 5,270,095 non-commercial driver licenses, 111,068 commercial driver licenses, 83,695 non-commercial instruction permit holders, and 3,081 commercial driver license instruction permit holders.

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

The Department state that they routinely adopt the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The Department believes that the rules are designed to minimally impact regulated persons and small businesses and that the probable benefits of the rules outweigh the probable costs of the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates they did not receive any written criticisms on these rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. For the reasons mentioned in the the report, the Department indicates the following rules need to be amended to improve their clarity, conciseness, consistency with other rules and statutes, understandability, and effectiveness:

- **R17-4-501** - Definitions
- **R17-4-502** - General Provisions for Visual, Physical and Psychological Ability to Operate a Motor Vehicle Safely
- **R17-4-503** - Visions standards
- **R17-4-504** - Medical Alert Conditions
- **R17-5-506** - Neurological Standards
- **R17-4-510** - Motorcycle noise level limits

- **R17-4-512** - Child-restraint Systems in Motor Vehicles

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

Yes. The for the reasons mentioned in the report, the Department indicates the following rules are not enforced as written:

- **R17-4-502** - General Provisions for Visual, Physical and Psychological Ability to Operate a Motor Vehicle Safely
- **R17-4-510** - Motorcycle noise level limits
- **R17-4-512** - Child-restraint Systems in Motor Vehicles

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

No. The Department indicates the rules are not more stringent than the corresponding federal law; 49 CFR 391, 40 CFR 205.152, 40 CFR 205.166, and 49 CFR 571.213.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The Department indicates they comply with A.R.S. § 41-1037.

9. Conclusion

As mentioned above and for the reasons mentioned in the report, the Department is proposing to amend several of its rules to improve its rules to improve their clarity, conciseness, understandability, effectiveness and consistency with other rules and statues.

The Department plans to file a Notice of Proposed Expedited Rulemaking within 180 days of approval of this report, and file a Notice Final Expedited Rulemaking to the Council on November 2020.

Council staff notes that the Department has not provided a justification or explanation for this timeline. While Council staff recommends approval of this report, staff encourages the Council to inquire as to the reasons for this timeline.

November 20, 2019

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Arizona Department of Transportation, 17 A.A.C. Chapter 4, Article 5, Five-Year Review Report

Dear Ms. Sornsin:

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report of 17 A.A.C. Chapter 4, Article 5, which is due on November 30, 2019. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department hereby certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candance Olson, Rules Analyst, at (602) 712-4534 or at Colson2@azdot.gov.

Sincerely,



John S. Halikowski
ADOT Director

Enclosure: ADOT Five-year Review Report



Rules and Policy Development

A.A.C. Title 17 – Transportation

Chapter 4

Department of Transportation

Title, Registration, and Driver Licenses

Article 5 – Safety

Five-Year Review Report

Douglas A. Ducey

Governor

John S. Halikowski

ADOT Director

Submitted to the Governor's Regulatory Review Council
November 2019

Governor’s Regulatory Review Council

Five-Year-Review Report

17 A.A.C. Chapter 4, Article 5

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 28-366, 28-5204

Specific Statutory Authority: A.R.S. §§ 28-364, 28-907, 28-955.02, 28-3005, 28-3153, 28-3158, 28-3159, 28-3164, 28-3167, 28-3171, 28-3173, 28-3223, 28-3306, 28-3314, and 28-3315

2. The objective of each rule:

Rule	Objective
R17-4-501	This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Article.
R17-4-502	This rule provides Arizona driver license applicants and licensees with information regarding driver license eligibility requirements and the screening processes used by the Department to assess a person’s visual, physical, and psychological ability to safely operate a motor vehicle.
R17-4-503	This rule provides physicians, optometrists, and Arizona driver license applicants and licensees with information regarding the vision standards, screening process, and reporting requirements of the Department for use in assessing a person’s ability to safely operate a motor vehicle.
R17-4-504	This rule details the ability to have a medical alert on a driver license, where to obtain a listing of recognized medical alert conditions, record retention, and proof required to establish the alert. This is to provide clarification to the requirements under A.R.S. § 28-3167.
R17-4-506	This rule provides information regarding the Department’s medical examination and reporting requirements for use by a person who has had a seizure in the three months preceding application for a driver license and the person’s physician. Additionally, the rule provides information regarding the revocation and restoration of driver privileges for a person with a driver license or nonresident driving privileges who experiences a seizure, including specific examination and reporting guidelines for use by the person’s physician to reassess the person’s ability to operate a motor vehicle safely.
R17-4-508	This rule establishes physical qualifications required for a commercial driver license applicant, prescribes the form and manner in which to report these findings to the Department, and prescribes the process used by the Department to summarily suspend and/or revoke a commercial driver license if the Department receives a report indicating that a commercial driver license holder no longer meets physical qualifications in order in order to ensure consistency and compliance from the commercial driver licensees and with the federal requirements.
R17-4-510	This rule establishes noise level limit regulations for operating a motorcycle on the streets or highways of this state in order to clarify and meet the requirements under A.R.S. § 28-955.02.
R17-4-512	This rule requires child-restraint systems to comply with 49 CFR 571.213 by incorporating the regulations by reference as required under A.R.S. § 28-907.

3. **Are the rules effective in achieving their objectives?** Yes No
If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes No
If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R17-4-510	This rule is not consistent with the federal regulations provided under 40 CFR 205.152 and 205.166 for motorcycle noise level limits. Specifically, the current federal standards are more stringent for motorcycles built after 1986. The current federal standard lowers the previously established threshold from 76 dBA to 70 dBA for motorcycles less than 50 cc and from 83 dBA to 82 dBA for off-road motorcycles over 170 cc. In addition, the methods and determining factors are defined and established slightly differently in the federal regulations.
R17-4-512	This rule is not consistent with current federal regulations. Since the 2003 edition of 49 CFR 571.213 there have been changes concerning test procedures (testing devices and test dummies), head impact, harnesses, webbing of belts, the anchorage system, information about the U.S. Government Vehicle Safety Hotline, and information that manufacturers provide (website availability, printed instructions on proper use, and registration forms).

5. **Are the rules enforced as written?** Yes No
If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R17-4-502	This rule is not enforced as written for requirements of an interview and re-evaluations since the Department no longer requires this process as it was a burden and unnecessary to take any additional action from what has been determined by the evaluation from a specialist.
R17-4-510	Enforcement is mainly by local law enforcement and many cities and counties have established their own noise limits by ordinances.
R17-4-512	The current rule is not current with the federal regulations and it is possible for a national market that manufacturers are in compliance with a more recent version of the federal regulations and enforcement cites violations of 28-907A.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

While the Department believes the rules under these Articles are generally clear, concise, and understandable, the Department has determined that the following changes would improve clarity and are necessary for accuracy.

Rule	Explanation
Throughout the Article	<ul style="list-style-type: none"> a. Update and make various grammatical and technical amendments throughout this Article that will help ensure consistency and conformity with the Arizona Administrative Procedure Act and Secretary of State rulemaking format and style requirements. b. Replace the term “Motor Vehicle Division” (R17-4-512) or “Division” with the term “Department” to reflect organizational changes made by the Department.
R17-4-501	<ul style="list-style-type: none"> a. Remove the reference to A.R.S. § 32-1601 from the introductory paragraph since the term “licensee” as defined under that section is not applicable to these rules and may create confusion and the term “registered nurse practitioner” from A.R.S. § 32-1601 is the only definition in that statute applicable to these rules and that term is also defined in A.R.S. § 28-3005, which defines it to have the same meaning as in A.R.S. § 32-1601. b. Remove the word “licensee” from the term “applicant” or “licensee” since there is a differing definition of “licensee” in this Section that is more applicable to the word’s usage. c. Remove the definition of “Division” as it will be obsolete since the Department plans to replace all the usages of “Division” with “Department” to reflect organizational changes made by the Department. d. Insert the phrase “or driving privileges” after “driver license” in the definition to “licensing action” to provide better clarity since in some cases the action may be against an out-of-state driver. e. Amend the definition and all instances of the term “medical code” to read “medical alert code” to be more consistent in usage since the terms are used interchangeably with the undefined term “medical alert code” under R17-4-504. f. Remove the definition of “substance abuse counselor” since that term is defined in A.R.S. § 28-3005, which is included in the introductory sentence.
R17-4-502	<ul style="list-style-type: none"> a. Remove subsection (A) since the information provided is better detailed and explained further in the rule and it could be read to say the applicant or licensee has to perform all those provisions when it may be necessary to only perform one. b. Remove the second sentence from the beginning of subsection (B) since it is unnecessary. c. Clarify the introductory sentence in subsection (B)(2) to indicate that the applicant shall complete an examination or obtain an evaluation since completing an examination does not necessarily require an evaluation. d. Remove the additional uses of “subsection” from the reference in subsection (B)(2)(b) in order to ensure compliance with the proper format. e. In subsection (B)(3), insert “or obtain an evaluation” after “examination” since certain conditions will require this instead of the examination, plus replace the usage of “renewal” at

	<p>the end of the sentence with “issuance” since it is possible the renewal application is occurring after the first issuance and not a renewal.</p> <p>f. Clarify subsection (B)(4) by replacing the usages of “applicant” with “licensee” since in this instance the person would already have a driver license, remove the option of notifying by telephone since it is more clear and better retention for the information to be obtained in writing. In addition, add the following sentence: “On receipt of the required notification, the Department shall require the licensee to complete an examination or evaluation.”</p> <p>g. Remove subsection (B)(5) since the pertinent information is being added for clarity to subsection (B)(4).</p> <p>h. Remove references to an “interview” and “additional evaluation” from subsections (C) and (D) since the Department no longer performs this burdensome and unnecessary process. Also remove subsections (C)(3) and (4).</p> <p>i. Correct the words “licensee’s driver license” under subsection (D)(2) to read “person’s driving privileges,” since the summary suspension for a disqualifying medical condition is actually more applicable to the person’s entire driving privileges and not just a process used to suspend a driver license already issued and there may be actions taken against a nonresident driver.</p> <p>j. Add “prosthetic aid” to subsection (E) as an applicable restriction used with adaptive driving.</p> <p>k. Restructure subsection (F) by removing subsections (F)(1) through (3), and replacing with the sentence “The Department’s Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5” in order to simply and maintain consistency with the Department’s other rules.</p>
R17-4-503	<p>a. Clarify that the vision standards located under this Section are applicable only to a class D, G, or M applicant or licensee in subsection (B).</p> <p>b. Clarify the field of vision readings in subsection (B) to be “70 degrees or greater” and “35 degrees or greater.”</p> <p>c. Relocate subsections (C)(4) and (5) to subsection (B) since these standards would not be applicable to restrictions and would be clearer to be with the other standards.</p> <p>d. Clarify that visual screening equipment or the Snellen Chart may be used to determine visual acuity and visual screening equipment is used for field of vision in subsection (D)(1).</p> <p>e. Correct the typo under subsection (D)(2)(a), by replacing the words “a initial” with “an initial.”</p> <p>f. Correct the written statement referenced under subsection (D)(2)(b) to require a vision examination form provided by the Department and completed by a physician or an optometrist.</p> <p>g. Remove subsection (D)(3) since clarification is being added to subsection (D)(1) so this subsection is unnecessary.</p> <p>h. Clarify that subsection (F) concerns the results from a physician or optometrist by inserting “from a physician or optometrist” after “visual field screening” in the introductory sentence.</p>
R17-4-504	<p>a. Replace the term “medical code” with “medical alert code” in subsection (D) since the term “medical code” in R17-4-501 is being revised to “medial alert code” and appears to be used interchangeably with the undefined term “medical alert code” in subsections (C) and (D) of this rule.</p>

	b. Clarify subsection (D) to indicate the code is maintained on a computer record and not just the Department computer.
R17-4-506	a. Replace the “medical examination” verbiage with “evaluation” verbiage since it is necessary to have the person seen by a specialist for an evaluation instead of the examination; this does not apply to the term “medical examination report.” b. Replace the usage of “non-resident” in subsection (B)(1) with “nonresident” to consistent in its usage in subsection (B)(3). c. Replace the phrase “driver privileges” with “driving privileges” to ensure consistency in use throughout the Article and usage in state statutes.
R17-4-510	Remove the current provisions under this rule and update, reword and restructure the rule language to incorporate by reference the federal regulations under 40 CFR 205.152 and 205.166 to be more consistent with the requirements of the Office of the Secretary of State.
R17-4-512	a. Update this rule for consistency with current federal standards by incorporating by reference the 2019 edition. b. Reword and restructure the rule language to be more consistent with the requirements of the Office of the Secretary of State.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules in Article 5 has essentially remained the same as estimated in the various economic impact statements prepared for the rules. The costs to the Department to uphold and perform a medical screening process remain as a substantial cost. Applicants and licensees may see a variety of indirect costs ranging from minimal to substantive from the examinations or evaluations performed by specialists or from any necessary equipment (adaptive equipment, modified van, bioptic telescopic lenses, etc). The benefit of being able to drive and the benefit of the Department being able to ensure public safety with physically qualified drivers outweigh the costs. Plus, in some instances the costs may already be necessary for the applicant or licensee for other purposes beyond driving. The costs of car seat manufacturers to be in compliance with the federal regulations are a statutory obligation and many may already be in compliance for the national market.

As of November 1, 2019, there are a total of 5,270,095 non-commercial driver licenses, 111,068 commercial driver licenses, 83,695 non-commercial instruction permit holders, and 3,081 commercial driver license instruction permit holders.

For calendar year 2018, the Department’s Medical Review Program processed 16,149 medical-related reports (evaluation reports, medical examination reports, etc.) on non-commercial drivers, sent out 69 requests for a non-commercial driver to go through an examination and 36 non-commercial drivers to complete a special performance evaluation. In addition, the Medical Review Program received 84,277 medical examiner’s certificates for commercial drivers and processed 18 special

performance evaluations for commercial drivers. Special performance evaluations are more comprehensive road and skills tests conducted to evaluate adaptive equipment and/or drivers with special needs and any appropriate restrictions.

As of November 15, 2019, the Department’s records indicate that 751 licensees have opted to have a medical alert code retained on their record and 505,522 licensees have a medical-related restriction on their driver license (500,144 are for wearing corrective lenses). For fiscal year 2019, 53,071 drivers were suspended or revoked for a medical-related issue, and 15,722 drivers completed their medical-related suspension or revocation.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the last five-year review report, the Department anticipated requesting an exception from the Governor’s rulemaking moratorium for rulemaking in March 2015 and if granted the Department intended to complete the indicated rule amendments by April 30, 2016. The Department did not complete the proposed course of action as indicated, except for parts of R17-4-501, R17-4-507, and R17-4-508, which were completed in connection to amendments made to the Department’s Motor Carriers rules in 17 A.A.C. Chapter 5, Article 2. The Council approved that rulemaking on May 1, 2018. At that time, the Department determined it was necessary to amend R17-4-508 in connection to the Motor Carriers rules update since those changes would impact R17-4-508 and would have created an inconsistency and decided that repealing R17-4-507 would be easy to include with a few changes to R17-4-501 that had no impact on the rest of the rules in this Article. The Department had been contemplating amending the other rules in connection with another rulemaking but due to other rulemaking priorities the Department was not able to complete the rest of the proposed course of action from the last review. The indicated changes were noncritical and intended only to improve rule clarity, conciseness, and understandability and ensure proper format conformity and did not have a significant impact on the overall enforceability of the rules.

Rule	Explanation
R17-4-501	<p>a. Remove the reference to A.R.S. § 32-1601 from the introductory paragraph since the term “licensee” as defined under that section is not applicable to these rules and may create confusion and the term “registered nurse practitioner” from A.R.S. § 32-1601 is the only definition in that statute applicable to these rules, but the definition of “registered nurse practitioner” provided under A.R.S. § 28-3005 already means the same as defined in A.R.S. § 32-1601.</p> <p>b. Replace the term “Director” and “Division” with the term “Department” to reflect organizational changes made by the Department. <i>(Completed May 1, 2018, except for Director which was removed.)</i></p> <p>c. Remove the definition of “Director” from this Section since the introductory paragraph already references the definitions provided under A.R.S. § 28-101 which includes a definition for “Director.” <i>(Completed May 1, 2018)</i></p> <p>d. Remove the terms “Arizona Driver License Manual” or “manual” since they are not used in this Article. <i>(Completed May 1, 2018)</i></p>

	<p>e. Remove the term “Identification number” if the Department repeals R17-4-507 since the term is not used elsewhere in this Article. <i>(Completed May 1, 2018)</i></p> <p>f. Amend the last sentence of the definition of “Licensing action” to include the word “medical” before the word “evaluation” for clarification purposes. <i>(After further consideration, determined the definition for “evaluation” provides the necessary medical clarification.)</i></p> <p>g. Amend the definition and all instances of the term “Medical code” to read “Medical alert code” to be more consistent in usage since the terms are used interchangeably with the undefined term “Medical alert code” under R17-4-504.</p>
R17-4-502	<p>a. Insert the word “medical” before the word “examination” in the introductory paragraph of subsection (B)(3) for clarification purposes. <i>(After further consideration, determined it was more appropriate to state examination or obtain an evaluation as proposed in item 6.)</i></p> <p>b. Strike subsections (B)(4) and (B)(5) and insert as (B)(4): “As soon as a licensee’s medical condition allows, the licensee shall notify the Department, in writing, that a medical condition exists not previously reported to the Department that may affect the licensee’s functional ability. On receipt of the required notification, the Department shall require the licensee to complete an examination or medical evaluation” since subsections (B)(4) and (B)(5) apply to a licensee when self-reporting a medical condition.</p> <p>c. Remove all references to “notification by telephone” or “appearing for an interview,” which are no longer applicable to the Department’s medical screening process and combine subsections (C)(3) and (C)(4). <i>(After further consideration, determined it was clearer to remove the subsections since both processes are no longer performed as proposed in item 6.)</i></p> <p>d. Correct the words “licensee’s driver license” under subsection (D)(2) to read “person’s driver license privilege,” since the summary suspension for a disqualifying medical condition is actually more applicable to the person’s entire driver license privilege and not just a process used to suspend a driver license already issued.</p> <p>e. Correct the reference to the Department’s administrative hearing rules by striking the language under subsection (F)(2), and inserting, “The Department’s Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.”</p> <p>f. Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department.</p>
R17-4-503	<p>a. Clarify that the vision standards located under this Section are applicable only to a class D, G, or M driver license applicant or licensee.</p> <p>b. Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department.</p> <p>c. Correct the written statement referenced under subsection (D)(2)(b) to require a vision examination form provided by the Department and completed by a physician or an optometrist.</p> <p>d. Amend this Section if the Department repeals R17-4-508 to incorporate the summary suspension and revocation process currently under R17-4-508. <i>(Department amended R17-4-508 on May 1, 2018, so decision not to incorporate that information.)</i></p> <p>e. Correct the typo under subsection (D)(2)(a), by replacing the words “a initial” with “an initial.”</p>

R17-4-504	<p>a. Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department.</p> <p>b. Replace the two instances of the term “Medical code” with “Medical alert code” since the term “Medical code” is defined in R17-4-501, but appears to be used interchangeably with the undefined term “Medical alert code” in subsections (C) and (D) of this Section.</p>
R17-4-506	<p>Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department.</p>
R17-4-507	<p>Repeal this rule since it is no longer necessary since all of the subject matter relating to the use of a person’s social security number as an identification number on a driver license or instruction permit is now regulated by statute. <i>(Completed May 1, 2018)</i></p>
R17-4-508	<p>a. Subsection (A)(1): Update to reflect changes made to 49 CFR 391.43, which now allow a commercial driver license applicant to submit to the Department a current medical examiner’s certificate instead of the medical examination form. <i>(Completed May 1, 2018)</i></p> <p>b. Subsection (A)(1)(a): Update to reflect changes made to 49 CFR 391.43, which now provides that on and after May 21, 2014, each medical examination required under this Section must be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners as of the date of medical examiner’s certificate issuance. <i>(Completed May 1, 2018)</i></p> <p>c. Subsection (A)(2): Update to reflect changes made to 49 CFR 391.41, which now provides that a commercial driver license holder who submits a current medical examiner’s certificate to the Department, documenting that he or she meets the physical qualification requirements of 49 CFR 391.41, no longer needs to carry an original or photographic copy of the medical examiner’s certificate. However, a commercial driver license holder who obtained a medical examiner’s certificate by virtue of having obtained a medical variance from the Federal Motor Carrier Safety Administration, must continue to have in his or her possession the original or copy of that medical variance documentation at all times when on-duty. These provisions are currently incorporated by reference under R17-5-202 as amended by R17-5-204. <i>(Completed May 1, 2018, except for the medical variance stipulation which applies only to interstate motor carriers since intrastate motor carriers do not receive medical variances from the Federal Motor Carrier Safety Administration, plus the requirement is incorporated by reference under A.A.C. R17-5-202 and the focus of this rule is towards the medical examiner’s certificate.)</i></p> <p>d. Subsection (C)(2)(d): Correct the statement so that instead of reading, “blood pressure is greater than 180 systolic or 110 diastolic,” the phrase should read, “blood pressure is at or greater than 180 systolic and 110 diastolic.” <i>(Completed May 1, 2018, except the Department no longer performs this process and removed this subsection.)</i></p> <p>e. Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department. <i>(Completed May 1, 2018)</i></p> <p>f. Amend all references to the term “twenty-four month renewal” to read “renewal.” A physician may specify a renewal cycle of less than 24 months. <i>(Completed May 1, 2018)</i></p> <p>g. Reevaluate the timeframes indicated under subsections (B)(2), (C)(2)(b), and (C)(2)(c)(iii) for any necessary adjustments. <i>(Completed May 1, 2018, determined to maintain the time-frames in subsections (B)(2) and (C)(2)(b), but removed subsection (C)(2)(c)(iii) as the Department no</i></p>

	<p><i>longer performs this process and 49 CFR 391 allows for medical examiners to certify the driver for a shorter period of time depending on the reading or in cases where it is too high they will certify once the driver's blood pressure is in an acceptable range.)</i></p> <p>h. Subsection (A)(1)(c): Correct the reference to 49 CFR 391.43(b)(10) to reference 49 CFR 391.41(b)(10), where the colors red, green, and amber are actually listed. <i>(Completed May 1, 2018)</i></p> <p>i. Correct the reference to the Department's administrative hearing rules by striking the language in the last sentence under subsection (E), and insert, "The Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5." <i>(Completed May 1, 2018)</i></p>
R17-4-510	<p>a. Update the rule, since it is not consistent with the most recent federal regulations provided under 40 CFR 205.152 and 205.166 for motorcycle noise level limits. Specifically, the current federal standards are more stringent for motorcycles built after 1986. The current federal standard lowers the previously established threshold from 76 dBA to 70 dBA for motorcycles under 49 cc and from 83 dBA to 82 dBA for off-road motorcycles over 170 cc.</p> <p>b. Rulemaking is proposed for this rule because the rule is drafted in an archaic manner, uses inappropriate terminology, or just need to be updated.</p>
R17-4-512	<p>a. Replace the term "Division" with the term "Department" to reflect organizational changes made by the Department.</p> <p>b. Amend this rule for consistency with current federal standards provided under 49 CFR 571.213. The Department has not officially incorporated by reference a more recent federal motor vehicle safety standard applicable to child-restraint systems in motor vehicles since the October 1, 2003, edition incorporated here.</p>

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:

In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The following rules are designed to minimally impact regulated persons and small businesses and the Department believes that the probable benefits of the rules outweigh the probable costs of the rules. Applicants and licensees may see a variety of indirect costs ranging from minimal to substantive from the examinations or evaluations performed by specialists or from any necessary equipment (adaptive equipment, modified van, bioptic telescopic lenses, etc). The benefit of being able to drive and the benefit of the Department being able to ensure public safety with physically qualified drivers outweigh the costs. Plus, in some instances the costs may already be necessary for the applicant or licensee for other purposes beyond driving. The costs of car seat manufacturers to be in compliance with the federal regulations are a statutory obligation and many may already be in compliance for the national market.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

There are no corresponding federal laws for 501, 502, 503, 504, and 506.

R17-4-508: This rule is not more stringent than its corresponding federal regulations in 49 CFR 391.

R17-4-510: This rule is not more stringent than its corresponding federal regulations in 40 CFR 205.152 and 205.166.

R17-4-512: This rule is not more stringent than its corresponding federal regulations in 49 CFR 571.213.

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:**

All sections, except 501 and 508, were adopted prior to July 29, 2010.

R17-4-501 does not require the issuance of a regulatory permit, license, or agency authorization.

R17-4-508 does contain certain requirements for applicants of a commercial driver license. A commercial driver license is a general permit since the activities and practices authorized by it are substantially similar in nature for all holders per each type of commercial driver license. The rule though does not require the issuance of the commercial driver license, that requirement is under 17 A.A.C. 5, Article 2.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department proposes to amend the rules in Article 5 as identified in item 6. The Department plans to request a moratorium exemption from the Governor's Office, pursuant to Executive Order 2020-02, and file a Notice of Proposed Expedited Rulemaking for R17-4-501-504, 506, 510, and 512, within 180 days of approval of this report and have the Notice of Final Expedited Rulemaking filed for the Council's November 2020 agenda. Currently, the Department does not plan to make any changes to R17-4-508 since the rule is still correct and the verbiage currently allows for recent federal regulation updates.

R17-4-504	<p>a. Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department.</p> <p>b. Replace the two instances of the term “Medical code” with “Medical alert code” since the term “Medical code” is defined in R17-4-501, but appears to be used interchangeably with the undefined term “Medical alert code” in subsections (C) and (D) of this Section.</p>
R17-4-506	<p>Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department.</p>
R17-4-507	<p>Repeal this rule since it is no longer necessary since all of the subject matter relating to the use of a person’s social security number as an identification number on a driver license or instruction permit is now regulated by statute. <i>(Completed May 1, 2018)</i></p>

R17-4-508

- a. Subsection (A)(1): Update to reflect changes made to 49 CFR 391.43, which now allow commercial driver license applicant to submit to the Department a current medical examiner's certificate instead of the medical examination form. *(Completed May 1, 2018)*
- b. Subsection (A)(1)(a): Update to reflect changes made to 49 CFR 391.43, which now provide that on and after May 21, 2014, each medical examination required under this Section must be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance. *(Completed May 1, 2018)*
- c. Subsection (A)(2): Update to reflect changes made to 49 CFR 391.41, which now provides that a commercial driver license holder who submits a current medical examiner's certificate to the Department, documenting that he or she meets the physical qualification requirements of 49 CFR 391.41, no longer needs to carry an original or photographic copy of the medical examiner's certificate. However, a commercial driver license holder who obtained a medical examiner's certificate by virtue of having obtained a medical variance from the Federal Motor Carrier Safety Administration, must continue to have in his or her possession the original copy of that medical variance documentation at all times when on-duty. These provisions are currently incorporated by reference under R17-5-202 as amended by R17-5-204. *(Completed May 1, 2018, except for the medical variance stipulation which applies only to interstate motor carriers since intrastate motor carriers do not receive medical variances from the Federal Motor Carrier Safety Administration, plus the requirement is incorporated by reference under A.A.C. R17-5-202 and the focus of this rule is towards the medical examiner's certificate.)*
- d. Subsection (C)(2)(d): Correct the statement so that instead of reading, "blood pressure is greater than 180 systolic or 110 diastolic," the phrase should read, "blood pressure is at or greater than 180 systolic and 110 diastolic." *(Completed May 1, 2018, except the Department no longer performs this process and removed this subsection.)*
- e. Replace the term "Division" with the term "Department" to reflect organizational changes made by the Department. *(Completed May 1, 2018)*
- f. Amend all references to the term "twenty-four month renewal" to read "renewal." A physician may specify a renewal cycle of less than 24 months. *(Completed May 1, 2018)*
- g. Reevaluate the timeframes indicated under subsections (B)(2), (C)(2)(b), and (C)(2)(c)(iii) for any necessary adjustments. *(Completed May 1, 2018, determined to maintain the time-frames under subsections (B)(2) and (C)(2)(b), but removed subsection (C)(2)(c)(iii) as the Department no longer performs this process and 49 CFR 391 allows for medical examiners to certify the driver for a shorter period of time depending on the reading or in cases where it is too high they will certify once the driver's blood pressure is in an acceptable range.)*
- h. Subsection (A)(1)(c): Correct the reference to 49 CFR 391.43(b)(10) to reference 49 CFR 391.41(b)(10), where the colors red, green, and amber are actually listed. *(Completed May 1, 2018)*
- i. Correct the reference to the Department's administrative hearing rules by striking the language in the last sentence under subsection (E), and insert, "The Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and A.A.C. 1, Article 5." *(Completed May 1, 2018)*

R17-4-510	<p>a. Update the rule, since it is not consistent with the most recent federal regulations provided under 40 CFR 205.152 and 205.166 for motorcycle noise level limits. Specifically, the current federal standards are more stringent for motorcycles built after 1986. The current federal standard lowers the previously established threshold from 76 dBA to 70 dBA for motorcycles under 49 cc and from 83 dBA to 82 dBA for off-road motorcycles over 170 cc.</p> <p>b. Rulemaking is proposed for this rule because the rule is drafted in an archaic manner, uses inappropriate terminology, or just need to be updated.</p>
R17-4-512	<p>a. Replace the term “Division” with the term “Department” to reflect organizational changes made by the Department.</p> <p>b. Amend this rule for consistency with current federal standards provided under 49 CFR 571.2. The Department has not officially incorporated by reference a more recent federal motor vehicle safety standard applicable to child-restraint systems in motor vehicles since the October 1, 2003, edition incorporated here.</p>

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:**

In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The following rules are designed to minimally impact regulated persons and small businesses and the Department believes that the probable benefits of the rules outweigh the probable costs of the rules. Applicants and licensees may see a variety of indirect costs ranging from minimal to substantive from the examinations or evaluations performed by specialists or from any necessary equipment (adaptive equipment, modified van, bioptic telescopic lenses, etc). The benefit of being able to drive and the benefit of the Department being able to ensure public safety with physically qualified drivers outweigh the costs. Plus, in some instances the costs may already be necessary for the applicant or licensee for other purposes beyond driving. The costs of car seat manufacturers to be in compliance with the federal regulations are a statutory obligation and many may already be in compliance for the national market.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No ___

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

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R17-4-508: This rule is not more stringent than its corresponding federal regulations in 49 CFR 391.

R17-4-510: This rule is not more stringent than its corresponding federal regulations in 40 CFR 205.152 and 205.166.

R17-4-512: This rule is not more stringent than its corresponding federal regulations in 49 CFR 571.213.

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:**

All sections, except 501 and 508, were adopted prior to July 29, 2010.

R17-4-501 does not require the issuance of a regulatory permit, license, or agency authorization.

R17-4-508 does contain certain requirements for applicants of a commercial driver license. A commercial driver license is a general permit since the activities and practices authorized by it are substantially similar in nature for all holders per each type of commercial driver license. The rule though does not require the issuance of the commercial driver license, that requirement is under 17 A.A.C. 5, Article 2.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department proposes to amend the rules in Article 5 as identified in item 6. The Department plans to request a moratorium exemption from the Governor's Office, pursuant to Executive Order 2019-01, and file a Notice of Proposed Expedited Rulemaking for R17-4-501-504, 506, 510, and 512, within 180 days of approval of this report and have the Notice of Final Expedited Rulemaking filed for the Council's November 2020 agenda. Currently, the Department does not plan to make any changes to R17-4-508 since the rule is still correct and the verbiage currently allows for recent federal regulation updates.

Arizona Administrative CODE

17 A.A.C. 4 Supp. 19-2

www.azsos.gov

This Chapter contains a rule Section filed between the dates of October 1, 2018 through December 31, 2018. It is being published in the second quarter of 2019 (Supp. 19-2).

Title 17



ARD Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter had two rule notices filed for publication in the last calendar quarter of 2018. Section R17-4-313 was amended in both notices and each had different effective dates. Therefore one amendment was not published in Supp. 18-4 to maintain the historical accuracy of the rule (Supp. 19-2).

[R17-4-313. Public Safety Fee 14](#)

Questions about these rules? Contact:

Name: Candace Olson, Rules Analyst
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Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
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The release of this Chapter in Supp. 19-2 replaces Supp. 18-4, 1-38 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

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Article 3, consisting of Sections R17-4-301 through R17-4-349, transferred to Title 17, Chapter 1, Article 3, Sections R17-1-301 through R17-1-349 (Supp. 92-4).

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Editor's Note: Sections R17-4-606, R17-4-607 and its Appendix A and Appendices A and B were repealed under a Notice of Proposed Summary Rulemaking in Supp. 96-1. R17-4-612 was amended under the same Notice of Proposed Summary Rulemaking at 2 A.A.R. 1486. The Office did not receive a Notice of Final Summary Rulemaking on these Sections (Editor's Note added Supp. 10-2).

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R17-4-201. Definitions

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

“Authorized ELT Participant” means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

“Date of lien” means the date identified by the lienholder as the date the loan was issued to the borrower.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Encumbrance” means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

“ELT” means Electronic Lien and Title.

“EPA standards” means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

“FMVSS” means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

“Joint tenancy with right of survivorship” means vehicle ownership by two or more persons and the deceased joint owner’s interest in the vehicle is transferred to the surviving owners.

“Lienholder” means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

“Lienholder Number” means the computer-generated record number assigned by the Division to a lienholder.

“Low-speed vehicle” has the same meaning as prescribed under 49 CFR 571.3.

“MPV” means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NHTSA” means National Highway Traffic Safety Administration of the United States Department of Transportation.

“Operation of law lien” means a lien resulting from the application of a state or federal statute.

“Primary lien” means the first of any multiple liens recorded on a vehicle or mobile home record.

“Registered importer” means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

“Tenancy in common” means vehicle ownership by two or more people without the right of survivorship.

“Valid titling document” means one of the following documents showing a vehicle’s compliance with FMVSS and EPA standards:

- A NHTSA Declaration,
- A manufacturer’s letter, or
- A U.S. federal compliance label printed in English.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-202. Certificate of Title Form

- A.** The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.
- B.** MVD shall provide space on the Certificate of Title form for the following information:
1. Title information:
 - a. Title number;
 - b. Issue date;
 - c. Previous title number; and
 - d. State and date of previous title.
 2. Vehicle information:
 - a. Vehicle identification number (VIN);
 - b. Vehicle make, model, year, and body style;
 - c. Fuel type;
 - d. Odometer information; and
 - e. Vehicle mechanical or structural condition.
 3. Lienholder information:
 - a. Lienholder name and address;
 - b. Lienholder customer or federal identification number; and
 - c. Lien amount and lien date.
 4. Vehicle owner’s or owner’s legal designee information:
 - a. Name; and
 - b. Mailing address.
 5. Ownership change information:
 - a. Sale date;
 - b. Purchaser’s name and address;
 - c. Odometer mileage disclosure statement;
 - d. Seller’s signature; and
 - e. Seller’s signature certification.
 6. Dealer reassignment information.
 7. Other information as required by the Division for internal processing and recordkeeping.

Historical Note

New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-203. Certificate of Title and Registration Application

- A.** In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:
1. Vehicle information:
 - a. Tab number;
 - b. Initial registration month and year;
 - c. Vehicle make, model, year, and body style;
 - d. Mechanical or structural status indicating whether the vehicle is:
 - i. Dismantled,
 - ii. Reconstructed,
 - iii. Salvaged, or
 - iv. Specially constructed;
 - e. Gross vehicle weight;
 - f. Fuel type;
 - g. Odometer information;
 - h. Current title number and titling state.
 2. An owner’s or lessee’s legal ownership status.
 3. Lienholder information:
 - a. Lienholder names and addresses, and

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- b. Lien amount and date incurred.
- 4. If a mobile home, the physical site.
- 5. Co-ownership information:
 - a. A statement of whether any survivorship rights in the vehicle exist; and
 - b. A statement providing co-ownership legal status prescribed in R17-4-205(B).
- 6. Owner certification information verifying:
 - a. Ownership,
 - b. Inclusion of all liens and encumbrances, and
 - c. Seller-verified odometer reading.
- 7. Applicant signatures.
- 8. An acknowledgement that:
 - a. The applicant agrees or disagrees to the Division's release of the applicant's name on a commercial mailing list; and
 - b. The applicant has read a printed explanation of odometer reading codes.
- 9. Other information required by the Division for internal processing and recordkeeping.
- B. An applicant may voluntarily provide the following information on the form:
 - 1. Applicant's birth date;
 - 2. Applicant's driver license number; and
 - 3. Applicant's federal employer identification number, if the applicant is taking title as a sole proprietor, partnership, corporation, or other legal business entity.

Historical Note

New Section recodified from R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-204. Seller's Signature Acknowledgement

A seller shall ensure that a Notary Public or a Motor Vehicle Division (MVD) agent witnesses the seller sign the title transfer. The Notary Public or MVD agent shall sign the title transfer acknowledging witnessing the seller's signature. "Motor Vehicle Division agent" has the meaning prescribed in A.R.S. § 28-370.

Historical Note

Adopted effective November 10, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-204 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-202 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-205. Co-ownership and Vehicle Title

- A. A title certificate application shall specify the form of co-ownership and names of a vehicle's co-owners as follows.
 - 1. If co-ownership is a joint tenancy with right of survivorship in which all owners must sign to transfer or encumber the vehicle, the applicant shall provide the name of each owner separated by "and/or."
 - 2. If co-ownership is a joint tenancy that allows one owner to transfer or encumber the vehicle title, the applicant shall provide:
 - a. The name of each co-owner separated by "or"; and
 - b. A form, signed by each co-owner authorizing title transfer or encumbrance on the signature of any co-owner.
 - 3. If co-ownership is a tenancy in common, the applicant shall provide the name of each owner separated by "and."
- B. Before a surviving joint tenant under subsection (A)(1) obtains a title certificate as owner or transfers or encumbers the vehi-

cle title, the surviving joint tenant shall present to the Division a death certificate for each deceased joint tenant.

- C. After the death of a tenant in common, the Division shall issue a new title certificate only as directed by:
 - 1. A certified probate court order, or
 - 2. A successor's affidavit under A.R.S. § 14-3971(B).

Historical Note

Adopted effective November 13, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-205 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-203 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles"

- A. Titling standards.
 - 1. The Division shall issue a title to a foreign-manufactured vehicle imported to the United States if an applicant presents the following:
 - a. A valid titling document,
 - b. A completed MVD title and registration application as prescribed under R17-4-203,
 - c. A completed Vehicle Verification Form certifying that the vehicle passed the Division's physical inspection,
 - d. A document stating that the vehicle passed an Arizona emissions inspection under A.R.S. § 49-542, and
 - e. A certificate that the vehicle was converted to meet:
 - i. EPA standards, and
 - ii. FMVSS.
 - 2. A foreign-manufactured vehicle imported to the United States is exempt from this subsection if it is older than 25 years from its manufacture date.
 - 3. A foreign-manufactured vehicle imported to the United States that is between 21 and 25 years from the manufacture date is exempt from subsection (A)(1)(e)(i).
 - 4. Titling standards for vehicles manufactured according to Canadian specifications.
 - a. The Division shall issue a title to a vehicle manufactured according to Canadian specifications if it:
 - i. Is not for resale;
 - ii. Has a GVWR of less than 10,000 pounds; and
 - iii. Is a passenger vehicle, motorcycle, or MPV.
 - b. Before titling a vehicle manufactured according to Canadian specifications, the owner shall submit to the Division manufacturer documentation verifying that the vehicle complies with FMVSS and EPA standards.
 - i. The Division shall waive the FMVSS and EPA labeling location requirements as prescribed in 49 CFR 571 and 40 CFR 86.
 - ii. If manufacturer documentation indicates that a vehicle's speedometer or headlights do not comply with FMVSS and EPA standards, the owner shall file additional documentation with the Division to verify completion of a modification that brings the vehicle into compliance.
 - c. A registered importer shall certify a vehicle manufactured according to Canadian specifications if:

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- i. The vehicle meets FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
 - ii. The owner did not submit manufacturer documentation as prescribed under subsection (A)(4)(b).
- B.** The Division shall require a registered importer's certification of a foreign-manufactured vehicle imported to the United States that:
- 1. Is not exempt under subsections (A)(2) or (A)(3), or
 - 2. Does not qualify under subsection (A)(4).

Historical Note

Former Rule, General Order 55. Former Section R17-4-19 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-209 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-207. Lien Filing

- A.** Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at www.azdot.gov/mvd/FormsandPub/mvd.asp), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.
- 1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
 - 2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the lien filing does not meet the requirements prescribed in this subsection.
- B.** Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.
- C.** Lien filing notice. The Division shall notify the lienholder of the recording of a lien.
- 1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
 - 2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

Historical Note

Former Rule, General Order 62. Former Section R17-4-24 renumbered without change as Section R17-4-207 (Supp. 87-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section recodified from R17-4-230 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new

Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-208. Lien Clearance

- A.** Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:
- 1. The transmission of an electronic lien release from an ELT Participant,
 - 2. A certificate of title acknowledged by the lienholder as prescribed under subsection (B)(1),
 - 3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection (B)(1),
 - 4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection (B)(1),
 - 5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection (B)(1); or
 - 6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection (B)(1).
- B.** Lienholder satisfaction of lien requirements.
- 1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.
 - 2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
 - 3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.
- C.** Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.
- D.** Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 83. Former Section R17-4-35 renumbered without change as Section R17-4-208 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified from R17-4-231 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-209. Recodified**Historical Note**

Adopted as Section R17-4-81 and renumbered as Section R17-4-209 effective May 29, 1987 (Supp. 87-2). Amended

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by final rulemaking at 7 A.A.R. 2755, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-210. Repealed**Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Section R17-4-210 repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore the rule went back into effect November 26, 1998; Section repealed by summary rulemaking with an interim effective date of August 20, 1999, filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

Appendix A. Repealed**Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Appendix A repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore Appendix A went back into effect November 26, 1998; Appendix A repealed by summary rulemaking with an interim effective date of August 20, 1999; filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

R17-4-211. Reserved**R17-4-212. Reserved****R17-4-213. Reserved****R17-4-214. Reserved****R17-4-215. Reserved****R17-4-216. Recodified****Historical Note**

Adopted effective October 21, 1997 (Supp. 97-4). Section recodified to R17-4-302 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-217. Recodified**Historical Note**

Adopted effective September 12, 1997 (Supp. 97-3). Section recodified to R17-4-303 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-218. Recodified**Historical Note**

Amended effective April 21, 1980 (Supp. 80-2). Former Section R17-4-54 renumbered without change as Section R17-4-218 (Supp. 87-2). R17-4-218 and Appendix A repealed; new Section adopted effective December 8, 1998 (Supp. 98-4). Section recodified to R17-4-304 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-219. Recodified**Historical Note**

Former Rule, General Order 101. Former Section R17-4-42 renumbered without change as Section R17-4-219 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4602, effective November 14, 2000 (Supp. 00-4). Section recodified to R17-4-305 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-220. Repealed**Historical Note**

Former Rule, General Order 103; Former Section R17-4-44 repealed, new Section R17-4-44 adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-44 renumbered without change as Section R17-4-220 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-221. Repealed**Historical Note**

Former Rule, General Order 75. Former Section R17-4-30 renumbered without change as Section R17-4-221 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-222. Recodified**Historical Note**

Adopted effective December 3, 1986 (Supp. 86-6). Former Section R17-4-80 renumbered without change as Section R17-4-222 (Supp. 87-2). Section recodified to R17-4-306 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-223. Repealed**Historical Note**

Emergency rule adopted effective August 8, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Former emergency rule permanently adopted with changes effective December 31, 1991 (Supp. 91-4). Repealed effective July 18, 1994 (Supp. 94-3).

R17-4-224. Recodified**Historical Note**

Adopted effective September 25, 1991 (Supp. 91-3). Section recodified to R17-4-307 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-225. Reserved**R17-4-226. Recodified****Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted with changes effective February 1, 1993 (Supp. 93-1). Amended effective January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Section repealed effective August 1, 1999 pursuant to subsection (C); new Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-502 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Repealed**Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted effective February 1,

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1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Appendix repealed effective August 1, 1999 pursuant to R17-4-226(C) (Supp. 00-2).

R17-4-226.01. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-503 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-227. Recodified**Historical Note**

Adopted effective June 16, 1992 (Supp. 92-2). Section recodified to R17-4-402 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-228. Reserved**R17-4-229. Reserved****R17-4-230. Recodified****Historical Note**

Former Rule, General Order 47. Former Section R17-4-15 renumbered without change as Section R17-4-230 (Supp. 87-2). Section recodified to R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-231. Recodified**Historical Note**

Former Rule, General Order 70. Former Section R17-4-28 renumbered without change as Section R17-4-231 (Supp. 87-2). Section recodified to R17-4-208 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-232. Reserved**R17-4-233. Reserved****R17-4-234. Reserved****R17-4-235. Reserved****R17-4-236. Reserved****R17-4-237. Repealed****Historical Note**

Former Rule, General Order 50. Former Section R17-4-16 renumbered without change as Section R17-4-237 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-238. Repealed**Historical Note**

Former Rule, General Order 51. Former Section R17-4-17 renumbered without change as Section R17-4-238 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-239. Repealed**Historical Note**

Former Rule, General Order 60. Former Section R17-4-22 renumbered without change as Section R17-4-239 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-240. Recodified**Historical Note**

Former Rule, General Order 65; Amended effective January 11, 1982 (Supp. 82-1). Former Section R17-4-25 renumbered without change as Section R17-4-240 (Supp. 87-2). Section recodified to R17-5-402 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-241. Recodified**Historical Note**

Former Rule, General Order 76. Former Section R17-4-31 renumbered without change as Section R17-4-241 (Supp. 87-2). Section amended by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-404 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-242. Repealed**Historical Note**

Former Rule, General Order 77. Former Section R17-4-32 renumbered without change as Section R17-4-242 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 869, effective January 22, 2001 (Supp. 01-1).

R17-4-243. Repealed**Historical Note**

Former Rule, General Order 85. Former Section R17-4-36 renumbered without change as Section R17-4-243 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-244. Reserved**R17-4-245. Recodified****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-405 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-246. Recodified**Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-406 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-247. Reserved**R17-4-248. Reserved****R17-4-249. Reserved****R17-4-250. Repealed****Historical Note**

Former Rule, General Order 111. Former Section R17-4-47 renumbered without change as Section R17-4-250 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-251. Repealed**Historical Note**

Former Rule, General Order 112. Former Section R17-4-48 renumbered without change as Section R17-4-251 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-252. Recodified**Historical Note**

Former Rule, General Order 82. Former Section R17-4-

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34 renumbered without change as Section R17-4-252 (Supp. 87-2). Section recodified to R17-4-308 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

- R17-4-253. Reserved
- R17-4-254. Reserved
- R17-4-255. Reserved
- R17-4-256. Reserved
- R17-4-257. Reserved
- R17-4-258. Reserved
- R17-4-259. Reserved
- R17-4-260. Recodified

Historical Note

Former Rule, General Order 72. Former Section R17-4-29 renumbered without change as Section R17-4-260 (Supp. 87-2). Section recodified to R17-5-407 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

- R17-4-261. Reserved
- R17-4-262. Reserved
- R17-4-263. Reserved
- R17-4-264. Reserved
- R17-4-265. Repealed

Historical Note

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 1, 1984 (Supp. 84-5). Former Section R17-4-72 renumbered without change as Section R17-4-265 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 2154, effective May 1, 2001 (Supp. 01-2).

ARTICLE 3. VEHICLE REGISTRATION**R17-4-301. Definitions**

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

“Apportioned commercial vehicle” means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

“Biennial” means once every two years.

“Business day” means a day other than a Sunday or holiday.

“Calendar quarter” means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Day” means the 24-hour period from one midnight to the following midnight.

“Disabled person” means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Division Director” means the Assistant Director for the Arizona Department of Transportation’s Motor Vehicle Division or the Assistant Director’s designee.

“Drop box” means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

“Effective date of registration” means the date the vehicle first becomes subject to registration fees in Arizona.

“Electronic delivery” means the transmission of registration and credit card information to the Division, by computer, through an authorized third party electronic service provider.

“Emergency Vehicle Permit” means a document issued by the Division’s Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

“Expiration date” means the day, month, and year in which a vehicle registration expires.

“Fire Engine” means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

“IM147 Test” means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Included vehicle” means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

“Initial registration” means the first registration of an included vehicle in Arizona.

“OBD” means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Off-highway vehicle” has the same meaning as prescribed under A.R.S. § 28-1171.

“Operator Requirements” means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

“Private fire department” means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

“Private Fire Emergency Vehicle” means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

“Registration” means the authorization, issued by the Division that allows a vehicle to use state highways.

“Registration fees” means the fees due to the Division at the time of registration and consisting of the general registration fees imposed under A.R.S. § 28-2003, the vehicle license tax imposed under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed under A.R.S. § 28-5433.

“Registration period” means the time-frame during which a vehicle registration is valid.

“Renewal registration” means the second and subsequent registration of an included vehicle.

Historical Note

Transferred to R17-1-301 (Supp. 92-4). New Section made by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010

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(Supp. 10-2).

R17-4-302. Staggered Registration for Apportioned Commercial Vehicles

Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. The Division shall:
 - a. Establish a registration period that expires on the last day of the calendar quarter selected by the fleet owner, not to exceed 12 months from the initial registration date.
 - b. Apply the original fleet registration fees towards the registration fees required for a replaced vehicle when an owner replaces a vehicle within a fleet.
 - c. Apply the original fleet registration fees towards the registration fees required for a transferred vehicle when an owner transfers a vehicle between fleets.
 - d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. The owner of an apportioned commercial fleet vehicle shall:
 - a. Ensure that all vehicles within a fleet have the same registration period.
 - b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.
 - c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
3. The Division shall not provide a grace period for late registration or late payment of fees.

Historical Note

Adopted effective August 1, 1988 (Supp. 88-3). Transferred to R17-1-302 (Supp. 92-4). New Section recodified from R17-4-216 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-303. Biennial Registration

- A. Biennial registration.
 1. The Division may register any vehicle biennially, unless excluded.
 2. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.
- B. Excluded vehicles. The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
 1. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
 2. A vehicle that requires an annual emissions test.
 3. A vehicle subject to any one of the following types of registration:
 - a. Allocated registration under A.R.S. § 28-2261,
 - b. Apportioned registration under A.R.S. § 28-2261,
 - c. Fleet registration under A.R.S. § 28-2202, or
 - d. Interstate registration under A.R.S. § 28-2052.
 4. A vehicle with an undersized mobile home plate registration.
 5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty military member, a widow, widower, or disabled person other than a 100% disabled veteran.

Historical Note

Transferred to R17-1-303 (Supp. 92-4). New Section recodified from R17-4-217 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-304. Staggered Registration for Included Vehicles

- A. Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
 1. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
 - a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
 - b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
 2. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
 - a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
 - b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.
- B. Excluded vehicles. The staggered registration prescribed by this Section excludes the following vehicles:
 1. A vehicle exempt from registration;
 2. A vehicle subject to any one of the following types of registration:
 - a. Allocated registration under A.R.S. § 28-2261,
 - b. Apportioned registration under A.R.S. § 28-2261,
 - c. Fleet registration under A.R.S. § 28-2202,
 - d. Interstate registration under A.R.S. § 28-2052, or
 - e. Seasonal agricultural registration under A.R.S. § 28-5436;
 3. A vehicle subject to a one-time registration fee;
 4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided under A.R.S. § 28-2511(A);
 5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
 6. A moped;
 7. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.
- C. Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.
- D. Expiration dates. The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:
 1. Annual registration: Expires 12 months from the expiration of the previous registration period; or
 2. Biennial registration: Expires 24 months from the expiration of the previous registration period.
- E. Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the requirements prescribed under subsection (1) or (2):
 1. If a person submits the registration to the Division or an Authorized Third-party Provider of registration functions in person or by mail:

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- a. The application for registration or registration card, and
 - b. Payment of registration fees.
2. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:
 - a. Required registration information, and
 - b. Credit card information.
- F. Timely submission of registration. A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than an established business day, a person shall submit the renewal registration of an included vehicle not later than the first business day after the prior registration period expires.
- G. Penalties. The penalties imposed under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
 1. A person does not submit to the Division or an Authorized Third-party Provider of registration functions the items set forth in subsection (E)(1) so that the items are received by the due date; or
 2. A person does not electronically submit to an Authorized Third-party Electronic Delivery Provider the items required under subsection (E)(2) so that the items are received by the due date.
- H. Date of receipt. The date of receipt for the items required under subsection (E)(1) or (E)(2) shall be the following:
 1. The date a person presents the items required under subsection (E)(1) to a Division facility or the facility of an Authorized Third-party Provider of registration functions in person;
 2. The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
 3. The date a private express mail carrier receives the package containing the items set forth in subsection (E)(1), as indicated on the shipping package;
 4. The date of the last business day prior to the day the Division retrieves the items set forth at subsection (E)(1) from a designated Division drop box; or
 5. The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.
- I. Evidence of registration. The Division or Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
 1. The assigned number plate shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
 2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed under A.R.S. §§ 28-2531(B) and 28-2532.
 3. Any registration tabs or stickers issued by the Division or Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

Historical Note

Transferred to R17-1-304 (Supp. 92-4). New Section recodified from R17-4-218 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007

(Supp. 07-4).

R17-4-305. Temporary Registration Plate “TRP” Procedure

- A. Definitions.
 1. “Charitable Event TRP” means a TRP issued to a motor vehicle dealership or manufacturer for a charitable event as prescribed by A.R.S. § 28-4548.
 2. “Deal Unwound” means the vehicle was returned to the dealership and the sale was not completed.
 3. “Voided TRP” means a TRP that the issuer records as voided after issuing the TRP.
- B. Issuing.
 1. New and used motor vehicle dealers and title service companies that issue TRPs shall send an electronic record of the TRP to the Division before placing the TRP on the vehicle.
 2. The TRP expiration date shall be 45 days from the issue date.
 3. TRPs issued for charitable events are valid for the duration of the event not to exceed 45 days.
 4. An issuer shall not issue more than one TRP per vehicle sale.
 5. An issuer shall attach the TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354.
- C. Voiding. An issuer shall void a TRP when:
 1. The TRP is lost,
 2. The TRP is damaged,
 3. The dealer reports a deal unwound,
 4. The issuer enters the wrong vehicle identification number, or
 5. The issuer enters the wrong customer identification number.

Historical Note

Transferred to R17-1-305 (Supp. 92-4). New Section R17-4-305 recodified from R17-4-219 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5320, effective February 6, 2006 (Supp. 05-4).

R17-4-306. Nonresident Daily Commuter Fee

A nonresident daily commuter shall pay a fee of \$8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

Historical Note

Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Transferred to R17-1-306 (Supp. 92-4). New Section R17-4-306 recodified from R17-4-222 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 571, effective January 14, 2002 (Supp. 02-1).

R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee

- A. Under A.R.S. § 28-4151(A), the Division shall assess a \$50 fee for reinstatement of a motor vehicle registration and license plate suspended under A.R.S. §§ 28-4148 and 28-4149.
- B. Subsection (A) does not apply to a motor carrier subject to the financial responsibility requirements prescribed under A.R.S. Title 28, Chapter 9, Article 2.

Historical Note

Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Transferred to R17-1-307 (Supp. 92-4). New Section R17-4-307 recodified from R17-4-224 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by

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final rulemaking at 7 A.A.R. 5439, effective November 14, 2001 (Supp. 01-4).

R17-4-308. Official Vehicle License Plates

- A. The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).
- B. A license plate issued under A.R.S. § 28-2511 has no expiration date.
- C. An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.
- D. A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
1. Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
 2. Display each license plate as prescribed by A.R.S. § 28-2354; and
 3. Maintain a record of each license plate transfer that includes:
 - a. The date of the transfer;
 - b. The year, make, and model of the vehicle, and
 - c. The vehicle identification number (VIN) for each car involved in the transfer.

Historical Note

Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Transferred to R17-1-308 (Supp. 92-4). New Section R17-4-308 recodified from R17-4-252 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 573, effective January 14, 2002 (Supp. 02-1).

R17-4-309. Private Fire Emergency Vehicle Permit

- A. Private Fire Emergency Vehicle Permit. A Private Fire Emergency Vehicle Permit may be issued to a private fire department if all requirements provided under subsections (B) and (C) are met.
1. The Private Fire Emergency Vehicle Permit is valid until revoked or surrendered.
 2. The Private Fire Emergency Vehicle Permit shall be carried at all times in the fire engine for which the permit is issued.
 3. The Private Fire Emergency Vehicle Permit is not transferable.
 4. The Private Fire Emergency Vehicle Permit shall remain the property of the Division and shall be surrendered to the Division when the fire engine is no longer being used to respond to an emergency.
- B. Private Fire Emergency Vehicle Permit application. A person applying for a Private Fire Emergency Vehicle Permit shall submit the required documentation to the Division's Enforcement Services Program, P.O. Box 2100, Mail Drop 513M, Phoenix, Arizona 85007. The following documentation is required at the time of initial application:
1. Private Fire Emergency Vehicle Permit Application. Multiple fire engines may be listed on one application. The Private Fire Emergency Vehicle Permit Application is furnished by the Division and is available upon request from the Division's Enforcement Services Program; and
 2. Proof of acceptable financial responsibility to cover any liability that may arise from the use of the Private Fire Emergency Vehicle Permit. Acceptable proof of financial responsibility is an insurance policy that:
 - a. Is issued by an insurance company licensed to conduct business in Arizona by the Arizona Department of Insurance;

- b. Is written for a combined single-limit coverage of at least \$5 million;
- c. Contains a provision stating that the state of Arizona shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions; and
- d. Contains a provision stating that the state of Arizona shall be notified immediately if the insurance company becomes insolvent.

C. Operational requirements.

1. A fire engine may be operated with the privileges prescribed under A.R.S. § 28-624, but shall be subject to all other applicable provisions prescribed under A.R.S. Title 28, A.A.C. Title 17, and any other applicable statutes or ordinances.
2. A fire engine shall only be driven by an operator who meets the Operator Requirements as defined under R17-4-301.
3. A fire engine with a Private Fire Emergency Vehicle Permit, shall meet the National Fire Protection Association's (NFPA) fire engine and fire apparatus standards in effect for the manufacture date of the emergency vehicle.
4. The private fire department is responsible for ensuring that the fire engine is not operated using the privileges prescribed under A.R.S. § 28-624 with an invalid Private Fire Emergency Vehicle Permit.

D. Denial. If an application for a Private Fire Emergency Vehicle Permit is denied, a notice of denial shall be sent to the applicant at the address of record. An applicant is allowed to reapply for a permit following denial, provided all requirements listed under this Section are met.

E. Revocation. If a Private Fire Emergency Vehicle Permit is revoked, a notice of the revocation shall be sent to the address of the applicant. An applicant is allowed to reapply for a permit following revocation, provided all requirements listed under this Section are met.

1. The emergency vehicle permit is immediately revoked upon a determination that:
 - a. The permitted vehicle or the private fire department no longer meets the requirements for the permit; or
 - b. The vehicle was operated in violation of the provisions of this rule, any other applicable rule, or statute.
2. The revocation shall be preceded by a notice of intent to revoke.
 - a. The notice of intent to revoke shall be sent by first-class mail to the address of the applicant as shown on the permit application.
 - b. The notice of intent to revoke shall inform the applicant of the right to an administrative hearing and the procedure for requesting a hearing.
3. The revocation shall become effective 25 days after the mailing date of the notice of intent to revoke unless a timely request for hearing is submitted.

F. Administrative hearing. The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Transferred to R17-1-309 (Supp. 92-4). New Section recodified from R17-4-701 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2106, effective July 5,

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2008 (Supp. 08-2).

Appendix A. Repealed**Historical Note**

Appendix A recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

Appendix A repealed by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

R17-4-310. Personalized License Plates**A. Definitions.**

1. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
2. "Division Director" means the Assistant Division Director for the Motor Vehicle Division of the Arizona Department of Transportation.
3. "Personalized plate" means a license plate with a registration number chosen by a person rather than assigned by the Division.
4. "Plate number" means the combination of letters, numbers, and spaces on a vehicle license plate.

B. A person who wants to receive a personalized plate shall file an application with the Division on a form provided by the Division.

1. An applicant shall provide the following information on the form:
 - a. Name of the vehicle's owner or lessee;
 - b. Vehicle owner's or lessee's mailing address;
 - c. Vehicle's make and year;
 - d. Vehicle identification number;
 - e. Vehicle's current plate number;
 - f. Date the vehicle's current registration expires;
 - g. Plate number to appear on the personalized plate;
 - h. Meaning or message of the personalized plate; and
 - i. Other information required by the Division.
2. If an applicant is purchasing the personalized plate as a gift for the vehicle's owner or lessee, the applicant shall also provide the applicant's name and mailing address.

C. The Division shall reject the application if the requested plate number:

1. Refers to or connotes breasts, genitalia, pubic area, buttocks, or relates to sexual or eliminatory functions;
2. Refers to or connotes the substance, paraphernalia, sale, use, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant;
3. Expresses contempt for or ridicule or superiority of a class of persons;
4. Duplicates another registration number;
5. Has connotations that are profane or obscene; or
6. Uses linguistics, numbers, phonetics, translations from foreign languages or upside-down or reverse reading to achieve a reference or connotation prohibited in subsection (C)(1) through (C)(3) or (C)(5).

D. Rejection of application.

1. If the Division does not issue personalized plates to an applicant, the Division shall inform the applicant by mail.
2. An applicant may make a written appeal by letter for a review of the rejection, within 10 days after the date of the Division's notice, to the following address:
Motor Vehicle Division
Special Plates Unit, Mail Drop 801Z
PO Box 2100
Phoenix, Arizona 85001-2100.

E. Revocation of personalized plates; appeal.

1. If the Division determines that a personalized plate should not have been issued because it contains a plate number prohibited under subsection (C), the Division

shall require the plate holder to surrender the plates to the division within 30 days after the date of the Division's mailed notice, unless the plate holder requests an appeal under subsection (D)(2).

2. A person who has been directed to surrender a personalized plate may submit a written appeal by letter as prescribed under subsection (D)(2).
3. Refund of personalized plate fees on revocation.
 - a. The Division shall refund the amount of the personalized plate fee and the pro rated amount of the special annual renewal fee to the person holding the revoked personalized plate along with any credit or refund calculated by the Division.
 - b. A person whose plate is revoked may request that instead of a refund, the Division issue the person a different personalized plate. The person shall apply for the personalized plate as prescribed under subsection (B).
4. The Division shall cancel the vehicle plate of a vehicle if the person who holds a revoked personalized plate does not surrender the plate within 30 days after the date of the Division's notice or, if the person timely requests an appeal, within 30 days after the Division issues a final decision.

Historical Note

Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Transferred to R17-1-310 (Supp. 92-4). New Section recodified from R17-4-708 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

R17-4-311. Special Organization Plate List

As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by the state license plate commission and available for issue to qualified applicants:

1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

Historical Note

Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

R17-4-312. Off-highway Vehicle User Indicia

A. For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:

1. The off-highway vehicle user indicia application provided by the Division, and
2. The fee prescribed under subsection (C).

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- B. The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
 2. Primarily off-highway, occasionally on-highway; or
 3. Primarily on-highway, occasionally off-highway.
- C. The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is \$25.
- D. The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.
- E. The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.
2. The owner or lessee of the following shall pay a reduced fee of \$5:
 - a. A registered street legal golf cart, or
 - b. A registered street legal off-highway vehicle that is eligible for the reduced vehicle license tax pursuant to A.R.S. § 28-5801.
 3. The owner or lessee of a vehicle that is part of the International Registration Plan shall pay an apportioned fee based on the International Registration Plan.
 4. All other vehicle owners or lessees shall pay a fee, rounded up to the nearest quarter dollar, calculated as follows:

$$\text{public safety fee} = [(110\% \times D - E) - (\$5 \times R)] \div V$$
 where:

“D” is the Department of Public Safety’s highway patrol budget for a fiscal year,

“E” is the amount of unencumbered balance in the highway patrol fund that exceeds 10% of the prior fiscal year’s deposits of the public safety fee,

“R” is the vehicles defined in subsection (B)(2), and

“V” is the Department’s estimate of the number of full public safety fees to be collected within the fiscal year for which the calculation is being made.

Historical Note

Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4).
New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

R17-4-313. Public Safety Fee

- A. Pursuant to A.R.S. § 28-2007, at the time of the initial or renewal registration of a vehicle, the owner or lessee shall pay a public safety fee as determined in subsection (B).
1. An owner or lessee who registers a vehicle for more than one year shall be assessed a fee for each registration year at the applicable fee rate known at the time of registration.
 2. The fee will be assessed for the initial registration and upon each transfer of ownership of a permanent trailer.
 3. The fee will be assessed for each vehicle in a fleet.
 4. The fee will be assessed on a vehicle that is a part of the International Registration Plan.
 5. The fee will be assessed upon each transfer of any vehicle subject to registration by the new owner.
- B. The Department determines the annual amount for the public safety fee based upon the following:
1. A vehicle owned or leased by the following shall pay a fee of \$0.
 - a. An Arizona resident who is a member of the U.S. armed forces, including a National Guard or reserve unit, who is deployed in support of a worldwide contingency operation of the U.S. armed forces;
 - b. An educational, charitable, and religious association or institution not used or held for profit;
 - c. A government entity, which includes foreign government, a consul or any other official representative of a foreign government, the United States, a state or political subdivision of a state, or an Indian tribal government;
 - d. A nonresident military member;
 - e. A public health services officer;
 - f. A Supplemental Security Income recipient;
 - g. A survivor of a fallen first responder or a fallen military member;
 - h. A U.S. Department of Veterans Affairs grant recipient who qualifies for an exemption from the vehicle license tax pursuant to A.R.S. § 28-5802;
 - i. A veteran who is certified by the U.S. Department of Veterans Affairs to be 100% with a disability and drawing applicable compensation; or
 - j. A widow or widower who qualifies for an exemption of taxation of property pursuant to A.R.S. § 42-1111.
 - C. If a vehicle is owned by more than one owner or lessee prescribed under subsections (B)(1)(d), (e), (f), (g), or (j), the fee of \$0 applies only to the qualified person and the fee as determined in subsection (B)(4) is applied proportionally to any additional owner or lessee.
 - D. If an owner or lessee prescribed under subsections (B)(1)(f), (g), (h), (i), or (j) owns or leases more than one vehicle, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
 - E. If an owner or lessee prescribed under subsection (B)(1)(a) owns or leases more than two vehicles, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
 - F. The public safety fee shall be specified and available on the Department’s website at www.azdot.gov and detailed on the registration renewal notice for the vehicle.
 - G. The fee is nonrefundable and non-transferable.

Historical Note

Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4).
Amended by exempt rulemaking at 24 A.A.R. 3512, effective December 1, 2018 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 104, effective December 21, 2018 (Supp. 19-2).

R17-4-314. Transferred**Historical Note**

Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

R17-4-315. Transferred**Historical Note**

Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

R17-4-316. Transferred**Historical Note**

Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

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R17-4-317. Transferred**Historical Note**

Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

R17-4-318. Transferred**Historical Note**

Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

R17-4-319. Transferred**Historical Note**

Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

R17-4-320. Transferred**Historical Note**

Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

R17-4-321. Transferred**Historical Note**

Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

R17-4-322. Transferred**Historical Note**

Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

R17-4-323. Transferred**Historical Note**

Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

R17-4-324. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-325. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-326. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-327. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-328. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-329. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-330. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

R17-4-331. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

R17-4-332. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

R17-4-333. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

R17-4-334. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Transferred to R17-1-334 (Supp. 92-4).

R17-4-335. Transferred**Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Transferred to R17-1-335 (Supp. 92-4).

R17-4-336. Transferred**Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Transferred to R17-1-336 (Supp. 92-4).

R17-4-337. Transferred**Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403

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renumbered without change as Section R17-4-337 (Supp. 87-2). Transferred to R17-1-337 (Supp. 92-4).

R17-4-338. Transferred**Historical Note**

Transferred to R17-1-338 (Supp. 92-4).

R17-4-339. Transferred**Historical Note**

Transferred to R17-1-339 (Supp. 92-4).

R17-4-340. Transferred**Historical Note**

Transferred to R17-1-340 (Supp. 92-4).

R17-4-341. Transferred**Historical Note**

Transferred to R17-1-341 (Supp. 92-4).

R17-4-342. Transferred**Historical Note**

Transferred to R17-1-342 (Supp. 92-4).

R17-4-343. Transferred**Historical Note**

Transferred to R17-1-343 (Supp. 92-4).

R17-4-344. Transferred**Historical Note**

Transferred to R17-1-344 (Supp. 92-4).

R17-4-345. Transferred**Historical Note**

Transferred to R17-1-345 (Supp. 92-4).

R17-4-346. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-346 (Supp. 92-4).

R17-4-347. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-347 (Supp. 92-4).

R17-4-348. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-348 (Supp. 92-4).

R17-4-349. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-349 (Supp. 92-4).

R17-4-350. Rental Vehicle Surcharge Reimbursement**A. Definitions.** In addition to the definitions prescribed under A.R.S. § 28-5810, the following terms apply to this Section, unless otherwise specified:

“Person” means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.

“Previous year” means the prior calendar year, January 1 through December 31.

“Rental revenue” means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related charges, including boxes, packing blankets, straps, and tow bars.

“Surcharge” means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related items, including boxes, packing blankets, straps, and tow bars.

“Vehicle License Tax” means the tax imposed by A.R.S. § 28-5801, less any tax credited under A.R.S. § 28-2356.

- B. Reports.** Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the Department and shall contain all of the following:
1. Address where business records are secured;
 2. Name, title, phone number, and signature of the person authorized to sign the form;
 3. Business name;
 4. Business type, including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership;
 5. Name, title, phone number, mailing address, and e-mail address of the contact person;
 6. Federal Employer Identification Number (FEIN);
 7. Mailing address (if different from principal business address);
 8. Principal business address;
 9. Rental vehicle revenue collected, by county;
 10. Total Arizona Vehicle License Tax paid on rental vehicles;
 11. Total rental vehicle revenue collected;
 12. Total surcharge collected;
 13. Total surcharge due to the Department; and
 14. Type of rental business, including passenger vehicle, semitrailer, trailer, truck, motorcycle, moped, and recreational vehicle.
- C. Records.** A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:
1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
 - a. The Vehicle Identification Number,
 - b. The Arizona vehicle license plate number,
 - c. A copy of the Arizona registration,
 - d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
 - e. The date on which the Vehicle License Tax was paid, and
 - f. The dates the rental vehicle was in and out of service.

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2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
- The rental contract for each rental vehicle,
 - The amount of surcharge collected,
 - Chart of accounts,
 - General ledger,
 - Financial statements,
 - Federal tax returns, and
 - Monthly trial balance.
3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
- All applicable rental contracts; and
 - The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.
- D. Audits.** The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at <http://www.gao.gov/yellowbook> or can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
- The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
 - The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

ARTICLE 4. DRIVER LICENSES**R17-4-401. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Financial responsibility (accident) suspension” means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

“Gore area” is defined under A.R.S. § 28-644.

“Proof the vehicle was sold” means a written statement to the Department from an owner that includes the following:

The seller’s name;

The VIN;

The sale date; and

The purchaser’s name and address.

“Restricted permit” means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person’s home and workplace,

During the person’s work-related activities, or

Between the person’s home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person’s home and workplace;

During the person’s work-related activities; or

Between the person’s home and school.

“State” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

“SR22” means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

“Thirty-six-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

“Twelve-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

“Twenty-four-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

“VIN” or “vehicle identification number” is defined under A.R.S. § 13-4701(4).

“Withdrawal action” means a Department action that invalidates a person’s Arizona driving privilege or a vehicle’s Arizona registration, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by

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final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension

- A.** An applicant for a restricted permit shall:
1. Have no withdrawal action other than the financial responsibility (accident) suspension;
 2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;
 3. Pay the \$10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and
 4. Pay the \$25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;
 5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and
 6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).
- B.** In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:
1. Apply for an original or renew an Arizona driver license by:
 - a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and
 - b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or
 2. Obtain a duplicate Arizona driver license by paying the \$12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).
- C.** At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

Historical Note

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees

- A.** An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.
- B.** The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is \$12 under A.R.S. §§ 28-3002(A) and 28-3165.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-404. Driver Point Assessment; Traffic Survival Schools

- A.** Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.

- B.** Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
 2. Suspend the driver's Arizona driver license or driving privilege.
- C.** Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
 - a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and
 - b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.
 2. The Department shall record that a driver completed traffic survival school if:
 - a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
 - b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.
- D.** Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
1. Specify the period within which the driver may submit a hearing request to the Department, and
 2. Specify the effective date of the suspension.
- E.** Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
1. Specify the length of the suspension as follows:
 - a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
 - b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
 - c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
 - d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
 2. Specify the period within which the driver may submit a hearing request to the Department; and
 3. Specify the effective date of the suspension.

Historical Note

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1,

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2015 (Supp. 15-2).

Table 1. Driver Point Valuation

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.	4
A.R.S. § 28-701, reasonable and prudent speed.	3
A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.	3
Any other traffic regulation that governs a vehicle moving under its own power.	2

Historical Note

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

R17-4-405. Emergency Expired

Historical Note

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

R17-4-406. Minor's Application for Permit or License

- A.** For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
 1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
 2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
 3. "Parent" means the natural or adoptive father or mother of a child.
- B.** Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.
- C.** Procedure when only one parent signs:
 1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.

2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
 3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.
- D.** Procedure when both parents are deceased:
 1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court judgment, affidavits of close relatives of the child, or school records.
 2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
 3. An employer signing the application shall certify the person employs the minor on the date of application.
 4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.
 - E.** Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

R17-4-407. Application for Travel-Compliant Driver License or Nonoperating Identification License; Fee

- A.** For the purposes of this Section:
 1. "Travel-compliant driver license" means a federally compliant driver license issued pursuant to A.R.S. § 28-3175.
 2. "Travel-compliant nonoperating identification license" means a federally compliant nonoperating identification license issued pursuant to A.R.S. § 28-3175.
- B.** An applicant shall apply to the Department, on a form provided by the Department, for a travel-compliant driver license or a travel-compliant nonoperating identification license.
- C.** An applicant must meet and comply with all lawful requirements for an Arizona driver license or nonoperating identification license.
- D.** An applicant shall meet and comply with all application and documentation requirements in the most current edition of 6 CFR 37, including satisfactory proof of identity, date of birth, social security number, principle residency, and evidence of lawful status in the United States. Documents and information must be verified by the Department. An applicant may obtain a

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listing of acceptable documentation from the Department's website at www.azdot.gov.

- E. An applicant shall pay a \$25 fee for any class of a travel-compliant driver license or travel-compliant nonoperating identification license.
- F. A travel-compliant driver license is valid for a period of eight years after issuance and is renewable for successive periods of eight years up to but not exceed the year of the licensee's 65th birthday, except for when:
 1. The applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.
 2. The applicant is 60 years of age or older and the travel-compliant driver license is valid for a period of five years after issuance and renewable for successive periods of five years.
- G. A travel-compliant nonoperating identification license is valid for a period of eight years after issuance and is renewable for successive periods of eight years, except for when the applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order

- A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).
- B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.
- C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp.

01-3).

R17-4-409. Application for Nonoperating Identification License; Fee

- A. This Section does not apply to applicants for a travel-compliant nonoperating identification license. Except as provided under R17-4-407, this Section applies to applicants for a nonoperating identification license.
- B. An applicant shall apply to the Department, on a form provided by the Department, for a nonoperating identification license, and shall comply with the requirements under A.R.S. § 28-3165.
- C. An applicant may obtain a listing of satisfactory proof of an applicant's name and date of birth from the Department's website at www.azdot.gov.
- D. Except as provided under A.R.S. § 28-3165, an applicant shall pay a \$12 fee for a nonoperating identification license.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

R17-4-410. Voter Registration Through the Motor Vehicle Division

- A. For purposes of this Section:
 1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
 2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.
- B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
 1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
 2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.
- C. Subsection (B) applies to the following license transactions:
 1. Initial licensee application;
 2. License renewal;
 3. Duplicate driver license; or
 4. Licensee personal information update.
- D. MVD shall transfer the voter registration forms and the data collected under this Section by:
 1. Mailing the completed hardcopy forms to the appropriate county recorder; and
 2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

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- E. MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee

- A. In addition to the requirements prescribed in A.R.S. § 28-3158, a person applying for a special ignition interlock restricted driver license shall:

1. If the person is suspended for a first offense of A.R.S. § 28-1321:
 - a. Complete at least 90 consecutive days of the period of the suspension, and
 - b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
 - a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
 - b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
 - c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
 - a. Comply with the restrictions in subsection (C), and
 - b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.

- B. The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).

- C. A person applying for a special ignition interlock restricted driver license shall pay the following fees:

- | | |
|----------------------|---------|
| 1. Age 50 or older | \$10.00 |
| 2. Age 45 – 49 | \$15.00 |
| 3. Age 40 – 44 | \$20.00 |
| 4. Age 39 or younger | \$25.00 |

- D. A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).

- E. Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:

1. Date installed;
2. Person's full name;

3. Person's date of birth;
4. Person's customer or driver license number;
5. Installer and manufacturer name;
6. Installer fax number;
7. Date report interpreted;
8. Report period;
9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
12. Any other information required by the Director.

- F. A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions

- A. Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:

1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.

- B. Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.

- C. Burden of proof and presumptions.

1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

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2. The person may rebut the presumption by a showing of clear and convincing evidence that the person whose special ignition interlock restricted driver license being extended, was not the person in control of the vehicle or attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
- D. Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.
- her commercial driving privileges are canceled, disqualified, suspended, or revoked.
- vii. Causing a fatality through the negligent operation of a commercial motor vehicle.
- C. Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.
- D. Permanent disqualification.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-413. Lifetime Disqualification Reinstatement

- A. Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
- "CDL" means Commercial Driver License.
- "Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
- "Permanently disqualified" means the individual will never be able to obtain a commercial driver license.
- B. Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
 2. The individual:
 - a. Is otherwise eligible for licensure.
 - b. Has continuously been eligible for a driver license during the most recent 10-year period.
 - c. Has not previously reinstated CDL privileges for another lifetime disqualification.
 - d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
 - i. Driving while under the influence of alcohol or a controlled substance.
 - ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
 - iii. Refusal to submit to a blood alcohol concentration test.
 - iv. Leaving the scene of an accident.
 - v. Using a vehicle in the commission of a felony.
 - vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing

- A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.
- B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
 2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
 - a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
 - b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license.

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tion permit for an applicant who currently possesses a valid Arizona commercial driver license.

3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.
- C. Required Action. In compliance with 49 CFR 384.210 and 384.231:
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
 2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
 3. The Department shall send written notification of the action to the person describing the action taken by the Department.
- D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
 2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
 3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
 4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
 5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
 - a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
 - b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
 6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

Historical Note

Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

- R17-4-415. Reserved**
R17-4-416. Reserved
R17-4-417. Reserved
R17-4-418. Reserved
R17-4-419. Reserved
R17-4-420. Recodified

Historical Note

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-421. Recodified**Historical Note**

Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-422. Recodified**Historical Note**

Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-423. Recodified**Historical Note**

Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-424. Recodified**Historical Note**

Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-425. Recodified**Historical Note**

Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-426. Recodified**Historical Note**

Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-427. Recodified**Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-428. Recodified**Historical Note**

New Section recodified from A.A.C. R17-3-403 at 7

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A.A.R. 1260, effective February 20, 2001 (Supp. 01-1).
Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-429. Reserved**R17-4-430. Reserved****R17-4-431. Reserved****R17-4-432. Reserved****R17-4-433. Reserved****R17-4-434. Reserved****R17-4-435. Recodified****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4) Emergency expired. Emergency amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.01. Recodified**Historical Note**

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective

January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.02. Recodified**Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.03. Recodified**Historical Note**

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.04. Recodified**Historical Note**

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.05. Recodified**Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.06. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-436. Recodified**Historical Note**

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13,

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2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-437. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.01. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.02. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.03. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

Appendix A. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.04. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-438. Recodified**Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-439. Recodified**Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-440. Recodified**Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-441. Reserved**R17-4-442. Reserved****R17-4-443. Reserved****R17-4-444. Repealed****Historical Note**

Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emergency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

R17-4-445. Recodified**Historical Note**

Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-446. Recodified**Historical Note**

Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-447. Recodified**Historical Note**

Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-448. Recodified**Historical Note**

Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-449. Reserved**R17-4-450. Repealed****Historical Note**

New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-451. Repealed**Historical Note**

New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-452. Repealed**Historical Note**

New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

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repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-453. Repealed**Historical Note**

New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-454. Repealed**Historical Note**

New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-455. Repealed**Historical Note**

New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-456. Repealed**Historical Note**

New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-457. Repealed**Historical Note**

New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-458. Repealed**Historical Note**

New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-459. Repealed**Historical Note**

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-460. Repealed**Historical Note**

New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-461. Repealed**Historical Note**

New Section recodified from R17-4-422 at 7 A.A.R.

3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-462. Repealed**Historical Note**

New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-463. Repealed**Historical Note**

New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-464. Repealed**Historical Note**

New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-465. Repealed**Historical Note**

New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-466. Repealed**Historical Note**

New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-467. Repealed**Historical Note**

New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

ARTICLE 5. SAFETY**R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” or “licensee” means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

“Application” means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

“Aura” means a sensation experienced before the onset of a neurological disorder.

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“Commercial driver license physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

- Ability to read and understand official traffic control devices,
- Knowledge of safe driving practices and the traffic laws of this state, and
- Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Department to:

- Issue, deny, suspend, revoke, cancel, or restrict a driver license; or
- Require an examination or evaluation of an applicant or licensee.

“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

- A physician who is a surgeon or a psychiatrist;
- A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or
- A psychologist.

“Substance abuse” means:

- Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or
- Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

“Substance abuse counselor” is defined in A.R.S. § 28-3005.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

“Successful completion of an examination” means an applicant or licensee:

- Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or
- Achieves a score of at least 80% on any required tests.

Historical Note

Adopted effective December 14, 1995 (Supp. 95-4). Section recodified to R17-5-706 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

- A. Applicant’s or licensee’s responsibility. To comply with the Division’s screening process for safe operation of a motor vehicle, an applicant or licensee shall:
1. Provide the Division with all requested information about the applicant’s or licensee’s visual, physical, or psychological condition;
 2. Successfully complete all required examinations;
 3. Obtain all required evaluations;
 4. Ensure timely submission of evaluation reports to the Division; and
 5. Appear at all required interviews.
- B. Screening process for safe operation of a motor vehicle. This subsection and subsections (C) through subsection (E) state the screening process for safe operation of a motor vehicle.
1. An applicant shall complete the application, including the medical screening questions and certification.
 2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
 - a. The Division informs the applicant that the applicant’s responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
 - b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).
 3. An applicant for license renewal shall successfully complete an examination if the applicant’s responses to the medical screening questions indicate that since the applicant’s last driver license renewal:
 - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
 - b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
 4. As soon as an applicant’s medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical con-

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- dition not previously reported to the Division that affects the applicant's functional ability.
5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
 - a. Complete the medical screening questions and certification on the application, and
 - b. Continue with the screening process for safe operation of a motor vehicle.
- C.** Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.
1. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
 - a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
 - b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
 - c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
 - d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
 2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division's Medical Review Program, an evaluation report on a form provided by the Division.
 3. If the evaluation report on the applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.
 4. If the Division is unable to determine whether a disqualifying medical condition exists after an interview with the applicant or licensee, the Division shall require an additional evaluation, performed by an appropriate specialist and reported to the Division's Medical Review Program, on a form provided by the Division.
 5. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.
- D.** Licensing action. The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.
1. The Division shall deny a driver license if an applicant:
 - a. Fails to complete successfully an examination; or
 - b. Fails to:
 - i. Obtain an evaluation;
 - ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an evaluation is required; or
 - iii. Appear at an interview; or
 - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
 2. The Division shall summarily suspend a licensee's driver license under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (D)(1).
3. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the licensee that:
 - a. Unless the Division receives the licensee's timely hearing request under subsection (F), the revocation becomes effective:
 - i. Fifteen days after the date the licensee is personally served with the notice; or
 - ii. Twenty days after the date the notice is mailed to the licensee.
 - b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.
 4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee's driver license if:
 - a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation, or
 - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.
- E.** Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record.
1. Automatic transmission,
 2. Hand dimmer switch,
 3. Left-foot gas pedal,
 4. Parking-brake extension,
 5. Power steering,
 6. Power brakes,
 7. Six-way power seat,
 8. Right-side directional signal,
 9. A device that enables an operator to spin the steering wheel,
 10. A device that enables full foot control,
 11. Dual outside mirrors,
 12. Chest restraints,
 13. Shoulder restraints,
 14. A device that extends pedals,
 15. A device that enables full hand control, and
 16. Adapted seat.
- F.** Hearings. This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.
1. If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division's Executive Hearing Office. A hearing request is timely if received by the Division:
 - a. Within 15 days after the date the notice is delivered to the applicant or licensee, or
 - b. Within 20 days after the date the notice is mailed to the applicant or licensee.
 2. A.A.C. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.
 3. The administrative law judge shall sustain, modify, or void the Division's licensing action.
- G.** The Division shall not release information required to be submitted to the Division under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

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Historical Note

New Section recodified from R17-4-520 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1861, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

Exhibit A. Repealed**Historical Note**

New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

R17-4-503. Vision standards**A. Definitions.**

1. "Binocular vision" means the ability to see in both eyes.
2. "Bioptic Telescopic Lens System" means a bioptic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
5. "Diplopia" means double vision.
6. "Field of vision" means the area in which objects may be seen when the eye is fixed.
7. "Impaired night vision" means below normal ability to see in reduced light.
8. "Monocular vision" means the ability to see in one eye only.
9. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
10. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
11. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
12. "Visual acuity" means the clarity of a person's vision.

B. Standard.

1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
2. Field of vision. Field of vision shall be 70 degrees temporally, and 35 degrees nasally, in at least one eye.

C. Restrictions.

1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
2. The Division shall restrict a person with diagnosed impaired night vision to daytime driving only.
3. The Division shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.
4. The Division shall not license a person with monocular vision and visual acuity of 20/50 or greater.
5. The Division shall not license a person with binocular vision and visual acuity of 20/70 or greater.

D. Screening process.

1. The Division, a physician, or an optometrist may administer visual acuity and field of vision screening through

the use of visual screening equipment to determine if a person's visual acuity and field of vision meets minimum standards.

2. A person may use a bioptic telescopic lens system during vision screening.
 - a. Beginning on the date of a initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the Division an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
 - b. The Division shall not license a person using a bioptic telescopic lens system unless the person submits to the Division a written statement from a physician or an optometrist that the individual meets the visual acuity standard as prescribed in subsection (B).
 - c. The Division shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.
3. The Division shall conduct visual acuity screening through the use of visual screening equipment or the Snellen Chart to determine whether a person's corrected vision is 20/40 in at least one eye.

E. Reporting requirements.

1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Division.
2. If the Division does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Division shall require the person to submit the results of the person's visual acuity and vision field screening by a physician or an optometrist.
3. The Division shall require a person diagnosed with any of the following conditions to file the results of the person's visual acuity and visual field screening completed by the physician or optometrist:
 - a. Any progressive eye disease,
 - b. Diplopia, or
 - c. Impaired night vision.

F. Results of visual acuity and visual field screening shall contain the following.

1. An examination date no more than three months before the submission date to the Division;
2. Visual acuity and field of vision;
3. If applicable, specification that the person is monocular;
4. If applicable, diagnosis of any condition described in subsection (E)(3);
5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Division;
6. Suggested restrictions on driving, in addition to those required by the Division; and
7. Any recommendations on the person's ability to safely operate a motor vehicle.

G. The Division shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.**Historical Note**

New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1).

R17-4-504. Medical Alert Conditions

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- A.** Definition. In this Section, “license” means any class driver license, commercial driver license, non-operating identification license, or instruction permit.
- B.** Medical alert condition displayed on license. The Division will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.
- C.** Retention of medical alert condition authorization. The Division will not maintain the medical alert code on the Division computer record unless written authorization is submitted.
- D.** A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Division to maintain the medical code in the Division computer.
3. EEG findings, if any;
4. Description, cause, frequency, duration, and date of most recent seizure;
5. Current medications, including dosage, side effects, and serum level; and
6. A physician’s medical opinion as to whether the neurological disorder will affect the person’s ability to operate a motor vehicle safely.
- D.** Physician’s medical opinion. A neurological disorder does not affect a person’s ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:
1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
 2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
 3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
 4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

Historical Note

Adopted effective September 25, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1).

R17-4-505. Repealed**Historical Note**

Adopted effective May 2, 1990 (Supp. 90-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-506. Neurological Standards

- A.** Driver license application.
1. A person who has a seizure in the three months before applying for a driver license shall undergo a medical examination as provided in R17-4-502.
 2. After the medical examination under R17-4-502, the person or the person’s physician shall submit the medical examination report to the Division.
 3. The Division shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person’s ability to operate a motor vehicle safely.
- B.** Driver license revocation.
1. A person with a driver license or non-resident driving privileges who experiences a seizure shall cease driving and:
 - a. Undergo a medical examination as provided in R17-4-502;
 - b. Submit the medical examination report to the Division; and
 - c. Undergo a follow-up medical examination within one year after the seizure or within a shorter time, as recommended by a physician.
 2. After each medical examination, the person or the person’s physician shall submit the applicable medical examination report to the Division.
 3. The Division shall revoke a person’s driver license or nonresident driver privileges if any medical examination report shows the person has a neurological disorder that affects the person’s ability to operate a motor vehicle safely.
- C.** Medical examination report. A medical examination report under this Section shall include the following information:
1. Age at onset of seizures, diagnosis, and history;
 2. Aftereffects of seizures;

Historical Note

Former Rule, General Order 107; Amended effective April 28, 1981 (Supp. 81-2). Amended effective July 1, 1985 (Supp. 85-4). Former Section R17-4-46 renumbered without change as Section R17-4-506 (Supp. 87-2). Emergency amendment adopted effective December 31, 1998, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 98-4). Emergency amendment expired June 29, 1999 pursuant to A.R.S. § 41-1026(C) (Supp. 99-3). Emergency amendment adopted effective October 1, 1999, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1172, effective March 9, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 3221, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-4-404 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-522 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5440, effective November 14, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4).

R17-4-507. Repealed**Historical Note**

Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Section repealed by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-508. Commercial Driver License Physical Qualifications

- A.** Requirements.
1. A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner’s certificate, available online from the Federal Motor Carrier Safety Administration at <https://www.fmcsa.dot.gov>, completed as prescribed under 49 CFR 391.43 to the Department.

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- a. Except as provided in subsection (A)(1)(c), the medical examiner’s certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A list of certified medical examiners is available on the National Registry website at <https://nationalregistry.fmcsa.dot.gov>.
 - b. The medical examiner’s certificate must be completed upon the applicant’s initial application and upon or prior to expiration of the applicant’s current medical examiner’s certificate.
 - c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).
2. As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photographic copy of the licensee’s current medical examiner’s certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a commercial driver license shall notify the Department of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications as soon as the licensee’s medical condition allows.
- B. Commercial driver license suspension and revocation notification procedure.** To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner’s certificate’s due date or actual submission date to the licensee’s address of record that:
- 1. Suspends the licensee’s commercial driver license beginning on the notice’s date; and
 - 2. Revokes the licensee’s commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).
- C. Noncompliance actions.**
- 1. Initial application denial. If an applicant’s initial medical examiner’s certificate required under subsection (A)(1) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant’s address of record.
 - 2. Medical examiner’s certificate renewal suspension and revocation. If a renewing commercial driver licensee submits:
 - a. No medical examiner’s certificate required under subsection (A)(1) or a form indicating noncompliance with commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
 - b. An incomplete medical examiner’s certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department’s letter. The Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.

- D.** A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license original-application written, vision, and skills testing and by submitting the medical examiner’s certificate prescribed under subsection (A)(1).
- E.** Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

Adopted effective October 31, 1975 (Supp. 75-1). Former Section R17-4-57 renumbered without change as Section R17-4-508 (Supp. 87-2). Emergency amendments adopted effective July 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments permanently adopted effective October 27, 1993 (Supp. 93-4). Section recodified to R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-802 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-509. Repealed

Historical Note

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

R17-4-510. Motorcycle noise level limits

- A.** No person shall operate any motorcycle on the streets or highways of the state of Arizona at any time or under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following noise limits. For the purpose of this Section, “dBA” shall mean “A” weighted decibel, a sound level measurement unit.

Model year of motorcycle	Speed limit of 35 m.p.h. or less	Speed limit of more than 35 m.p.h. and less than or equal to 45 m.p.h.	Speed limit of more than 45 m.p.h.
Before 1972	84 dBA	88 dBA	88 dBA
1972-1980	79 dBA	82 dBA	86 dBA
After 1980	76 dBA	80 dBA	83 dBA

- B.** The noise limits established by this Section shall be based on measurements taken at a distance of 50 feet from the center of the lane of travel within the specified speed limit. Noise measurements can be made at distances other than 50 feet from the center of the lane of travel. In such cases, the measurement shall be corrected to what it would be at the standard distance of 50 feet, for comparison with the standard.

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- C. For speed zones of 35 miles per hour or less, notwithstanding the provisions stated above, measurement shall not be made within 200 feet of any intersection controlled by an official traffic device or within 20 feet of the beginning or end of any grade in excess of plus or minus 1%. Measurements shall be made when it is reasonable to assume that the vehicle flow is at a constant rate of speed and measurement shall not be made under congested traffic conditions which require notice able acceleration or deceleration.

Historical Note

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-511. Repealed**Historical Note**

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-512. Child-restraint Systems in Motor Vehicles

The Motor Vehicle Division incorporates 49 CFR 571.213, Federal Motor Vehicle Safety Standard number 213 of the October 1, 2003, edition and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001, and is on file with the Division.

Historical Note

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1).

R17-4-513. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-514. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-515. Reserved**R17-4-516. Reserved****R17-4-517. Reserved****R17-4-518. Reserved****R17-4-519. Reserved****R17-4-520. Recodified****Historical Note**

Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-521. Recodified**Historical Note**

Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-522. Recodified**Historical Note**

Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

ARTICLE 6. EXPIRED**R17-4-601. Reserved****R17-4-602. Reserved****R17-4-603. Reserved****R17-4-604. Reserved****R17-4-605. Reserved****R17-4-606. Repealed****Historical Note**

Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-607. Repealed**Historical Note**

Adopted effective August 24, 1982 (Supp. 82-4). Former Section R17-4-501 renumbered without change as Section R17-4-607 (Supp. 87-2). Emergency amendments adopted and filed August 24, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments repealed, new emergency amendments adopted effective October 1, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-repealed, new emergency amendments readopted effective February 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency

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amendments re-adopted with changes effective November 14, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired. Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-608. Expired**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-504 renumbered without change as Section R17-4-608 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-609. Expired**Historical Note**

Adopted effective March 7, 1983, to apply to chassis and bodies placed in production after May 1, 1983 (Supp. 83-2). Former Section R17-4-502 renumbered without change as Section R17-4-609 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-610. Expired**Historical Note**

Adopted effective February 11, 1983 (Supp. 83-1). Former Section R17-4-503 renumbered without change as Section R17-4-610 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-611. Expired**Historical Note**

Adopted effective August 24, 1983 (Supp. 83-4). Former Section R17-4-506 renumbered without change as Section R17-4-611 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-612. Expired**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-505 renumbered without change as Section R17-4-612 (Supp. 87-2). R17-4-612 amended by summary action; Appendices A and B repealed by summary action with an interim effective date March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT**R17-4-701. Definitions**

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

“Applicant” means an individual who applies to obtain an original or renewal HME.

“CDL” means commercial driver license.

“Department” has the same meaning as defined under A.R.S. § 28-101.

“HME” means Hazardous Materials Endorsement.

“Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

“Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.

“TSA” means the U.S. Transportation Security Administration.

Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

Appendix A. Recodified**Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2016, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160935534.

Historical Note

Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-703. Expired**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2518, effective May 25, 2001 (Supp. 01-2). Section recodified to R17-1-204 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-704. Requirements for an HME

To receive an HME an applicant shall:

1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,

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3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

Historical Note

Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-705. Required Testing

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

Historical Note

Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-706. Fees

All applicants and transfer applicants shall pay all applicable fees as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

Historical Note

Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-707. 60-Day Notice to Apply

- A. The Department shall notify an existing HME holder that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
- B. Upon expiration of the Department's 60 Day Notice to Apply, the Department shall cancel the Arizona driver license privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

Historical Note

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by

final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-708. Security Threat Assessment

- A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
 1. Cancellation,
 2. Suspension for a period of one year or more,
 3. Expiration for a period of one year or more, and
 4. Revocation for a period of one year or more.

Historical Note

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
 - a. The Department will deny the request for an HME; and
 - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
 - a. The Department shall immediately cancel the HME.
 - b. The Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
 - c. The applicant shall visit a CDL office for removal of the HME.
 - d. If the applicant fails to comply with the Department's Notice of Action, the Department shall cancel the applicant's Arizona driver license privilege.
 - e. Upon removal of an HME by the Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

Historical Note

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-709.01. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.

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549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-602 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.02. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-603 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.03. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-604 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.04. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-605 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.05. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-606 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.06. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-607 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Recodified**Historical Note**

Appendix A adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix A renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix A expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix A adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix B. Recodified**Historical Note**

Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appen-

dix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix C. Recodified**Historical Note**

Appendix C adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.07. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.08. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.09. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit A. Recodified**Historical Note**

New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading "Form A" changed to "Exhibit A" to conform with R1-1-412 (Supp. 00-3). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit B. Recodified**Historical Note**

New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.10. Recodified**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20,

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2001 (Supp. 01-3).

R17-4-710. Requests for Administrative Hearing

- A.** In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.
- B.** An applicant whose Arizona driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-711. Expired**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-712. Transfer Applicant

- A.** Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.
- B.** Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:
1. Verify the TSA approval of a Determination of No Security Threat;
 2. Issue an Arizona CDL with an HME; and
 3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new Security Threat Assessment and testing requirements under R17-4-705.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

Table A. Recodified**Historical Note**

Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).

ARTICLE 8. MOTOR VEHICLE RECORDS**R17-4-801. Definitions**

“Batch” means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.

“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the

original to be used for purposes prescribed under A.R.S. § 28-442.

“Commercial driver license record” has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Department to each person with a record on the Department’s database, which includes the driver license number assigned to a person for a driver license, identification card, or instruction permit.

“Driver record” means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

“Interactive” means an electronic query-command method individually initiated by a person that produces immediate results.

“Reasonable costs” has the same meaning as defined in A.R.S. § 12-351.

“Requester” means the person, as defined in A.R.S. § 41-1001, requesting a motor vehicle record.

“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

“Support document” means any customer record maintained by the Department in an electronic, hardcopy, or microfilm file storage format.

“Title and registration record” means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-802. Motor Vehicle Record Request

- A.** Identification requirements. The requester of a motor vehicle record shall present valid identification as indicated on the motor vehicle record request form or at the request of the Department at the time a motor vehicle record request is made.
- B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy charge under R17-4-803, unless exempt under A.R.S. § 28-446.
- C.** Motor vehicle record types. Under this Article, the Department may release any of the following motor vehicle record types:
1. Title and Registration record, uncertified;
 2. Title and Registration record, certified;
 3. Driver 39-month record, uncertified;
 4. Driver five-year record, certified;
 5. Driver extended history record, certified;
 6. Special MVR, uncertified;
 7. Commercial driver license record, uncertified;
 8. Support documents, uncertified; and
 9. Support documents, certified.
- D.** Search Criteria. A requester who has a permissible use under A.R.S. § 28-455, except as indicated under subsection (E) when using the permissible use under A.R.S. § 28-455(C)(11),

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shall provide at least one of the items of information listed in this subsection when requesting a motor vehicle record. The requester may need to provide additional information as needed in order to locate the record.

1. For a title and registration motor vehicle record:
 - a. Vehicle identification number,
 - b. License plate number, or
 - c. Vehicle owner's full name.
 2. For a driver motor vehicle record:
 - a. The full name of the person whose record is requested, or
 - b. Customer number.
- E.** Consent to release motor vehicle record. A requester who uses the permissible use under A.R.S. § 28-455(C)(13) shall present a properly signed Consent To Release Motor Vehicle Record - One-Time form from the person whose motor vehicle record is requested. A requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall present a properly signed Consent To Release Motor Vehicle Record - General form from the person whose motor vehicle record is requested if that person has not previously submitted this form to the Department. In addition, a requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall provide the items of information listed in this subsection. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Authorized Third Party Provider offices and online at <https://www.azdot.gov>.
1. For a title and registration motor vehicle record:
 - a. Two items under subsection (D)(1), and
 - b. The vehicle owner's residence address.
 2. For a driver motor vehicle record:
 - a. The name and customer number of the person whose record is requested, and
 - b. The person's date of birth, or
 - c. The person's address, or
 - d. The person's Arizona driver license expiration date.

1. The general consent to release information is valid until revoked, in writing, by the person.
 2. A person may submit the written notice of revocation:
 - a. In person, at a Customer Service office or Authorized Third Party Provider; or
 - b. By mail, to Motor Vehicle Division, P.O. Box 2100, Mail Drop 500M, Phoenix, AZ 85001-2100.
- G.** Insurance companies requesting a driver record. The Department shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person's driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 19, 1994 (Supp. 94-2). Section recodified to R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-803. Record Copy Charges

In accordance with A.R.S. §§ 12-351 and 28-446, for each separate request, the Department shall assess a charge as provided in Table 1. Certified and Uncertified Motor Vehicle Record Fees. Therefore, a fee is collected if the request results in a motor vehicle record or "No Record Found."

Historical Note

New Section made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

Table 1. Certified and Uncertified Motor Vehicle Record Fees

Description	Method of Delivery	Amount
A certified record:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	\$5
	Electronic batch.	\$3
A certified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	\$5
An uncertified record:	Over-the-counter immediate service; Mail-in request; or Electronic interactive.	\$3
	Electronic batch; or Over-the-counter drop-off service.	\$2
An uncertified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	\$3
An uncertified Special MVR:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	\$1.50
Civil subpoena support documentation:	Served by a process server.	Reasonable costs
Any photocopied item: (Does not include... etc.)	Over-the-counter immediate or drop-off service; or Mail-in request.	25¢ per page

Historical Note

Table 1 made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-804. Repealed

effective November 21, 1995 (Supp. 95-4).

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Repealed

R17-4-805. Recodified

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Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-806. Recodified**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-703 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-807. Recodified**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-704 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-808. Recodified**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-705 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

ARTICLE 9. RESERVED**R17-4-901. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-59 renumbered without change as Section R17-4-901 (Supp. 87-2). Former Section R17-4-901 repealed, new Section R17-4-901 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-501 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-902. Recodified**Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Amended subsections (A), (E) and (F) effective April 4, 1984 (Supp. 84-2). Former Section R17-4-60 renumbered without change as Section R17-4-902 (Supp. 87-2). Former Section R17-4-902 repealed, new Section R17-4-902 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-502 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-903. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-503 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-904. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-504 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-905. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-505 at 7 A.A.R. 3477, effective July

20, 2001 (Supp. 01-3).

R17-4-906. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-506 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-907. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-507 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-908. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-508 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-909. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-509 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-910. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-513 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-911. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-511 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-912. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-512 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-913. Recodified**Historical Note**

Adopted as an emergency effective December 30, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Readopted as an emergency with a correction in subsection (A), paragraph (A) effective March 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Adopted without change as a permanent rule effective June 15, 1988 (Supp. 88-2). Amended effective July 13, 1989 (Supp. 89-3). Section recodified to R17-1-510 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-914. Repealed**Historical Note**

Former General Order 68. Former Section R17-4-26 renumbered without change as Section R17-4-914 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

28-364. Powers of the director

A. The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning and guide local transportation planning to assure compliance with federal requirements. The planning authority granted by this subsection does not preempt planning responsibilities and decisions of local governments.

B. If the governor declares a state of emergency, the director may contract and do all things necessary to provide emergency transportation services for the residents in the affected areas whether the emergency transportation is by street, rail or air.

C. On a determination that it is in this state's best interest, the director may authorize payment for necessary relocation costs in advance of work being performed if an existing facility owned by the United States must be relocated or adjusted due to construction, modification or improvement of a state highway. The director shall base each advance payment on an estimate of cost of the proposed relocation or adjustment prepared by the federal government and acceptable to the director and shall base the final compensation on the actual agreed cost.

D. The director of the department of transportation in consultation with the director of the department of public safety shall develop procedures to exchange information for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

E. The director may establish a system or process that does all of the following:

1. Allows for mailing notices of service or other legal documents or records of the department electronically or digitally to a person who consents to receiving these notices, documents or records through a secure electronic or digital system.
2. Enables a person to establish a financial account in the department's database. The account shall be accessible by the person or the person's authorized representative to review statements of all transactions associated with the person's account and to make prepayments or payments for authorized transactions with the department. Notwithstanding any other law, monies in financial accounts established pursuant to this section that remain unexpended for a period of five years or more revert to the Arizona highway user revenue fund and shall be distributed pursuant to section 28-6538.
3. Allows a person to comply with the photograph update and proof of vision test requirements prescribed by section 28-3173 through electronic or digital means that meet the department's standards.

F. The director, in consultation with the Arizona medical board or the state board of optometry, may do all of the following:

1. Establish medical and vision standards for driver license applicants and examinations.
2. Establish courses of training, training facilities and qualifications and methods of training for driver license examining personnel.
3. Establish procedures for the certification of driver license examining personnel and driver license instructors personnel.
4. Direct research in the field of licensing drivers. The director may accept public or private grants for the research.
5. Conduct research in the field of examination or reexamination of licensing individual drivers with medical or vision problems.

6. Set minimum vision standards for the operation of a motor vehicle in this state.

G. The director may implement electronic or digital versions of driver licenses, nonoperating identification licenses, vehicle registration cards, license plates or any other official record of the department.

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-907. Child restraint system; civil penalty; exemptions; notice; child restraint fund; definitions

A. Except as provided in subsection H of this section, a person shall not operate a motor vehicle on the highways in this state when transporting a child who is under five years of age unless that child is properly secured in a child restraint system.

B. The operator of a motor vehicle that is designed for carrying ten or fewer passengers, that is manufactured for the model year 1972 and thereafter and that is required to be equipped with an integrated lap and shoulder belt or a lap belt pursuant to the federal motor vehicle safety standards prescribed in 49 Code of Federal Regulations section 571.208 shall require each passenger who is at least five years of age, who is under eight years of age and who is not more than four feet nine inches tall to be restrained in a child restraint system.

C. The department shall adopt standards in accordance with 49 Code of Federal Regulations section 571.213 for the performance, design and installation of child restraint systems for use in motor vehicles as prescribed in this section.

D. A person who violates this section is subject to a civil penalty of fifty dollars, except that a civil penalty shall not be imposed if the person makes a sufficient showing that the motor vehicle has been subsequently equipped with a child restraint system that meets the standards adopted pursuant to subsection C of this section. A sufficient showing may include a receipt mailed to the appropriate court officer that evidences purchase or acquisition of a child restraint system. The court imposing and collecting the civil penalty shall deposit, pursuant to sections 35-146 and 35-147, the monies, exclusive of any surcharges imposed pursuant to sections 12-116.01 and 12-116.02, in the child restraint fund.

E. If a law enforcement officer stops a vehicle for an apparent violation of this section, the officer shall determine from the driver the age and height of the child or children in the vehicle to assess whether the child or children in the vehicle should be in child restraint systems.

F. If the information given to the officer indicates that a violation of this section has not been committed, the officer shall not detain the vehicle any further unless some additional violation is involved. The stopping of a vehicle for an apparent or actual violation of this section is not probable cause for the search or seizure of the vehicle unless there is probable cause for another violation of law.

G. The requirements of this section or evidence of a violation of this section are not admissible as evidence in a judicial proceeding except in a judicial proceeding for a violation of this section.

H. This section does not apply to any of the following:

1. A person who operates a motor vehicle that was originally manufactured without passenger restraint devices.
2. A person who operates a motor vehicle that is also a recreational vehicle as defined in section 41-4001.
3. A person who operates a commercial motor vehicle and who holds a current commercial driver license issued pursuant to chapter 8 of this title.
4. A person who must transport a child in an emergency to obtain necessary medical care.
5. A person who operates an authorized emergency vehicle that is transporting a child for medical care.
6. A person who transports more than one child under eight years of age in a motor vehicle that because of the restricted size of the passenger area does not provide sufficient area for the required number of child restraint systems, if both of the following conditions are met:
 - (a) At least one child is restrained or seated as required by this section.

(b) The person has secured as many of the other children in child restraint systems pursuant to this section as is reasonable given the restricted size of the passenger area and the number of passengers being transported in the motor vehicle.

I. Before the release of any newly born child from a hospital, the hospital in conjunction with the attending physician shall provide the parents of the child with a copy of this section and information with regard to the availability of loaner or rental programs for child restraint systems that may be available in the community where the child is born.

J. A child restraint fund is established. The fund consists of all civil penalties deposited pursuant to this section and any monies donated by the public. The department of child safety shall administer the fund.

K. The department of child safety shall purchase child restraint systems that meet the requirements of this section from monies deposited in the fund. If a responsible agency requests child restraint systems and if they are available, the department of child safety shall distribute child restraint systems to the requesting responsible agency.

L. On the application of a person to a responsible agency on a finding by the responsible agency to which the application was made that the applicant is unable to acquire a child restraint system because the person is indigent and subject to availability, the responsible agency shall lend the applicant a child restraint system at no charge for as long as the applicant has a need to transport a child who is subject to this section.

M. Monies in the child restraint fund shall not exceed twenty thousand dollars. All monies collected over the twenty thousand dollar limit shall be deposited in the Arizona highway user revenue fund established by section 28-6533.

N. For the purposes of this section:

1. "Child restraint system" means an add-on child restraint system, a built-in child restraint system, a factory-installed built-in child restraint system, a rear-facing child restraint system or a booster seat as defined in 49 Code of Federal Regulations section 571.213.
2. "Indigent" means a person who is defined as an eligible person pursuant to section 36-2901.01.
3. "Responsible agency" means a licensed hospital, a public or private agency providing shelter services to victims of domestic violence, a public or private agency providing shelter services to homeless families or a health clinic.

28-955.02. Motorcycle noise level rules

A. The department shall establish by rule maximum operating noise levels for motorcycles operated in this state.

B. The rules shall:

1. Provide for varying maximum operational noise levels for motorcycles, categorized by year of manufacture and speed of operation of the motorcycle.
2. Be based on noise reduction levels achieved by reasonable and prudent operation of a motorcycle and proper maintenance of the noise reduction equipment.

28-3005. Medical or psychological reports; immunity; definitions

A. For medical conditions, a physician or registered nurse practitioner, for psychological conditions, a psychologist, physician, psychiatric mental health nurse practitioner or substance abuse counselor who provides information to the director in good faith and at the written request of a driver license applicant or licensee concerning a person's medical or psychological condition with respect to operation of a motor vehicle is immune from personal liability with respect to the information provided.

B. Notwithstanding the physician-patient, nurse-patient or psychologist-client confidentiality relationship, a physician, registered nurse practitioner or psychologist may voluntarily report a patient to the department who has a medical or psychological condition that in the opinion of the physician, registered nurse practitioner or psychologist could significantly impair the person's ability to safely operate a motor vehicle. If a report is made, the physician, registered nurse practitioner or psychologist shall make the report in writing, including the name, address and date of birth of the patient. On receipt of the report, the department may require an examination of the person reported in the manner provided by section 28-3314. A person shall not bring an action against a physician, registered nurse practitioner or psychologist for not making a report pursuant to this subsection. The physician, registered nurse practitioner or psychologist submitting the report in good faith is immune from civil or criminal liability for making the report pursuant to this subsection. The physician's, registered nurse practitioner's or psychologist's report is subject to subpoena or order to produce in an action except an action against the physician, registered nurse practitioner or psychologist submitting the report.

C. In this section:

1. "Medical or psychological condition" means a condition that could affect a person's functional ability to safely operate a motor vehicle.
2. "Physician" means a medical doctor, optometrist, chiropractor, naturopathic physician, doctor of osteopathy or doctor of homeopathy who is licensed to practice in this state or another state or who is employed by the federal government and practicing in this state or their agents.
3. "Psychiatric mental health nurse practitioner" means a person certified as a registered nurse practitioner in a psychiatric mental health specialty area under the provisions of title 32, chapter 15.
4. "Psychologist" means a person who is licensed pursuant to title 32, chapter 19.1, who is licensed to practice psychology in another state or who is employed by the federal government and practicing in this state.
5. "Registered nurse practitioner" has the same meaning prescribed in section 32-1601.
6. "Substance abuse counselor" means a person who is licensed by the board of behavioral health examiners in this state, who is licensed or certified in another state, who is certified by a board for certification of addiction counselors, who is a nationally certified addiction counselor or who is employed by the federal government and practicing in this state.

28-5204. Administration and enforcement; rules

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.

Arizona Administrative CODE

17 A.A.C. 4 Supp. 19-2

www.azsos.gov

This Chapter contains a rule Section filed between the dates of October 1, 2018 through December 31, 2018. It is being published in the second quarter of 2019 (Supp. 19-2).

Title 17



ARD Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter had two rule notices filed for publication in the last calendar quarter of 2018. Section R17-4-313 was amended in both notices and each had different effective dates. Therefore one amendment was not published in Supp. 18-4 to maintain the historical accuracy of the rule (Supp. 19-2).

[R17-4-313.](#) [Public Safety Fee](#) [14](#)

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The release of this Chapter in Supp. 19-2 replaces Supp. 18-4, 1-38 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
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Editor's Note: Sections R17-4-606, R17-4-607 and its Appendix A and Appendices A and B were repealed under a Notice of Proposed Summary Rulemaking in Supp. 96-1. R17-4-612 was amended under the same Notice of Proposed Summary Rulemaking at 2 A.A.R. 1486. The Office did not receive a Notice of Final Summary Rulemaking on these Sections (Editor's Note added Supp. 10-2).

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R17-4-201. Definitions

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

“Authorized ELT Participant” means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

“Date of lien” means the date identified by the lienholder as the date the loan was issued to the borrower.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Encumbrance” means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

“ELT” means Electronic Lien and Title.

“EPA standards” means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

“FMVSS” means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

“Joint tenancy with right of survivorship” means vehicle ownership by two or more persons and the deceased joint owner’s interest in the vehicle is transferred to the surviving owners.

“Lienholder” means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

“Lienholder Number” means the computer-generated record number assigned by the Division to a lienholder.

“Low-speed vehicle” has the same meaning as prescribed under 49 CFR 571.3.

“MPV” means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NHTSA” means National Highway Traffic Safety Administration of the United States Department of Transportation.

“Operation of law lien” means a lien resulting from the application of a state or federal statute.

“Primary lien” means the first of any multiple liens recorded on a vehicle or mobile home record.

“Registered importer” means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

“Tenancy in common” means vehicle ownership by two or more people without the right of survivorship.

“Valid titling document” means one of the following documents showing a vehicle’s compliance with FMVSS and EPA standards:

- A NHTSA Declaration,
- A manufacturer’s letter, or
- A U.S. federal compliance label printed in English.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-202. Certificate of Title Form

- A.** The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.
- B.** MVD shall provide space on the Certificate of Title form for the following information:
1. Title information:
 - a. Title number;
 - b. Issue date;
 - c. Previous title number; and
 - d. State and date of previous title.
 2. Vehicle information:
 - a. Vehicle identification number (VIN);
 - b. Vehicle make, model, year, and body style;
 - c. Fuel type;
 - d. Odometer information; and
 - e. Vehicle mechanical or structural condition.
 3. Lienholder information:
 - a. Lienholder name and address;
 - b. Lienholder customer or federal identification number; and
 - c. Lien amount and lien date.
 4. Vehicle owner’s or owner’s legal designee information:
 - a. Name; and
 - b. Mailing address.
 5. Ownership change information:
 - a. Sale date;
 - b. Purchaser’s name and address;
 - c. Odometer mileage disclosure statement;
 - d. Seller’s signature; and
 - e. Seller’s signature certification.
 6. Dealer reassignment information.
 7. Other information as required by the Division for internal processing and recordkeeping.

Historical Note

New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-203. Certificate of Title and Registration Application

- A.** In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:
1. Vehicle information:
 - a. Tab number;
 - b. Initial registration month and year;
 - c. Vehicle make, model, year, and body style;
 - d. Mechanical or structural status indicating whether the vehicle is:
 - i. Dismantled,
 - ii. Reconstructed,
 - iii. Salvaged, or
 - iv. Specially constructed;
 - e. Gross vehicle weight;
 - f. Fuel type;
 - g. Odometer information;
 - h. Current title number and titling state.
 2. An owner’s or lessee’s legal ownership status.
 3. Lienholder information:
 - a. Lienholder names and addresses, and

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- b. Lien amount and date incurred.
- 4. If a mobile home, the physical site.
- 5. Co-ownership information:
 - a. A statement of whether any survivorship rights in the vehicle exist; and
 - b. A statement providing co-ownership legal status prescribed in R17-4-205(B).
- 6. Owner certification information verifying:
 - a. Ownership,
 - b. Inclusion of all liens and encumbrances, and
 - c. Seller-verified odometer reading.
- 7. Applicant signatures.
- 8. An acknowledgement that:
 - a. The applicant agrees or disagrees to the Division's release of the applicant's name on a commercial mailing list; and
 - b. The applicant has read a printed explanation of odometer reading codes.
- 9. Other information required by the Division for internal processing and recordkeeping.
- B. An applicant may voluntarily provide the following information on the form:
 - 1. Applicant's birth date;
 - 2. Applicant's driver license number; and
 - 3. Applicant's federal employer identification number, if the applicant is taking title as a sole proprietor, partnership, corporation, or other legal business entity.

Historical Note

New Section recodified from R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-204. Seller's Signature Acknowledgement

A seller shall ensure that a Notary Public or a Motor Vehicle Division (MVD) agent witnesses the seller sign the title transfer. The Notary Public or MVD agent shall sign the title transfer acknowledging witnessing the seller's signature. "Motor Vehicle Division agent" has the meaning prescribed in A.R.S. § 28-370.

Historical Note

Adopted effective November 10, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-204 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-202 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-205. Co-ownership and Vehicle Title

- A. A title certificate application shall specify the form of co-ownership and names of a vehicle's co-owners as follows.
 - 1. If co-ownership is a joint tenancy with right of survivorship in which all owners must sign to transfer or encumber the vehicle, the applicant shall provide the name of each owner separated by "and/or."
 - 2. If co-ownership is a joint tenancy that allows one owner to transfer or encumber the vehicle title, the applicant shall provide:
 - a. The name of each co-owner separated by "or"; and
 - b. A form, signed by each co-owner authorizing title transfer or encumbrance on the signature of any co-owner.
 - 3. If co-ownership is a tenancy in common, the applicant shall provide the name of each owner separated by "and."
- B. Before a surviving joint tenant under subsection (A)(1) obtains a title certificate as owner or transfers or encumbers the vehi-

cle title, the surviving joint tenant shall present to the Division a death certificate for each deceased joint tenant.

- C. After the death of a tenant in common, the Division shall issue a new title certificate only as directed by:
 - 1. A certified probate court order, or
 - 2. A successor's affidavit under A.R.S. § 14-3971(B).

Historical Note

Adopted effective November 13, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-205 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-203 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles"

- A. Titling standards.
 - 1. The Division shall issue a title to a foreign-manufactured vehicle imported to the United States if an applicant presents the following:
 - a. A valid titling document,
 - b. A completed MVD title and registration application as prescribed under R17-4-203,
 - c. A completed Vehicle Verification Form certifying that the vehicle passed the Division's physical inspection,
 - d. A document stating that the vehicle passed an Arizona emissions inspection under A.R.S. § 49-542, and
 - e. A certificate that the vehicle was converted to meet:
 - i. EPA standards, and
 - ii. FMVSS.
 - 2. A foreign-manufactured vehicle imported to the United States is exempt from this subsection if it is older than 25 years from its manufacture date.
 - 3. A foreign-manufactured vehicle imported to the United States that is between 21 and 25 years from the manufacture date is exempt from subsection (A)(1)(e)(i).
 - 4. Titling standards for vehicles manufactured according to Canadian specifications.
 - a. The Division shall issue a title to a vehicle manufactured according to Canadian specifications if it:
 - i. Is not for resale;
 - ii. Has a GVWR of less than 10,000 pounds; and
 - iii. Is a passenger vehicle, motorcycle, or MPV.
 - b. Before titling a vehicle manufactured according to Canadian specifications, the owner shall submit to the Division manufacturer documentation verifying that the vehicle complies with FMVSS and EPA standards.
 - i. The Division shall waive the FMVSS and EPA labeling location requirements as prescribed in 49 CFR 571 and 40 CFR 86.
 - ii. If manufacturer documentation indicates that a vehicle's speedometer or headlights do not comply with FMVSS and EPA standards, the owner shall file additional documentation with the Division to verify completion of a modification that brings the vehicle into compliance.
 - c. A registered importer shall certify a vehicle manufactured according to Canadian specifications if:

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- i. The vehicle meets FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
 - ii. The owner did not submit manufacturer documentation as prescribed under subsection (A)(4)(b).
- B.** The Division shall require a registered importer's certification of a foreign-manufactured vehicle imported to the United States that:
1. Is not exempt under subsections (A)(2) or (A)(3), or
 2. Does not qualify under subsection (A)(4).

Historical Note

Former Rule, General Order 55. Former Section R17-4-19 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-209 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-207. Lien Filing

- A.** Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at www.azdot.gov/mvd/FormsandPub/mvd.asp), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.
1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
 2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the lien filing does not meet the requirements prescribed in this subsection.
- B.** Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.
- C.** Lien filing notice. The Division shall notify the lienholder of the recording of a lien.
1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
 2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

Historical Note

Former Rule, General Order 62. Former Section R17-4-24 renumbered without change as Section R17-4-207 (Supp. 87-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section recodified from R17-4-230 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new

Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-208. Lien Clearance

- A.** Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:
1. The transmission of an electronic lien release from an ELT Participant,
 2. A certificate of title acknowledged by the lienholder as prescribed under subsection (B)(1),
 3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection (B)(1),
 4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection (B)(1),
 5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection (B)(1); or
 6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection (B)(1).
- B.** Lienholder satisfaction of lien requirements.
1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.
 2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
 3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.
- C.** Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.
- D.** Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 83. Former Section R17-4-35 renumbered without change as Section R17-4-208 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified from R17-4-231 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-209. Recodified**Historical Note**

Adopted as Section R17-4-81 and renumbered as Section R17-4-209 effective May 29, 1987 (Supp. 87-2). Amended

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by final rulemaking at 7 A.A.R. 2755, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-210. Repealed**Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Section R17-4-210 repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore the rule went back into effect November 26, 1998; Section repealed by summary rulemaking with an interim effective date of August 20, 1999, filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

Appendix A. Repealed**Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Appendix A repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore Appendix A went back into effect November 26, 1998; Appendix A repealed by summary rulemaking with an interim effective date of August 20, 1999; filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

R17-4-211. Reserved**R17-4-212. Reserved****R17-4-213. Reserved****R17-4-214. Reserved****R17-4-215. Reserved****R17-4-216. Recodified****Historical Note**

Adopted effective October 21, 1997 (Supp. 97-4). Section recodified to R17-4-302 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-217. Recodified**Historical Note**

Adopted effective September 12, 1997 (Supp. 97-3). Section recodified to R17-4-303 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-218. Recodified**Historical Note**

Amended effective April 21, 1980 (Supp. 80-2). Former Section R17-4-54 renumbered without change as Section R17-4-218 (Supp. 87-2). R17-4-218 and Appendix A repealed; new Section adopted effective December 8, 1998 (Supp. 98-4). Section recodified to R17-4-304 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-219. Recodified**Historical Note**

Former Rule, General Order 101. Former Section R17-4-42 renumbered without change as Section R17-4-219 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4602, effective November 14, 2000 (Supp. 00-4). Section recodified to R17-4-305 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-220. Repealed**Historical Note**

Former Rule, General Order 103; Former Section R17-4-44 repealed, new Section R17-4-44 adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-44 renumbered without change as Section R17-4-220 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-221. Repealed**Historical Note**

Former Rule, General Order 75. Former Section R17-4-30 renumbered without change as Section R17-4-221 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-222. Recodified**Historical Note**

Adopted effective December 3, 1986 (Supp. 86-6). Former Section R17-4-80 renumbered without change as Section R17-4-222 (Supp. 87-2). Section recodified to R17-4-306 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-223. Repealed**Historical Note**

Emergency rule adopted effective August 8, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Former emergency rule permanently adopted with changes effective December 31, 1991 (Supp. 91-4). Repealed effective July 18, 1994 (Supp. 94-3).

R17-4-224. Recodified**Historical Note**

Adopted effective September 25, 1991 (Supp. 91-3). Section recodified to R17-4-307 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-225. Reserved**R17-4-226. Recodified****Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted with changes effective February 1, 1993 (Supp. 93-1). Amended effective January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Section repealed effective August 1, 1999 pursuant to subsection (C); new Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-502 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Repealed**Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted effective February 1,

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1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Appendix repealed effective August 1, 1999 pursuant to R17-4-226(C) (Supp. 00-2).

R17-4-226.01. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-503 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-227. Recodified**Historical Note**

Adopted effective June 16, 1992 (Supp. 92-2). Section recodified to R17-4-402 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-228. Reserved**R17-4-229. Reserved****R17-4-230. Recodified****Historical Note**

Former Rule, General Order 47. Former Section R17-4-15 renumbered without change as Section R17-4-230 (Supp. 87-2). Section recodified to R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-231. Recodified**Historical Note**

Former Rule, General Order 70. Former Section R17-4-28 renumbered without change as Section R17-4-231 (Supp. 87-2). Section recodified to R17-4-208 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-232. Reserved**R17-4-233. Reserved****R17-4-234. Reserved****R17-4-235. Reserved****R17-4-236. Reserved****R17-4-237. Repealed****Historical Note**

Former Rule, General Order 50. Former Section R17-4-16 renumbered without change as Section R17-4-237 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-238. Repealed**Historical Note**

Former Rule, General Order 51. Former Section R17-4-17 renumbered without change as Section R17-4-238 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-239. Repealed**Historical Note**

Former Rule, General Order 60. Former Section R17-4-22 renumbered without change as Section R17-4-239 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-240. Recodified**Historical Note**

Former Rule, General Order 65; Amended effective January 11, 1982 (Supp. 82-1). Former Section R17-4-25 renumbered without change as Section R17-4-240 (Supp. 87-2). Section recodified to R17-5-402 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-241. Recodified**Historical Note**

Former Rule, General Order 76. Former Section R17-4-31 renumbered without change as Section R17-4-241 (Supp. 87-2). Section amended by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-404 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-242. Repealed**Historical Note**

Former Rule, General Order 77. Former Section R17-4-32 renumbered without change as Section R17-4-242 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 869, effective January 22, 2001 (Supp. 01-1).

R17-4-243. Repealed**Historical Note**

Former Rule, General Order 85. Former Section R17-4-36 renumbered without change as Section R17-4-243 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-244. Reserved**R17-4-245. Recodified****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-405 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-246. Recodified**Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-406 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-247. Reserved**R17-4-248. Reserved****R17-4-249. Reserved****R17-4-250. Repealed****Historical Note**

Former Rule, General Order 111. Former Section R17-4-47 renumbered without change as Section R17-4-250 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-251. Repealed**Historical Note**

Former Rule, General Order 112. Former Section R17-4-48 renumbered without change as Section R17-4-251 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-252. Recodified**Historical Note**

Former Rule, General Order 82. Former Section R17-4-

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34 renumbered without change as Section R17-4-252 (Supp. 87-2). Section recodified to R17-4-308 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

- R17-4-253. **Reserved**
- R17-4-254. **Reserved**
- R17-4-255. **Reserved**
- R17-4-256. **Reserved**
- R17-4-257. **Reserved**
- R17-4-258. **Reserved**
- R17-4-259. **Reserved**
- R17-4-260. **Recodified**

Historical Note

Former Rule, General Order 72. Former Section R17-4-29 renumbered without change as Section R17-4-260 (Supp. 87-2). Section recodified to R17-5-407 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

- R17-4-261. **Reserved**
- R17-4-262. **Reserved**
- R17-4-263. **Reserved**
- R17-4-264. **Reserved**
- R17-4-265. **Repealed**

Historical Note

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 1, 1984 (Supp. 84-5). Former Section R17-4-72 renumbered without change as Section R17-4-265 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 2154, effective May 1, 2001 (Supp. 01-2).

ARTICLE 3. VEHICLE REGISTRATION**R17-4-301. Definitions**

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

“Apportioned commercial vehicle” means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

“Biennial” means once every two years.

“Business day” means a day other than a Sunday or holiday.

“Calendar quarter” means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Day” means the 24-hour period from one midnight to the following midnight.

“Disabled person” means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Division Director” means the Assistant Director for the Arizona Department of Transportation’s Motor Vehicle Division or the Assistant Director’s designee.

“Drop box” means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

“Effective date of registration” means the date the vehicle first becomes subject to registration fees in Arizona.

“Electronic delivery” means the transmission of registration and credit card information to the Division, by computer, through an authorized third party electronic service provider.

“Emergency Vehicle Permit” means a document issued by the Division’s Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

“Expiration date” means the day, month, and year in which a vehicle registration expires.

“Fire Engine” means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

“IM147 Test” means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Included vehicle” means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

“Initial registration” means the first registration of an included vehicle in Arizona.

“OBD” means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Off-highway vehicle” has the same meaning as prescribed under A.R.S. § 28-1171.

“Operator Requirements” means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

“Private fire department” means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

“Private Fire Emergency Vehicle” means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

“Registration” means the authorization, issued by the Division that allows a vehicle to use state highways.

“Registration fees” means the fees due to the Division at the time of registration and consisting of the general registration fees imposed under A.R.S. § 28-2003, the vehicle license tax imposed under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed under A.R.S. § 28-5433.

“Registration period” means the time-frame during which a vehicle registration is valid.

“Renewal registration” means the second and subsequent registration of an included vehicle.

Historical Note

Transferred to R17-1-301 (Supp. 92-4). New Section made by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010

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(Supp. 10-2).

R17-4-302. Staggered Registration for Apportioned Commercial Vehicles

Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. The Division shall:
 - a. Establish a registration period that expires on the last day of the calendar quarter selected by the fleet owner, not to exceed 12 months from the initial registration date.
 - b. Apply the original fleet registration fees towards the registration fees required for a replaced vehicle when an owner replaces a vehicle within a fleet.
 - c. Apply the original fleet registration fees towards the registration fees required for a transferred vehicle when an owner transfers a vehicle between fleets.
 - d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. The owner of an apportioned commercial fleet vehicle shall:
 - a. Ensure that all vehicles within a fleet have the same registration period.
 - b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.
 - c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
3. The Division shall not provide a grace period for late registration or late payment of fees.

Historical Note

Adopted effective August 1, 1988 (Supp. 88-3). Transferred to R17-1-302 (Supp. 92-4). New Section recodified from R17-4-216 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-303. Biennial Registration

- A. Biennial registration.
 1. The Division may register any vehicle biennially, unless excluded.
 2. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.
- B. Excluded vehicles. The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
 1. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
 2. A vehicle that requires an annual emissions test.
 3. A vehicle subject to any one of the following types of registration:
 - a. Allocated registration under A.R.S. § 28-2261,
 - b. Apportioned registration under A.R.S. § 28-2261,
 - c. Fleet registration under A.R.S. § 28-2202, or
 - d. Interstate registration under A.R.S. § 28-2052.
 4. A vehicle with an undersized mobile home plate registration.
 5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty military member, a widow, widower, or disabled person other than a 100% disabled veteran.

Historical Note

Transferred to R17-1-303 (Supp. 92-4). New Section recodified from R17-4-217 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-304. Staggered Registration for Included Vehicles

- A. Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
 1. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
 - a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
 - b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
 2. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
 - a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
 - b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.
- B. Excluded vehicles. The staggered registration prescribed by this Section excludes the following vehicles:
 1. A vehicle exempt from registration;
 2. A vehicle subject to any one of the following types of registration:
 - a. Allocated registration under A.R.S. § 28-2261,
 - b. Apportioned registration under A.R.S. § 28-2261,
 - c. Fleet registration under A.R.S. § 28-2202,
 - d. Interstate registration under A.R.S. § 28-2052, or
 - e. Seasonal agricultural registration under A.R.S. § 28-5436;
 3. A vehicle subject to a one-time registration fee;
 4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided under A.R.S. § 28-2511(A);
 5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
 6. A moped;
 7. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.
- C. Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.
- D. Expiration dates. The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:
 1. Annual registration: Expires 12 months from the expiration of the previous registration period; or
 2. Biennial registration: Expires 24 months from the expiration of the previous registration period.
- E. Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the requirements prescribed under subsection (1) or (2):
 1. If a person submits the registration to the Division or an Authorized Third-party Provider of registration functions in person or by mail:

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- a. The application for registration or registration card, and
 - b. Payment of registration fees.
2. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:
 - a. Required registration information, and
 - b. Credit card information.
- F.** Timely submission of registration. A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than an established business day, a person shall submit the renewal registration of an included vehicle not later than the first business day after the prior registration period expires.
- G.** Penalties. The penalties imposed under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
1. A person does not submit to the Division or an Authorized Third-party Provider of registration functions the items set forth in subsection (E)(1) so that the items are received by the due date; or
 2. A person does not electronically submit to an Authorized Third-party Electronic Delivery Provider the items required under subsection (E)(2) so that the items are received by the due date.
- H.** Date of receipt. The date of receipt for the items required under subsection (E)(1) or (E)(2) shall be the following:
1. The date a person presents the items required under subsection (E)(1) to a Division facility or the facility of an Authorized Third-party Provider of registration functions in person;
 2. The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
 3. The date a private express mail carrier receives the package containing the items set forth in subsection (E)(1), as indicated on the shipping package;
 4. The date of the last business day prior to the day the Division retrieves the items set forth at subsection (E)(1) from a designated Division drop box; or
 5. The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.
- I.** Evidence of registration. The Division or Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
1. The assigned number plate shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
 2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed under A.R.S. §§ 28-2531(B) and 28-2532.
 3. Any registration tabs or stickers issued by the Division or Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

Historical Note

Transferred to R17-1-304 (Supp. 92-4). New Section recodified from R17-4-218 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007

(Supp. 07-4).

R17-4-305. Temporary Registration Plate “TRP” Procedure

- A.** Definitions.
1. “Charitable Event TRP” means a TRP issued to a motor vehicle dealership or manufacturer for a charitable event as prescribed by A.R.S. § 28-4548.
 2. “Deal Unwound” means the vehicle was returned to the dealership and the sale was not completed.
 3. “Voided TRP” means a TRP that the issuer records as voided after issuing the TRP.
- B.** Issuing.
1. New and used motor vehicle dealers and title service companies that issue TRPs shall send an electronic record of the TRP to the Division before placing the TRP on the vehicle.
 2. The TRP expiration date shall be 45 days from the issue date.
 3. TRPs issued for charitable events are valid for the duration of the event not to exceed 45 days.
 4. An issuer shall not issue more than one TRP per vehicle sale.
 5. An issuer shall attach the TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354.
- C.** Voiding. An issuer shall void a TRP when:
1. The TRP is lost,
 2. The TRP is damaged,
 3. The dealer reports a deal unwound,
 4. The issuer enters the wrong vehicle identification number, or
 5. The issuer enters the wrong customer identification number.

Historical Note

Transferred to R17-1-305 (Supp. 92-4). New Section R17-4-305 recodified from R17-4-219 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5320, effective February 6, 2006 (Supp. 05-4).

R17-4-306. Nonresident Daily Commuter Fee

A nonresident daily commuter shall pay a fee of \$8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

Historical Note

Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Transferred to R17-1-306 (Supp. 92-4). New Section R17-4-306 recodified from R17-4-222 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 571, effective January 14, 2002 (Supp. 02-1).

R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee

- A.** Under A.R.S. § 28-4151(A), the Division shall assess a \$50 fee for reinstatement of a motor vehicle registration and license plate suspended under A.R.S. §§ 28-4148 and 28-4149.
- B.** Subsection (A) does not apply to a motor carrier subject to the financial responsibility requirements prescribed under A.R.S. Title 28, Chapter 9, Article 2.

Historical Note

Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Transferred to R17-1-307 (Supp. 92-4). New Section R17-4-307 recodified from R17-4-224 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by

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final rulemaking at 7 A.A.R. 5439, effective November 14, 2001 (Supp. 01-4).

R17-4-308. Official Vehicle License Plates

- A. The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).
- B. A license plate issued under A.R.S. § 28-2511 has no expiration date.
- C. An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.
- D. A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
 - 1. Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
 - 2. Display each license plate as prescribed by A.R.S. § 28-2354; and
 - 3. Maintain a record of each license plate transfer that includes:
 - a. The date of the transfer;
 - b. The year, make, and model of the vehicle, and
 - c. The vehicle identification number (VIN) for each car involved in the transfer.

Historical Note

Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Transferred to R17-1-308 (Supp. 92-4). New Section R17-4-308 recodified from R17-4-252 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 573, effective January 14, 2002 (Supp. 02-1).

R17-4-309. Private Fire Emergency Vehicle Permit

- A. Private Fire Emergency Vehicle Permit. A Private Fire Emergency Vehicle Permit may be issued to a private fire department if all requirements provided under subsections (B) and (C) are met.
 - 1. The Private Fire Emergency Vehicle Permit is valid until revoked or surrendered.
 - 2. The Private Fire Emergency Vehicle Permit shall be carried at all times in the fire engine for which the permit is issued.
 - 3. The Private Fire Emergency Vehicle Permit is not transferable.
 - 4. The Private Fire Emergency Vehicle Permit shall remain the property of the Division and shall be surrendered to the Division when the fire engine is no longer being used to respond to an emergency.
- B. Private Fire Emergency Vehicle Permit application. A person applying for a Private Fire Emergency Vehicle Permit shall submit the required documentation to the Division's Enforcement Services Program, P.O. Box 2100, Mail Drop 513M, Phoenix, Arizona 85007. The following documentation is required at the time of initial application:
 - 1. Private Fire Emergency Vehicle Permit Application. Multiple fire engines may be listed on one application. The Private Fire Emergency Vehicle Permit Application is furnished by the Division and is available upon request from the Division's Enforcement Services Program; and
 - 2. Proof of acceptable financial responsibility to cover any liability that may arise from the use of the Private Fire Emergency Vehicle Permit. Acceptable proof of financial responsibility is an insurance policy that:
 - a. Is issued by an insurance company licensed to conduct business in Arizona by the Arizona Department of Insurance;

- b. Is written for a combined single-limit coverage of at least \$5 million;
- c. Contains a provision stating that the state of Arizona shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions; and
- d. Contains a provision stating that the state of Arizona shall be notified immediately if the insurance company becomes insolvent.

C. Operational requirements.

- 1. A fire engine may be operated with the privileges prescribed under A.R.S. § 28-624, but shall be subject to all other applicable provisions prescribed under A.R.S. Title 28, A.A.C. Title 17, and any other applicable statutes or ordinances.
- 2. A fire engine shall only be driven by an operator who meets the Operator Requirements as defined under R17-4-301.
- 3. A fire engine with a Private Fire Emergency Vehicle Permit, shall meet the National Fire Protection Association's (NFPA) fire engine and fire apparatus standards in effect for the manufacture date of the emergency vehicle.
- 4. The private fire department is responsible for ensuring that the fire engine is not operated using the privileges prescribed under A.R.S. § 28-624 with an invalid Private Fire Emergency Vehicle Permit.

- D. Denial. If an application for a Private Fire Emergency Vehicle Permit is denied, a notice of denial shall be sent to the applicant at the address of record. An applicant is allowed to reapply for a permit following denial, provided all requirements listed under this Section are met.

- E. Revocation. If a Private Fire Emergency Vehicle Permit is revoked, a notice of the revocation shall be sent to the address of the applicant. An applicant is allowed to reapply for a permit following revocation, provided all requirements listed under this Section are met.

- 1. The emergency vehicle permit is immediately revoked upon a determination that:
 - a. The permitted vehicle or the private fire department no longer meets the requirements for the permit; or
 - b. The vehicle was operated in violation of the provisions of this rule, any other applicable rule, or statute.
- 2. The revocation shall be preceded by a notice of intent to revoke.
 - a. The notice of intent to revoke shall be sent by first-class mail to the address of the applicant as shown on the permit application.
 - b. The notice of intent to revoke shall inform the applicant of the right to an administrative hearing and the procedure for requesting a hearing.
- 3. The revocation shall become effective 25 days after the mailing date of the notice of intent to revoke unless a timely request for hearing is submitted.

- F. Administrative hearing. The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Transferred to R17-1-309 (Supp. 92-4). New Section recodified from R17-4-701 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2106, effective July 5,

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2008 (Supp. 08-2).

Appendix A. Repealed**Historical Note**

Appendix A recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

Appendix A repealed by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

R17-4-310. Personalized License Plates**A. Definitions.**

1. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
2. "Division Director" means the Assistant Division Director for the Motor Vehicle Division of the Arizona Department of Transportation.
3. "Personalized plate" means a license plate with a registration number chosen by a person rather than assigned by the Division.
4. "Plate number" means the combination of letters, numbers, and spaces on a vehicle license plate.

B. A person who wants to receive a personalized plate shall file an application with the Division on a form provided by the Division.

1. An applicant shall provide the following information on the form:
 - a. Name of the vehicle's owner or lessee;
 - b. Vehicle owner's or lessee's mailing address;
 - c. Vehicle's make and year;
 - d. Vehicle identification number;
 - e. Vehicle's current plate number;
 - f. Date the vehicle's current registration expires;
 - g. Plate number to appear on the personalized plate;
 - h. Meaning or message of the personalized plate; and
 - i. Other information required by the Division.
2. If an applicant is purchasing the personalized plate as a gift for the vehicle's owner or lessee, the applicant shall also provide the applicant's name and mailing address.

C. The Division shall reject the application if the requested plate number:

1. Refers to or connotes breasts, genitalia, pubic area, buttocks, or relates to sexual or eliminatory functions;
2. Refers to or connotes the substance, paraphernalia, sale, use, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant;
3. Expresses contempt for or ridicule or superiority of a class of persons;
4. Duplicates another registration number;
5. Has connotations that are profane or obscene; or
6. Uses linguistics, numbers, phonetics, translations from foreign languages or upside-down or reverse reading to achieve a reference or connotation prohibited in subsection (C)(1) through (C)(3) or (C)(5).

D. Rejection of application.

1. If the Division does not issue personalized plates to an applicant, the Division shall inform the applicant by mail.
2. An applicant may make a written appeal by letter for a review of the rejection, within 10 days after the date of the Division's notice, to the following address:
Motor Vehicle Division
Special Plates Unit, Mail Drop 801Z
PO Box 2100
Phoenix, Arizona 85001-2100.

E. Revocation of personalized plates; appeal.

1. If the Division determines that a personalized plate should not have been issued because it contains a plate number prohibited under subsection (C), the Division

shall require the plate holder to surrender the plates to the division within 30 days after the date of the Division's mailed notice, unless the plate holder requests an appeal under subsection (D)(2).

2. A person who has been directed to surrender a personalized plate may submit a written appeal by letter as prescribed under subsection (D)(2).
3. Refund of personalized plate fees on revocation.
 - a. The Division shall refund the amount of the personalized plate fee and the pro rated amount of the special annual renewal fee to the person holding the revoked personalized plate along with any credit or refund calculated by the Division.
 - b. A person whose plate is revoked may request that instead of a refund, the Division issue the person a different personalized plate. The person shall apply for the personalized plate as prescribed under subsection (B).
4. The Division shall cancel the vehicle plate of a vehicle if the person who holds a revoked personalized plate does not surrender the plate within 30 days after the date of the Division's notice or, if the person timely requests an appeal, within 30 days after the Division issues a final decision.

Historical Note

Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Transferred to R17-1-310 (Supp. 92-4). New Section recodified from R17-4-708 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

R17-4-311. Special Organization Plate List

As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by the state license plate commission and available for issue to qualified applicants:

1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

Historical Note

Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

R17-4-312. Off-highway Vehicle User Indicia

A. For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:

1. The off-highway vehicle user indicia application provided by the Division, and
2. The fee prescribed under subsection (C).

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- B. The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
 2. Primarily off-highway, occasionally on-highway; or
 3. Primarily on-highway, occasionally off-highway.
- C. The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is \$25.
- D. The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.
- E. The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.
2. The owner or lessee of the following shall pay a reduced fee of \$5:
 - a. A registered street legal golf cart, or
 - b. A registered street legal off-highway vehicle that is eligible for the reduced vehicle license tax pursuant to A.R.S. § 28-5801.
 3. The owner or lessee of a vehicle that is part of the International Registration Plan shall pay an apportioned fee based on the International Registration Plan.
 4. All other vehicle owners or lessees shall pay a fee, rounded up to the nearest quarter dollar, calculated as follows:

$$\text{public safety fee} = [(110\% \times D - E) - (\$5 \times R)] \div V$$
 where:

“D” is the Department of Public Safety’s highway patrol budget for a fiscal year,

“E” is the amount of unencumbered balance in the highway patrol fund that exceeds 10% of the prior fiscal year’s deposits of the public safety fee,

“R” is the vehicles defined in subsection (B)(2), and

“V” is the Department’s estimate of the number of full public safety fees to be collected within the fiscal year for which the calculation is being made.

Historical Note

Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4).
New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

R17-4-313. Public Safety Fee

- A. Pursuant to A.R.S. § 28-2007, at the time of the initial or renewal registration of a vehicle, the owner or lessee shall pay a public safety fee as determined in subsection (B).
1. An owner or lessee who registers a vehicle for more than one year shall be assessed a fee for each registration year at the applicable fee rate known at the time of registration.
 2. The fee will be assessed for the initial registration and upon each transfer of ownership of a permanent trailer.
 3. The fee will be assessed for each vehicle in a fleet.
 4. The fee will be assessed on a vehicle that is a part of the International Registration Plan.
 5. The fee will be assessed upon each transfer of any vehicle subject to registration by the new owner.
- B. The Department determines the annual amount for the public safety fee based upon the following:
1. A vehicle owned or leased by the following shall pay a fee of \$0.
 - a. An Arizona resident who is a member of the U.S. armed forces, including a National Guard or reserve unit, who is deployed in support of a worldwide contingency operation of the U.S. armed forces;
 - b. An educational, charitable, and religious association or institution not used or held for profit;
 - c. A government entity, which includes foreign government, a consul or any other official representative of a foreign government, the United States, a state or political subdivision of a state, or an Indian tribal government;
 - d. A nonresident military member;
 - e. A public health services officer;
 - f. A Supplemental Security Income recipient;
 - g. A survivor of a fallen first responder or a fallen military member;
 - h. A U.S. Department of Veterans Affairs grant recipient who qualifies for an exemption from the vehicle license tax pursuant to A.R.S. § 28-5802;
 - i. A veteran who is certified by the U.S. Department of Veterans Affairs to be 100% with a disability and drawing applicable compensation; or
 - j. A widow or widower who qualifies for an exemption of taxation of property pursuant to A.R.S. § 42-1111.
- C. If a vehicle is owned by more than one owner or lessee prescribed under subsections (B)(1)(d), (e), (f), (g), or (j), the fee of \$0 applies only to the qualified person and the fee as determined in subsection (B)(4) is applied proportionally to any additional owner or lessee.
- D. If an owner or lessee prescribed under subsections (B)(1)(f), (g), (h), (i), or (j) owns or leases more than one vehicle, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
- E. If an owner or lessee prescribed under subsection (B)(1)(a) owns or leases more than two vehicles, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
- F. The public safety fee shall be specified and available on the Department’s website at www.azdot.gov and detailed on the registration renewal notice for the vehicle.
- G. The fee is nonrefundable and non-transferable.

Historical Note

Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4). Amended by exempt rulemaking at 24 A.A.R. 3512, effective December 1, 2018 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 104, effective December 21, 2018 (Supp. 19-2).

R17-4-314. Transferred**Historical Note**

Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

R17-4-315. Transferred**Historical Note**

Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

R17-4-316. Transferred**Historical Note**

Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

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R17-4-317. Transferred**Historical Note**

Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

R17-4-318. Transferred**Historical Note**

Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

R17-4-319. Transferred**Historical Note**

Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

R17-4-320. Transferred**Historical Note**

Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

R17-4-321. Transferred**Historical Note**

Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

R17-4-322. Transferred**Historical Note**

Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

R17-4-323. Transferred**Historical Note**

Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

R17-4-324. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-325. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-326. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-327. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-328. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-329. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-330. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

R17-4-331. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

R17-4-332. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

R17-4-333. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

R17-4-334. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Transferred to R17-1-334 (Supp. 92-4).

R17-4-335. Transferred**Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Transferred to R17-1-335 (Supp. 92-4).

R17-4-336. Transferred**Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Transferred to R17-1-336 (Supp. 92-4).

R17-4-337. Transferred**Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403

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renumbered without change as Section R17-4-337 (Supp. 87-2). Transferred to R17-1-337 (Supp. 92-4).

R17-4-338. Transferred**Historical Note**

Transferred to R17-1-338 (Supp. 92-4).

R17-4-339. Transferred**Historical Note**

Transferred to R17-1-339 (Supp. 92-4).

R17-4-340. Transferred**Historical Note**

Transferred to R17-1-340 (Supp. 92-4).

R17-4-341. Transferred**Historical Note**

Transferred to R17-1-341 (Supp. 92-4).

R17-4-342. Transferred**Historical Note**

Transferred to R17-1-342 (Supp. 92-4).

R17-4-343. Transferred**Historical Note**

Transferred to R17-1-343 (Supp. 92-4).

R17-4-344. Transferred**Historical Note**

Transferred to R17-1-344 (Supp. 92-4).

R17-4-345. Transferred**Historical Note**

Transferred to R17-1-345 (Supp. 92-4).

R17-4-346. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-346 (Supp. 92-4).

R17-4-347. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-347 (Supp. 92-4).

R17-4-348. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-348 (Supp. 92-4).

R17-4-349. Transferred**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-349 (Supp. 92-4).

R17-4-350. Rental Vehicle Surcharge Reimbursement**A. Definitions.** In addition to the definitions prescribed under A.R.S. § 28-5810, the following terms apply to this Section, unless otherwise specified:

“Person” means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.

“Previous year” means the prior calendar year, January 1 through December 31.

“Rental revenue” means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related charges, including boxes, packing blankets, straps, and tow bars.

“Surcharge” means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related items, including boxes, packing blankets, straps, and tow bars.

“Vehicle License Tax” means the tax imposed by A.R.S. § 28-5801, less any tax credited under A.R.S. § 28-2356.

- B. Reports.** Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the Department and shall contain all of the following:
1. Address where business records are secured;
 2. Name, title, phone number, and signature of the person authorized to sign the form;
 3. Business name;
 4. Business type, including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership;
 5. Name, title, phone number, mailing address, and e-mail address of the contact person;
 6. Federal Employer Identification Number (FEIN);
 7. Mailing address (if different from principal business address);
 8. Principal business address;
 9. Rental vehicle revenue collected, by county;
 10. Total Arizona Vehicle License Tax paid on rental vehicles;
 11. Total rental vehicle revenue collected;
 12. Total surcharge collected;
 13. Total surcharge due to the Department; and
 14. Type of rental business, including passenger vehicle, semitrailer, trailer, truck, motorcycle, moped, and recreational vehicle.
- C. Records.** A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:
1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
 - a. The Vehicle Identification Number,
 - b. The Arizona vehicle license plate number,
 - c. A copy of the Arizona registration,
 - d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
 - e. The date on which the Vehicle License Tax was paid, and
 - f. The dates the rental vehicle was in and out of service.

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2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
- The rental contract for each rental vehicle,
 - The amount of surcharge collected,
 - Chart of accounts,
 - General ledger,
 - Financial statements,
 - Federal tax returns, and
 - Monthly trial balance.
3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
- All applicable rental contracts; and
 - The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.
- D. Audits.** The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at <http://www.gao.gov/yellowbook> or can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
- The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
 - The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

ARTICLE 4. DRIVER LICENSES**R17-4-401. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Financial responsibility (accident) suspension” means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

“Gore area” is defined under A.R.S. § 28-644.

“Proof the vehicle was sold” means a written statement to the Department from an owner that includes the following:

The seller’s name;

The VIN;

The sale date; and

The purchaser’s name and address.

“Restricted permit” means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person’s home and workplace,

During the person’s work-related activities, or

Between the person’s home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person’s home and workplace;

During the person’s work-related activities; or

Between the person’s home and school.

“State” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

“SR22” means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

“Thirty-six-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

“Twelve-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

“Twenty-four-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

“VIN” or “vehicle identification number” is defined under A.R.S. § 13-4701(4).

“Withdrawal action” means a Department action that invalidates a person’s Arizona driving privilege or a vehicle’s Arizona registration, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by

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final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension

- A.** An applicant for a restricted permit shall:
1. Have no withdrawal action other than the financial responsibility (accident) suspension;
 2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;
 3. Pay the \$10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and
 4. Pay the \$25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;
 5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and
 6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).
- B.** In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:
1. Apply for an original or renew an Arizona driver license by:
 - a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and
 - b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or
 2. Obtain a duplicate Arizona driver license by paying the \$12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).
- C.** At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

Historical Note

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees

- A.** An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.
- B.** The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is \$12 under A.R.S. §§ 28-3002(A) and 28-3165.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-404. Driver Point Assessment; Traffic Survival Schools

- A.** Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.

- B.** Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
 2. Suspend the driver's Arizona driver license or driving privilege.
- C.** Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
 - a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and
 - b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.
 2. The Department shall record that a driver completed traffic survival school if:
 - a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
 - b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.
- D.** Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
1. Specify the period within which the driver may submit a hearing request to the Department, and
 2. Specify the effective date of the suspension.
- E.** Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
1. Specify the length of the suspension as follows:
 - a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
 - b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
 - c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
 - d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
 2. Specify the period within which the driver may submit a hearing request to the Department; and
 3. Specify the effective date of the suspension.

Historical Note

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1,

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2015 (Supp. 15-2).

Table 1. Driver Point Valuation

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.	4
A.R.S. § 28-701, reasonable and prudent speed.	3
A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.	3
Any other traffic regulation that governs a vehicle moving under its own power.	2

Historical Note

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

R17-4-405. Emergency Expired

Historical Note

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

R17-4-406. Minor's Application for Permit or License

- A.** For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
 1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
 2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
 3. "Parent" means the natural or adoptive father or mother of a child.
- B.** Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.
- C.** Procedure when only one parent signs:
 1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.

2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
 3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.
- D.** Procedure when both parents are deceased:
 1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court judgment, affidavits of close relatives of the child, or school records.
 2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
 3. An employer signing the application shall certify the person employs the minor on the date of application.
 4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.
 - E.** Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

R17-4-407. Application for Travel-Compliant Driver License or Nonoperating Identification License; Fee

- A.** For the purposes of this Section:
 1. "Travel-compliant driver license" means a federally compliant driver license issued pursuant to A.R.S. § 28-3175.
 2. "Travel-compliant nonoperating identification license" means a federally compliant nonoperating identification license issued pursuant to A.R.S. § 28-3175.
- B.** An applicant shall apply to the Department, on a form provided by the Department, for a travel-compliant driver license or a travel-compliant nonoperating identification license.
- C.** An applicant must meet and comply with all lawful requirements for an Arizona driver license or nonoperating identification license.
- D.** An applicant shall meet and comply with all application and documentation requirements in the most current edition of 6 CFR 37, including satisfactory proof of identity, date of birth, social security number, principle residency, and evidence of lawful status in the United States. Documents and information must be verified by the Department. An applicant may obtain a

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listing of acceptable documentation from the Department's website at www.azdot.gov.

- E. An applicant shall pay a \$25 fee for any class of a travel-compliant driver license or travel-compliant nonoperating identification license.
- F. A travel-compliant driver license is valid for a period of eight years after issuance and is renewable for successive periods of eight years up to but not exceed the year of the licensee's 65th birthday, except for when:
 1. The applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.
 2. The applicant is 60 years of age or older and the travel-compliant driver license is valid for a period of five years after issuance and renewable for successive periods of five years.
- G. A travel-compliant nonoperating identification license is valid for a period of eight years after issuance and is renewable for successive periods of eight years, except for when the applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order

- A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).
- B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.
- C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp.

01-3).

R17-4-409. Application for Nonoperating Identification License; Fee

- A. This Section does not apply to applicants for a travel-compliant nonoperating identification license. Except as provided under R17-4-407, this Section applies to applicants for a nonoperating identification license.
- B. An applicant shall apply to the Department, on a form provided by the Department, for a nonoperating identification license, and shall comply with the requirements under A.R.S. § 28-3165.
- C. An applicant may obtain a listing of satisfactory proof of an applicant's name and date of birth from the Department's website at www.azdot.gov.
- D. Except as provided under A.R.S. § 28-3165, an applicant shall pay a \$12 fee for a nonoperating identification license.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

R17-4-410. Voter Registration Through the Motor Vehicle Division

- A. For purposes of this Section:
 1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
 2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.
- B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
 1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
 2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.
- C. Subsection (B) applies to the following license transactions:
 1. Initial licensee application;
 2. License renewal;
 3. Duplicate driver license; or
 4. Licensee personal information update.
- D. MVD shall transfer the voter registration forms and the data collected under this Section by:
 1. Mailing the completed hardcopy forms to the appropriate county recorder; and
 2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

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- E. MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee

- A. In addition to the requirements prescribed in A.R.S. § 28-3158, a person applying for a special ignition interlock restricted driver license shall:

1. If the person is suspended for a first offense of A.R.S. § 28-1321:
 - a. Complete at least 90 consecutive days of the period of the suspension, and
 - b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
 - a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
 - b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
 - c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
 - a. Comply with the restrictions in subsection (C), and
 - b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.

- B. The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).

- C. A person applying for a special ignition interlock restricted driver license shall pay the following fees:

- | | |
|----------------------|---------|
| 1. Age 50 or older | \$10.00 |
| 2. Age 45 – 49 | \$15.00 |
| 3. Age 40 – 44 | \$20.00 |
| 4. Age 39 or younger | \$25.00 |

- D. A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).

- E. Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:

1. Date installed;
2. Person's full name;

3. Person's date of birth;
4. Person's customer or driver license number;
5. Installer and manufacturer name;
6. Installer fax number;
7. Date report interpreted;
8. Report period;
9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
12. Any other information required by the Director.

- F. A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions

- A. Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:

1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.

- B. Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.

- C. Burden of proof and presumptions.

1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

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2. The person may rebut the presumption by a showing of clear and convincing evidence that the person whose special ignition interlock restricted driver license being extended, was not the person in control of the vehicle or attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
- D. Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.
- her commercial driving privileges are canceled, disqualified, suspended, or revoked.
- vii. Causing a fatality through the negligent operation of a commercial motor vehicle.
- C. Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.
- D. Permanent disqualification.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-413. Lifetime Disqualification Reinstatement

- A. Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
- "CDL" means Commercial Driver License.
- "Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
- "Permanently disqualified" means the individual will never be able to obtain a commercial driver license.
- B. Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
 2. The individual:
 - a. Is otherwise eligible for licensure.
 - b. Has continuously been eligible for a driver license during the most recent 10-year period.
 - c. Has not previously reinstated CDL privileges for another lifetime disqualification.
 - d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
 - i. Driving while under the influence of alcohol or a controlled substance.
 - ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
 - iii. Refusal to submit to a blood alcohol concentration test.
 - iv. Leaving the scene of an accident.
 - v. Using a vehicle in the commission of a felony.
 - vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing

- A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.
- B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
 2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
 - a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
 - b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license.

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tion permit for an applicant who currently possesses a valid Arizona commercial driver license.

3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.
- C. Required Action. In compliance with 49 CFR 384.210 and 384.231:
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
 2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
 3. The Department shall send written notification of the action to the person describing the action taken by the Department.
- D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
 2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
 3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
 4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
 5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
 - a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
 - b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
 6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

Historical Note

Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

- R17-4-415. Reserved**
R17-4-416. Reserved
R17-4-417. Reserved
R17-4-418. Reserved
R17-4-419. Reserved
R17-4-420. Recodified

Historical Note

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-421. Recodified**Historical Note**

Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-422. Recodified**Historical Note**

Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-423. Recodified**Historical Note**

Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-424. Recodified**Historical Note**

Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-425. Recodified**Historical Note**

Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-426. Recodified**Historical Note**

Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-427. Recodified**Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-428. Recodified**Historical Note**

New Section recodified from A.A.C. R17-3-403 at 7

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A.A.R. 1260, effective February 20, 2001 (Supp. 01-1).
Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-429. Reserved**R17-4-430. Reserved****R17-4-431. Reserved****R17-4-432. Reserved****R17-4-433. Reserved****R17-4-434. Reserved****R17-4-435. Recodified****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4) Emergency expired. Emergency amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.01. Recodified**Historical Note**

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective

January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.02. Recodified**Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.03. Recodified**Historical Note**

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.04. Recodified**Historical Note**

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.05. Recodified**Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.06. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-436. Recodified**Historical Note**

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13,

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2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-437. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.01. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.02. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.03. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

Appendix A. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.04. Emergency Expired**Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-438. Recodified**Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-439. Recodified**Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-440. Recodified**Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-441. Reserved**R17-4-442. Reserved****R17-4-443. Reserved****R17-4-444. Repealed****Historical Note**

Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emergency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

R17-4-445. Recodified**Historical Note**

Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-446. Recodified**Historical Note**

Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-447. Recodified**Historical Note**

Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-448. Recodified**Historical Note**

Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-449. Reserved**R17-4-450. Repealed****Historical Note**

New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-451. Repealed**Historical Note**

New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-452. Repealed**Historical Note**

New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

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repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-453. Repealed**Historical Note**

New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-454. Repealed**Historical Note**

New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-455. Repealed**Historical Note**

New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-456. Repealed**Historical Note**

New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-457. Repealed**Historical Note**

New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-458. Repealed**Historical Note**

New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-459. Repealed**Historical Note**

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-460. Repealed**Historical Note**

New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-461. Repealed**Historical Note**

New Section recodified from R17-4-422 at 7 A.A.R.

3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-462. Repealed**Historical Note**

New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-463. Repealed**Historical Note**

New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-464. Repealed**Historical Note**

New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-465. Repealed**Historical Note**

New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-466. Repealed**Historical Note**

New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-467. Repealed**Historical Note**

New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

ARTICLE 5. SAFETY**R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” or “licensee” means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

“Application” means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

“Aura” means a sensation experienced before the onset of a neurological disorder.

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“Commercial driver license physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

- Ability to read and understand official traffic control devices,
- Knowledge of safe driving practices and the traffic laws of this state, and
- Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Department to:

- Issue, deny, suspend, revoke, cancel, or restrict a driver license; or
- Require an examination or evaluation of an applicant or licensee.

“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

- A physician who is a surgeon or a psychiatrist;
- A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or
- A psychologist.

“Substance abuse” means:

- Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or
- Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

“Substance abuse counselor” is defined in A.R.S. § 28-3005.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

“Successful completion of an examination” means an applicant or licensee:

- Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or
- Achieves a score of at least 80% on any required tests.

Historical Note

Adopted effective December 14, 1995 (Supp. 95-4). Section recodified to R17-5-706 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

- A. Applicant’s or licensee’s responsibility. To comply with the Division’s screening process for safe operation of a motor vehicle, an applicant or licensee shall:
1. Provide the Division with all requested information about the applicant’s or licensee’s visual, physical, or psychological condition;
 2. Successfully complete all required examinations;
 3. Obtain all required evaluations;
 4. Ensure timely submission of evaluation reports to the Division; and
 5. Appear at all required interviews.
- B. Screening process for safe operation of a motor vehicle. This subsection and subsections (C) through subsection (E) state the screening process for safe operation of a motor vehicle.
1. An applicant shall complete the application, including the medical screening questions and certification.
 2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
 - a. The Division informs the applicant that the applicant’s responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
 - b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).
 3. An applicant for license renewal shall successfully complete an examination if the applicant’s responses to the medical screening questions indicate that since the applicant’s last driver license renewal:
 - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
 - b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
 4. As soon as an applicant’s medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical con-

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- dition not previously reported to the Division that affects the applicant's functional ability.
5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
 - a. Complete the medical screening questions and certification on the application, and
 - b. Continue with the screening process for safe operation of a motor vehicle.
- C.** Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.
1. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
 - a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
 - b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
 - c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
 - d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
 2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division's Medical Review Program, an evaluation report on a form provided by the Division.
 3. If the evaluation report on the applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.
 4. If the Division is unable to determine whether a disqualifying medical condition exists after an interview with the applicant or licensee, the Division shall require an additional evaluation, performed by an appropriate specialist and reported to the Division's Medical Review Program, on a form provided by the Division.
 5. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.
- D.** Licensing action. The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.
1. The Division shall deny a driver license if an applicant:
 - a. Fails to complete successfully an examination; or
 - b. Fails to:
 - i. Obtain an evaluation;
 - ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an evaluation is required; or
 - iii. Appear at an interview; or
 - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
 2. The Division shall summarily suspend a licensee's driver license under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (D)(1).
3. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the licensee that:
 - a. Unless the Division receives the licensee's timely hearing request under subsection (F), the revocation becomes effective:
 - i. Fifteen days after the date the licensee is personally served with the notice; or
 - ii. Twenty days after the date the notice is mailed to the licensee.
 - b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.
 4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee's driver license if:
 - a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation, or
 - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.
- E.** Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record.
1. Automatic transmission,
 2. Hand dimmer switch,
 3. Left-foot gas pedal,
 4. Parking-brake extension,
 5. Power steering,
 6. Power brakes,
 7. Six-way power seat,
 8. Right-side directional signal,
 9. A device that enables an operator to spin the steering wheel,
 10. A device that enables full foot control,
 11. Dual outside mirrors,
 12. Chest restraints,
 13. Shoulder restraints,
 14. A device that extends pedals,
 15. A device that enables full hand control, and
 16. Adapted seat.
- F.** Hearings. This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.
1. If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division's Executive Hearing Office. A hearing request is timely if received by the Division:
 - a. Within 15 days after the date the notice is delivered to the applicant or licensee, or
 - b. Within 20 days after the date the notice is mailed to the applicant or licensee.
 2. A.A.C. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.
 3. The administrative law judge shall sustain, modify, or void the Division's licensing action.
- G.** The Division shall not release information required to be submitted to the Division under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

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Historical Note

New Section recodified from R17-4-520 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1861, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

Exhibit A. Repealed**Historical Note**

New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

R17-4-503. Vision standards**A. Definitions.**

1. "Binocular vision" means the ability to see in both eyes.
2. "Bioptic Telescopic Lens System" means a bioptic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
5. "Diplopia" means double vision.
6. "Field of vision" means the area in which objects may be seen when the eye is fixed.
7. "Impaired night vision" means below normal ability to see in reduced light.
8. "Monocular vision" means the ability to see in one eye only.
9. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
10. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
11. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
12. "Visual acuity" means the clarity of a person's vision.

B. Standard.

1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
2. Field of vision. Field of vision shall be 70 degrees temporally, and 35 degrees nasally, in at least one eye.

C. Restrictions.

1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
2. The Division shall restrict a person with diagnosed impaired night vision to daytime driving only.
3. The Division shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.
4. The Division shall not license a person with monocular vision and visual acuity of 20/50 or greater.
5. The Division shall not license a person with binocular vision and visual acuity of 20/70 or greater.

D. Screening process.

1. The Division, a physician, or an optometrist may administer visual acuity and field of vision screening through

the use of visual screening equipment to determine if a person's visual acuity and field of vision meets minimum standards.

2. A person may use a bioptic telescopic lens system during vision screening.
 - a. Beginning on the date of a initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the Division an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
 - b. The Division shall not license a person using a bioptic telescopic lens system unless the person submits to the Division a written statement from a physician or an optometrist that the individual meets the visual acuity standard as prescribed in subsection (B).
 - c. The Division shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.
3. The Division shall conduct visual acuity screening through the use of visual screening equipment or the Snellen Chart to determine whether a person's corrected vision is 20/40 in at least one eye.

E. Reporting requirements.

1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Division.
2. If the Division does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Division shall require the person to submit the results of the person's visual acuity and vision field screening by a physician or an optometrist.
3. The Division shall require a person diagnosed with any of the following conditions to file the results of the person's visual acuity and visual field screening completed by the physician or optometrist:
 - a. Any progressive eye disease,
 - b. Diplopia, or
 - c. Impaired night vision.

F. Results of visual acuity and visual field screening shall contain the following.

1. An examination date no more than three months before the submission date to the Division;
2. Visual acuity and field of vision;
3. If applicable, specification that the person is monocular;
4. If applicable, diagnosis of any condition described in subsection (E)(3);
5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Division;
6. Suggested restrictions on driving, in addition to those required by the Division; and
7. Any recommendations on the person's ability to safely operate a motor vehicle.

G. The Division shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.**Historical Note**

New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1).

R17-4-504. Medical Alert Conditions

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- A.** Definition. In this Section, “license” means any class driver license, commercial driver license, non-operating identification license, or instruction permit.
- B.** Medical alert condition displayed on license. The Division will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.
- C.** Retention of medical alert condition authorization. The Division will not maintain the medical alert code on the Division computer record unless written authorization is submitted.
- D.** A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Division to maintain the medical code in the Division computer.
3. EEG findings, if any;
4. Description, cause, frequency, duration, and date of most recent seizure;
5. Current medications, including dosage, side effects, and serum level; and
6. A physician’s medical opinion as to whether the neurological disorder will affect the person’s ability to operate a motor vehicle safely.
- D.** Physician’s medical opinion. A neurological disorder does not affect a person’s ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:

1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

Historical Note

Adopted effective September 25, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1).

R17-4-505. Repealed**Historical Note**

Adopted effective May 2, 1990 (Supp. 90-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-506. Neurological Standards

- A.** Driver license application.
1. A person who has a seizure in the three months before applying for a driver license shall undergo a medical examination as provided in R17-4-502.
 2. After the medical examination under R17-4-502, the person or the person’s physician shall submit the medical examination report to the Division.
 3. The Division shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person’s ability to operate a motor vehicle safely.
- B.** Driver license revocation.
1. A person with a driver license or non-resident driving privileges who experiences a seizure shall cease driving and:
 - a. Undergo a medical examination as provided in R17-4-502;
 - b. Submit the medical examination report to the Division; and
 - c. Undergo a follow-up medical examination within one year after the seizure or within a shorter time, as recommended by a physician.
 2. After each medical examination, the person or the person’s physician shall submit the applicable medical examination report to the Division.
 3. The Division shall revoke a person’s driver license or nonresident driver privileges if any medical examination report shows the person has a neurological disorder that affects the person’s ability to operate a motor vehicle safely.
- C.** Medical examination report. A medical examination report under this Section shall include the following information:
1. Age at onset of seizures, diagnosis, and history;
 2. Aftereffects of seizures;

Historical Note

Former Rule, General Order 107; Amended effective April 28, 1981 (Supp. 81-2). Amended effective July 1, 1985 (Supp. 85-4). Former Section R17-4-46 renumbered without change as Section R17-4-506 (Supp. 87-2). Emergency amendment adopted effective December 31, 1998, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 98-4). Emergency amendment expired June 29, 1999 pursuant to A.R.S. § 41-1026(C) (Supp. 99-3). Emergency amendment adopted effective October 1, 1999, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1172, effective March 9, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 3221, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-4-404 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-522 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5440, effective November 14, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4).

R17-4-507. Repealed**Historical Note**

Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Section repealed by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-508. Commercial Driver License Physical Qualifications

- A.** Requirements.
1. A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner’s certificate, available online from the Federal Motor Carrier Safety Administration at <https://www.fmcsa.dot.gov>, completed as prescribed under 49 CFR 391.43 to the Department.

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- a. Except as provided in subsection (A)(1)(c), the medical examiner’s certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A list of certified medical examiners is available on the National Registry website at <https://nationalregistry.fmcsa.dot.gov>.
 - b. The medical examiner’s certificate must be completed upon the applicant’s initial application and upon or prior to expiration of the applicant’s current medical examiner’s certificate.
 - c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).
2. As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photographic copy of the licensee’s current medical examiner’s certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a commercial driver license shall notify the Department of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications as soon as the licensee’s medical condition allows.
- B. Commercial driver license suspension and revocation notification procedure.** To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner’s certificate’s due date or actual submission date to the licensee’s address of record that:
- 1. Suspends the licensee’s commercial driver license beginning on the notice’s date; and
 - 2. Revokes the licensee’s commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).
- C. Noncompliance actions.**
- 1. Initial application denial. If an applicant’s initial medical examiner’s certificate required under subsection (A)(1) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant’s address of record.
 - 2. Medical examiner’s certificate renewal suspension and revocation. If a renewing commercial driver licensee submits:
 - a. No medical examiner’s certificate required under subsection (A)(1) or a form indicating noncompliance with commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
 - b. An incomplete medical examiner’s certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department’s letter. The Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.

- D.** A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license original-application written, vision, and skills testing and by submitting the medical examiner’s certificate prescribed under subsection (A)(1).
- E.** Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

Adopted effective October 31, 1975 (Supp. 75-1). Former Section R17-4-57 renumbered without change as Section R17-4-508 (Supp. 87-2). Emergency amendments adopted effective July 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments permanently adopted effective October 27, 1993 (Supp. 93-4). Section recodified to R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-802 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-509. Repealed

Historical Note

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

R17-4-510. Motorcycle noise level limits

- A.** No person shall operate any motorcycle on the streets or highways of the state of Arizona at any time or under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following noise limits. For the purpose of this Section, “dBA” shall mean “A” weighted decibel, a sound level measurement unit.

Model year of motorcycle	Speed limit of 35 m.p.h. or less	Speed limit of more than 35 m.p.h. and less than or equal to 45 m.p.h.	Speed limit of more than 45 m.p.h.
Before 1972	84 dBA	88 dBA	88 dBA
1972-1980	79 dBA	82 dBA	86 dBA
After 1980	76 dBA	80 dBA	83 dBA

- B.** The noise limits established by this Section shall be based on measurements taken at a distance of 50 feet from the center of the lane of travel within the specified speed limit. Noise measurements can be made at distances other than 50 feet from the center of the lane of travel. In such cases, the measurement shall be corrected to what it would be at the standard distance of 50 feet, for comparison with the standard.

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- C. For speed zones of 35 miles per hour or less, notwithstanding the provisions stated above, measurement shall not be made within 200 feet of any intersection controlled by an official traffic device or within 20 feet of the beginning or end of any grade in excess of plus or minus 1%. Measurements shall be made when it is reasonable to assume that the vehicle flow is at a constant rate of speed and measurement shall not be made under congested traffic conditions which require notice able acceleration or deceleration.

Historical Note

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-511. Repealed**Historical Note**

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-512. Child-restraint Systems in Motor Vehicles

The Motor Vehicle Division incorporates 49 CFR 571.213, Federal Motor Vehicle Safety Standard number 213 of the October 1, 2003, edition and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001, and is on file with the Division.

Historical Note

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1).

R17-4-513. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-514. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-515. Reserved**R17-4-516. Reserved****R17-4-517. Reserved****R17-4-518. Reserved****R17-4-519. Reserved****R17-4-520. Recodified****Historical Note**

Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-521. Recodified**Historical Note**

Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-522. Recodified**Historical Note**

Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

ARTICLE 6. EXPIRED**R17-4-601. Reserved****R17-4-602. Reserved****R17-4-603. Reserved****R17-4-604. Reserved****R17-4-605. Reserved****R17-4-606. Repealed****Historical Note**

Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-607. Repealed**Historical Note**

Adopted effective August 24, 1982 (Supp. 82-4). Former Section R17-4-501 renumbered without change as Section R17-4-607 (Supp. 87-2). Emergency amendments adopted and filed August 24, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments repealed, new emergency amendments adopted effective October 1, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-repealed, new emergency amendments readopted effective February 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency

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amendments re-adopted with changes effective November 14, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired. Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-608. Expired**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-504 renumbered without change as Section R17-4-608 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-609. Expired**Historical Note**

Adopted effective March 7, 1983, to apply to chassis and bodies placed in production after May 1, 1983 (Supp. 83-2). Former Section R17-4-502 renumbered without change as Section R17-4-609 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-610. Expired**Historical Note**

Adopted effective February 11, 1983 (Supp. 83-1). Former Section R17-4-503 renumbered without change as Section R17-4-610 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-611. Expired**Historical Note**

Adopted effective August 24, 1983 (Supp. 83-4). Former Section R17-4-506 renumbered without change as Section R17-4-611 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-612. Expired**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-505 renumbered without change as Section R17-4-612 (Supp. 87-2). R17-4-612 amended by summary action; Appendices A and B repealed by summary action with an interim effective date March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT**R17-4-701. Definitions**

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

“Applicant” means an individual who applies to obtain an original or renewal HME.

“CDL” means commercial driver license.

“Department” has the same meaning as defined under A.R.S. § 28-101.

“HME” means Hazardous Materials Endorsement.

“Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

“Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.

“TSA” means the U.S. Transportation Security Administration.

Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

Appendix A. Recodified**Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2016, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160935534.

Historical Note

Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-703. Expired**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2518, effective May 25, 2001 (Supp. 01-2). Section recodified to R17-1-204 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-704. Requirements for an HME

To receive an HME an applicant shall:

1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,

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3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

Historical Note

Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-705. Required Testing

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

Historical Note

Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-706. Fees

All applicants and transfer applicants shall pay all applicable fees as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

Historical Note

Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-707. 60-Day Notice to Apply

- A. The Department shall notify an existing HME holder that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
- B. Upon expiration of the Department's 60 Day Notice to Apply, the Department shall cancel the Arizona driver license privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

Historical Note

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by

final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-708. Security Threat Assessment

- A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
 1. Cancellation,
 2. Suspension for a period of one year or more,
 3. Expiration for a period of one year or more, and
 4. Revocation for a period of one year or more.

Historical Note

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
 - a. The Department will deny the request for an HME; and
 - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
 - a. The Department shall immediately cancel the HME.
 - b. The Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
 - c. The applicant shall visit a CDL office for removal of the HME.
 - d. If the applicant fails to comply with the Department's Notice of Action, the Department shall cancel the applicant's Arizona driver license privilege.
 - e. Upon removal of an HME by the Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

Historical Note

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-709.01. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-602 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.02. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-603 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.03. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-604 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.04. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-605 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.05. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-606 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.06. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-607 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Recodified**Historical Note**

Appendix A adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix A renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix A expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix A adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix B. Recodified**Historical Note**

Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appen-

dix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix C. Recodified**Historical Note**

Appendix C adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.07. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.08. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.09. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit A. Recodified**Historical Note**

New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading "Form A" changed to "Exhibit A" to conform with R1-1-412 (Supp. 00-3). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit B. Recodified**Historical Note**

New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.10. Recodified**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20,

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2001 (Supp. 01-3).

R17-4-710. Requests for Administrative Hearing

- A.** In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.
- B.** An applicant whose Arizona driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-711. Expired**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-712. Transfer Applicant

- A.** Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.
- B.** Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:
1. Verify the TSA approval of a Determination of No Security Threat;
 2. Issue an Arizona CDL with an HME; and
 3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new Security Threat Assessment and testing requirements under R17-4-705.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

Table A. Recodified**Historical Note**

Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).

ARTICLE 8. MOTOR VEHICLE RECORDS**R17-4-801. Definitions**

“Batch” means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.

“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the

original to be used for purposes prescribed under A.R.S. § 28-442.

“Commercial driver license record” has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Department to each person with a record on the Department’s database, which includes the driver license number assigned to a person for a driver license, identification card, or instruction permit.

“Driver record” means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

“Interactive” means an electronic query-command method individually initiated by a person that produces immediate results.

“Reasonable costs” has the same meaning as defined in A.R.S. § 12-351.

“Requester” means the person, as defined in A.R.S. § 41-1001, requesting a motor vehicle record.

“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

“Support document” means any customer record maintained by the Department in an electronic, hardcopy, or microfilm file storage format.

“Title and registration record” means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-802. Motor Vehicle Record Request

- A.** Identification requirements. The requester of a motor vehicle record shall present valid identification as indicated on the motor vehicle record request form or at the request of the Department at the time a motor vehicle record request is made.
- B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy charge under R17-4-803, unless exempt under A.R.S. § 28-446.
- C.** Motor vehicle record types. Under this Article, the Department may release any of the following motor vehicle record types:
1. Title and Registration record, uncertified;
 2. Title and Registration record, certified;
 3. Driver 39-month record, uncertified;
 4. Driver five-year record, certified;
 5. Driver extended history record, certified;
 6. Special MVR, uncertified;
 7. Commercial driver license record, uncertified;
 8. Support documents, uncertified; and
 9. Support documents, certified.
- D.** Search Criteria. A requester who has a permissible use under A.R.S. § 28-455, except as indicated under subsection (E) when using the permissible use under A.R.S. § 28-455(C)(11),

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shall provide at least one of the items of information listed in this subsection when requesting a motor vehicle record. The requester may need to provide additional information as needed in order to locate the record.

1. For a title and registration motor vehicle record:
 - a. Vehicle identification number,
 - b. License plate number, or
 - c. Vehicle owner’s full name.
 2. For a driver motor vehicle record:
 - a. The full name of the person whose record is requested, or
 - b. Customer number.
- E.** Consent to release motor vehicle record. A requester who uses the permissible use under A.R.S. § 28-455(C)(13) shall present a properly signed Consent To Release Motor Vehicle Record - One-Time form from the person whose motor vehicle record is requested . A requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall present a properly signed Consent To Release Motor Vehicle Record - General form from the person whose motor vehicle record is requested if that person has not previously submitted this form to the Department. In addition, a requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall provide the items of information listed in this subsection. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Authorized Third Party Provider offices and online at <https://www.azdot.gov>.
1. For a title and registration motor vehicle record:
 - a. Two items under subsection (D)(1), and
 - b. The vehicle owner’s residence address.
 2. For a driver motor vehicle record:
 - a. The name and customer number of the person whose record is requested, and
 - b. The person’s date of birth, or
 - c. The person’s address, or
 - d. The person’s Arizona driver license expiration date.

- F.** General consent to release information. The Department shall record a person’s general consent to release information on the person’s driver and title and registration records.
1. The general consent to release information is valid until revoked, in writing, by the person.
 2. A person may submit the written notice of revocation:
 - a. In person, at a Customer Service office or Authorized Third Party Provider; or
 - b. By mail, to Motor Vehicle Division, P.O. Box 2100, Mail Drop 500M, Phoenix, AZ 85001-2100.
- G.** Insurance companies requesting a driver record. The Department shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person’s driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 19, 1994 (Supp. 94-2). Section recodified to R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-803. Record Copy Charges

In accordance with A.R.S. §§ 12-351 and 28-446, for each separate request, the Department shall assess a charge as provided in Table 1. Certified and Uncertified Motor Vehicle Record Fees. Therefore, a fee is collected if the request results in a motor vehicle record or “No Record Found.”

Historical Note

New Section made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

Table 1. Certified and Uncertified Motor Vehicle Record Fees

Description	Method of Delivery	Amount
A certified record:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	\$5
	Electronic batch.	\$3
A certified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	\$5
An uncertified record:	Over-the-counter immediate service; Mail-in request; or Electronic interactive.	\$3
	Electronic batch; or Over-the-counter drop-off service.	\$2
An uncertified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	\$3
An uncertified Special MVR:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	\$1.50
Civil subpoena support documentation:	Served by a process server.	Reasonable costs
Any photocopied item: (Does not include... etc.)	Over-the-counter immediate or drop-off service; or Mail-in request.	25¢ per page

Historical Note

Table 1 made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-804. Repealed

effective November 21, 1995 (Supp. 95-4).

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Repealed

R17-4-805. Recodified

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Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-806. Recodified**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-703 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-807. Recodified**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-704 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-808. Recodified**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-705 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

ARTICLE 9. RESERVED**R17-4-901. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-59 renumbered without change as Section R17-4-901 (Supp. 87-2). Former Section R17-4-901 repealed, new Section R17-4-901 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-501 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-902. Recodified**Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Amended subsections (A), (E) and (F) effective April 4, 1984 (Supp. 84-2). Former Section R17-4-60 renumbered without change as Section R17-4-902 (Supp. 87-2). Former Section R17-4-902 repealed, new Section R17-4-902 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-502 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-903. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-503 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-904. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-504 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-905. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-505 at 7 A.A.R. 3477, effective July

20, 2001 (Supp. 01-3).

R17-4-906. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-506 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-907. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-507 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-908. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-508 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-909. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-509 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-910. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-513 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-911. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-511 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-912. Recodified**Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-512 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-913. Recodified**Historical Note**

Adopted as an emergency effective December 30, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Readopted as an emergency with a correction in subsection (A), paragraph (A) effective March 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Adopted without change as a permanent rule effective June 15, 1988 (Supp. 88-2). Amended effective July 13, 1989 (Supp. 89-3). Section recodified to R17-1-510 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-914. Repealed**Historical Note**

Former General Order 68. Former Section R17-4-26 renumbered without change as Section R17-4-914 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F20-0102)

Title 6, Chapter 14, Food Stamps Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 7, 2020

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

FROM: Council Staff

DATE: January 3, 2020

SUBJECT: Arizona Department of Economic Security
Title 6, Chapter 14 - Food Stamps Program

This Five-Year-Review Report from the Department of Economic Security relates to rules in Title 6, Chapter 14 regarding the food stamps program.

In the previous Five-Year-Review of these rules, the Department proposed to amend several of its rules and conducted an emergency rulemaking. The emergency rules became effective on July 6, 2018, and were renewed to extend through July 1, 2019. The Department filed a new Notice of Proposed Rulemaking on June 10, 2019, and is currently proceeding with regular rulemaking process to address their three priority topics, Claims Against Households, Hearing and Appeals, and Intentional Program Violations.

Proposed Action

The Department indicates it submitted a Notice of Proposed Rulemaking in November 2019. The Department also plans to complete an additional rulemaking that would amend the definitions in R6-14-111 to align with the new rules. The Department indicates it will complete the additional rulemaking by March 2022.

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

Yes. The Department cites to both general and specific authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

This five-year review focuses on R6-14-111 and its lack of clarity in the terms and definitions as currently written. The Department plans to revise several of the existing definitions while adding new definitions in order to increase the effectiveness of this rule. There was no economic impact statement completed at the time this rule was adopted.

From July 1, 2018 to June 30, 2019, the Department of Economic Security issued \$1,164,987,124 in Nutrition Assistance Benefits. The monthly average caseload was 383,491 cases comprised of 824,197 eligible Nutrition Assistance recipients. Each case received a monthly average of \$253.15 in Nutrition Assistance benefits.

The stakeholders include the Department, recipients of the Nutrition Assistance Program, and the public.

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

The Department believes that the rules have minimal impact on regulated parties, as the rules only concern clarifying terminology used in the Nutrition Assistance Program. The Department believes that the rules impose the least burden and cost to regulated parties, including compliance costs and paperwork, necessary to achieve the regulatory objectives

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department indicates they did not receive any written criticisms.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons mentioned in the report the Department indicates R6-14-111 is not clear, concise, understandable, and consistent with other rules and statutes.

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

Yes. The Department indicates the rule is enforced as written.

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

No. The Department indicates the rule is not more stringent than the corresponding federal law; 7 U.S.C. 2012 and 7 CFR 271.1.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require a permit or license.

9. Conclusion

As mentioned above, the Department indicated it planned to submit a Notice of Final Rulemaking to the Council in November 2019. The NFR was submitted to the Council on November 13, 2019, and was heard on the January 7, 2020 Study Session. The Department also indicates it plans to complete additional rulemaking to amend the definitions in R6-14-111 to align with the new rules. The Department indicates it will submit a Notice of Final Rulemaking to the Council by March 2022.

While Council staff recommends approval of this report, staff encourages the Council to further inquire as to the reasons for this timeline.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

SEP 27 2019

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Economic Security, 6AAC14, Five-Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of the Department of Economic Security (Department) for 6AAC14, which is due on October 31, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Rod Huenemann, Rules Analyst, Policy and Planning Administration, at (602) 542-6159.

Sincerely,

Michael Traylor
Director

Enclosure

**Department of Economic Security
Title 6, Chapter 14 – Food Stamps Program
Five-Year Review Report**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-134(1), and 46-134(10)

Specific Statutory Authority: A.R.S. §§ 41-1954(A)(1)(c), 46-136(B) and (C); 7 U.S.C. § 2013

2. The objective of each rule:

Rule	Objective
R6-14-111	The objective of R6-14-111 is to define terms used in the Food Stamp Program, now the Nutrition Assistance Program. The Program uses terms that lack clarity if undefined.

3. Are the rules effective in achieving their objectives?

Yes

No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R6-14-111	This rule is partially effective in meeting its objective. It contains some definitions that are currently applicable to the Department's administration of the federal Supplemental Nutrition Assistance Program. The Department plans to revise several of the existing definitions as specified in item 6 of this report and add some new definitions to increase the effectiveness of this rule.

4. Are the rules consistent with other rules and statutes?

Yes

No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R6-14-111	This rule is inconsistent with the federal regulations governing the federal Supplemental Nutrition Assistance Program because it contains some outdated definitions, such as: 3. Alien lawfully admitted to the United States, 5. Allotment,

	8. Appeal, 10. Assets, 11. A.T.P., 16. Citizen, 18. Color of Law, 19. Coupon, 32. Identification card, 37. Non-eligible food, 40. Project area, 42. Restoration of lost benefits, 43. Retroactive benefits, 44. Roomer, and 45. Spouse
--	--

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R6-14-111	The Department enforces the rule to the extent that it does not conflict with federal regulations.

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R6-14-111	In addition to definitions that are inconsistent with federal regulations, as identified in item 4, the rule is not clear, concise, or understandable because it contains some outdated definitions and is not written in the proper format.

The following definitions are not clear, concise, or understandable and the Department plans on clarifying each definition:

1. Adjusted net income,
2. Adverse action,
5. Allotment,
6. Annualization of income,
7. Anticipated income,
8. Appeal,
9. Applicant,
12. Authorized representative,
13. Basis of issuance or benefit level,
14. Boarding house,
17. Collateral contact,
21. Department,
22. Drug and/or alcoholic treatment and rehabilitation center,
24. Eligible food,
26. Equity value,
27. F.N.S.,
28. Fraud,
29. Hearing,
33. In-kind,
34. Institution of higher education,
35. Liquid resources,
38. Overissuance,
39. Parental control,
41. Recertification,
42. Restoration of lost benefits,
46. Student,
47. United States citizen, and
49. Vendor payments.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
R6-14-111	The Department has not received any criticisms of R6-14-111 in the last five years.	N/A

8. **Economic, small business, and consumer impact comparison:**

R6-14-111 has minimal impact to small business and consumers, because it only explains terminology used in the Nutrition Assistance program. There was no economic impact statement completed at the time this rule was adopted. The following information is provided relative to economic activity associated with the Nutrition Assistance program that will be addressed through anticipated rulemaking:

For the 12-month period of July 1, 2018, through June 30, 2019, the Department of Economic Security issued \$ 1,164,987,124 in Nutrition Assistance benefits. The monthly average benefit paid was \$ 97,082,260. The monthly average caseload was 383,491 cases comprised of 824,197 eligible Nutrition Assistance recipients. Each case received a monthly average of \$253.15 in Nutrition Assistance benefits.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the previous Five-Year Review Report, the Department stated that it anticipated filing a Notice of Proposed Rulemaking within six months of receiving Governor's Office approval or the expiration of the regulatory moratorium.

The Department requested an exception from the Governors' Office to conduct rulemaking to revise 6 A.A.C. 14 that was approved on May 6, 2017. The Department conducted emergency rulemaking to address the three priority topics of Claims Against Households, Hearings and Appeals, and Intentional Program Violations. The emergency rules were effective on filing by the Office of Attorney General on July 6, 2018 and were renewed to extend through July 1, 2019.

The Department initiated regular rulemaking to address the three priority topics and filed a Notice of Proposed Rulemaking on September 26, 2018. As a result of the substance and volume of public comment received on the proposed rules, the Department terminated the rulemaking in February 2019 in order to start a new regular rulemaking. The Department filed a new Notice of Proposed Rulemaking on June 10, 2019. The Department is currently proceeding with the regular rulemaking process for these three topics.

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

Through analysis by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules have minimal impact on regulated parties, because the rules only explain terminology used in the Nutrition Assistance Program. The Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

Amendments discussed in this report seek to address three priority topics that impact the regulated community and to make the rules more comprehensive, as well as more clear, concise, and understandable to the public. Program subject matter experts indicate that amendments to the rules, as proposed in this report, will inform the public of program requirements and opportunities with the least cost and burden on the public.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

7 U.S.C. 2012 and 7 CFR 271.1 are corresponding federal statute and regulation. The Department has determined that R6-14-111 is not more stringent than the corresponding federal statute and regulation.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because none of the rules were adopted after July 29, 2010. Additionally, the rules do not relate to licensing, but to the provision of nutrition assistance.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department proposes to file a Notice of Final Rulemaking with Council in November 2019 to address the three priority topics discussed in Item 10. This rulemaking will include definitions as needed to clarify terms associated with these topics. The Department further proposes to complete an additional rulemaking to address other topics that would incorporate options chosen by the state and waivers granted by the federal government relative to the administration of the Food Stamp Program. The additional rulemaking will include appropriate updates to the definitions in R6-14-111 to align with the new rules. The Department will prioritize revising Cash Assistance Program rules found in 6AAC12 to inform the additional Food Stamps Program rulemaking. The program operations addressed in the Food Stamps Program rules will largely mirror the program operations addressed in the Cash Assistance Program rules. The Department anticipates submitting a Notice of Final Rulemaking for the additional Food Stamps Program rules to Council by March 2022.

Arizona Administrative CODE

6 A.A.C. 14 Supp. 18-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2018 through December 31, 2018

Title 6

ARD Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 6. ECONOMIC SECURITY

CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY - FOOD STAMPS PROGRAM

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Questions about these rules? Contact:

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Phoenix, AZ 85005
or
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1789 W. Jefferson St., Mail Drop 1292
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The release of this Chapter in Supp. 18-4 replaces Supp. 18-3, 16 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
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TITLE 6. ECONOMIC SECURITY

CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY - FOOD STAMPS PROGRAM

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Article 1, consisting of Sections R6-14-101 through R6-14-111 recodified from A.A.C. R6-3-1901 through R6-3-1911 effective February 13, 1996 (Supp. 96-1).

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Article 2, consisting of Sections R6-14-201 through R6-14-218, expired effective February 28, 2005 (Supp. 05-1).

Article 2, consisting of Sections R6-14-201 through R6-14-218, recodified effective February 13, 1996 (Supp. 96-1).

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New Article 3, consisting of Sections R6-14-301 through R6-14-308, made by emergency rulemaking effective July 6, 2018 for 180 days (Supp. 18-3).

Article 3, consisting of Sections R6-14-301 through R6-14-327, expired effective February 28, 2005 (Supp. 05-1).

Article 3, consisting of Sections R6-14-301 through R6-14-320 and R6-14-322 through R6-14-327 recodified from A.A.C. R6-3-

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New Article 4, consisting of Sections R6-14-401 through R6-14-417, made by emergency rulemaking effective July 6, 2018 for 180 days (Supp. 18-3).

Article 4, consisting of Sections R6-14-401 and R6-14-402, expired effective February 28, 2005 (Supp. 05-1).

Article 4, consisting of Sections R6-14-401 and R6-14-402, recodified from A.A.C. R6-3-2201 and R6-3-2203 effective Febru-

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2019 for 180 days (Supp. 18-4).

New Article 5, consisting of Sections R6-14-501 through R6-14-507, made by emergency rulemaking effective July 6, 2018 for 180 days (Supp. 18-3).

Article 5, consisting of Sections R6-14-501 through R6-14-507, expired effective February 28, 2005 (Supp. 05-1).

Article 5, consisting of Sections R6-14-501 through R6-14-507, recodified from A.A.C. R6-3-2301 through R6-3-2307 effective February 13, 1996 (Supp. 96-1).

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Article 6, consisting of Sections R6-14-601 through R6-14-610, expired effective February 28, 2005 (Supp. 05-1).

Article 6, consisting of Sections R6-14-601, R6-14-602, R6-14-604 through R6-14-608, and R6-14-610, recodified from A.A.C. R6-3-2401, R6-3-2402, R6-3-2404 through R6-3-2408, and R6-3-2410 effective February 13, 1996 (Supp. 96-1).

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CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY - FOOD STAMPS PROGRAM

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Section R6-14-110 recodified from A.A.C. R6-3-1910 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-101. Expired**Historical Note**

Section R6-14-101 recodified from A.A.C. R6-3-1901 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-102. Expired**Historical Note**

Section R6-14-102 recodified from A.A.C. R6-3-1902 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-103. Expired**Historical Note**

Section R6-14-103 recodified from A.A.C. R6-3-1903 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-104. Expired**Historical Note**

Section R6-14-104 recodified from A.A.C. R6-3-1904 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-105. Expired**Historical Note**

Section R6-14-105 recodified from A.A.C. R6-3-1905 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-106. Expired**Historical Note**

Section R6-14-106 recodified from A.A.C. R6-3-1906 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-107. Expired**Historical Note**

Section R6-14-107 recodified from A.A.C. R6-3-1907 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-108. Expired**Historical Note**

Section R6-14-108 recodified from A.A.C. R6-3-1908 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-109. Expired**Historical Note**

Section R6-14-109 recodified from A.A.C. R6-3-1909 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-111. Definitions

For purposes of this Section, the following terms are defined as follows:

1. "Adjusted net income". Income remaining after all deductions from gross income.
2. "Adverse action". The reduction or termination of program benefits within the certification period.
3. "Alien lawfully admitted to the United States". An alien legally admitted to the United States by the U.S. Immigration and Naturalization Service. An alien legally admitted to the United States may or may not be legally admitted for permanent residence or residing under color of law.
4. "Alien lawfully admitted to the United States for permanent residence". An alien permitted to reside continuously in the United States, as specified by appropriate documentation which the alien must have in the alien's possession at all times.
5. "Allotment". The total value of coupons a household is authorized to receive during each month or any specified time period.
6. "Annualization of income". The division of yearly gross income by 12 to arrive at the monthly average.
7. "Anticipated income". Income which is not yet available to meet needs but which is expected to become available.
8. "Appeal". An individual's written statement requesting a hearing to contest action to be taken or previously taken by the Department.
9. "Applicant". A person who applies for program benefits for the that person and/or others.
10. "Assets". All items owned by an individual which have a monetary value.
11. "A.T.P.". Authorization to Participate in the Food Stamp Program.
12. "Authorized representative". A person authorized by an individual to act in the individual's behalf.
13. "Basis of issuance or benefit level". The amount of coupons for which the household is eligible, based on household size and adjusted net income.
14. "Boarding house". A commercial enterprise which offers meals and lodging for compensation.
15. "Certification". Approval of the household's application and determination of basis of issuance and period of eligibility.
16. "Citizen". An individual born or naturalized in the United States, which is defined, for program purposes, as the 50 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and Swain's Island.
17. "Collateral contact". An individual, agency, or organization contacted to confirm statements presented by the applicant and/or participant.
18. "Color of Law". A legal status which a lawfully admitted alien may claim if the alien can satisfactorily prove that the alien has continuously resided in the United States since June 30, 1948.
19. "Coupon". Any coupon, stamp, or certification provided pursuant to the Food Stamp Act of 1977 for the purchase of eligible food.

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20. "Denial". The formal disapproval of an application for program benefits.
21. "Department". The Department of Economic Security.
22. "Drug and/or alcoholic treatment and rehabilitation center". A center providing treatment and rehabilitation programs by a private nonprofit organization.
23. "Earned income". Compensation received as wages, salaries, commissions, or profit, through employment or self-employment.
24. "Eligible food". Any food for human consumption; seeds and plants to grow foods for the personal consumption of the eligible household; delivered meals and meals served at approved communal dining facilities and rehabilitation treatment centers.
25. "Eligibility worker". Department employee responsible for the determination of eligibility of the applicant households.
26. "Equity value". The fair market value less encumbrances.
27. "F.N.S.". Food and Nutrition Service, a division of the United States Department of Agriculture.
28. "Fraud". An action, punishable by law, in which a person has knowingly, willfully, and with deceitful intent obtained benefits for which the person was not eligible.
29. "Hearing". The process of reviewing a client's situation for the purpose of deciding whether or not action taken or intended action by the Department is correct.
30. "Home visit". A visit by an Eligibility Worker to the client's place of residence to verify eligibility factors for program benefits.
31. "Home and land contiguous thereto". The residential real property owned by a client, both land improvements on which client is living, as well as any land immediately touching which is also owned by the client.
32. "Identification card". A card which identifies the bearer as eligible to receive and use food coupons.
33. "In kind". Any gain or benefit which is not in the form of money payable directly to the household, such as meals, clothing, public housing, produce from a garden, and vendor payments.
34. "Institution of higher education". Any institution providing post-high-school education, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high-school level.
35. "Liquid resources". Financial instruments which can be converted to cash quickly (such as stocks, bonds, savings certificates, notes, sales contracts, etc.).
36. "Minor child". A person under age 18 and under parental control.
37. "Non-eligible food". Hot foods and hot food products prepared for immediate over-the-counter service, alcoholic beverages, tobacco, pet foods and supplies, soap, and paper products.
38. "Overissuance". The amount of a coupon allotment received by a household which is in excess of what it was eligible to receive.
39. "Parental control". A child under the age of 18 years and under the control of the parent or any adult other than natural parents (in loco parentis).
40. "Project area". The county or geographic entity designated as the administrative unit for program operations.
41. "Recertification". A re-evaluation of all eligibility factors.
42. "Restoration of lost benefits". Issuance of coupons to an eligible household that did not receive benefits or the correct amount of benefits due to an error caused by the Department.
43. "Retroactive benefits". An issuance of coupons to an eligible household who experienced a delay in the processing of the application.
44. "Roomer". Individual to whom lodging is furnished for compensation.
45. "Spouse". One of 2 individuals who are married to each other under applicable state law or who are living together and holding themselves out to the community as husband and wife.
46. "Student". An individual 18 years of age or older and attending, at least half time, a post-high-school institution of higher education (as defined for program purposes).
47. "United States citizen". A person who was born in the United States or naturalized in the United States and has maintained United States citizenship status.
48. "U.S.D.A.". United States Department of Agriculture.
49. "Vendor payments". Money payments made on behalf of the household to another by a 3rd party.

Historical Note

Section R6-14-111 recodified from A.A.C. R6-3-1911 effective February 13, 1996 (Supp. 96-1).

ARTICLE 2. EXPIRED**R6-14-201. Expired****Historical Note**

R6-14-201 recodified from A.A.C. R6-3-2001 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-202. Expired**Historical Note**

R6-14-202 recodified from A.A.C. R6-3-2002 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-203. Expired**Historical Note**

R6-14-203 recodified from A.A.C. R6-3-2003 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-204. Expired**Historical Note**

R6-14-204 recodified from A.A.C. R6-3-2004 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-205. Expired**Historical Note**

R6-14-205 recodified from A.A.C. R6-3-2005 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-206. Expired**Historical Note**

R6-14-206 recodified from A.A.C. R6-3-2006 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

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R6-14-207. Expired**Historical Note**

R6-14-207 recodified from A.A.C. R6-3-2007 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-208. Expired**Historical Note**

R6-14-208 recodified from A.A.C. R6-3-2008 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-209. Expired**Historical Note**

R6-14-209 recodified from A.A.C. R6-3-2009 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-210. Expired**Historical Note**

R6-14-210 recodified from A.A.C. R6-3-2010 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-211. Expired**Historical Note**

R6-14-211 recodified from A.A.C. R6-3-2011 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-212. Expired**Historical Note**

R6-14-212 recodified from A.A.C. R6-3-2012 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-213. Expired**Historical Note**

R6-14-213 recodified from A.A.C. R6-3-2013 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-214. Expired**Historical Note**

R6-14-214 recodified from A.A.C. R6-3-2014 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-215. Expired**Historical Note**

R6-14-215 recodified from A.A.C. R6-3-2015 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-216. Expired**Historical Note**

R6-14-216 recodified from A.A.C. R6-3-2016 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-217. Expired**Historical Note**

R6-14-217 recodified from A.A.C. R6-3-2017 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-218. Expired**Historical Note**

R6-14-218 recodified from A.A.C. R6-3-2018 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

ARTICLE 3. CLAIMS AGAINST HOUSEHOLDS EMERGENCY RULEMAKING

R6-14-301. Purpose and Definitions

- A.** The Department establishes and collects claims under 7 CFR 273.18, Claims against households. This Article clarifies the Department's policies and procedures as permitted in federal regulation.
- B.** The definitions in Section R6-14-111 and the following definitions apply to this Article:
1. "Agency error" or "AE claim" means any claim for an overpayment caused by an action or failure to take action by the Department.
 2. "Claim" means the amount of a federal debt owed because Nutrition Assistance benefits were overpaid or benefits were trafficked.
 3. "Household" means one of the following individuals or groups of individuals, unless otherwise specified under 7 CFR 273.1(b):
 - a. An individual living alone;
 - b. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
 - c. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.
 4. "Inadvertent household error" or "IHE claim" means any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the Nutrition Assistance household. This includes instances when the household received more benefits than it was entitled to receive because the household requested a continuation of benefits, pending a fair hearing decision.
 5. "Intentional Program Violation" or "IPV claim" means any claim for an overpayment resulting from an individual committing an IPV under 7 CFR 273.16.
 6. "Trafficking claim" means any claim for the value of benefits that are trafficked, under 7 CFR 273.18. Trafficking is defined under 7 CFR 271.2.

Historical Note

R6-14-301 recodified from A.A.C. R6-3-2101 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for

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for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-302. Calculating a Claim Amount

Under 7 CFR 273.18, the Department shall calculate an overpayment of benefits claim by:

- A.** Date of discovery. The date of discovery is determined when the Department becomes aware of the overpayment. The Department becomes aware of an overpayment when:
1. For AE claims, the date that the Department received written or oral notification, or the date the Department discovered an agency error occurred that caused an overpayment to the household.
 2. For IHE and IPV non-trafficking claims, the date that verification used to calculate the over-issuance is obtained.
 3. For claims resulting from trafficking, the date of the court decision or the date the household signed a waiver of administrative disqualification hearing form or a disqualification consent agreement.
- B.** For AE claims, calculate a claim for the month of the date of discovery and for each prior month, not to exceed 36 months prior to the date of discovery.
- C.** For IHE claims, calculate a claim for the month of the date of discovery and for each prior month, not to exceed 36 months prior to the date of discovery.
- D.** For an IPV claim not related to trafficking, calculate a claim back to the month that the IPV first occurred, not to exceed 72 months prior to the date of discovery.
- E.** For a claim resulting from trafficking, calculate a claim for the value of the trafficked benefits, as determined under 7 CFR 273.18(c)(2).

Historical Note

R6-14-302 recodified from A.A.C. R6-3-2102 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-303. Pre-establishment Cost Effectiveness Determination

The Department shall not establish an overpayment that is not cost effective using the threshold at 7 CFR 273.18(e)(2)(ii), unless the Department establishes and collects claims under a cost-effectiveness plan approved by F.N.S. under 7 CFR 273.18(e)(2)(ii) that establishes a different threshold.

Historical Note

R6-14-303 recodified from A.A.C. R6-3-2103 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-304. Claim Compromise

For households not receiving Nutrition Assistance benefits under 7 CFR 273.18(e)(7), the Department may reduce or compromise a

claim when the Department reasonably determines that a household's economic circumstances dictate that the claim will not be paid in three years. The Department shall:

1. Allow a household to repay a claim in equal monthly increments based on the following claim amounts:
 - a. 12 month increments when the claim is \$600.00 or less.
 - b. 24 month increments when the claim is \$1,200.00 or less.
 - c. 36 month increments when the claim is over \$1,200.00.
2. When a household reports that it is unable to afford the monthly increments established in subsection (1) and requests a compromise of the claim balance, the Department shall:
 - a. Request the household to provide an oral or written financial statement that includes the sources and amounts of all earned and unearned income and all household monthly expenses.
 - b. Establish a new claim balance based on the monthly amount the Department determines the household can reasonably afford to pay over a 36 month period based on the household's oral or written financial statement.
3. The Department shall consider the claim paid in full and subsequently adjust off any amount(s) remaining from the original claim after the household pays the new claim balance established in subsection (2)(b).
4. When the household fails to pay the new claim balance established in subsection (2)(b) within the 36 month period established in the new payment agreement, the Department shall reinstate the original amount of the claim, minus any payments received.

Historical Note

R6-14-304 recodified from A.A.C. R6-3-2104 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-305. Terminating and Writing Off a Claim

- A.** Under 7 CFR 273.18(e)(8)(ii)(F), the Department may terminate and write off a claim when no adult member of the household who is responsible for paying the claim can be located.
- B.** Under 7 CFR 273.18(e)(8)(ii)(E), the Department shall not terminate and write off a claim which has been delinquent for 36 months when the claim is pending for possible payment through the Treasury Offset Program or a State Offset Program.

Historical Note

R6-14-305 recodified from A.A.C. R6-3-2105 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-306. Acceptable Forms of Payment

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The Department may accept all forms of payment methods listed in 7 CFR 273.18(f) to collect a claim.

Historical Note

R6-14-306 recodified from A.A.C. R6-3-2106 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-307. Collection Methods**

- A.** Allotment reduction. The Department may use the allotment reduction in 7 CFR 273.18(g)(1) except the allotment reduction in 7 CFR 273.18(g)(1)(vi).
- B.** Under 7 CFR 273.18(g)(5), the Department may allow the household to pay a claim in installment payments pursuant to R6-14-304(1)(a) through (c).
- C.** Intercept of unemployment compensation benefits.
- D.** Under 7 CFR 273.18(g)(8), the Department may use other collection methods that include:
1. Submit the claim to the Arizona Department of Revenue for payment through a state tax refund.
 2. Submit the claim to the Arizona Lottery Commission for payment through a lottery winnings offset.
 3. Submit the claim to the federal Treasury Offset Program pursuant to 7 CFR 273.18(n).
 4. Wage garnishment established through a civil judgment or criminal restitution order. When the Department has obtained a judgment or order, the Department shall:
 - a. Send the household a Pre-Garnishment Notice to allow the household to agree to pay the claim in a manner other than wage garnishment; and
 - b. If the household fails to arrange for payment in response to the Pre-Garnishment Notice, the Department may request the Arizona Attorney General's Office to initiate a wage garnishment pursuant to A.R.S. Title 12, Chapter 9, Article 4.1, and that garnishment may continue until the claim is paid in full.
 5. Garnishment or levy of monies or property, pursuant to A.R.S. Title 12, Chapter 9, Article 4.
 6. Imposition or enforcement of all liens, including judgment liens imposed pursuant to A.R.S. § 33-961.
 7. Any other legal or equitable remedy for the collection of debts and judgments.
- E.** Under 7 CFR 273.18(i)(2), the Department may accept a claim from another state if the household subject to the claim receives Nutrition Assistance benefits in Arizona, when:
1. The Department confirms that the household was notified by the other state of the overpayment; and
 2. There is no pending or unresolved Fair Hearing or Appeal of the overpayment in the other state.
- F.** Under 7 CFR 273.18(j) and at the Arizona Attorney General's direction, the Department shall act on behalf of the federal Food and Nutrition Service in any bankruptcy proceeding against a household subject to a claim.

Historical Note

R6-14-307 recodified from A.A.C. R6-3-2107 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24

A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-308. Notice of Claim**

To begin collection on a claim, the Department shall send the household a Notice of Claim. At a minimum, the notice shall include all elements required under 7 CFR 273.18(e)(3)(iv).

Historical Note

R6-14-308 recodified from A.A.C. R6-3-2108 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

R6-14-309. Expired**Historical Note**

R6-14-309 recodified from A.A.C. R6-3-2109 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-310. Expired**Historical Note**

R6-14-310 recodified from A.A.C. R6-3-2110 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-311. Expired**Historical Note**

R6-14-311 recodified from A.A.C. R6-3-2111 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-312. Expired**Historical Note**

R6-14-312 recodified from A.A.C. R6-3-2112 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-313. Expired**Historical Note**

R6-14-313 recodified from A.A.C. R6-3-2113 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-314. Expired**Historical Note**

R6-14-314 recodified from A.A.C. R6-3-2114 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-315. Expired**Historical Note**

R6-14-315 recodified from A.A.C. R6-3-2115 effective February 13, 1996 (Supp. 96-1). Section expired under

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A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-316. Expired**Historical Note**

R6-14-316 recodified from A.A.C. R6-3-2116 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-317. Expired**Historical Note**

R6-14-317 recodified from A.A.C. R6-3-2117 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-318. Expired**Historical Note**

R6-14-318 recodified from A.A.C. R6-3-2118 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-319. Expired**Historical Note**

R6-14-319 recodified from A.A.C. R6-3-2119 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-320. Expired**Historical Note**

R6-14-320 recodified from A.A.C. R6-3-2120 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-321. Expired**Historical Note**

R6-14-321 reserved; Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-322. Expired**Historical Note**

R6-14-322 recodified from A.A.C. R6-3-2122 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-323. Expired**Historical Note**

R6-14-323 recodified from A.A.C. R6-3-2123 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-324. Expired**Historical Note**

R6-14-324 recodified from A.A.C. R6-3-2124 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-325. Expired**Historical Note**

R6-14-325 recodified from A.A.C. R6-3-2125 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-326. Expired**Historical Note**

R6-14-326 recodified from A.A.C. R6-3-2126 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-327. Expired**Historical Note**

R6-14-327 recodified from A.A.C. R6-3-2127 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

ARTICLE 4. APPEALS AND FAIR HEARINGS EMERGENCY RULEMAKING

R6-14-401. Entitlement to a Fair Hearing; Appealable Action

Any applicant or recipient who disagrees with any action or inaction by the Department has the right to challenge the action or inaction by requesting an administrative or fair hearing. Administrative hearings are conducted by the Department's Office of Appeals. In this Article, "hearing" refers to a Fair Hearing as required in 7 CFR 273.15.

Historical Note

R6-14-401 recodified from A.A.C. R6-3-2201 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-402. Computation of Time

- A.** In computing any time period:
1. "Day" means a calendar day;
 2. "Working day" means Monday through Friday, excluding federal or Arizona state holidays;
 3. The Department does not count the date of the act, event, notice, or default from which a designated time period begins to run as part of the time period; and
 4. The Department counts the last day of the designated time period unless it is a Saturday, Sunday, federal holiday or Arizona state holiday.
- B.** Documents sent by the Department are received by an applicant or recipient on the date sent to the applicant or recipient's last known street or electronic mail address, plus an additional five calendar days only when sent by United States Postal Service. The send date is the date shown on the document unless the facts show otherwise.

Historical Note

R6-14-402 recodified from A.A.C. R6-3-2203 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency

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rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-403. Request for Hearing; Form; Time Limits; Presumptions

- A.** An applicant or recipient who wishes to appeal an action or inaction shall make an oral or written request for a hearing to the Department within 90 days of the notice date advising the applicant or recipient of the action, except that a recipient may appeal the current level of benefits at any time within a certification period. Action by the Department shall include a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request for a hearing. An applicant or recipient may file a request for hearing in-person or by mail, fax, or Internet. The Department shall provide a form for this purpose and, upon request, shall help an applicant or recipient complete the form. If the applicant or recipient makes an oral request for a hearing, the Department shall reduce the appeal and the stated reasons for the appeal to writing, record the date of the oral request, and forward the request to the Office of Appeals. The freedom to make a request for a hearing shall not be limited or interfered with in any way.
- B.** An appellant is an applicant or recipient who files an appeal. The appellant shall include the following information in the request for hearing:
1. Name, address, electronic mail address, if applicable, and telephone number of the appellant;
 2. A description of the action or inaction that is the subject of the appeal;
 3. The date of the notice of adverse action or inaction; and
 4. A statement explaining why the appellant disagrees with the action or inaction.
- C.** The Department shall process any oral or written request for a hearing as long as the request contains sufficient information for the Department to determine the appellant's identity.
- D.** The Department deems a request for hearing filed on:
1. If the appellant sends the request for hearing by first-class mail through the United States Postal Service to the Department:
 - a. The mailing date as shown by the postmark;
 - b. In the absence of a postmark, the postage meter mark on the envelope in which it is received; or
 - c. If not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 2. The date the Department actually receives the request, if not mailed.
- E.** A document is timely filed if the appellant can demonstrate that any delay in submission was due to any of the following reasons:
1. Department error or misinformation,
 2. Delay or other action by the United States Postal Service, or
 3. Delay due to the appellant's changing mailing addresses at a time when the appellant had no duty to notify the Department of the change.
- F.** When the Office of Appeals receives an untimely request for a hearing, the Office of Appeals shall determine whether the delay in submission is excusable, as provided in subsection (E).
- G.** An appellant whose appeal the Office of Appeals denies as untimely may petition for review of this issue as provided in R6-14-416.

- H.** The Department shall expedite a hearing request for any person covered by 7 CFR 273.15(i)(2).
- I.** The Department shall provide interpreters or other language services at no cost to persons who speak a language other than English. This shall include explaining the hearing procedures orally in the person's language if the materials are not translated into the person's language.
- J.** The Department shall offer an agency conference as provided by 7 CFR 273.15(d) to those persons denied expedited service and to any person who requests a conference.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-404. Stay of Action Pending Appeal

As provided by 7 CFR 273.15(k), and subject to the exceptions listed in that regulation, if the appellant timely requests a fair hearing, the Department shall stay the implementation of an action until the hearing officer renders a decision on the appeal and the person receives the decision, unless the appellant signs a waiver of continuation of benefits.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-405. Hearings: Location; Notice; Time

- A.** The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing instead of an in-person hearing or permit a witness or party, upon request, to appear telephonically.
- B.** Unless the appellant requests an earlier hearing date, the Office of Appeals shall schedule the hearing no earlier than 20 days from the date the Department receives the appellant's request for hearing.
- C.** The Office of Appeals shall send a notice of hearing to all parties at least 20 days before the hearing date, unless a request for an earlier hearing date is granted under subsection (B).
- D.** The notice of hearing shall be in writing and shall:
1. Advise the appellant or the appellant's representative of the name, address, and phone number to notify the Office of Appeals in the event it is not possible for the appellant to attend the hearing;
 2. Specify that the Office of Appeals will dismiss the hearing request if the appellant or the appellant's representative fails to appear for the hearing without good cause;
 3. Include the Office of Appeals hearing procedures and any other information that would provide the appellant with an understanding of the proceedings and that would contribute to the effective presentation of the appellant's case, which shall include a pre-hearing summary prepared by the Department; and
 4. Explain that the appellant or the appellant's representative shall be given adequate opportunity to:
 - a. Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and

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documents of verification used by the Department to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the Department shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing officer's decision.

- b. Present the case or have it presented by a legal counsel or other person.
 - c. Bring witnesses.
 - d. Advance arguments without undue interference.
 - e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
 - f. Submit evidence to establish all pertinent facts and circumstances in the case.
5. The notice shall include information about the availability of free legal services.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-406. Postponing the Hearing**

- A. The appellant may request and is entitled to receive one postponement of the first scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. The Office of Appeals may grant subsequent postponements upon a showing of good cause.
- B. When the Office of Appeals reschedules a hearing under this Section, the Office of Appeals shall send the notice of rescheduled hearing at least 11 days prior to the date of the rescheduled hearing, unless the appellant agrees to shorter notice.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-407. Hearing Officer: Duties and Qualifications**

- A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.
- B. The hearing officer shall:
 1. Administer oaths and affirmations;
 2. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;
 3. Consider all relevant issues;
 4. Request, receive, and admit into the record all evidence determined necessary to decide the issues being raised;

5. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department. The hearing officer shall decide on the source of the medical assessment or professional evaluation when the household and the Department are unable to agree on a mutually satisfactory source. The Department shall pay for the medical assessment or professional evaluation when such services are not available to the household as part of the household's current health insurance coverage; and
6. Render a hearing decision and issue a written decision.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-408. Change of Hearing Officer; Challenges for Cause**

- A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit that shall include:
 1. The case name and number,
 2. The hearing officer assigned to the case, and
 3. The name and signature of the party requesting the change.
- B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the hearing date.
- C. A party shall request only one change of hearing officer unless that party is challenging a hearing officer for cause under subsection (E).
- D. A party may not request a change of hearing officer once the hearing officer has heard and decided a motion except as provided in subsection (E).
- E. At any time before a hearing officer renders a final decision under R6-14-414, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- F. A party who brings a challenge for cause shall file an affidavit as provided in subsection (A) and send a copy of the affidavit to all other parties. The affidavit shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- G. The hearing officer being challenged for cause may hear and decide the challenge unless:
 1. A party specifically requests that another hearing officer make the determination, or
 2. The assigned hearing officer recuses himself or herself.
- H. The Office of Appeals shall transfer the case to another hearing officer when:
 1. A party requests a change as provided in subsections (A) through (D); or
 2. The hearing officer is removed for cause, as provided in subsections (E) through (G).
- I. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

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R6-14-409. Subpoenas

- A. A party who wishes to have a witness testify at a hearing or to offer a particular document or item in evidence shall first attempt to obtain the witness or evidence by voluntary means. Subpoena forms are available to the appellant under R6-14-410(2).
- B. If the party cannot obtain the voluntary attendance of the witness or production of the evidence, the party may ask the assigned hearing officer to issue a subpoena for a witness, document, or other physical evidence or to otherwise obtain the requested evidence.
- C. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
1. The case name and number;
 2. The name of the party requesting the subpoena;
 3. The name and address of any person to be subpoenaed;
 4. A description of any documents or physical evidence the appellant desires the hearing officer to subpoena, including the title, appearance, and location of the item if the appellant knows its location, and the name and address of the person in possession of the item;
 5. A statement about the expected substance of the testimony or other evidence as well as the relevance and importance of the requested testimony or other evidence; and
 6. A description of the party's efforts to obtain the witness or evidence by voluntary means.
- D. A party shall request a subpoena at least five working days before the hearing date.
- E. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is duplicative.
- F. The Office of Appeals shall prepare all subpoenas and serve them by mail, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their jobs, by regular mail, hand-delivered mail, electronic mail, or interoffice mail.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-410. Parties' Rights

The appellant and the Department have the following rights:

1. The right to request a postponement of the hearing;
2. The right to receive before and during the hearing a free copy of any documents in the Department's file on the appellant and documents the Department may use at the hearing, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws;
3. The right to request a change of hearing officer;
4. The right to request subpoenas for witnesses and evidence;
5. The right to be represented by an authorized representative, subject to any limitations on the unauthorized practice of law in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to bring witnesses, present evidence, and to confront and cross-examine adverse witnesses;

7. The right to advance arguments without undue interference, to question or refute any testimony or evidence, and
8. The right to further appeal, as provided in R6-14-416 and R6-14-417, if dissatisfied with the Office of Appeals decision.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-411. Withdrawal of an Appeal

- A. An appellant may withdraw an appeal at any time prior to the time the hearing officer issues a decision.
1. An appellant may withdraw an appeal orally, either in person or by telephone. The Department may record the audio of the withdrawal. The Department is prohibited from coercion or actions that would influence the appellant or the appellant's representative to withdraw the fair hearing request. The Department must provide a written notice within 10 days of the oral request confirming the withdrawal request and providing the appellant an opportunity to reinstate a hearing. The notice shall explain the appellant's right to request or reinstate the hearing within 10 days of when they receive the notice.
 2. An appellant may withdraw an appeal by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.
- B. The Department shall dismiss the appeal upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or upon receipt of a statement of withdrawal made on the record when the hearing officer has accepted the withdrawal.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-412. Failure to Appear; Default; Reopening

- A. If an appellant fails to appear at the hearing, the hearing officer shall:
1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
 2. Rule summarily on the available record; or
 3. Adjourn the hearing to a later date and time.
- B. The hearing officer shall not enter a default or rule summarily if the appellant notifies the Office of Appeals before the scheduled time of hearing that the appellant cannot attend the hearing because of good cause and still desires a hearing or wishes to have the matter considered on the available record. Good cause exists if circumstances beyond the party's reasonable control make it unduly difficult or burdensome for the party or the party's representative to attend the hearing at the scheduled time.
- C. A party who did not appear at the hearing may file a request to reopen the proceedings no later than 10 days after the hearing. The request shall be in writing or be made in person and shall demonstrate good cause for the party's failure to appear.

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- D. If the hearing officer finds that the party had good cause for failure to appear, the hearing officer shall reopen the proceedings and schedule a new hearing with notice to all interested parties as prescribed in R6-14-405.
- E. Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party. Good cause also exists when the nonappearing party demonstrates excusable neglect, as used in Arizona Rules of Civil Procedure, Rule 60(b)(1) for both the failure to appear and the failure to timely notify the hearing officer.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-413. Hearing Proceedings**

- A. The hearing is a de novo proceeding. The Department has the initial burden of presenting the evidence to support the adverse action being appealed.
- B. The standard of proof is a preponderance of the evidence.
- C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 41-1062(A).
- D. The Office of Appeals shall record all hearings. The Office of Appeals shall also transcribe the proceedings when a transcription is requested by the Appeals Board or when a transcription is required for a judicial review under A.R.S. § 41-1993. If a transcript is prepared for any purpose, the appellant is entitled to a copy of the transcription at no cost.
- E. A party may, at the party's own expense, arrange to have a court reporter present to transcribe the hearing, provided that such transcription does not delay or interfere with the hearing. The Office of Appeal's recording of the hearing shall constitute the official record of the hearing.
- F. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.
- G. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
- H. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence.
- I. A party may testify, present evidence, call witnesses, cross-examine adverse witnesses, and object to evidence. The hearing officer may also take witness testimony or admit evidence on the hearing officer's own motion.
- J. The hearing officer shall keep a complete record of all proceedings in connection with an appeal.
- K. The hearing officer may request the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.
- L. The recording of the hearing, all the evidence presented at the hearing and all papers and requests filed shall constitute the record and shall be available to the household or its representative at any reasonable time for copying and inspection.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days

(Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-414. Hearing Decision**

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing and the applicable law. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.
- B. The hearing decision shall include:
1. Findings of fact concerning the issue on appeal,
 2. Citations to the law and authority applicable to the issue on appeal,
 3. A statement of the conclusions derived from the controlling facts and law and the reasons for the conclusions,
 4. The name of the hearing officer,
 5. The date of the decision,
 6. A statement of further appeal rights and the time period for exercising those rights, and
 7. That an appeal may result in a reversal of the decision.
- C. The Office of Appeals shall send a copy of the decision to each party or the party's representative.
- D. When requested by the appellant, the Department, or upon the hearing officer's own motion, the Office of Appeals may amend or vacate a decision to correct clerical errors, including typographical and computational errors.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-415. Effect of the Decision**

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective as of the date of the initial determination of adverse action by the Department. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- B. If the hearing officer vacates or reverses the Department's decision to take adverse action, the Department shall not take the action or shall reverse any adverse action.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-416. Further Administrative Appeal**

- A. A party can appeal an adverse decision issued by a hearing officer to the Department's Appeals Board as prescribed in A.R.S. § 41-1992(C) and (D) by filing a written petition for review with the Office of Appeals within 15 days of the mailing or transmittal date of the hearing officer's decision.
- B. The petition for review shall:
1. Be in writing and filed in person, by mail, or fax,

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2. Describe why the party disagrees with the hearing officer's decision, and
3. Be signed and dated by the party or the party's representative.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-417. Appeals Board

- A. The Appeals Board shall conduct proceedings in accordance with A.R.S. §§ 41-1992(D) and 23-672.
- B. The Appeals Board shall issue to all parties a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision based on the record. The decision of the Appeals Board shall specify the parties' rights to seek further review and the time for filing an application for appeal.
- C. An appellant adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.

Historical Note

New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

ARTICLE 5. INTENTIONAL PROGRAM VIOLATION

EMERGENCY RULEMAKING

R6-14-501. Intentional Program Violation (IPV); Defined

- A. An Intentional Program Violation (IPV) consists of having intentionally:
 1. Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or
 2. Committed any act that constitutes a violation of the Food Stamp Act, Nutrition Assistance Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of nutrition assistance benefits or EBT cards.
- B. For the purpose of imposing sanctions as prescribed in R6-14-505, a person is considered to have committed an IPV if:
 1. A person signs a waiver of an Administrative Disqualification Hearing,
 2. A person is found to have committed an IPV by an Administrative Disqualification Hearing, or
 3. A person is convicted of a criminal offense the elements of which would constitute an IPV under subsection (A) above or enters into a disqualification consent agreement for deferred prosecution for fraud in a court of law.

Historical Note

R6-14-501 recodified from A.A.C. R6-3-2301 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver

- A. Upon receipt of sufficient documentary evidence substantiating that a person has committed an IPV, the Department shall initiate either an Administrative Disqualification Hearing, or a referral for prosecution.
- B. When the Department initiates an Administrative Disqualification Hearing, the Department shall mail the person suspected of an IPV written notice of the right to waive the Administrative Disqualification Hearing. This notice shall be sent either by first class mail or certified mail – return receipt requested.
- C. The waiver notice of the Administrative Disqualification Hearing shall include the following information as well as the information described in R6-14-503(D):
 1. A statement that the Department has determined that the individual suspected of the IPV committed one or more acts described in R6-14-501(A) and that the Department has initiated an Administrative Disqualification Hearing against the individual suspected of the IPV.
 2. A summary of the allegations and evidence against the individual suspected of the IPV and notification that the individual suspected of the IPV has the right to examine and, when requested by the individual or representative, be provided a free copy of the portions of the case file that are relevant to the hearing.
 3. A statement of the right of the individual suspected of the IPV to remain silent concerning the allegation of an IPV, and that anything said or signed by the individual concerning the allegations can be used against the individual suspected of the IPV in a court of law, including signing any part of the waiver.
 4. A statement that signing a waiver of the Administrative Disqualification Hearing will result in disqualification periods as determined by R6-14-505, a statement of the penalty the Department believes is applicable to the case scheduled for a hearing, and a reduction in benefits for the period of disqualification, even if the individual suspected of the IPV does not admit to the facts as presented by the Department.
 5. A statement that the individual suspected of the IPV does not have to sign a waiver of the Administrative Disqualification Hearing, return the waiver form to the Department, or speak to anyone at the Department.
 6. A listing of the individual suspected of the IPV's fair hearing rights contained in 6 A.A.C. 14, Article 4 and notification that the individual suspected of the IPV will waive these rights if the waiver of the Administrative Disqualification Hearing is signed.
 7. A statement that waiver of the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual suspected of the IPV for the IPV in a civil or criminal court action, or from collecting any overissuance of Nutrition Assistance benefits.
 8. A statement that the individual suspected of the IPV may wish to consult an attorney and a list of any individuals or organizations that provide free legal representation.
 9. A statement that Nutrition Assistance benefits will continue and will only be terminated if the following occurs:
 - a. The individual suspected of the IPV signs a notice to waive their rights to an Administrative Disqualification Hearing,
 - b. There is an Administrative Disqualification Hearing decision that the individual suspected of the IPV is disqualified,
 - c. The individual is determined to no longer be eligible on other grounds, or

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- d. The individual requests that the Nutrition Assistance benefits not be continued in order to avoid a potential overissuance of benefits.
10. A statement that the remaining household members, if any, will be held responsible for repayment of the resulting overissuance claim.
11. An opportunity for the individual suspected of the IPV to specify whether or not the individual admits to the facts as presented by the Department. This opportunity shall consist of the following statements, and a method for the individual suspected of the IPV to designate the individual's waiver choice:
- I admit to the facts as presented and understand that a disqualification penalty will be imposed if I sign this waiver. I understand that if I sign this waiver, there will not be an Administrative Disqualification Hearing; or
 - I do not admit that the facts as presented are correct in my Nutrition Assistance case. However, I have chosen to sign this waiver of the Administrative Disqualification Hearing. I also understand that a disqualification penalty will be imposed. I understand that if I mark this box, I will not be able to submit additional evidence, have an Administrative Disqualification Hearing, or have the right to administrative appeal.
 - A statement that the individual suspected of the IPV does not waive the individual's right to an Administrative Disqualification Hearing and a method to indicate this choice:

I do not admit that I committed an Intentional Program Violation and I do not waive my right to an Administrative Disqualification Hearing where the Department must prove that I committed an Intentional Program Violation. I understand that I may attend the hearing but I am not required to attend. If I attend the hearing, I may talk to the judge about what happened. I understand that at my hearing, I can present additional evidence to the judge if I want. I understand that I have the right to remain silent. I understand that the judge will decide if I will be disqualified from participating in the Nutrition Assistance program.
12. The telephone number of the appropriate Department unit which the individual may contact to obtain additional information.
13. A due date that the signed waiver of an Administrative Disqualification Hearing must be provided to the Department so that a hearing will not be held and a signature line for the individual suspected of the IPV, along with a statement that the head of household must also sign the waiver if the individual suspected of the IPV is not the head of household, with an appropriately designated signature line.
- D. For the purpose of imposing sanctions as prescribed in R6-14-505, a timely signed waiver of an Administrative Disqualification Hearing shall have the same effect as an administrative adjudication that an IPV occurred.

Historical Note

R6-14-502 recodified from A.A.C. R6-3-2302 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24

A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-503. Administrative Disqualification Hearings**

- A. The rules on fair hearings apply to Intentional Program Violation (IPV) Administrative Disqualification Hearings, except as provided in this Article.
- B. All IPV Administrative Disqualification Hearings are conducted by the Department's Office of Appeals.
- C. If the individual suspected of an IPV does not sign and return the waiver of Administrative Disqualification Hearing by the return date set in the waiver notice, or returns the waiver notice stating they do not waive the Administrative Disqualification Hearing, the Office of Appeals shall send the individual a written hearing notice. The Office of Appeals shall send the notice by first class mail, certified mail return receipt requested, or any other reliable method, no later than 30 days before the scheduled hearing date.
- D. The hearing notice shall include the following information:
- The date, time, and place of the hearing;
 - The allegations of an IPV against the individual;
 - A summary of the evidence, and how and where the evidence can be examined. When requested by the household or its representative, the Department shall provide a free copy of the portions of the case file that are relevant to the hearing;
 - A notice that the decision will be based solely on information provided by the Department if the individual suspected of the IPV fails to appear at the hearing;
 - A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
 - A warning that a determination of IPV will result in disqualification periods as defined by Section R6-14-505, and a statement of which penalty the Department believes is applicable to the case scheduled for a hearing;
 - A listing of the individual's rights as contained in R6-14-410;
 - A statement that the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any overissuance of Nutrition Assistance benefits;
 - A statement that the individual suspected of the IPV may consult with an attorney and a list of any individuals or organizations known to the Department that provide free legal representation; and
 - A notice that the individual suspected of the IPV has the right to obtain a copy of the Department's published hearing procedures together with an explanation of how the individual suspected of the IPV can obtain these procedures.
- E. The hearing officer shall postpone a hearing for up to 30 days if the individual suspected of the IPV files a written or oral request for postponement with the hearing officer no later than 10 days before the hearing date. Any such postponement shall increase the time by which the hearing officer shall issue a decision, as provided in subsection (G) below.
- F. The time and place for the hearing shall be arranged so that the hearing is accessible to the individual suspected of the IPV, including making reasonable accommodations for a person with a disability.
- G. At the start of the Administrative Disqualification Hearing, the hearing officer shall advise the individual suspected of the IPV

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or representative of the right to remain silent during the hearing and the consequences of exercising that right, including the court's ability to draw an adverse inference from silence. The hearing officer shall also advise that if the individual suspected of the IPV or representative chooses not to exercise the right to remain silent, anything they say could be used against them.

- H. A hearing officer, as prescribed in R6-14-407, shall conduct the Administrative Disqualification Hearing pursuant to the procedures set forth in R6-14-408, R6-14-409, R6-14-410, and R6-14-413, except as prescribed in this subsection.
- I. The Department shall prove by clear and convincing evidence that the household member committed an IPV.
- J. No later than 90 days from the date of the notice of hearing, as increased by any postponement days, the hearing officer shall send to the individual suspected of the IPV a written decision. The hearing officer shall find whether the evidence shows by clear and convincing evidence that the person committed an IPV or did not commit the IPV. The decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent regulation, and respond to reasoned arguments made by the individual suspected of the IPV or representative.

Historical Note

R6-14-503 recodified from A.A.C. R6-3-2303 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-504. Failure to Appear; Default; Reopening**

- A. If the individual suspected of the IPV fails to appear at the Administrative Disqualification Hearing without good cause, the hearing officer shall conduct the hearing.
- B. The hearing officer shall not conduct the hearing if the individual suspected of the IPV notifies the Office of Appeals before the hearing that the individual cannot attend the hearing because of good cause and still desires a hearing. Good cause exists if circumstances beyond the party's reasonable control make it unduly difficult or burdensome for the party or the party's representative to attend the hearing on the scheduled date.
- C. An individual suspected of the IPV who did not appear at the hearing may file a request to reopen the Administrative Disqualification Hearing. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
 1. The individual suspected of the IPV has 30 days after the date of the written notice of the hearing decision to file a request to reopen the Administrative Disqualification Hearing if the individual did not receive a hearing notice.
 2. In all other instances, the individual suspected of the IPV has 10 days from the hearing date to show good cause why the individual failed to appear.
- D. The hearing officer shall review the good cause reason submitted by the individual suspected of the IPV and unless the hearing officer can grant or deny the request based on the information provided, shall set the matter for a hearing to determine whether the individual suspected of the IPV had good cause for failing to appear.
- E. If the hearing officer finds that the individual suspected of the IPV had good cause for failure to appear, the previous decision shall be vacated and the hearing officer shall reopen the

Administrative Disqualification Hearing and schedule a new hearing with notice to all parties. The hearing officer must enter the good cause decision on the record.

- F. Good cause, for the purpose of reopening an Administrative Disqualification Hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the individual suspected of the IPV. Good cause also exists when the individual suspected of the IPV demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" means an action involving an error such as might be made by a reasonably prudent person who attempts to handle a matter in a prompt and diligent fashion.

Historical Note

R6-14-504 recodified from A.A.C. R6-3-2304 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING**R6-14-505. Disqualification Sanctions; Notice**

- A. A person found to have committed an IPV is disqualified from program participation:
 1. For a period of 12 months for the first IPV, except as provided under subsections (B) through (E);
 2. For a period of 24 months for the second IPV, except as provided in subsections (B) through (E);
 3. Permanently for the third IPV; and
 4. The same act of IPV repeated over a period of time shall not be separated so that separate penalties can be imposed.
- B. Individuals found by any court to have used or received benefits in a transaction involving the sale of a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), shall be ineligible to participate in the program:
 1. For a period of 24 months for the first violation; and
 2. Permanently upon the second violation.
- C. Individuals found by any court to have used or received benefits in a transaction involving the sale of firearms, ammunition, or explosives shall be permanently ineligible to participate in the program upon the first violation.
- D. An individual convicted by any court of having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the program upon the first violation.
- E. Except as provided under subsection (A)(3), an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple Nutrition Assistance benefits simultaneously shall be ineligible to participate in the program for 10 years.
- F. The Department shall not include the needs of the disqualified person in the household but shall count the income and resources of the disqualified person available to the household.
- G. Upon a determination of IPV, the Department shall notify the disqualified person in writing of the pending disqualification. The written notice shall:
 1. Inform the disqualified person of the decision and the reasons for the decision; and

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2. Inform the disqualified person of the date the disqualification will take effect and the duration of the disqualification. If the disqualified person is no longer receiving Nutrition Assistance benefits, the notice shall inform the disqualified person that the period of disqualification will be deferred until such time as the disqualified person again applies for and is determined eligible for Nutrition Assistance benefits.

Historical Note

R6-14-505 recodified from A.A.C. R6-3-2305 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing; Appeal

- A. Upon a determination of IPV through a signed waiver of an Administrative Disqualification Hearing, the individual has no right to further administrative appeal. The individual may seek relief in a court having jurisdiction and may seek a stay or other injunctive relief of a period of disqualification.
- B. A person found to have committed an IPV through an Administrative Disqualification Hearing has no right to further administrative appeal but may seek relief in a court of appropriate jurisdiction.

Historical Note

R6-14-506 recodified from A.A.C. R6-3-2306 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

EMERGENCY RULEMAKING

R6-14-507. Honoring Out-of-State IPV Determinations and Sanctions

The Department shall honor sanctions imposed against an applicant or recipient by the agency of another state that administers the Nutrition Assistance program and shall consider prior violations committed in another state when determining the appropriate sanction.

Historical Note

R6-14-507 recodified from A.A.C. R6-3-2307 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1). New Section made by emergency rulemaking at 24 A.A.R. 2081, effective July 6, 2018 for 180 days (Supp. 18-3). Emergency renewed at 24 A.A.R. 3591, effective January 2, 2019 for an additional 180 days (Supp. 18-4).

ARTICLE 6. EXPIRED**R6-14-601. Expired****Historical Note**

R6-14-601 recodified from A.A.C. R6-3-2401 effective February 13, 1996 (Supp. 96-1). Section expired under

A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-602. Expired**Historical Note**

R6-14-602 recodified from A.A.C. R6-3-2402 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-603. Expired**Historical Note**

R6-14-603 reserved; Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-604. Expired**Historical Note**

R6-14-604 recodified from A.A.C. R6-3-2404 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-605. Expired**Historical Note**

R6-14-605 recodified from A.A.C. R6-3-2405 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-606. Expired**Historical Note**

R6-14-606 recodified from A.A.C. R6-3-2406 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-607. Expired**Historical Note**

R6-14-607 recodified from A.A.C. R6-3-2407 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-608. Expired**Historical Note**

R6-14-608 recodified from A.A.C. R6-3-2408 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-609. Expired**Historical Note**

R6-14-609 reserved; Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

R6-14-610. Expired**Historical Note**

R6-14-610 recodified from A.A.C. R6-3-2410 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 1056(E) at 11 A.A.R. 1450, effective February 28, 2005 (Supp. 05-1).

41-1954 . Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for

the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that is judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.
15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.
17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.
18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:
 - (a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.
 - (b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.
 - (c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.
2. The cost of further enforcement action.
3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

46-134 . Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

46-136 . Powers of state department regarding work projects for unemployed persons

A. The state department may institute work projects for the employment of needy unemployed persons being granted public assistance. The nature of the work projects shall be determined by the state department and the governing body of the county, municipal government or school district involved to be projects necessary and desirable to the community including projects designed to improve health and public safety. County or municipal governments, including school districts, shall cooperate in such projects by furnishing supervision, transportation and payment of industrial commission insurance.

B. The state department shall act as the official agency for the state in any social welfare activity initiated by the federal government and shall administer state funds appropriated or made available for the relief of dependent persons, except as otherwise provided by law.

C. The state department shall expend from any amounts otherwise available by law amounts that, in the discretion of the director, are determined necessary for such purpose in conjunction with any agency or department of the federal government for the purpose of receiving and distributing food stamps offered to public welfare agencies for needy persons. The amount so determined may be expended by the department in payment of expenses necessarily incurred by reason of the receipt or distribution of such food stamps.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F20-0203)

Title 9, Chapter 6, Article 5, Rabies Control



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 28, 2020

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

FROM: Council Staff

DATE: January 6, 2020

SUBJECT: Department of Health Services
Title 9, Chapter 6, Article 5

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 9, Article 5 regarding rabies control.

The Department did not propose a course of action in the last Five-Year-Review Report of these rules.

Proposed Action

The Department is planning to amend R9-6-502 to improve its effectiveness. Currently the rule requires an exposed dog or cat, that is currently vaccinated, to be confined (at the owner's expense) for 180 days in a veterinary hospital or animal control agency facility. The Department is proposing to amend the total number of days to 120, as opposed to the current 180, which is now the current practice. DHS plans to submit a Notice of Final Rulemaking to the Council by May 2020.

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

Yes. The Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department last amended the rules in October 2004. The Department believes the costs and benefits identified in the 2004 economic impact statement (EIS) are consistent with the actual costs and benefits of the rules. The Department believes the economic impact of the rules in Article 5 has continued to be consistent with the impact predicted in 2004.

The stakeholders include: the Department of Health Services, Animal Control Agencies, Veterinary Hospitals, Arizona pet owners and the public.

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

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. The Department indicates it received one comment and properly responded.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates the rules are clear, concise, understandable, consistent with other rules and effective.

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

Yes. The Department indicates the rules are enforced as written.

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

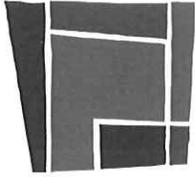
Not applicable. There is no corresponding federal law for these rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

9. Conclusion

As mentioned above, the Department is proposing to amend R9-6-502 to improve its overall effectiveness. The Department plans to submit a Notice of Final Rulemaking to the Council by May 2020. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

October 28, 2019

VIA EMAIL: grrc@azdoa.gov

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

RE: Department of Health Services, 9 A.A.C. 6, Article 5, Five-Year-Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 6, Article 5, Rabies Control, which is due on October 31, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Brittany Green at 602-542-1574 or brittany.green@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a horizontal line.

Robert Lane
Director's Designee

RL:bg

Enclosures



ARIZONA DEPARTMENT
OF HEALTH SERVICES

**ARIZONA DEPARTMENT OF HEALTH SERVICES
FIVE-YEAR-REVIEW REPORT**

**TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 5. RABIES CONTROL
OCTOBER 2019**

1. Authorization of the rule by existing statutes

General authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Specific authority: A.R.S. §§ 11-1003 and 36-136(I)(1)

2. The objective of each rule:

Rule	Objective
R9-6-501	The objective of the rule is to define terms used only in Article 5 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-6-502	The objectives of the rule are to specify how an animal control agency shall handle animals, other than livestock, that are exposed to a rabid animal or an animal suspected of being rabid, and how livestock shall be handled.
R9-6-503	The objectives of the rule are to specify the term of confinement for an animal suspected of being rabid, and the treatment of the brain of an animal suspected of being rabid that has been euthanized by an animal control agency.
R9-6-504	The objective of the rule is to specify the content of a report that is required to be submitted by animal control agencies to the Department by April 30 of each year.

3. Are the rules effective in achieving their objectives? Yes ___ No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-6-502	The rule would be more effective if it required for an animal control agency to, at the owner's expense, confine an exposed dog or cat, which is not currently vaccinated, for 120 days rather than 180 days in a veterinary hospital, or the animal control agency's facility which is now current practice.

4. Are the rules consistent with other rules and statutes? Yes No ___

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
------	-------------

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
------	-------------

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
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7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

<u>Commenter</u>	<u>Comment</u>	<u>Agency's Response</u>
	Public request to change the rules to include rabies titer testing of dogs in conjunction with the Department of Agriculture.	If the rules change to include titer testing, the Department will not be in compliance with the National Compendium of Animal Rabies Prevention and Control. The Department does not plan to amend the rules to add this change during the next rulemaking.

8. **Economic, small business, and consumer impact comparison:**

A.R.S. § 36-136(I)(1) requires the Department of Health Services (Department) to define and prescribe reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases. The Department serves as a repository for information about rabies control activities and provides assistance and guidance to animal control agencies. The Department also performs tests for rabies on animals submitted for testing and monitors human exposure to laboratory-confirmed rabid animals. The following table provides the number of laboratory-confirmed rabies-positive animals and the number of humans exposed to laboratory-confirmed rabid animals from the last five years:

	2014	2015	2016	2017	2018	January 1, 2019 to October 1, 2019
Lab-confirmed Rabies Positive Animals	100	105	153	155	160	109
Humans Exposed to Lab-confirmed Rabid Animals	20	15	28	30	29	27

The rules in Article 5 were amended effective October 2004. An Economic, Small Business, and Consumer Impact Statement (EIS) was submitted with the 2004 rulemaking and designated annual costs and revenues as minimal when less than \$1,000, moderate when between \$1,000 to \$10,000, and substantial when \$10,000 or greater. The EIS stated that the Department, animal control agencies, and the public would receive a minimal benefit from adding definitions and clarifying the rules during the 2004 rulemaking. Adding ferrets to R9-6-502 was estimated in the EIS to impose a minimal-to-moderate burden on animal control agencies that would have to treat ferrets in the same manner as cats and dogs, rather than just euthanizing exposed ferrets. This would provide a significant benefit to ferret owners whose pets were exposed to rabid animals or suspect cases.

Animal control agencies have a major responsibility for rabies control through immunization and licensure programs and through impounding and, if appropriate, euthanizing suspect rabies cases or exposed animals. Removing some reporting requirements was estimated to provide animal control agencies with a minimal-to-moderate benefit. The Department believes the costs and benefits identified in the EIS are consistent with the actual costs and benefits of the rules. Upon review, the Department believes the economic impact of the rules in Article 5 has continued to be consistent with the impact predicted in 2004.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No √

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the previous five-year-review report for 9 A.A.C. 6, Article 5, the Department did not plan to amend the rules. Accordingly, no rulemaking actions have occurred.

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

The rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No √

Federal laws are not applicable to the rules in 9 A.A.C. 6, Article 5.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules were adopted before July 29, 2010.

14. Proposed course of action

The Department plans to amend the rules to address the issue identified in this report. The Department plans to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by May 2020.



Brittany Green <brittany.green@azdhs.gov>

Fwd: Information on exemptions and titer process

1 message

Heather Venkat <heather.venkat@azdhs.gov>

Tue, Sep 24, 2019 at 11:32 AM

To: Brittany Green <brittany.green@azdhs.gov>

Cc: Vectorborne Zoonotic Diseases Group <vbzd@azdhs.gov>, Ken Komatsu <Ken.Komatsu@azdhs.gov>

Public request for changing rabies rules to include rabies titer testing of dogs (in conjunction with the Department of Agriculture, we did not/do not support this)

-Heather

Heather Venkat, DVM, MPH, DACVPM

CDC Career Epidemiology Field Officer

Acting State Public Health Veterinarian

Arizona Department of Health Services

150 North 18th Avenue, Suite 140, Phoenix, AZ 85007

Main 602-364-3676

Direct 602-542-8960

Mobile 480-273-6162

Email heather.venkat@azdhs.gov | hvenkat@cdc.gov

Health and Wellness for all Arizonans



----- Forwarded message -----

From: **Patty Coyne** <pawspector@gmail.com>

Date: Thu, Oct 18, 2018 at 5:04 PM

Subject: Information on exemptions and titer process

To: Heather Venkat, DVM MPH <Heather.Venkat@azdhs.gov>

Cc: Kevin Payne <kpayne@azleg.gov>, Margo Roman <margoroman3@gmail.com>

Dear Dr Venkat,

Here is the information you asked for at our last meeting in Legislator's Payne's office on October 10th.

Organizing the existing exemption policy would be helpful to a lot of folks and clarify the process to veterinarians. Leaving it up to Animal Control makes it very hard to administer. They also are representing the shelter system and not pet dogs so there is a difference in perspective.

The Rabies Challenge fund is the independent non profit that has funded duration studies. That study has ended and a paper was submitted for publication. They have been instrumental in raising awareness and

getting exemption legislation passed. It will give you an overview of how different states have handle exemptions

It is our feeling in the Protect the Pets movement that if titers were a viable reportable means to show immunity to rabies, there would be less reason for exemptions to exist.

In the State of Arizona the largest group of dogs I can think of that are very fragile are those that are stricken with Valley Fever, the other group, senior pets. In the past many veterinarians stopped vaccinating older pets but that is not as true today.

Rabies Challenge Fund information:

[Exemptions on the books by State.](#)

[This is the donor list.](#)

A titer/exemption form could be reported on a single dual purpose submittal form with the veterinarian entering the titer value. It does not require a whole changes to reporting.

If you like I can forward the form that Dr Roman who supplied the serial titer uses. She lists a lot more information about the patient status.

I look forward to hearing about the progress you have made to share the titer opportunity via the State website with pet owners. We could develop a lot of information quickly.

Good luck at the CDC meetings. We need to move this effort forward. For those with boots on the ground there is little in the way of any meaningful news. Individuals at the CDC have agreed that this is long overdue and there is just no way to do that. It was rather disheartening for me to hear that the Rabies Compendium Committee takes marching order from the CDC.

I will forward the published article as soon as I receive it, In the meantime the pertinent studies are on the [Protect the Pets Website](#).

Best Wishes,

Patty Coyne

Glendale AZ (623)521.4518

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APPENDIX A- Current Rules

9 A.A.C. 6 Article 5. Rabies Control

ARTICLE 5. RABIES CONTROL

R9-6-501. Definitions

In this Article, unless otherwise specified:

1. “Animal control agency” means a board, commission, department, office, or other administrative unit of federal or state government or of a political subdivision of the state that has the responsibility for controlling rabies in animals in a particular geographic area.
2. “Approved rabies vaccine” means a rabies vaccine authorized for use in this state by the state veterinarian under A.A.C. R3-2-409.
3. “Cat” means an animal of the genus species *Felis domesticus*.
4. “Currently vaccinated” means that an animal was last immunized against rabies with an approved rabies vaccine:
 - a. At least 28 days and no longer than one year before being exposed, if the animal has only received an initial dose of approved rabies vaccine;
 - b. No longer than one year before being exposed, if the approved rabies vaccine is approved for annual use under A.A.C. R3-2-409; or
 - c. No longer than three years before being exposed, if the approved rabies vaccine is approved for triennial use under A.A.C. R3-2-409.
5. “Dog” means an animal of the genus species *Canis familiaris*.
6. “Euthanize” means to kill an animal painlessly.
7. “Exposed” means bitten by or having touched a rabid animal or an animal suspected of being rabid.
8. “Ferret” means an animal of the genus species *Mustela putorius*.
9. “Not currently vaccinated” means that an animal does not meet the definition of “currently vaccinated.”
10. “Rabid” means infected with rabies virus, a rhabdovirus of the genus *Lyssavirus*.
11. “Suspect case” means an animal whose signs or symptoms indicate that the animal may be rabid.

R9-6-502. Management of Exposed Animals

A. An animal control agency shall manage an exposed dog, cat, or ferret as follows:

1. If the exposed dog, cat, or ferret is currently vaccinated, the animal control agency shall:
 - a. Revaccinate the animal with an approved rabies vaccine within seven days after the date that the animal is exposed; and

APPENDIX A- Current Rules

9 A.A.C. 6 Article 5. Rabies Control

- b. Confine and observe the animal in the owner's home or, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, for 45 days after the animal is exposed; or
- 2. If the exposed dog, cat, or ferret is not currently vaccinated, the animal control agency shall:
 - a. Euthanize the animal; or
 - b. At the owner's request, confine the animal for 180 days, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, and vaccinate the animal with an approved rabies vaccine 28 days before it is released from confinement.
- B.** An animal control agency that is aware of an exposed animal, other than a cat, dog, ferret, or livestock, shall:
 - 1. Make every effort to capture the exposed animal as soon as it is identified, and
 - 2. Euthanize the animal as soon as it is captured.
- C.** An animal control agency shall release from confinement a dog, cat, or ferret exposed to a suspect case when the animal control agency receives a negative rabies report on the suspect case from the Department.
- D.** Livestock shall be handled according to A.A.C. R3-2-408.

R9-6-503. Suspect Cases

- A.** An animal control agency shall ensure confinement of a dog, cat, or ferret that is a suspect case until:
 - 1. The animal dies,
 - 2. The animal is euthanized, or
 - 3. A veterinarian determines that the animal is not rabid.
- B.** When an animal control agency euthanizes a suspect case, the animal control agency shall avoid damaging the brain, so that rabies testing can be performed.

R9-6-504. Animal Control Agency Reporting Requirements

By April 30 of each year, an animal control agency shall submit a report to the Department that contains the number of animal bites to humans reported as occurring in the animal control agency's jurisdiction during the preceding calendar year and a breakdown of the bites by:

- 1. Species of animal,
- 2. Age of victim, and
- 3. Month of occurrence.

APPENDIX B- General and Specific Authority

9 A.A.C. 6 Article 5. Rabies Control

GENERAL AUTHORITY

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

APPENDIX B- General and Specific Authority

9 A.A.C. 6 Article 5. Rabies Control

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.

APPENDIX B- General and Specific Authority

9 A.A.C. 6 Article 5. Rabies Control

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
 17. License and regulate health care institutions according to chapter 4 of this title.
 18. Issue or direct the issuance of licenses and permits required by law.
 19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
 20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high-risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
 21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or

APPENDIX B- General and Specific Authority

9 A.A.C. 6 Article 5. Rabies Control

facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

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6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state

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hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

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1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
 - (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

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- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from

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sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from

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rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall

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provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

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O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

SPECIFIC AUTHORITY

11-1003. Powers and duties of department of health services

A. The department of health services shall regulate the handling and disposition of animals other than livestock that have been bitten by a rabid or suspected rabid animal or are showing symptoms suggestive of rabies.

B. The department of health services may require the county enforcement agent to submit a record of all dog licenses issued and in addition any information deemed necessary to aid in the control of rabies.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

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1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
 2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
 7. Prepare sanitary and public health rules.
 8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property,

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including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and

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may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and

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transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department

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pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free

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from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director

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of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

APPENDIX B- General and Specific Authority

9 A.A.C. 6 Article 5. Rabies Control

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

APPENDIX B- General and Specific Authority

9 A.A.C. 6 Article 5. Rabies Control

ARIZONA DEPARTMENT OF HEALTH SERVICES (F20-0205)

Title 9, Chapter 6, Article 19, Counseling Facilities



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 28, 2020

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

FROM: Council Staff

DATE: January 6, 2020

SUBJECT: Department of Health Services
Title 9, Chapter 10, Article 19

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 10, Article 19 regarding Counseling Facilities.

This is the first Five-Year-Review Report on these rules.

Proposed Action

The Department, for the reasons mentioned in the report, plans to amend the following rules to improve their overall clarity, conciseness, and understandability:

- **R9-10-1903** - Administration
- **R19-10-1909** - Counseling
- **R19-10-1910** - Physical Plant, Environmental Services, and Equipment Standards
- **R19-1911** - Integrated Information

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

Yes. The Department cites to both general and specific statutory authority.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

Prior to 2015, the rules for counseling facilities had been adopted in R9-10-117. In 2015, the rules in 9 A.A.C. 10 were amended to comply with Laws 2014, Ch. 233. As part of this rulemaking, R9-10-117 was repealed and a new Article 19 was adopted through exempt rulemaking. The new Article 19 included requirements governing supplemental application information; administration; quality management; contracted services; personnel; patient rights; medical records; counseling; and physical plant, environmental services, and equipment standards for counseling facilities. Article 19 also included requirements for affiliated outpatient treatment centers and affiliated counseling facilities. This is the first five-year review of the Article 19 rules adopted by exempt rulemaking in 2015. The Department believes that the changes in both the 2015 exempt rulemaking, the 2019 regular rulemaking, and the 2019 expedited rulemaking reduced monetary and regulatory costs and facilitated the licensing of counseling facilities. They believe the changes made the rules more consistent with practices and increased the consistency within health care institution licensing rules.

As of October 1, 2019 there were 250 licensed counseling facilities in Arizona. The Department received 231 renewal applications and 25 initial applications in 2018. In 2018, the Department conducted 15 complaint surveys and 78 compliance surveys. There were 40 counseling facilities that closed or were licensed under another governing authority in 2018.

Stakeholders for these rulemakings include the Department; counseling facilities; individuals licensed or certified under A.R.S. Title 32, Chapter 33; patients and their families; and the general public.

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

The Department believes 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. The Department indicates that Article 19 further reduced the administrative burden on a counseling facility by allowing some administrative tasks and recordkeeping to be accomplished in an integrated/consolidated manner.

The Department plans to amend the rules in 9 A.A.C. 10, Article 19 to address inconsistent verbiage, clarify and correct typographical errors identified in the five-year-review report. To allow for stakeholder engagement, the Department plans to submit a Notice of Final Expedited Rulemaking to the council by August 2020

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department indicates they did not receive any written criticisms on these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons mentioned in the report the Department indicates the following rules need to be amended to improve their clarity, conciseness, understandability, consistency with other rules and statutes, and effectiveness:

- **R9-10-1903** - Administration
- **R19-10-1909** - Counseling
- **R19-10-1910** - Physical Plant, Environmental Services, and Equipment Standards
- **R19-1911** - Integrated Information

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

Yes. The Department indicates the rules are enforced as written.

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

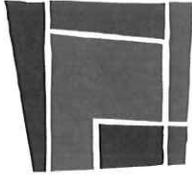
Not Applicable. There are no corresponding federal laws for these rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates the rules require issuance of a specific agency authorization, which is authorized by A.R.S. 36-405, therefore a general permit is not applicable.

9. **Conclusion**

As mentioned above and for the reasons mentioned in the report, the Department is proposing to amend some of its rules to improve their clarity, conciseness, understandability, consistency with other rules and statutes, and effectiveness. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by August 2020. Council staff recommend approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 20, 2019

VIA EMAIL: grrc@azdoa.gov

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

RE: Department of Health Services, 9 A.A.C. 10, Article 19, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 10, Article 19, Counseling Facilities, which is due on December 31, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov or 602-364-1230.

Sincerely,



Stephanie Elzenga
Director's Designee

SE:rms

Enclosures

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



Arizona Department of Health Services
Five-Year-Review Report
Title 9. Health Services
Chapter 10. Department of Health Services
Health Care Institutions: Licensing
Article 19. Counseling Facilities
November 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and (17) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-405, 36-406, and 36-407

In addition, the following rules have additional specific statutory authority:

Rule	Statutory Authority
R9-10-1902	A.R.S. § 36-422
R9-10-1906	A.R.S. § 36-405.02
R9-10-1906 and R9-10-1909	A.R.S. § 36-425.03

2. The objective of each rule:

Rule	Objective
R9-10-1902	To specify license application requirements, in addition to those in A.R.S. § 36-422 and R9-10-105 that are specific to counseling facilities.
R9-10-1903	To establish minimum requirements and responsibilities for a counseling facility's governing authority and administrator.
R9-10-1904	To establish minimum requirements for a counseling facility's quality management program.
R9-10-1905	To establish minimum requirements for persons who contract with the licensee to provide counseling services.

R9-10-1906	To establish minimum standards for counseling facility personnel and minimum standards for documentation of personnel member qualifications.
R9-10-1907	To establish minimum standards for patient rights.
R9-10-1908	To establish minimum requirements for patient medical records.
R9-10-1909	To establish minimum requirements for counseling services.
R9-10-1910	To establish minimum standards for physical plant, environmental services, and equipment for counseling facility.
R9-10-1911	To establish minimum standards for a information and records maintained by an affiliated outpatient treatment center or an affiliated counseling facility.

3. **Are the rules effective in achieving their objectives?** Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
Multiple	The rules are effective, but they would be more effective if the issues identified in paragraphs and 6 were addressed.

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-10-1909	The rule is inconsistent with A.R.S. § 36-405.02 as amended by Laws 2019, Ch. 215, § 4, related to the minimum age of a personnel member. Similar inconsistencies are present in other Sections of the Chapter as well and should be corrected,.

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-10-1903	The rule would be clearer if the typographical error in subsection (D)(1) were corrected.
R9-10-1909	The rule would be clearer if the typographical errors in subsections (B)(1)(b) and (c) were corrected to eliminate the “and” at the end of subsection (B)(1)(b) and replace it with the “or” at the end of subsection (B)(1)(c). The rule would also be improved if subsection (C) were reworded so it did not appear to duplicate R9-10-1902(2).
R9-10-1910	The rule would be improved if the Section were retitled to replace “Equipment” with “Safety” to better reflect the content of the rule.
R9-10-1911	The rule would be clearer if the term “orientation plan” in subsection (C)(4) were replaced with “in-service education plan” and if the typographical error in subsection (C)(5)(b)(i) were corrected.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No ___

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

There were 250 licensed counseling facilities in Arizona as of October 1, 2019. The Department received 231 renewal applications and 25 initial applications in 2018. In 2018, the Department also conducted 15 complaint surveys and 78 compliance surveys. There were 40 counseling facilities that closed or were licensed under another governing authority in 2018.

Prior to 2015, the rules for counseling facilities had been adopted in R9-10-117. In 2015, the rules in 9 A.A.C. 10 were amended to comply with Laws 2014, Ch. 233. As part of this rulemaking, R9-10-117 was repealed and a new Article 19 was adopted through exempt rulemaking. The new Article 19 included requirements governing supplemental application information; administration; quality management; contracted services; personnel; patient rights; medical records; counseling; and physical plant, environmental services, and equipment standards for counseling facilities. Article 19 also included requirements for affiliated outpatient treatment centers and affiliated counseling

facilities. In 2019, as part of the regular rulemaking to comply with Laws 2017, Ch. 122, R9-10-1901 was repealed and R9-10-1902 was revised to remove references to “initial” licenses. Also in 2019, R9-10-1910 was revised by expedited rulemaking to correct a cross-reference. Stakeholders for these rulemakings include the Department; counseling facilities; individuals licensed or certified under A.R.S. Title 32, Chapter 33; patients and their families; and the general public.

In repealing R9-10-117, the 2015 rulemaking reduced the regulatory burden on counseling facilities. Counseling facilities had been required by R9-10-117 to comply with the requirements in both Article 1, which is still the case, and Article 10 for outpatient treatment centers. Requirements in Article 19 include many, but not all, of the requirements in Article 10, as shown in <https://www.azdhs.gov/documents/director/administrative-counsel-rules/rules/rulemaking/counseling/counseling-facilities-crosswalk.pdf>. By including requirements for affiliated outpatient treatment centers and affiliated counseling facilities, Article 19 further reduced the administrative burden on a counseling facility by allowing some administrative tasks and recordkeeping to be accomplished in an integrates/consolidated manner.

The changes in both the 2015 exempt rulemaking, the 2019 regular rulemaking, and the 2019 expedited rulemaking reduced monetary and regulatory costs and facilitated the licensing of counseling facilities. The changes also made the rules more consistent with practices and increased consistency within health care institution licensing rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No ___
10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**
Please state what the previous course of action was and if the agency did not complete the action, please explain why not.
This is the first five-year-review of the new rules adopted by exempt rulemaking in 2015.
11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs.**

necessary to achieve the underlying regulatory objective:

The changes in the 2015 exempt rulemaking that included requirements governing supplemental application information; administration; quality management; contracted services; personnel; patient rights; medical records; counseling; and physical plant, environmental services, and equipment standards for counseling facilities were intended to reduce monetary and regulatory costs. The Department believes that they accomplished this purpose while protecting health and safety. The minor changes made as part of the 2019 regular rulemaking and 2019 expedited rulemaking clarified the rules and, thus, also reduced the regulatory burden. The changes in both the 2015 exempt rulemaking and the 2019 rulemakings reduced monetary and regulatory costs and facilitated the licensing of counseling facilities. The changes also made the rules more consistent with practices and increased consistency within health care institution licensing rules. The benefits of these changes outweigh any possible costs. Except as noted in paragraphs 4 and 6, the Department believes 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.

12. Are the rules more stringent than corresponding federal laws?

Yes ___ No ___

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Federal laws are not applicable to the rules in 9 A.A.C. 10, Article 19.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to amend the rules in 9 A.A.C. 10, Article 19 to address issues

identified in this five- year-review report. To allow for stakeholder engagement, the Department plans to submit a Notice of Final Expedited Rulemaking to the Council by August 2020.

ARTICLE 19. COUNSELING FACILITIES

R9-10-1901. Definitions Repealed

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

- ~~1. “Affiliated counseling facility” means a counseling facility that shares administrative support with one or more other counseling facilities that operate under the same governing authority.~~
- ~~2. “Affiliated outpatient treatment center” means an outpatient treatment center authorized by the Department to provide behavioral health services that provides administrative support to a counseling facility or counseling facilities that operate under the same governing authority as the outpatient treatment center.~~

Department Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Repealed by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019.

R9-10-1902. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, a governing authority applying for a license as a counseling facility shall submit, in a format provided by the Department:

1. The days and hours of clinical operation and, if different from the days and hours of clinical operation, the days and hours of administrative operation;
2. If applicable, a request to provide one of more of the following:
 - a. DUI screening,
 - b. DUI education,
 - c. DUI treatment, or
 - d. Misdemeanor domestic violence offender treatment;
3. Whether the counseling facility has an affiliated outpatient treatment center;
4. If the counseling facility has an affiliated outpatient treatment center:
 - a. The affiliated outpatient treatment center’s name; and
 - b. Either:
 - i. The license number assigned to the affiliated outpatient treatment center by the Department; or
 - ii. If the affiliated outpatient treatment center is not currently licensed, the:
 - (1) Street address of the affiliated outpatient treatment center, and
 - (2) Date the affiliated outpatient treatment center submitted to the Department an application for a health care institution license;
5. Whether the counseling facility is sharing administrative support with an affiliated counseling facility; and
6. If the counseling facility is sharing administrative support with an affiliated counseling facility, for each affiliated counseling facility sharing administrative support with the counseling facility:
 - a. The affiliated counseling facility’s name; and
 - b. Either:
 - i. The license number assigned to the affiliated counseling facility by the Department; or
 - ii. If the affiliated counseling facility is not currently licensed, the:
 - (1) Street address of the affiliated counseling facility, and

- (2) Date the affiliated counseling facility submitted to the Department an initial application for a health care institution license.

Department Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Revised by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019.

R9-10-1903. Administration

- A.** A governing authority shall:
 1. Consist of one or more individuals accountable for the organization, operation, and administration of a counseling facility;
 2. Establish, in writing:
 - a. A counseling facility's scope of services, and
 - b. Qualifications for an administrator;
 3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
 4. Adopt a quality management program according to R9-10-1904;
 5. Review and evaluate the effectiveness of the quality management program in R9-10-1904 at least once every 12 months;
 6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
 - a. Expected not to be present on the premises for more than 30 calendar days, or
 - b. Not present on the premises for more than 30 calendar days; and
 7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in an administrator and identify the name and qualifications of the new administrator.
- B.** An administrator:
 1. Is directly accountable to the governing authority for the daily operation of the counseling facility and all services provided by or at the counseling facility;
 2. Has the authority and responsibility to manage the counseling facility; and
 3. Except as provided in subsection (A)(6), designates in writing, an individual who is present on the counseling facility's premises and accountable for the counseling facility when the administrator is not available.
- C.** An administrator or the administrator of the counseling facility's affiliated outpatient treatment center shall establish policies and procedures to protect the health and safety of a patient that:
 1. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience, for personnel members, employees, volunteers, and students;
 2. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 3. Include how a personnel member may submit a complaint relating to services provided to a patient;
 4. Cover the requirements in Title 36, Chapter 4, Article 11;
 5. Cover patient screening, admission, assessment, discharge planning, and discharge;
 6. Cover medical records;
 7. Cover the provision of counseling and any services listed in the counseling facility's scope of services;
 8. Include when general consent and informed consent are required;
 9. Cover telemedicine, if applicable;

10. Cover specific steps for:
 - a. A patient or a patient's representative to file a complaint, and
 - b. A counseling facility to respond to a complaint; and
 11. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual.
- D.** An administrator shall ensure that:
1. Policies and procedures established according to subsection (C) are documented and implemented:
 2. Counseling facility policies and procedures are:
 - a. Reviewed at least once every three years and updated as needed, and
 - b. Available to personnel members and employees;
 3. Unless otherwise stated:
 - a. Documentation required by this Article is maintained and provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of a counseling facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the counseling facility;
 4. The following are conspicuously posted:
 - a. The current license for the counseling facility issued by the Department;
 - b. The name, address, and telephone number of the Department;
 - c. A notice that a patient may file a complaint with the Department about the counseling facility;
 - d. A list of patient rights;
 - e. A map for evacuating the facility; and
 - f. A notice identifying the location on the premises where current license inspection reports required in A.R.S. § 36-425(H), with patient information redacted, are available;
 5. Patient follow-up instructions are:
 - a. Provided, orally or in written form, to a patient or the patient's representative before the patient leaves the counseling facility unless the patient leaves against a personnel member's advice; and
 - b. Documented in the patient's medical record; and
 6. Cardiopulmonary resuscitation training includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation.
- E.** If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a counseling facility's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
 2. For a patient under 18 years of age, according to A.R.S. § 13-3620.
- F.** If an administrator has a reasonable basis, according to A.R.S. §§ 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from a counseling facility's employee or personnel member, an administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 2. Report the suspected abuse, neglect, or exploitation of the patient as follows:
 - a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
 - b. For a patient under 18 years of age, according to A.R.S. § 13-3620;

3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (F)(1); and
 - c. The report in subsection (F)(2);
4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-1904. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
 - a. A method to identify, document, and evaluate incidents;
 - b. A method to collect data to evaluate services provided to patients;
 - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
 - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
 - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
 - a. An identification of each concern about the delivery of services related to patient care, and
 - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-1905. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-1906. Personnel

An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
 - a. Are based on:
 - i. The type of counseling expected to be provided by the personnel member according to the established job description, and
 - ii. The acuity of the patients expected to be receiving the counseling from the personnel member according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the personnel member to provide the counseling listed in the established job description,
 - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the counseling listed in the established job description, and
 - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the counseling listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
 - a. Before the personnel member provides counseling, and
 - b. According to policies and procedures;
3. Sufficient personnel members are present on a counseling facility's premises during hours of clinical operation with the qualifications, skills, and knowledge necessary to:
 - a. Provide the counseling in the counseling facility's scope of services,
 - b. Meet the needs of a patient, and
 - c. Ensure the health and safety of a patient;
4. At least one personnel member with cardiopulmonary resuscitation training is present on a counseling facility's premises during hours of clinical operation;
5. At least one personnel member with first aid training is present on a counseling facility's premises during hours of clinical operation;
6. A personnel member only provides counseling the personnel member is qualified to provide;
7. A plan is developed, documented, and implemented to provide orientation specific to the duties of personnel members, employees, volunteers, and students;
8. A personnel member completes orientation before providing counseling to a patient;
9. An individual's orientation is documented, to include:
 - a. The individual's name,
 - b. The date of the orientation, and
 - c. The subject or topics covered in the orientation;
10. A plan is developed, documented, and implemented to provide in-service education specific to the duties of a personnel member;
11. A personnel member's in-service education is documented, to include:
 - a. The personnel member's name,

- b. The date of the in-service education, and
 - c. The subject or topics covered in the in-service education;
12. A personnel member who is a behavioral health technician or behavioral health paraprofessional complies with the applicable requirements in R9-10-115;
13. A record for a personnel member, an employee, a volunteer, or a student is maintained that includes:
- a. The individual's name, date of birth, and contact telephone number;
 - b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
 - c. Documentation of:
 - i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
 - ii. The individual's education and experience applicable to the individual's job duties;
 - iii. The individual's completed orientation and in-service education as required by policies and procedures;
 - iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
 - v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
 - vi. The individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03, if applicable;
 - vii. If applicable, cardiopulmonary resuscitation training; and
 - viii. If applicable, first aid training; and
14. The record in subsection (13) is:
- a. Maintained while an individual provides services for or at the counseling facility and for at least 24 months after the last date the individual provided services for or at the counseling facility; and
 - b. If the ending date of employment or volunteer service was 12 or more months before the date of the Department's request, provided to the Department within 72 hours after the Department's request.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-1907. Patient Rights

- A.** An administrator shall ensure that at the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C).
- B.** An administrator shall ensure that:
 - 1. A patient is treated with dignity, respect, and consideration;
 - 2. A patient as not subjected to:
 - a. Abuse;
 - b. Neglect;
 - c. Exploitation;
 - d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;
 - g. Sexual assault;

- h. Restraint or seclusion;
 - i. Retaliation for submitting a complaint to the Department or another entity; or
 - j. Misappropriation of personal and private property by a counseling facility's personnel member, employee, volunteer, or student; and
3. A patient or the patient's representative:
- a. Either consents to or refuses counseling;
 - b. May refuse or withdraw consent for receiving counseling before counseling is initiated;
 - c. Is informed of the following:
 - i. The counseling facility's policy on health care directives, and
 - ii. The patient complaint process;
 - d. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a counseling facility for identification and administrative purposes; and
 - e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
 - i. Medical record, or
 - ii. Financial records.
- C. A patient has the following rights:
- 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
 - 2. To receive counseling that supports and respects the patient's individuality, choices, strengths, and abilities;
 - 3. To receive privacy during counseling;
 - 4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
 - 5. To receive a referral to another health care institution if the counseling facility is not authorized or not able to provide the behavioral health services needed by the patient;
 - 6. To participate or have the patient's representative participate in the development of, or decisions concerning, the counseling provided to the patient;
 - 7. To participate or refuse to participate in research or experimental treatment; and
 - 8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-1908. Medical Records

- A. An administrator shall ensure that:
- 1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
 - 2. An entry in a patient's medical record is:
 - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
 - b. Dated, legible, and authenticated; and
 - c. Not changed to make the initial entry illegible;
 - 3. An order is:
 - a. Dated when the order is entered in the patient's medical record and includes the time of the order;

- b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
 - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
 - 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
 - 5. A patient's medical record is available to an individual:
 - a. Authorized according to policies and procedures to access the patient's medical record;
 - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
 - c. As permitted by law; and
 - 6. A patient's medical record is protected from loss, damage, or unauthorized use.
- B.** If a counseling facility maintains patients' medical records electronically, an administrator shall ensure that:
 - 1. Safeguards exist to prevent unauthorized access, and
 - 2. The date and time of an entry in a medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a patient's medical record contains:
 - 1. Patient information that includes:
 - a. The patient's name and address, and
 - b. The patient's date of birth;
 - 2. A diagnosis or reason for counseling;
 - 3. Documentation of general consent and, if applicable, informed consent for counseling by the patient or the patient's representative;
 - 4. If applicable, the name and contact information of the patient's representative and:
 - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
 - b. If the patient's representative:
 - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
 - ii. Is a legal guardian, a copy of the court order establishing guardianship;
 - 5. Documentation of medical history;
 - 6. Orders;
 - 7. Assessment;
 - 8. Interval notes;
 - 9. Progress notes;
 - 10. Documentation of counseling provided to the patient;
 - 11. The name of each individual providing counseling;
 - 12. Disposition of the patient upon discharge;
 - 13. Documentation of the patient's follow-up instructions provided to the patient;
 - 14. A discharge summary; and
 - 15. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch.

R9-10-1909. Counseling

- A.** An administrator of a counseling facility shall ensure that:
1. Counseling provided at the counseling facility is provided under the direction of a behavioral health professional;
 2. A personnel member who provides counseling is:
 - a. At least 21 years of age, or
 - b. At least 18 years of age and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice; and
 3. If a counseling facility provides counseling to a patient who is less than 18 years of age, an employee or a volunteer and the owner comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.
- B.** An administrator of a counseling facility shall ensure that:
1. Before counseling for a patient is initiated, there is a behavioral health assessment for the patient that complies with the requirements in this Section that is:
 - a. Available:
 - i. In the patient's medical record maintained by the counseling facility;
 - ii. If the counseling facility is an affiliated counseling facility, in the patient's integrated medical record; or
 - iii. If the counseling facility has an affiliated outpatient treatment center, in the patient's integrated medical record maintained by the counseling facility's affiliated outpatient treatment center;
 - b. Completed by a personnel member at the counseling facility; and
 - c. Obtained from a behavioral health provider other than the counseling facility; or
 2. A behavioral health assessment, obtained from a behavioral health provider other than the counseling facility or available in a medical record or integrated medical record, was completed within 12 months before the date of the patient's current admission;
 3. If a behavioral health assessment is obtained from a behavioral health provider other than the counseling facility or is available as stated in subsection (B)(1)(a), the information in the behavioral health assessment is reviewed and updated if additional information that affects the patient's behavioral health assessment is identified;
 4. The review and update of the patient's assessment information in subsection (B)(3) is documented in the patient's medical record within 48 hours after the review is completed;
 5. If a behavioral health assessment is conducted by a:
 - a. Behavioral health technician or a registered nurse, within 72 hours after the behavioral health assessment is conducted, a behavioral health professional certified or licensed to provide the counseling needed by the patient reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the counseling needed by the patient; or
 - b. Behavioral health paraprofessional, a behavioral health professional certified or licensed to provide the counseling needed by the patient supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the assessment identifies the counseling needed by the patient;
 6. A behavioral health assessment:
 - a. Documents a patient's:
 - i. Presenting issue;
 - ii. Substance use history;
 - iii. Co-occurring disorder;

- iv. Medical condition and history;
 - v. Legal history, including:
 - (1) Custody,
 - (2) Guardianship, and
 - (3) Pending litigation;
 - vi. Criminal justice record;
 - vii. Family history;
 - viii. Behavioral health treatment history; and
 - ix. Symptoms reported by the patient or the patient's representative and referrals needed by the patient, if any;
 - b. Includes:
 - i. Recommendations for further assessment or examination of the patient's needs;
 - ii. A description of the counseling, including type, frequency, and number of hours, that will be provided to the patient; and
 - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
 - c. Is documented in patient's medical record;
 - 7. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
 - 8. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
 - 9. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
 - 10. Documentation of the request in subsection (B)(8) and the opportunity in subsection (B)(9) is in the patient's medical record;
 - 11. A patient's behavioral health assessment information is documented in the medical record within 48 hours after completing the assessment;
 - 12. If information in subsection (B)(6)(a) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained;
 - 13. Counseling is:
 - a. Offered as described in the counseling facility's scope of services;
 - b. Provided according to the type, frequency, and number of hours identified in the patient's assessment; and
 - c. Provided by a behavioral health professional or a behavioral health technician;
 - 14. A personnel member providing counseling to address a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
 - 15. Each counseling session is documented in the patient's medical record to include:
 - a. The date of the counseling session;
 - b. The amount of time spent in the counseling session;
 - c. Whether the counseling was individual counseling, family counseling, or group counseling;
 - d. The treatment goals addressed in the counseling session; and
 - e. The signature of the personnel member who provided the counseling and the date signed.
- C. An administrator may request authorization to provide any of the following to individuals

required to attend by a referring court:

1. DUI screening,
 2. DUI education,
 3. DUI treatment, or
 4. Misdemeanor domestic violence offender treatment.
- D.** An administrator of a counseling facility authorized to provide the services in subsection (C):
1. Shall comply with the requirements for the specific service in 9 A.A.C. 20, and
 2. May have a behavioral health technician who has the appropriate skills and knowledge established in policies and procedures provide the services.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-1910. Physical Plant, Environmental Services, and Equipment Standards

- A.** An administrator shall ensure that a counseling facility has either:
1. Both of the following:
 - a. A smoke detector installed in each hallway of the counseling facility that is:
 - i. Maintained in an operable condition;
 - ii. Either battery operated or, if hard-wired into the electrical system of the outpatient treatment center, has a back-up battery; and
 - iii. Tested monthly; and
 - b. A portable, operable fire extinguisher, labeled as rated at least 2A-10-BC by the Underwriters Laboratories, that:
 - i. Is available at the counseling facility;
 - ii. Is mounted in a fire extinguisher cabinet or placed on wall brackets so that the top handle of the fire extinguisher is not over five feet from the floor and the bottom of the fire extinguisher is at least four inches from the floor;
 - iii. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
 - iv. If a rechargeable fire extinguisher, is serviced at least once every 12 months and has a tag attached to the fire extinguisher that specifies the date of the last servicing and the name of the servicing person; or
 2. Both of the following that are tested and serviced at least once every 12 months:
 - a. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, that is in working order; and
 - b. A sprinkler system installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, that is in working order.
- B.** An administrator shall ensure that documentation of a test required in subsection (A) is maintained for at least 12 months after the date of the test.
- C.** An administrator shall ensure that on a counseling facility's premises:
1. Exit signs are illuminated, if the local fire jurisdiction requires illuminated exit signs;
 2. Corridors and exits are kept clear of any obstructions;
 3. A patient can exit through any exit during hours of clinical operation;
 4. An extension cord is not used instead of permanent electrical wiring; and
 5. Each electrical outlet and electrical switch has a cover plate that is in good repair.
- D.** An administrator shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local

- fire department or the State Fire Marshal,
- 2. Make any repairs or corrections stated on the fire inspection report, and
- 3. Maintain documentation of a current fire inspection.
- E. An administrator shall ensure that:
 - 1. A counseling facility's premises are:
 - a. Sufficient to provide the counseling facility's scope of services;
 - b. Cleaned and disinfected to prevent, minimize, and control illness and infection; and
 - c. Free from a condition or situation that may cause an individual to suffer physical injury;
 - 2. If a bathroom is on the premises, the bathroom contains:
 - a. A working sink with running water,
 - b. A working toilet that flushes and has a seat,
 - c. Toilet tissue,
 - d. Soap for hand washing,
 - e. Paper towels or a mechanical air hand dryer,
 - f. Lighting, and
 - g. A means of ventilation;
 - 3. If a bathroom is not on the premises, a bathroom is:
 - a. Available for a patient's use,
 - b. Located in a building in contiguous proximity to the counseling facility, and
 - c. Free from a condition or situation that may cause an individual using the bathroom to suffer a physical injury; and
 - 4. A tobacco smoke-free environment is maintained on the premises.

Department Note

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Revised by final expedited rulemaking, effective November 5, 2019, to be published November 29, 2019.

R9-10-1911. Integrated Information

- A. An administrator of an affiliated outpatient treatment center may maintain the following information, required in this Article for a counseling facility for which the affiliated outpatient treatment center provides administrative support, integrated with information required in 9 A.A.C. 10, Article 10 for the outpatient treatment center:
 - 1. Quality management plan, documented incidents, and reports required in R9-10-1904;
 - 2. Contracted services information in R9-10-1905;
 - 3. Orientation plan, in-service education plan, and personnel records in R9-10-1906; and
 - 4. Medical records in R9-10-1908.
- B. An administrator of an affiliated counseling facility that shares administrative support with one or more other affiliated counseling facilities may maintain the information in subsections (A)(1) through (A)(4) integrated with information maintained by the other affiliated counseling facilities.
- C. If an administrator of an affiliated outpatient treatment center or an affiliated counseling facility maintains integrated information according to subsection (A) or (B), the administrator shall develop, document, and implement a method to ensure that:
 - 1. If the quality management plan is integrated, the incidents documented, concerns identified, and changes or actions taken are identified for each facility;
 - 2. If a person provides contracted services at more than one facility, the types of services the person provides at each facility is identified in the contract information;
 - 3. If an orientation plan is applicable to more than one facility, the orientation a personnel

- member is expected to obtain for each facility is identified in the orientation plan;
4. If an in-service education plan is applicable to more than one facility, the in-service education a personnel member is expected to obtain for each facility is identified in the orientation plan;
 5. If a personnel member provides counseling at more than one facility, the following is identified in the personnel member's record:
 - a. The days and hours the personnel member provides counseling for each facility;
 - b. If the personnel member's job description is different for each facility:
 - i. Each job description for the personnel member; and
 - ii. Verification of the skills and knowledge to provide counseling according to each of the personnel member's job descriptions; and
 - c. If a personnel member is a behavioral health technician, documentation of the clinical oversight provided to the personnel member, based on the number and acuity of the patients to whom the personnel member provided counseling at each facility; and
 6. If a patient receives counseling at more than one facility, the counseling received and any information related to the counseling received at each facility is identified in the patient's medical record.
- D.** An administrator of a counseling facility receiving administrative support from an affiliated outpatient treatment center or an affiliated counseling facility shall ensure that if the counseling facility:
1. Has integrated information, the integrated information is provided to the Department for review within two hours after the Department's request:
 - a. In a written or electronic format at the counseling facility's premises; or
 - b. Electronically directly to the Department.
 2. No longer receives or shares administrative support that includes integrating the information in subsection (A), the information for the counseling facility required in this Article is maintained by the counseling facility and provided to the Department according to the requirements in this Article.

Historical Note

Statutory Authority

9 A.A.C. 10 Article 19. Counseling Facilities

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the

health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts

and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the

construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.
2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.
3. Prescribe the criteria for the licensure inspection process.
4. Prescribe standards for the selection of health care-related demonstration projects.
5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.
6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.
7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-405.02. Outpatient behavioral health and other related health care services; employees; rules

The department shall allow a person who is employed at a health care institution that provides outpatient behavioral health services, who is not a licensed behavioral health professional and who is at least eighteen years of age to provide outpatient behavioral health or other related health care services pursuant to all applicable department rules. The director shall adopt rules consistent with this section.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-407. Prohibited acts; required acts

A. A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

B. The licensee shall not imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this chapter and the underlying rules for the particular class or subclass of health care institution within which the licensee is licensed.

C. The licensee may not transfer or assign the license. A license is valid only for the premises occupied by the institution at the time of its issuance.

D. The licensee shall not personally or through an agent offer or imply an offer of rebate or fee splitting to any person regulated by title 32 or chapter 17 of this title.

E. The licensee shall submit an itemized statement of charges to each patient.

F. A health care institution shall refer a patient who is discharged after receiving emergency services for a drug-related overdose to a behavioral health services provider.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department and that contains all of the following:

(a) The name and location of the health care institution.

(b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.

(c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.

(d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

(e) The class or subclass of health care institution to be established or operated.

(f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

(g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

(h) Other pertinent information required by the department for the proper administration of this chapter and department rules.

2. The architectural plans and specifications or the department's approval of the architectural plans and specifications required by section 36-421, subsection A.

3. The applicable application fee.

B. An application submitted pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.

F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual

licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. A behavioral health residential facility that provides services to children must notify the department within thirty days after the facility begins contracting exclusively with the federal government, receives only federal monies and does not contract with this state.

J. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

K. Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.
2. All applicable application and license fees.
3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

L. Within seven days after the department's receipt of the items required in subsection K of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.
2. The name of the licensee.
3. The facility's class or subclass.
4. The temporary license's effective date.
5. The location of the licensed premises.

M. A facility may begin operating on the effective date of the temporary license.

N. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

O. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.
2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

36-425.03. Children's behavioral health programs; personnel; fingerprinting requirements; exemptions; definitions

A. Except as provided in subsections B, C and D of this section, children's behavioral health program personnel, including volunteers, shall submit the form prescribed in subsection E of this section to the employer and shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 or, within seven working days after employment or beginning volunteer work, shall apply for a fingerprint clearance card.

B. The following persons are exempt from the fingerprinting requirements of this section:

1. When under the direct visual supervision and in the presence of children's behavioral health program personnel who have a valid fingerprint clearance card:

(a) Except as provided in subsection C of this section, parents, foster parents, kinship foster care parents and guardians who participate in group activities that include their children who are receiving behavioral health services from a children's behavioral health program if they are not employees of the children's behavioral health program.

(b) A volunteer who provides services to children receiving behavioral health services.

(c) An employee or contractor who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision.

(d) A person who is not providing medical services, nursing services, behavioral health services, health-related services, home health services or supportive services and who is either not an employee or contractor or not on the premises on a regular basis.

2. Hospital medical staff members, employees, contractors and volunteers who are not present in an area of the hospital authorized by the department for providing children's behavioral health services.

C. A parent, foster parent, kinship foster care parent or guardian of a child who is receiving behavioral health services from a children's behavioral health program is not required to be fingerprinted or supervised for purposes of this section if the person is in the presence of or participating with only the person's own child.

D. Applicants and employees who are fingerprinted pursuant to section 15-512 or 15-534 are exempt from the fingerprinting requirements of subsection A of this section.

E. Children's behavioral health program personnel shall certify on forms that are provided by the department and notarized that they are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement to committing any of the offenses listed in section 41-1758.03, subsection B or C in this state or similar offenses in another state or jurisdiction.

F. Forms submitted pursuant to subsection E of this section are confidential.

G. Employers of children's behavioral health program personnel shall make documented, good faith efforts to contact previous employers of children's behavioral health program personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a children's behavioral health program.

H. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection B is prohibited from working in any capacity in a children's behavioral health program that requires or allows contact with children.

I. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection C shall not work in a children's behavioral health program in any capacity that requires or allows the employee to provide direct services to children unless the person has applied for and received the required fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

J. The department of health services shall accept a certification submitted by a United States military base or a federally recognized Indian tribe that either:

1. Personnel who are employed or who will be employed and who provide services directly to children have not been convicted of, have not admitted committing or are not awaiting trial on any offense prescribed in subsection H of this section.

2. Personnel who are employed or who will be employed to provide services directly to children have been convicted of, have admitted committing or are awaiting trial on any offense prescribed in subsection I of this section if the personnel provide these services while under direct visual supervision.

K. The employer shall notify the department of public safety if the employer receives credible

evidence that a person who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.
2. Falsified information on the form required by subsection E of this section.

L. For the purposes of this section:

1. "Children's behavioral health program" means a program provided in a health care institution that is licensed by the department to provide children's behavioral health services.
2. "Children's behavioral health program personnel" means an owner, employee or volunteer who works at a children's behavioral health program.
3. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

DEPARTMENT OF FINANCIAL INSTITUTIONS (F20-0104)

Title 20, Chapter 4, Articles 6, 7, 8, 10, and 11, Department of Financial Institutions

ARIZONA
DEPARTMENT OF
FINANCIAL INSTITUTIONS

Keith A. Schraad
Interim Superintendent

Douglas A. Ducey
Governor

September 30, 2019

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Financial Institutions, Title 20, Chapter 4, Article 6,
7, 8, 10, 11, Five-Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of Department of Financial Institutions for Title 20, Chapter 4, Articles 6, 7, 8, 10 and 11 which is due on September 30, 2019.

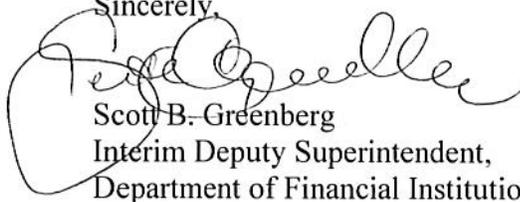
The Department of Financial Institutions did not review the following rule with the intention that those rules expire under A.R.S. 41-1056(J):

R20-4-1102.

The Department of Financial Institutions hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Stephen Briggs at 602-771-2778 or sbriggs@azdfi.gov.

Sincerely,



Scott B. Greenberg
Interim Deputy Superintendent,
Department of Financial Institutions

Cc: Keith Schraad
Stephen Briggs



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: January 2, 2020

SUBJECT: DEPARTMENT OF FINANCIAL INSTITUTIONS (F20-0104)
Title 20, Chapter 4, Articles 6, 7, 8, 10 and 11, Department of Financial Institutions

Summary:

This Five Year Review Report from the Department of Financial Institutions (Department) relates to rules in Title 20, Chapter 4, Articles 6, 7, 8, 10, and 11. The rules address the following:

- **Article 6 (Debt Management Companies);**
- **Article 7 (Escrow Agents);**
- **Article 8 (Trust Companies);**
- **Article 10 (Safe Deposit and Safekeeping Code); and**
- **Article 11 (Public Depositories for Public Monies).**

In the previous 5YRR for these rules, which the Council approved on February 3, 2015, the Department stated it planned to amend certain rules in these Articles. The Department did not complete the prior proposed course of action.

Proposed Action:

Except for the rules listed below, the Department proposes to take no action on the rules reviewed in this 5YRR. The Department intends to request an exemption from the rulemaking moratorium and submit a Notice of Proposed Rulemaking for the following rules by July 31, 2020:

- **R20-4-602 (Applications);**
- **R20-4-603 (Reports);**
- **R20-4-703 (Preservation of Records);**
- **R20-4-801 (Definitions); and**
- **R20-4-811 (Investment of Trust Funds).**

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

Yes. The Department cites applicable general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department licenses, supervises, and regulates state-chartered financial institutions. In this report, the Department did not identify any substantive changes in the economic impact of the rules since the last 5YRR. The Department believes the rules have had no adverse economic impact on the Department, the regulated community, or the public.

The stakeholders include: the Department, financial institutions, the State, and the general public.

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

The Department states that the benefits of the rules outweigh the probable costs and impose the least burden and cost necessary to achieve the regulatory objective of protecting Arizona citizens and businesses and ensuring the safety and soundness of state-licensed institutions and individuals

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are clear, concise, understandable, and consistent with other rules and statutes.

The Department states that the rules are mostly effective, except for R20-4-602 (Applications), R20-4-603 (Reports), R20-4-703 (Preservation of Records), R20-4-801 (Definitions), and R20-4-811 (Investment of Trust Funds). The Department intends to take action to amend these rules by July 31, 2020.

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

Yes. The Department indicates that the rules are enforced as written.

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

No. The Department indicates that the rules are not more stringent than corresponding federal law. The Department states that the corresponding federal laws are: the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, TILA-RESPA Integrated Disclosure (TRID), and the Consumer Credit Protection Act.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules in this Chapter were not adopted after July 29, 2010 and thus do not require a permit.

9. **Conclusion**

The Department indicates that the rules reviewed in this report are mostly clear, concise, understandable, effective, consistent with other rules and statutes, and are enforced as written. The Department identifies five rules that could be amended and plans to request an exemption from the rulemaking moratorium to amend them. If granted, the Department intends to submit a Notice of Proposed Rulemaking by July 31, 2020. Council staff recommends approval of this report.

FIVE-YEAR REVIEW REPORT
A.A.C. Title 20, Chapter 4, Articles 6, 7, 8, 10 and 11
September 2019

Information that is identical for all the rules; exceptions

This section presents information that is applicable to all the rules within the scope of this report except where specifically noted. Where information is the same for all the rules, information is only provided in this section and is not provided in the “Analysis of Individual Rules” section that follows.

1. Authorization for each rule.

Arizona Revised Statutes ("A.R.S.") § 6-123(2), which provides general rulemaking authority to the Superintendent of the Department of Financial Institutions (“Department”), applies to all the rules covered by this report. In the “Analysis of Individual Rules” section, we identify the specific statute on which each rule is based.

2. Objective of each rule.

Each rule has a different objective, described in the “Analysis of Individual Rules” section.

3. Are the rules effective in achieving their objectives? Yes

The objectives of the rules are effectively fulfilled except as to R20-4-602, R20-4-703, R20-4-801, and R20-4-811 (see “Analysis of Individual Rules” section). To determine effectiveness, we analyzed the rules contained in this report against the Department’s governing statutes. There have been no substantive changes to the rules since the previous five-year rule review, and the Department has determined effectiveness through analysis and practice that the rules achieve their regulatory purpose.

4. Are the rules consistent with other rules and statutes? Yes

The rules are consistent with the Department's governing statutes found in Title 6, Arizona Revised Statutes.

5. Are the rules enforced as written? Yes

The rules are enforced through the established policies and procedures prescribed by the rules and statutes except as to R20-6-602 and R20-6-603. All rules are consistently and fairly enforced. The Department has had no substantive problems with enforcing the rules as written.

6. Are the rules clear, concise, and understandable? Yes

The Department believes the rules are adequately clear, concise and understandable. The Department would consider pursuing specific rules amendments upon changes to the statutes underlying those rules.

7. Has the agency received written criticism of the rules within the last five years? No

The Department has not received any written criticisms of any of the rules in Article 6, 7, 8, 10 or 11 since the previous five-year review report.

8. Economic, small business, and consumer impact comparison:

The Department identified no substantive change in the economic impact of the rules on small business or consumers since their currently effective text was approved by GRRC. These rules have had no adverse economic impact on the Department, the regulated community or the public.

Article 6. Debt Management Companies

The modest reduction in license counts since the last rule review may be due to increased regulation set forth by the Federal Trade Commission, which prohibits companies that sell debt settlement and other debt relief services on the phone from charging a fee before the settle or reduce your debt.

	September, 2014	September, 2019
# of Licensed Debt Management Companies	35	27
# of Licensed Branches	14	2

Article 7. Escrow Agents

Since the last rule review, the license counts have reflected steady growth in this market.

	September, 2014	September, 2019
# of Licensed Escrow Agents	119	150
# of Licensed Branches	424	489

Article 8. Trust Companies

Since the last rule review, the license counts have reflected steady growth in this market.

	September, 2014	September, 2019
# of Licensed Trust Companies	5	8

Article 10. Safe Deposit and Safekeeping code

There has been no adverse economic impact of these rules on the Department, the regulated community or the public. It should be noted that Article 10 contains one rule that specifies how and when the public must be notified of a change of location of a safe deposit repository.

Article 11. Public Depositories for public monies

It should be noted that these rules have no real economic impact on consumer, small businesses, or state government. Article 11 contains definitions required by the provisions of A.R.S. Title 35, Chapter 1, Articles 2 and 2.1 budgetary and fiscal provisions for state agencies.

9. Has the agency received any business competitiveness analyses of the rules? No

The Department did not receive any analysis in the past five years regarding the impact of the rules on this state's business competitiveness as compared to business competitiveness of other states.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report? No

This group of rules was the subject of a normal five-year rule review submitted to G.R.R.C in September 2014. In that review, the Department noted seven rules within Articles 6, 7 and 8 for which the Department

was going to seek further advisement from legal counsel before requesting an exemption from the Governor's rules moratorium.

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

The benefits of the rules in Articles 6, 7, 8, 10 and 11 outweigh the probable costs of the rules and impose the least burden and cost on regulated persons necessary to achieve the regulatory objective of protecting Arizona citizens and businesses by ensuring the safety and soundness of state-licensed institutions and individuals. The rules covering the subject matter are necessary to fulfill the agency's mission.

12. Are the rules more stringent than corresponding federal laws? No

No rules in this report were found to be more stringent than related federal rules or statutes. The Department analyzed Arizona Revised Statutes Title 6, and applicable federal law including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, TILA-RESPA Integrated Disclosure (TRID), and the Consumer Credit Protection Act.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, a determination as to whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or an explanation as to why the agency believes an exception applies.

No rule in Articles 6, 7, 8, 10 and 11 was adopted after July 29, 2010, therefore no analysis for compliance is required.

14. Proposed course of action.

With the exceptions of R20-4-602, R20-4-603, R20-4-703 R20-4-801 and R20-4-811, for which courses of actions are addressed in the "Analysis of Individual Rules" section, the Department has no course of action planned for rulemaking on the articles in this five-year rule review.

Analysis of Individual Rules

R20-4-602 Applications

1. Authorization

The authority for the rule derives from A.R.S. § 6-704.

2. Objective

The objective of this rule is to specify the contents and procedures required for a debt management company to complete the application package for a license, branch license or license renewal.

3. Effectiveness

The stated objectives of the rule are effectively met except that the Department no longer obtains a credit report when an application is received. The applicant is required to obtain its own credit report and submit it with the license application.

5. Enforcement

This rule is reflected in established policy and procedures and is consistently and fairly enforced except for the sentence that requires the Department to obtain a credit report. The Department no longer obtains a credit report when an application is received. The applicant is required to obtain its own credit report and submit it with the license application.

11. Probable benefits of the rule outweigh the probable costs of the rule

The benefits of this rule outweigh the burden or costs to the individuals regulated by the rule as the applicant currently pays for the credit report even though the Department orders it.

14. Proposed course of action.

The Department proposes to amend the rule by removing the verbiage from section (A) that directs the Department to order a credit report and replace it with language stating the applicant shall furnish a credit report as part of a completed application.

The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

R20-4-603 Reports

1. Authorization

The authority for the rule derives from A.R.S. § 6-709(M).

2. Objective

The objective of the rule is to specify the time frame of the annual reporting of the business and operations of each place of business, the acceptable method and documents for the annual reporting, the deadline for the annual reporting to the Department, and the timeframe within which the licensee must notify the Department of changes in ownership or of changes to officers, directors, trustees, partners or managing agents.

5. Enforcement

This rule is consistently and fairly enforced except for Section “B,” which requires the company to submit a date-stamped copy of its annual report that was submitted to the Corporation Commission within 10 days of its submission. The Department does not know when an annual report has been submitted to the Corporation Commission; therefore, compliance with the annual report submission requirement is reviewed as part of an examination. The Department does not impose disciplinary action for failing to file the annual report with the Department within the 10 day requirement as long as the licensee has filed with the Corporation Commission.

14. Proposed course of action.

The Department proposes to amend the rule by removing the verbiage from section (B) that directs the debt management company to, within ten days, send the department a copy, date-stamped by the Arizona Corporation Commission, of each annual report and certificate of disclosure.

The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

R20-4-604 Records

1. Authorization

The authority for the rule derives from A.R.S. §§ 6-709(J), 6-710(1).

2. Objective

The objective of the rule is to interpret and advise the licensee about the nature and content of the records that must be maintained, the frequency with which certain records must be prepared, and of record-keeping procedures or practices.

R20-4-607 Budget Analysis

1. Authorization

The authority for the rule derives from A.R.S. § 6-710(1)

2. Objective

The objective of the rule is to specify information that must be documented in a budget analysis of a prospective debtor in determining that the person is reasonably able to make agreed-upon payments before accepting the account..

R20-4-611 Advertising

1. Authorization

The authority for the rule derives from A.R.S. §§ 6-710(8) and 6-714.

2. Objective

The objective of the rule is to establish requirements and prohibitions for advertising, communication or sales material to be used by a licensee, and to require a licensee to file with the Department advertising, communication or sales material at least five days prior to their use.

R20-4-612 Solvency and Minimum Liquid Assets

1. Authorization

The authority for the rule derives from A.R.S. § 6-709(A).

2. Objective

The objective of this rule is to define liquid assets, specify the amount by which liquid assets must exceed current liabilities and debtor balances, and specify a licensee must use generally accepted accounting principles to compute assets and liabilities.

R20-4-701 Change in Location of Business

1. Authorization

The authority for the rule derives from A.R.S. § 6-814(A).

2. Objective

The objective of this rule is to advise and describe what documentation is to be retained to enable the Superintendent to reconstruct the details of each escrow transaction.

R20-4-702 Account Practice and Records

1. Authorization

The authority for the rule derives from A.R.S. § 6-831.

2. Objective

The objective of this rule is to advise and describe what documentation is to be retained to enable the Superintendent to reconstruct the details of each escrow transaction.

R20-4-703 Preservation of Records

1. Authorization

The authority for the rule derives from A.R.S. § 6-831.

2. Objective

The objective of this rule is to interpret and describe the procedure and practice requirements acceptable to the Department for the length of time and method of retaining records, books, and accounts pertaining to each escrow transaction.

3. Effectiveness

The rule could be made more effective by requiring that an escrow agent preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the *final transaction*, not the final settlement date, as is currently required in the rule.

14. Course of Action

The department proposes to amend the rule by striking settlement date and replacing it with transaction.

The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

R20-4-704 Subsidiary Account Records

1. Authorization

The authority for the rule derives from A.R.S. § 6-834.

2. Objective

The objective of the rule is to interpret and advise the licensee of the procedure or practice requirements of the Department which governs the deposit of escrow monies.

R20-4-708 Financial Condition and Resources

1. Authorization

The authority for the rule derives from A.R.S. § 6-817.

2. Objective

The objective of the rule is to establish a set of criteria the Superintendent uses in evaluating an applicant's or escrow agent's financial condition and resources.

R20-4-801 Definitions

1. Authorization

The authority for the rule derives from A.R.S. § 6-123(2).

2. Objective

The objective of the rule is to define terms used in the rules but not defined elsewhere, and to cross-reference definitions either from the statutes or from other provisions of these rules.

3. Effectiveness

The rule would be made more effective if the rule cited the correct statute for the definition of “Superintendent”. The rule cross references A.R.S. § 6-851 but the definition of “Superintendent” is actually defined in A.R.S. § 6-101(16).

14. Course of Action

The department proposes to amend the rule to reflect the definition of “Superintendent” found in A.R.S. § 6-101(16).

The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

R20-4-805 Reports

1. Authorization

The authority for the rule derives from A.R.S. § 6-861.

2. Objective

The objective of the rule is to specify the subject matter and contents of the reports required by the Superintendent under this statutory authority.

R20-4-806 Records

1. Authorization

The authority for the rule derives from A.R.S. § 6-859(A).

2. Objective

The objective of the rule is to provide the periods of time and the manner in which each licensee’s record shall be kept.

R20-4-807 Unsafe and Unsound Condition

1. Authorization

The authority for the rule derives from A.R.S. §§ 6-863(A)(8) and 6-865.

2. Objective

The objective of the rule is to clarify the persons exempted under A.R.S. § 6-942(A)(1) and the level of regulation required to qualify those persons for the exemption.

R20-4-808 Administration of Fiduciary Powers

1. Authorization

The authority for the rule derives from A.R.S. § 6-859.

2. Objective

The objective of the rule is to inform licensees of the standards of conduct for the administration of fiduciary powers, and the records required to prove compliance with those standards.

R20-4-809 Fiduciary Duties

1. Authorization

The authority for the rule derives from A.R.S. §§ 6-859 and 6-860.

2. Objective

The objective of the rule is to specify the primary duties of the licensees' management in the conduct of trust business.

R20-4-810 Funds Awaiting Investment or Distribution

1. Authorization

The authority for the rule derives from A.R.S. § 6-862.

2. Objective

The objective of the rule is to require prompt investment or distribution of funds held in trust by a licensee, to require that deposited funds be secured to the extent they are not covered by deposit insurance, and to permit retention of such funds in deposit accounts of a bank acting as a fiduciary under certain circumstances.

R20-4-811 Investment of Trust Funds

1. Authorization

The authority for the rule derives from A.R.S. § 6-870.02.

2. Objective

The objective of the rule is to specify the legal limits on the licensee's investment discretion, and to clarify the sole legal basis on which a licensee may rely in deciding to make collective investments.

3. Effectiveness

The rule would be more effective if they referenced the statutes found in A.R.S. §§14-7501 through 14-7512.

4. Consistency

The reference to A.R.S. §§ 14-7601 through 14-7611 found in (A)(2) of the rule is not consistent with the statutes.

14. Course of Action

The department proposes to amend the rule to reflect the intended statutes found in A.R.S. §§14-7501 through 14-7512.

The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

R20-4-812 Self-Dealing

1. Authorization

The authority for the rule derives from A.R.S. § 6-870.02.

2. Objective

The objective of the rule is to explicitly advise licensees of the acts of self-dealing that are prohibited under the statute and these rules. The rule also lists the special circumstances that create exceptions to the rule's prohibitions.

R10-4-813 Custody of Investments

1. Authorization

The authority for the rule derives from A.R.S. § 6-862.

2. Objective

The objective of the rule is to advise licensees of the permissible means of custody and control of account assets, as well the records required to demonstrate compliance with this rule.

R10-4-814 Compensation

1. Authorization

The authority for the rule derives from A.R.S. § 6-870.02(E).

2. Objective

The objective of the rule is to describe the legal bases under which a licensee may charge a fee for its services, and to list those circumstances under which neither it, nor its employees may receive a fee.

R20-4-815 Collective Investments

1. Authorization

The authority for the rule derives from A.R.S. § 6-871.

2. Objective

The objective of the rule is to establish the procedures used by licensees to establish a common trust fund, and to list the specific duties imposed at the organization phase.

R20-4-816 Termination of Trust or Fiduciary Powers and Duties

1. Authorization

The authority for the rule derives from A.R.S. § 6-864.

2. Objective

The objective of the rule is to describe the procedures a licensee shall use to surrender its right to conduct trust business. It also states the level of regulation imposed while a licensee winds up its trust business affairs.

R20-4-1001 Notice of Change of Location of Safe Deposit Repository

1. Authorization

The authority for the rule derives from A.R.S. § 6-1003.

2. Objective

The objective of the rule is to specify the form and timing of notice required to comply with A.R.S. § 6-1003 so that safe deposit box lessees are notified when a safe deposit box will be moved.

R20-4-1101 Capital structure of banks; defined

1. Authorization

The authority for the rule derives from A.R.S. § 6-321(3).

2. Objective

The objective of the rule is to specify the components of the statutory term “capital structure” for the benefit to reporting requirements and definition in the state treasurer’s statutes.

R20-4-1102 Capital structure of savings and loan association; defined

Not reviewed.



Replacement Check List

For rules filed within the
1st Quarter
January 1 – March 31, 2017

THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Financial Institutions

Supplement 17-1

Sections, Parts, Exhibits, Tables or Appendices modified

R20-4-301, R20-4-303, R20-4-304, R20-4-309, R20-4-318, R20-4-324 through R20-4-328, R20-4-330

REMOVE Supp. 15-1
Pages: 1 - 54

REPLACE with Supp. 17-1
Pages: 1 - 48

The agency who can answer questions about expired rules in Supp. 17-1:

Agency: Governor's Regulatory Review Council
Address: 100 N. 15th Ave #402
Phoenix, AZ 85007
Phone: (602) 542-2058

Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Public Services Division

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
PUBLIC SERVICES DIVISION
March 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 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

(Authority: A.R.S. § 6-101 et seq.)

Editor's Note: The Banking Department's name was changed to the Arizona Department of Financial Institutions under the authority of A.R.S. § 6-110, originally enacted as Laws 2004, Ch. 188, effective January 1, 2006 (Supp. 06-1).

Editor's Note: Title 20, formerly Commerce, Banking, and Insurance, is now Commerce, Financial Institutions, and Insurance. This change became effective when the Banking Department changed its name to the Department of Financial Institutions, effective January 1, 2006 (Supp. 06-1).

20 A.A.C. 4, consisting of R20-4-101 through R20-4-106, R20-4-201 through R20-4-215, R20-4-301 through R20-4-331, R20-4-401 through R20-4-402, R20-4-501 through R20-4-536, R20-4-601 through R20-4-620, R20-4-701 through R20-4-707, R20-4-801 through R20-4-816, R20-4-901 through R20-4-924, R20-4-1001, R20-4-1101 through R20-4-1102, R20-4-1201 through R20-4-1220, R20-4-1401 through R20-4-1410, R20-4-1501 through R20-4-1530, R20-4-1601 through R20-4-1604, and R20-4-1701 through R20-4-1706, recodified from 4 A.A.C. 4, consisting of R4-4-101 through R4-4-106, R4-4-201 through R4-4-215, R4-4-301 through R4-4-331, R4-4-401 through R4-4-402, R4-4-501 through R4-4-536, R4-4-601 through R4-4-620, R4-4-701 through R4-4-707, R4-4-801 through R4-4-816, R4-4-901 through R4-4-924, R4-4-1001, R4-4-1101 through R4-4-1102, R4-4-1201 through R4-4-1220, R4-4-1401 through R4-4-1410, R4-4-1501 through R4-4-1530, R4-4-1601 through R4-4-1604, and R4-4-1701 through R4-4-1706, pursuant to R1-1-102 (Supp. 95-1).

ARTICLE 1. GENERAL

R20-4-101 through R4-4-106 recodified from R4-4-101 through R4-4-106 (Supp. 95-1).

Article 1, consisting of Sections R4-4-101 through R4-4-106 adopted effective August 16, 1991 (Supp. 91-3).

Article 1, consisting of Sections R4-4-101 through R4-4-104, repealed effective August 16, 1991 (Supp. 91-3).

Table with 2 columns: Section and Page. Includes R20-4-101 Scope of Article (5), R20-4-102 Definitions (5), R20-4-103 Fingerprints (7), R20-4-104 Acceptance of Other Forms (7), R20-4-105 Claims Against a Deposit in Place of Bond (7), R20-4-106 Bankruptcy (8), R20-4-107 Licensing Time-frames (8), and Table A. Licensing Time-frames (9).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

Table with 2 columns: Section and Page. Includes R20-4-201 Articles of Incorporation (10), R20-4-202 Bylaws (10), R20-4-203 Repealed (10), R20-4-204 Repealed (10), R20-4-205 Repealed (10), R20-4-206 Bankers Blanket Bond Coverage -- A.R.S. § 6-188 (11), R20-4-207 Capital Obligations (11), R20-4-208 Repealed (11), R20-4-209 Notice of Permanent Closing of Banking Office (11), R20-4-210 Repealed (11), R20-4-211 Application for a Banking Permit (11), R20-4-212 Repealed (12), R20-4-213 Repealed (12), R20-4-214 Preservation of Records (12), and R20-4-215 Trust Business (16).

ARTICLE 3. EXPIRED

Table with 2 columns: Section and Page. Includes R20-4-301 Expired (16), R20-4-302 Repealed (16), R20-4-303 Expired (16), R20-4-304 Expired (16), R20-4-305 Repealed (16), R20-4-306 Repealed (16), and R20-4-307 Repealed (16).

Table with 2 columns: Section and Page. Includes R20-4-308 Repealed (16), R20-4-309 Expired (16), R20-4-311 Repealed (16), R20-4-312 Repealed (16), R20-4-314 Repealed (16), R20-4-315 Repealed (17), R20-4-316 Repealed (17), R20-4-317 Repealed (17), R20-4-318 Expired (17), R20-4-319 Repealed (17), R20-4-320 Repealed (17), R20-4-321 Repealed (17), R20-4-322 Repealed (17), R20-4-323 Repealed (17), R20-4-324 Expired (17), R20-4-325 Expired (17), R20-4-326 Expired (17), R20-4-327 Expired (17), R20-4-328 Expired (17), R20-4-329 Repealed (17), R20-4-330 Expired (17), and R20-4-331 Repealed (17).

ARTICLE 4. CREDIT UNIONS

Table with 2 columns: Section and Page. Includes R20-4-401 Fidelity Bond Coverage (17) and R20-4-402 Repealed (17).

ARTICLE 5. SMALL LOANS

Table with 2 columns: Section and Page. Includes R20-4-501 Repealed (17), R20-4-502 Repealed (18), R20-4-503 Adjustments in Precomputed Charges (18), R20-4-504 Repealed (18), R20-4-505 Repealed (18), R20-4-506 Repealed (18), R20-4-507 Repealed (18), R20-4-508 Cut-off Date for Computing Refunds upon Early Repayment in Full (18), R20-4-509 Repealed (18), R20-4-510 Repealed (18), R20-4-511 Repealed (18), R20-4-513 Repealed (18), R20-4-514 Repealed (18), R20-4-515 Repealed (18), R20-4-516 Repealed (18), and R20-4-517 Repealed (18).

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Former Article 6, consisting of Section R4-4-601, repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

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Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired on April 21, 2011. New Sections R20-4-1301 through R20-4-1305 were made by final rulemaking on effective April 22, 2011. Emergency rules removed from this Chapter for clarity. (Supp. 15-1).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired April 21, 2011; new Article consisting of Sections R20-4-1301 through R20-4-1305, made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2).

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ARTICLE 1. GENERAL**R20-4-101. Scope of Article**

The rules in this Article apply to all activities of the Superintendent and to the interpretation of all Arizona statutes and rules administered by the Superintendent.

Historical Note

Former Rule 1. Former R4-4-101 repealed, new R4-4-101 adopted effective August 16, 1991 (Supp. 91-3).
R20-4-101 recodified from R4-4-101 (Supp. 95-1).

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
 - a. Is knowledgeable about the licensee's Arizona activities;
 - b. Supervises compliance with:
 - i. The laws enforced by the Department of Financial Institutions as they relate to the licensee, and
 - ii. Other applicable laws and rules; and
 - c. Has sufficient authority to ensure compliance.
2. "Affiliate" has the meaning stated at A.R.S. § 6-901.
3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.
4. "Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:
 - a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
 - b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
 - c. Insurance commissions;
 - d. Contingent or additional interest, including interest based on net operating income; or
 - e. Equity participation.
7. "Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.
8. "Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.
9. "Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. "Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:
 - a. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction;
 - i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or
 - ii. To a borrower, concerning the location or identity of potential investors or lenders; or
 - b. Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and
 - c. Processing a loan; but
 - d. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" do not include:
 - i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;
 - ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;
 - iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
 - iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modification, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan

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- simultaneously with terminating an existing loan.
12. "Electronic record" has the meaning stated at A.R.S. § 44-7002(7).
 13. "Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:
 - a. The person is entitled to payment, or is paid, by the licensee;
 - b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;
 - c. The licensee has the right to hire and fire the employee and the employee's assistants;
 - d. The licensee directs the methods and procedures for performing the employee's job;
 - e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws and rules; and
 - f. The rights and duties under subsections (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
 14. "Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.
 15. "Exclusive contract," as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.
 16. "Generally accepted accounting principles" has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
 17. "Holds out to the public," as used in this Section's definition of "branch office," means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Holds out to the public" includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. "Holds out to the public" does not include a clearly identified home or mobile telephone number on a business card or stationery.
 18. "Loan," as that term is used in A.R.S. §§ 6-126(C)(6) and (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
 19. "Loan Processing" means obtaining a loan application's supporting documents for use in underwriting.
 20. "Person" means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.
 21. "Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.
 22. "Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
 - a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
 - b. Obtains a completed Employment Eligibility Verification (Form I-9);
 - c. Obtains a completed and signed employment application;
 - d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
 - e. Consults with the applicant's most recent or next most recent employer, if any;
 - f. Inquiries regarding the applicant's qualifications and competence for the position;
 - g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
 - h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
 23. "Record" has the meaning stated at A.R.S. § 44-7002(13).
 24. "Registered to do business in this state" means:
 - a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
 - b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
 - c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
 - d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
 - e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:
 - All the current amendments, or
 - A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;
 - f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;

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- g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;
 - h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or
 - i. The entity is exempt from registration.
25. "Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.
26. "Resident of this state" means a natural person domiciled in Arizona.
27. "Responsible individual" or "responsible person", as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:
- a. Lives in Arizona during the entire period of designation as the responsible individual on a license;
 - b. Is in active management of a licensee's affairs;
 - c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and
 - d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

Historical Note

Former Rule 2. Former R4-4-102 repealed, new R4-4-102 adopted effective August 16, 1991 (Supp. 91-3). R20-4-102 recodified from R4-4-102 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 668, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-103. Fingerprints

- A. A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.
- B. A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.
- C. A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:
 - 1. A municipal police department,
 - 2. A local sheriff's office, or
 - 3. Another law enforcement authority recognized by the Superintendent.

Historical Note

Former Rule 3. Former R4-4-103 repealed, new R4-4-103 adopted effective August 16, 1991 (Supp. 91-3). R20-4-103 recodified from R4-4-103 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-104. Acceptance of Other Forms

If another entity's applications and forms provide all the information required by Arizona law, the Superintendent has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department of Financial Institutions form. The Superintendent's exercise of the discretion to accept alternative forms does not limit the Superintendent's power to require addi-

tional information necessary to complete an application or other form.

Historical Note

Former Rule 4. Former R4-4-104 repealed, new R4-4-104 adopted effective August 16, 1991 (Supp. 91-3). R20-4-104 recodified from R4-4-104 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-105. Claims Against a Deposit in Place of Bond

- A. As used in this Section:
 - 1. "Deposit" means cash or alternatives to cash deposited by a licensee with the Superintendent in place of a bond.
 - 2. "Depositor" means licensee or an employee of the licensee who makes a deposit with the Superintendent.
 - 3. "Verified claim" means a claim filed with the Superintendent under subsection (B).
 - 4. "Award" means an amount of money granted under subsection (F).
- B. A person may file a claim against a deposit by delivering documentation of the claim to the Superintendent. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:
 - 1. Against a depositor;
 - 2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
 - 3. Documented by:
 - a. A certified copy of the complaint in the action;
 - b. A certified copy of the judgment in the action;
 - c. A statement that execution of the judgment has not been stayed, or an explanation of the terms and reason for any stay;
 - d. A statement of any amounts recovered on the judgment; and
 - e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.
- C. A claimant shall file a claim with the Superintendent, and all required supporting documentation, not more than six months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first six months after its entry, the claimant may file a verified claim only during the six months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under R20-4-1208.
- D. The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the Superintendent under subsection (B). The Department considers a proceeding on a verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.
- E. The Superintendent shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:
 - 1. The judgment is not for an injury caused by the depositor and described in subsection (B)(2);
 - 2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B)(2);
 - 3. The judgment's execution has been stayed for any reason;

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4. The judgment was procured through fraud or collusion;
 5. The judgment has been satisfied from other sources; or
 6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.
- F.** If the Superintendent grants a verified claim, the Superintendent shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:
1. Attorney's fees, and
 2. Amounts previously paid on the judgment.
- G.** A person injured by a depositor shall give the Superintendent written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the Superintendent upon request.
- H.** If the Superintendent grants a verified claim under subsection (F), the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Superintendent has not received notice of another pending civil action under subsection (G).
- I.** If given notice under subsection (G), the Superintendent shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Superintendent shall determine award amounts for each claim of which the Superintendent has notice, and authorize payment, as follows:
1. If the deposit is sufficient to satisfy all claims under subsection (F), the Superintendent shall authorize its release as described in subsection (H).
 2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Superintendent shall calculate the award on each claim as follows:
 - a. Each granted claim shall receive a pro rata share of the total deposit.
 - b. Each pro rata share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
 - i. The numerator of the fraction is the amount of the Superintendent's award for the verified claim.
 - ii. The denominator of the fraction is the sum of the amount of the Superintendent's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Superintendent under subsection (G).
 - c. The Superintendent shall authorize the State Treasurer to release the pro rata portion of the deposit calculated for each verified claim.
- J.** A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The Superintendent shall not release any part of a deposit to a depositor or former licensee until the Superintendent determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Superintendent shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the Superintendent shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.
- K.** The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certi-

fied copy of the court's order to the Superintendent. The copy may be uncertified if the receiver is the Superintendent or any other officer or agency of the state of Arizona. The Superintendent shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). R20-4-105 recodified from R4-4-105 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the Superintendent if it files a voluntary bankruptcy petition, or if its creditors name the licensee a debtor in an involuntary bankruptcy petition. On the date of each of the following documents' filing with the bankruptcy court, the licensee shall deliver to the Superintendent a copy of the:

1. Petition for relief,
2. Schedule of assets and liabilities,
3. Statement of financial affairs,
4. List of creditors, and
5. Plan of reorganization.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). R20-4-106 recodified from R4-4-106 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-107. Licensing Time-frames

- A.** As used in this Section, "application" means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.
- B.** The time-frames in Table A apply solely to applications received by the Department after the effective date of this Section. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.
1. Within the administrative completeness review time-frame in Table A, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall specify the missing information or component.
 2. An applicant whose application is incomplete shall supply the missing information within 60 days after the date of the notice. If an applicant shows good cause in writing before the expiration of the 60 day time limit, the Superintendent shall extend the period for administrative completion of an application. The administrative completeness review time-frame stops running on the postmark date of the Department's written notice of an incomplete application, and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department shall reject the application and close the file. An applicant may reapply.
 3. The substantive review time-frame begins to run on the postmark date of the Department's written notice that the application is administratively complete.

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4. Within the overall time-frame set forth in Table A the Department shall send the applicant written notice of its decision to approve, conditionally approve, or deny a license, unless the time-frame is extended by mutual agreement under A.R.S. § 41-1075. If the Department denies an application, it shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or appeal in the form required by A.R.S. § 41-1076.
5. The Department shall calculate time limits prescribed in this Section under R2-19-107.
- C. The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).
Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

Table A. Licensing Time-frames

No	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	Bank	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	45	45	90
2	Bank Trust Dept.	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	Savings & Loan	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	60	60	120
5	Trust Company	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	Debt Management	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	30	30	60
8	Escrow Agent	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	Mortgage Broker or Commercial Mortgage Broker	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	Mortgage Banker	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker	A.R.S. § 6-971, et seq.			

	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	Acquisition of Control of Financial Institution	R20-4-1602, R20-4-1702			
	Initial Application	A.R.S. 6-1104	30	30	60
13	Money Transmitter	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	Advance Fee Loan Broker	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	30	30	60
15	Premium Finance Co.	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	Collection Agency	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	30	15	45
17	Motor Vehicle Dealer	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
18	Sales Finance Co.	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
19	Certificate of Exemption	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	45	45	90
20	Loan Originators	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120

Historical Note

Table A adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation

A licensee shall deliver to the Superintendent a copy of each amendment to the licensee's articles of incorporation within 30 days after the amendment is filed with the Arizona Corporation Commission. Before delivery to the Superintendent, an officer of the licensee shall:

1. Certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.

Historical Note

Former Rule 1. R20-4-201 recodified from R4-4-201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1).

R20-4-202. Bylaws

A licensee shall deliver to the Superintendent a copy of each amendment to the licensee's bylaws within 30 days after the amendment is adopted. An officer of the licensee shall certify the

copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note

Former Rule 2. R20-4-202 recodified from R4-4-202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1).

R20-4-203. Repealed

Historical Note

Former Rule 3; Amended subsection (C) effective September 4, 1981 (Supp. 81-5). R20-4-203 recodified from R4-4-203 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-204. Repealed

Historical Note

Former Rule 4. R20-4-204 recodified from R4-4-204 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-205. Repealed

Historical Note

Former Rule 5. R20-4-205 recodified from R4-4-205 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-206. Bankers Blanket Bond Coverage -- A.R.S. § 6-188

A. Each bank shall carry at least the following basic blanket bond coverage:

Banks with Deposits of:	Amounts:
Less than \$750,000	\$25,000
\$ 750,000 to 1,500,000	50,000
1,500,000 to 2,000,000	75,000
2,000,000 to 3,000,000	90,000
3,000,000 to 5,000,000	120,000
5,000,000 to 7,500,000	150,000
7,500,000 to 10,000,000	175,000
10,000,000 to 15,000,000	200,000
15,000,000 to 20,000,000	250,000
20,000,000 to 25,000,000	300,000
25,000,000 to 35,000,000	350,000
35,000,000 to 50,000,000	450,000
50,000,000 to 75,000,000	550,000
75,000,000 to 100,000,000	700,000
100,000,000 to 150,000,000	850,000
150,000,000 to 250,000,000	1,200,000
250,000,000 to 500,000,000	1,700,000
500,000,000 to 1,000,000,000	2,500,000
1,000,000,000 to 2,000,000,000	4,000,000
Over 2,000,000,000	6,000,000

B. Each bank shall supplement the bankers blanket bond coverage with at least a \$1,000,000 excess fidelity bond. Effective 8-8-73.

Historical Note

Former Rule 6. R20-4-206 recodified from R4-4-206 (Supp. 95-1).

R20-4-207. Capital Obligations

A. An applicant for a Superintendent's order of approval to issue a capital obligation shall submit the following documents to the Superintendent, and shall not issue any capital obligation before the Superintendent issues the order of approval. The required documents are:

1. A certified copy of the resolution adopted by the Board of Directors, or a certified copy of the unanimous written consent of the Board of Directors, authorizing the sale of the capital obligation;
2. A copy of the agreement underlying the capital obligation;
3. A copy of the note or debenture intended to represent the capital obligation; and
4. A copy of the prospectus, if any, proposed for use in the sale of the capital obligation.

B. Each document evidencing a capital obligation shall:

1. Bear on its face, in bold face type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.
2. Have a maturity provision that either:
 - a. Gives the obligation a maturity of at least five years, or
 - b. In the case of an obligation or issue that provides for scheduled repayments of principal, gives an average maturity of at least five years. The restriction on maturity stated in this subsection does not apply to

any obligation that otherwise meets all the requirements of this rule if the Superintendent determines that exigent circumstances require the issuance of the obligation without regard to any restriction on maturity. The provisions of this subsection do not apply to mandatory convertible debt obligations or issues.

3. State expressly on its face that the obligation:

- a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and
- b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. § 6-354.

4. Be unsecured.

5. State expressly on its face that the issuing bank may not retire any part of its capital obligation without the Superintendent's prior written order of approval, and the prior written consent of the Federal Deposit Insurance Corporation.

6. Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

7. State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on a capital obligation.

C. No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the Superintendent. The Superintendent may grant that authority in the initial order of approval or in a later order of approval.

Historical Note

Former Rule 7. R20-4-207 recodified from R4-4-207 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 2155, effective May 4, 2001 (Supp. 01-2).

R20-4-208. Repealed**Historical Note**

Former Rule 8. R20-4-208 recodified from R4-4-208 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-209. Notice of Permanent Closing of Banking Office

A bank may close fewer than all of its banking offices. Before closing any office, a bank shall deliver a letter to the Superintendent specifying the banking office it plans to close and the closing date. The bank shall ensure that the Superintendent receives the letter at least 10 days before the closing date. Closing the banking office shall terminate the bank's authority to maintain that banking office on the date of the actual closure.

Historical Note

Former Rule 9. R20-4-209 recodified from R4-4-209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5388, effective November 9, 2001 (Supp. 01-4).

R20-4-210. Repealed**Historical Note**

Former Rule 10. R20-4-210 recodified from R4-4-210 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-211. Application for a Banking Permit

A. Before an application is filed, the representatives of the potential applicant shall meet with the Superintendent of Banks to discuss capitalization, location, and management of the proposed bank.

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- B. After the meeting required by subsection (A), persons who wish to proceed with the application process shall submit an application in the form the Superintendent prescribes. The applicant shall support the application with sufficient information to enable the Superintendent to make a determination.

Historical Note

Former Rule 11. R20-4-211 recodified from R4-4-211 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-212. Repealed

Historical Note

Former Rule 12. Amended effective September 4, 1981 (Supp. 81-4). R20-4-212 recodified from R4-4-212 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-213. Repealed

Historical Note

Former Rule 13. Repealed effective September 13, 1981 (Supp. 81-5). R20-4-213 recodified from R4-4-213 (Supp. 95-1).

R20-4-214. Preservation of Records

- A. Every bank shall keep its corporate and business records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. Copies complying with this subsection, when satisfactorily identified, have the same evidentiary status as an original. A bank may use an electronic recordkeeping system. The Department shall not require a bank to keep a written copy of its records if the bank can generate all information and copies required by this Section in a timely manner for examination or other purposes.
- B. A bank shall keep its corporate and business records for the period required by this Section. These periods are measured from the date of the last entry or final action date. A bank shall have and comply with its own record retention schedule that is consistent with this Section. A bank may comply with this Section by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this Section. This Section does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required in subsection (D).
- C. Beginning on the effective date of this Section, corporate and business records of a bank operating in the state of Arizona are classified, and their retention periods are prescribed, according to the schedule in subsection (D). Retention periods are listed in subsection (D) using the notations, acronyms, and abbreviations listed in this Section.
 - 1. A numerical designation refers to a period of years unless a shorter period of time is specified in the schedule.
 - 2. "AC" means after closure.
 - 3. "ACH" means automated clearing house.
 - 4. "AE" means after expiration.
 - 5. "ALC" means after last contact.
 - 6. "AP" means after paid.
 - 7. "ATD" means after termination date.
 - 8. "CTR" means a cash transaction report required by the Federal Bank Secrecy Act.
 - 9. "FDIC" means the Federal Deposit Insurance Corporation.
 - 10. "FHA" means the Federal Housing Administration.

- 11. "FHLMC" means the Federal Home Loan Mortgage Corporation.
- 12. "FNMA" means the Federal National Mortgage Association.
- 13. "GNMA" means the Government National Mortgage Association.
- 14. "IRS" means the United States Department of the Treasury's Internal Revenue Service.
- 15. "M" means months.
- 16. "P" means the bank shall keep the record permanently.
- 17. "PMI" means private mortgage insurance.
- 18. "SAR" means a suspicious activity report required by the federal Bank Secrecy Act.
- 19. "TTL" means a treasury, tax, and loan account maintained by a bank.
- 20. "UCC" means the Uniform Commercial Code as it is in effect in Arizona.

D. Retention Schedule

- 1. Accounting and Auditing
 - a. Accrual and bond amortization 3
 - b. Audit report 6
 - c. Audit work papers 3
 - d. Bank call, income and dividend report 5
 - e. Bill, statement, or invoice - paid 7
 - f. Budget work papers 2
 - g. Collateral vault "in-and-out" ticket 1
 - h. Daily reserve computation 1
 - i. Earnings report 7
 - j. Expense voucher or invoice
 - k. Financial statement 7
 - l. Interoffice reconciliation 1
 - m. Interoffice transaction 1
 - n. Periodic statement for account owned by the bank 2
 - o. Reconcilement of deposits-due to bank 2
 - p. Reconcilement register-due from bank 2
 - q. Return and cash item register 1
 - r. Service contract 2
 - s. Treasury tax and loan account 2
 - t. Unclaimed property record 7
- 2. Administration
 - a. Articles of incorporation or association, bylaws, or other record of organization P
 - b. Bankers blanket bond-record showing compliance 5 AE
 - c. Bank examiner's report 7
 - d. Capital note issuance and transfer record P
 - e. Depreciation record-office equipment 3
 - f. Dividend check and register 7
 - g. Dividend check-outstanding P
 - h. Expired policy insuring the bank 3 AE
 - i. FDIC assessment base, record 5
 - j. FDIC certificate P
 - k. Insurance policy number, record of premium paid and amount recovered 3 AE
 - l. Legal proceedings when completed 5
 - m. Minute book of:
 - i. Meetings of the board of directors P
 - ii. Meetings of committees of the board of directors P
 - iii. Shareholders' meetings P
 - n. Postage meter record book (from date of final entry) 1
 - o. Real estate documentation 5 ATD
 - p. Report to directors 3
 - q. Stock issuance and transfer record P
 - r. Required report to supervisory agency 3

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s.	Tax controversy or proceeding when completed	7	i.	Regulation CC, Expedited Funds Availability Act	2
t.	Tax record not material to any controversy	7	ii.	Regulation DD, Truth in Savings Act	2
u.	Voting list and proxies	3	iii.	Regulation E, Electronic Funds Transfer Act	2
3.	Collections		t.	Returned statement and cancelled checks	6
a.	Collection payment record	1	u.	Statement	6
b.	Collection receipt-carbon	1	v.	Stop payment order	6 AE
c.	Collection register	1	w.	Document used to request and receive Tax Identification Number	6
d.	Coupon cash letter-outgoing	1	x.	Transaction journal	6
e.	Coupon envelope	1	y.	Trial balance	6
f.	Customer file copy	1	7.	Due from banks	
g.	Incoming collection letter	1	a.	Advice from correspondent bank	1
h.	Incoming contract or note letter	1	b.	Bank statement	1
4.	Customer service		c.	Draft-original	7
a.	Broker account holder-identification	5	d.	Draft register or copy	1 AP
b.	Broker's confirmation	3	e.	Duplicate check-information and documentation pertaining to issuance	7
c.	Broker's invoice	3	f.	Reconciliation register	1
d.	Broker's statement	3	8.	Due to banks	
e.	E-Bond application	2	a.	Account opened and account closed-reports	1
f.	E-Bond sold or redeemed-record	2	b.	Advice-copy	1
g.	E-Bond transmittal letter	2	c.	Incoming cash letter memo for credit	1
h.	Lock box daily receipts	1	d.	Incoming cash letter for remittance	1
i.	Night depository agreement	1 AC	e.	Reconciliation register (TTL)	2
j.	Night depository daily record	1	f.	Reconciliation verification	1
k.	Safekeeping record and receipt	5	g.	Resolution	2 AC
l.	Securities buy order and sell order	3	h.	Signature card	6 AC
5.	Data processing (management information systems)		i.	Trial balance (fiche)	7
a.	Back-up data (for reconstruction) daily, end of month, quarter, or year	1	j.	Undelivered statement, reconstruction available from bank records	1
b.	Disaster recovery program	P	k.	Undelivered statement, reconstruction not possible	7
c.	Film copy of every IRS financial reporting form	6	9.	General	
d.	Program change	P	a.	Address change order	1
e.	System, program and procedure manual	P	b.	Affidavit from customer including affidavit of loss, forgery, or non-use of cashier's check	1
6.	Deposits		c.	Writ of attachment or garnishment	5
a.	Account opened and account closed report	1	d.	Attachment, release	5
b.	Certificate of deposit purchase record	7	e.	Armored car receipt	1
c.	Check paid, withdrawal slip, and other debits to account	7	f.	Check book order	1
d.	Club account check register	1	g.	Check book-receipt	1
e.	Club account coupon	1	h.	Court order memorandum record	5
f.	SAR - for suspicious transaction under \$10,000	5	i.	Notice of Protest	1
g.	CTR - for transaction exceeding \$10,000	5	j.	Travelers check-application	2
h.	Customer authorization, resolution, and signature card	6 AC	k.	Vault record-opening and closing	1
i.	Deposit account record needed to reconstruct	7	l.	Wire transfer debit entry and credit entry	7
j.	Deposit and other credits	7	10.	General ledger	
k.	Dormant account - after closed or escheated	7 ALC	a.	Daily statement of condition	3
l.	Form 1096, and 1099 reports to IRS	7	b.	General journal-if byproduct of posting the general ledger	3
m.	Individual retirement account record	7	c.	General journal-if used as book of original entry with description	3
n.	Interest check or other record of interest payment and reports	7	d.	General ledger	5
o.	Internal management reports:		e.	General ledger ticket-debit and credit	2
i.	Large balance	1	11.	International department	
ii.	Overdraft	1	a.	Broker account holder-identification	5
iii.	Public funds	1	b.	Cable copy	7
iv.	Service charges	1	c.	Cable requisition	7
v.	Stop payment	1	d.	Collection paid	1
vi.	Uncollected funds	1	e.	Correspondence	2
vii.	Unposted item	1	f.	Draft	7
viii.	Zero balance	1	g.	Foreign collection register	6
p.	Ledger card	5 AC	h.	Foreign draft application	6
q.	Power of attorney document	7 ATD	i.	Foreign draft-carbon	2 ATD
r.	Receipt for statement held at customer's request	1	j.	Foreign exchange remittance sheet or book	6
s.	Record showing compliance with the following federal regulations. The stated retention period applies unless, and until, it is preempted by federal law:		k.	Foreign financial account-record	7

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l.	Foreign mail transfer application	6	iv.	Business annual report (fiscal or year end) - after date of report	3
m.	Foreign mail transfer-carbon	2 ATD	v.	Business cash-flow analysis report - after date of report	3
n.	Foreign outstanding cash	2	vi.	Business tax return - after date of return	6
o.	Foreign payment-incoming	2	vii.	Commitment letter	6
p.	Letter of credit application	2	viii.	Copy of mortgage note or deed of trust	6
q.	Letter of credit ledger sheet	7	ix.	Evidence of insurance	6
r.	Transfer outside of the United States in excess of \$10,000 – record	5	x.	Guaranty	6
12.	Investments		xi.	Letter of credit	6
a.	Bonds		xii.	Participation agreement	6
i.	Amortization record	6	xiii.	Promissory note	6
ii.	Confirmation	3	xiv.	Purchase and sale agreement	6
iii.	Safekeeping receipt	2	xv.	Security agreement	6
b.	Broker’s securities		xvi.	Title documentation	6
i.	Broker’s invoice	3	xvii.	UCC filing	6
ii.	Broker’s statement	3	c.	Consumer loans	
iii.	Report of lost or stolen securities	3	i.	Application for loan denied, including adverse action notice	25 M
iv.	Safekeeping advice	2	ii.	Collateral record	6
v.	Taxpayer identification number	5	iii.	Hazard insurance record	6
c.	Commercial paper		iv.	Invoice	6
i.	Broker’s advice	2	v.	Life and disability insurance record	6
ii.	Purchase order	2	vi.	Overdraft loan agreement	6
iii.	Remittance advice	2	vii.	Promissory note and modification agreement - copy	6
d.	Mortgage-backed securities		viii.	Title documentation	6
i.	Buy-and-sell agreement	3	ix.	UCC filing - copy	6
ii.	Commitment letter	7	d.	Real estate loans	
iii.	FHLMC and FNMA loan file	7	i.	Assignment of escrow	6
iv.	GNMA certificate	7	ii.	Assumption	6
v.	Interest accrual record	7	iii.	Commitment letter	6
vi.	Monthly remittance report	7	iv.	Copy of deed of trust or mortgage note, as it may have been modified	6
13.	Loans. A bank shall keep each loan record listed for the period required by this subsection. These periods are measured from the date of final activity. A bank shall have and comply with its own record retention schedule that is consistent with this subsection. A bank may comply with this subsection by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this subsection. This subsection does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required by this subsection.		v.	Escrow analysis and record	6
a.	All Loans - general		vi.	Evidence of any FHA or PMI insurance required	6
i.	Application for loan approved	6	vii.	Hazard insurance	life of loan
ii.	Appraisal	6	viii.	Proof of insurance excluding hazard	6
iii.	Borrower’s financial statement	6	ix.	Sales contract	6
iv.	Charge-off record	10	x.	Settlement sheet	6
v.	Charged off note	10	xi.	Survey	6
vi.	Collateral file	6	xii.	Title documentation	6
vii.	Correspondence	6	e.	Construction loans. In addition to the documents specified in subsection (d), a bank shall keep a record for a construction loan as specified in this subsection:	
viii.	Credit file – all documentation	6	i.	Certificate of occupancy	6
ix.	Credit report	6	ii.	Construction progress report	6
x.	Daily proof and record	6	iii.	Contractor’s cost breakdown	6
xi.	Loan committee minutes	P	iv.	Disbursement documentation	6
xii.	Miscellaneous loan reports including new loan journal, paid loan journal, past due report, and transaction journal as original entry	6	v.	Inspection report	6
xiii.	Other documentation for reconstruction of loan	2	vi.	Residential construction specifications and material list	6
b.	Commercial loans		14.	Official checks and drafts	
i.	Application for loan denied	12 M	a.	Affidavit, bond, indemnity agreement, other documentation supporting the issuance of a duplicate check or draft	7
ii.	Bill of sale	6	b.	Bank draft	3
iii.	Borrowing resolution	3	c.	Cashier’s check-cancelled	7
			d.	Cashier’s check register-copy	7
			e.	Expense check-cancelled	7
			f.	Expense check register-copy	7
			g.	Expense voucher or invoice	7
			h.	Money order-bank or personal	7
			i.	Money order register-copy	7

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j.	Official check outstanding	P	i.	Real estate and mortgage document	3 AC
15.	Personnel Records		j.	Receipt for asset received or delivered	3 AC
a.	Attendance record, and time card	3	k.	Record of asset tax cost	3 AC
b.	Authorization for payroll deduction	2	l.	Summary card, original instrument, agreement and amendment, and letters of appointment	3 AC
c.	Department of labor report	5	m.	Synopsis sheet	3 AC
d.	Disability record	5	21.	Corporate trust	
e.	Employee record and personnel folder	5	a.	Bond registration journal	3 AC
f.	Employment application	3 AT	b.	Bond-cancelled	7
g.	Insurance record	2	c.	Indemnity bond	P
h.	Payroll check	2	d.	Certification	2
i.	Pension fund record	10	e.	Coupon envelope	6 M
j.	Profit sharing fund record	10	f.	Coupon-cancelled	6 M
k.	Rejected employee application	2	g.	Customer receipt	7
l.	Salary ledger or electronic data processing printout	4	h.	Dividend and coupon record	3 AC
m.	Salary receipt	2	i.	Dividend and interest disbursement check and list	3 AC
n.	W-3 reconciliation of income tax withheld from wages	3	j.	General ledger ticket	2
o.	W-4 withholding exemption certificate	3	k.	Legal paper	P
p.	Wage and tax statement record (W-2)	7	l.	Copy of cancelled stock certificate, original returned to customer	1
q.	Wage differential documentation (Fair Labor Standards Act)	3	m.	Stock registration journal	3 AC
16.	Registered mail		n.	Stock transfer memo	1
a.	Marine insurance book	3	o.	Stock transfer receipt	1
b.	Record of incoming and outgoing registered mail	1	p.	Tax return	3 AC
c.	Return receipt card	3	q.	Transfer-supporting papers	3 AC
17.	Safe deposit vault		r.	Transfer journal	3 AC
a.	Access ticket or card	6	s.	Transfer tax waiver	3 AC
b.	Court order and correspondence	6	t.	Trust ledger-corporate	7
c.	Delivery of will, burial plot deed, insurance policy-receipt	6	22.	Personal trust	
d.	Forced entry record	6	a.	Record of previously discharged fiduciary	
e.	Lease or contract-closed account	2 AC	i.	Accounting	3 AC
f.	Ledger record of account	1	ii.	Decree	3 AC
g.	Opened box contents-record and report	7	iii.	Receipt and release	3 AC
h.	Rent receipt-copy	1	b.	Accounting - recorded	3 AC
i.	Sale to satisfy lien-record	7	c.	Advice of payment - securities department regarding bond and coupon collection	3 AC
j.	Signature card, authorization, and resolution	6 AC	d.	Appraisal	
18.	Tellers		i.	Real property	3 AC
a.	Mail teller envelope	3 M	ii.	Personal property	3 AC
b.	Teller's balancing recap or recap book	1	e.	Asset delivery receipt	3 AC
c.	Teller's cash ticket-original and carbons	1	f.	Authorization	
d.	Teller's cash shipment record	1	i.	By co-fiduciary	P
e.	Teller's exchange ticket	1	ii.	By consultant	P
f.	Teller's machine tape	1	g.	Approval	
19.	Transit, proof, and clearing		i.	By co-fiduciary	P
a.	ACH entry	6	ii.	By consultant	P
b.	Advice of correction to deposit	2	h.	Broker's statement	7
c.	Clearinghouse settlement sheet - recapitulation of checks delivered to the clearinghouse or federal reserve	2	i.	Buy and sell order	7
d.	Record of items processed	6	j.	Cash documentation	
e.	Proof machine tape or other record	2	i.	Customer cash and asset statement	7
f.	Receipt for transit letter	1	ii.	Cash and security journal	7
g.	Return item letter	5	iii.	Cash trial balance	1
20.	Trust department administration		k.	Common trust fund annual report	10
a.	Appraisal of real or personal property held as a trust asset	3 AC	l.	Correspondence	
b.	Correspondence	3 AC	i.	Transfer letter	3 AC
c.	Decree or receipt and release	3 AC	ii.	Claim letter	3 AC
d.	Fee record and supporting data	3 AC	m.	Coupon collection record	7
e.	Intermediate and final account	3 AC	n.	Court accounting and petition	7
f.	Legal documentation including judgment, court order, and legal opinion	3 AC	o.	Daily transaction journal	6 M
g.	Paid bill	3 AP	p.	Debits and credits-daily	1
h.	Real estate insurance policy	1 AE	q.	Documentation necessary to support account decision	3 AC
			r.	Tax Documentation	
			i.	Federal estate tax return	10
			ii.	State estate tax return	10

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- iii. Tax-related work papers 10
- iv. Federal gift tax return 10
- s. Fee calculations and supporting data 1
- t. Income tax return
 - i. Federal 3 AC
 - ii. State 3 AC
- u. Inventory 3 AC
- v. Investment review and related material 3 AC
- w. Minutes
 - i. Investment committee P
 - ii. Trust committee P
- 23. Other personal trust records
 - a. Legal opinion 3 AC
 - b. Correspondence related to legal opinion 3 AC
 - c. Paid bill 7
 - d. Review and recommendation 3 AC
 - e. Safekeeping record and receipt 3 AC
 - f. Security ledger sheet P
 - g. Trust check 10
 - h. Trust entry-original 3 AC
 - i. Trust or agency agreement-original 3 AC
 - j. Vault withdrawal and deposit ticket 7
 - k. Will-certified copy P
 - l. Work papers supporting tax return 7
- 24. Trust Investments
 - a. Annual report
 - i. Common trust fund 10
 - ii. Pooled fund 10
 - b. Valuation
 - i. Common trust fund 10
 - ii. Pooled fund 10
 - c. Minutes
 - i. Investment committee P
 - ii. Administrative committee P
 - d. Investment order and broker's confirmation 3 AC
 - e. investment review and related material 3 AC
 - f. Correspondence 3 AC
 - g. Summary of annual account activity 3 AC
- 25. Wire transfer
 - a. Incoming wire log 1
 - b. Outgoing wire log 1
 - c. Transmission record 7
 - d. Wire transfer request 7

Historical Note

Former Rule 14. R20-4-214 recodified from R4-4-214 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4142, effective September 12, 2001 (Supp. 01-3).

R20-4-215. Trust Business

All banks authorized to conduct trust business under their banking permit shall comply with the applicable requirements of R20-4-808 through R20-4-816.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-215 recodified from R4-4-215 (Supp. 95-1).

ARTICLE 3. EXPIRED

R20-4-301. Expired

Historical Note

Former Rule 1. R20-4-301 recodified from R4-4-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-302. Repealed

Historical Note

Former Rule 2; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-302 recodified from R4-4-302 (Supp. 95-1).

R20-4-303. Expired

Historical Note

Former Rule 3. R20-4-303 recodified from R4-4-303 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-304. Expired

Historical Note

Former Rule 4. R20-4-304 recodified from R4-4-304 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-305. Repealed

Historical Note

Former Rule 5. R20-4-305 recodified from R4-4-305 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-306. Repealed

Historical Note

Former Rule 6. R20-4-306 recodified from R4-4-306 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-307. Repealed

Historical Note

Former Rule 7. R20-4-307 recodified from R4-4-307 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-308. Repealed

Historical Note

Former Rule 8. R20-4-308 recodified from R4-4-308 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-309. Expired

Historical Note

Former Rule 9. R20-4-309 recodified from R4-4-309 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-310. Reserved

R20-4-311. Repealed

Historical Note

Former Rule 11; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-311 recodified from R4-4-311 (Supp. 95-1).

R20-4-312. Repealed

Historical Note

Former Rule 12. R20-4-312 recodified from R4-4-312 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-313. Reserved

R20-4-314. Repealed

Historical Note

Former Rule 14. R20-4-314 recodified from R4-4-314 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-315. Repealed**Historical Note**

Former Rule 15. R20-4-315 recodified from R4-4-315 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-316. Repealed**Historical Note**

Former Rule 16. R20-4-316 recodified from R4-4-316 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-317. Repealed**Historical Note**

Former Rule 17; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-317 recodified from R4-4-317 (Supp. 95-1).

R20-4-318. Expired**Historical Note**

Former Rule 18. R20-4-318 recodified from R4-4-318 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-319. Repealed**Historical Note**

Former Rule 19. R20-4-319 recodified from R4-4-319 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-320. Repealed**Historical Note**

Former Rule 20. R20-4-320 recodified from R4-4-320 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-321. Repealed**Historical Note**

Former Rule 21. R20-4-321 recodified from R4-4-321 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-322. Repealed**Historical Note**

Former Rule 22; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-322 recodified from R4-4-322 (Supp. 95-1).

R20-4-323. Repealed**Historical Note**

Former Rule 23. R20-4-323 recodified from R4-4-323 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-324. Expired**Historical Note**

Former Rule 24. R20-4-324 recodified from R4-4-324 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-325. Expired**Historical Note**

Former Rule 25. R20-4-325 recodified from R4-4-325 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-326. Expired**Historical Note**

Former Rule 26. R20-4-326 recodified from R4-4-326 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-327. Expired**Historical Note**

Former Rule 27. R20-4-327 recodified from R4-4-327 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-328. Expired**Historical Note**

Former Rule 28. R20-4-328 recodified from R4-4-328 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-329. Repealed**Historical Note**

Former Rule 29. R20-4-329 recodified from R4-4-329 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-330. Expired**Historical Note**

Original Rule. R20-4-330 recodified from R4-4-330 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-331. Repealed**Historical Note**

Original Rule. R20-4-331 recodified from R4-4-331 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

ARTICLE 4. CREDIT UNIONS**R20-4-401. Fidelity Bond Coverage**

- A. A credit union shall have a fidelity bond in the form and in the amount required to maintain federal insurance on its accounts.
- B. A fidelity bond purchased by a credit union to comply with this Section shall include faithful-performance-of-duty coverage.
- C. A credit union shall purchase its fidelity bond from an insurer that holds a certificate of authority from the Arizona Director of Insurance to transact surety business in Arizona.

Historical Note

Former Rule 1. R20-4-401 recodified from R4-4-401 (Supp. 95-1). Amended effective April 21, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2229, effective May 3, 2001 (Supp. 01-2).

R20-4-402. Repealed**Historical Note**

Former Rule 2. R20-4-402 recodified from R4-4-402 (Supp. 95-1). Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 5. SMALL LOANS**R20-4-501. Repealed**

Historical Note

Former Rule 1. R20-4-501 recodified from R4-4-501 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-502. Repealed**Historical Note**

Former Rule 2. R20-4-502 recodified from R4-4-502 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-503. Adjustments in Precomputed Charges

A licensee shall adjust the total precomputed charges if the first installment period is more or less than one month long. The licensee's records shall reflect the adjustment's collection in one of three ways.

1. In the first installment payment,
2. Amortized over the life of the contract, or
3. As part of the final payment.

Historical Note

Former Rule 3. R20-4-503 recodified from R4-4-503 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-504. Repealed**Historical Note**

Former Rule 4. R20-4-504 recodified from R4-4-504 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-505. Repealed**Historical Note**

Former Rule 5. R20-4-505 recodified from R4-4-505 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-506. Repealed**Historical Note**

Former Rule 6. R20-4-506 recodified from R4-4-506 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-507. Repealed**Historical Note**

Former Rule 7. R20-4-507 recodified from R4-4-507 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full

If a borrower repays a loan before the due date of the final installment, a licensee shall calculate any refund or credit due on the pre-computed loan using the following rules:

1. A licensee shall credit any full repayment, made on or before the 15th day following an installment date, as if received on the last previous installment date.
2. A licensee shall credit any full repayment, made on or after the 16th day following an installment date, as if received on the next installment date.

Historical Note

Former Rule 8. R20-4-508 recodified from R4-4-508 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, November 14, 2000 (Supp. 00-4).

R20-4-509. Repealed**Historical Note**

Former Rule 9. R20-4-509 recodified from R4-4-509 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-510. Repealed**Historical Note**

Former Rule 10. R20-4-510 recodified from R4-4-510 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-511. Repealed**Historical Note**

Former Rule 11. R20-4-511 recodified from R4-4-511 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-512. Reserved**R20-4-513. Repealed****Historical Note**

Former Rule 13. R20-4-513 recodified from R4-4-513 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-514. Repealed**Historical Note**

Former Rule 14. R20-4-514 recodified from R4-4-514 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-515. Repealed**Historical Note**

Former Rule 15. R20-4-515 recodified from R4-4-515 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-516. Repealed**Historical Note**

Former Rule 16. R20-4-516 recodified from R4-4-516 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-517. Repealed**Historical Note**

Former Rule 17. R20-4-517 recodified from R4-4-517 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-518. Deferral Fee

- A. A licensee may collect a deferral fee at the time it agrees to a deferment or at any time after the assessment of a deferral fee. If a licensee receives a payment when it agrees to the deferment, it may apply the payment first to the deferral fee. Any remainder of the payment shall be applied to the balance of the loan.
- B. If a licensee receives a payment that is large enough to pay in full a delinquent installment and all allowable delinquency fees, the licensee shall apply the payment first to the delinquent installment and fees. The licensee shall not show the paid installment as deferred, and shall not collect a deferral fee.

Historical Note

Former Rule 18. R20-4-518 recodified from R4-4-518 (Supp. 95-1). Section repealed; new Section adopted by

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final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-519. Deferment Statement

A licensee shall give the borrower a statement at the time a deferment is made, and shall retain a copy of the statement in the borrower's credit file. The statement shall contain the following information:

1. The amount of the deferral fee,
2. The date of the borrower's next scheduled payment,
3. The amount of the borrower's next scheduled payment, and
4. The extended maturity date of the loan.

Historical Note

Former Rule 19. R20-4-519 recodified from R4-4-519 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-520. Repealed**Historical Note**

Former Rule 20. R20-4-520 recodified from R4-4-520 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-521. Repealed**Historical Note**

Former Rule 21. R20-4-521 recodified from R4-4-521 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-522. Repealed**Historical Note**

Former Rule 22. R20-4-522 recodified from R4-4-522 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-523. Repealed**Historical Note**

Former Rule 23. R20-4-523 recodified from R4-4-523 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-524. Books, Accounts, and Records

- A. A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;
- B. A licensee shall keep its books, accounts, and records of operations licensed under A.R.S. Title 6, Chapter 5 separate from the books, accounts, and records of its other business activities.
- C. In addition to any statutory requirements, the books, accounts, and records maintained by a Small Loan Company shall include the following:
 1. A file containing a record of all legal actions brought during the fiscal year. A licensee shall keep the file until the Department of Financial Institutions conducts its examination of the licensee.

2. An itemized record of disbursing the proceeds of each loan. The itemized record shall include the amount of refund on each loan that is renewed or refinanced if the licensee makes precomputed loans.
3. A record of the receipt of all allowable fees.
4. A record for each borrower and each loan that contains documentary evidence of filing or recording each instrument of record for the loan.
5. A record of the borrower's voluntary election to purchase any insurance in connection with a loan, if that insurance is sold by the licensee.

Historical Note

Former Rule 24. R20-4-524 recodified from R4-4-524 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-525. Repealed**Historical Note**

Former Rule 25. R20-4-525 recodified from R4-4-525 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-526. Repealed**Historical Note**

Former Rule 26. R20-4-526 recodified from R4-4-526 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-527. Repealed**Historical Note**

Former Rule 27. R20-4-527 recodified from R4-4-527 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-528. Repealed**Historical Note**

Former Rule 28. R20-4-528 recodified from R4-4-528 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-529. Repealed**Historical Note**

Former Rule 29. R20-4-529 recodified from R4-4-529 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-530. Repealed**Historical Note**

Former Rule 30. R20-4-530 recodified from R4-4-530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-531. Repealed**Historical Note**

Former Rule 31. R20-4-531 recodified from R4-4-531 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-532. Repealed**Historical Note**

Former Rule 32. R20-4-532 recodified from R4-4-532 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-533. Reserved**R20-4-534. Insurance**

- A. A licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance in connection with a loan if the licensee's sale of insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE INSURANCE IN THE AMOUNT OF \$ _____.

I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF \$ _____.

- B. A licensee shall obtain written evidence of the borrower's voluntary election to purchase property insurance in connection with a loan if the licensee's sale of property insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE PROPERTY INSURANCE IN THE AMOUNT OF \$ _____.

I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF \$ _____.

I ATTEST THAT THE VALUE OF MY PROPERTY INSURED IN CONNECTION WITH THIS LOAN IS THE SUM OF \$ _____.

Historical Note

Former Rule 34. R20-4-534 recodified from R4-4-534 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-535. Reserved**R20-4-536. Repealed****Historical Note**

Former Rule 36. R20-4-536 recodified from R4-4-536 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6 consisting of Section R4-4-601 repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

R20-4-601. Repealed**Historical Note**

Former Rule 1; Former Section R4-4-601 repealed, new Section R4-4-601 adopted effective October 26, 1978 (Supp. 78-5). R20-4-601 recodified from R4-4-601 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-602. Applications

- A. An applicant for a debt management company license shall send the Department an application on the form required by the Superintendent. The Department shall order a credit report from a local credit reporting agency disclosing the credit his-

tory of the applicant's principals or managing agents. The Department shall direct the credit reporting agency to send the credit report directly to the Superintendent. The applicant shall pay the cost of obtaining the credit report. A complete application shall include the credit report required by this Section and all of the following:

1. The surety bond required by A.R.S. § 6-704(B);
 2. The fidelity bond required by A.R.S. § 6-704(D);
 3. The nonrefundable application fee and original license fee described in A.R.S. § 6-706, and specified in A.R.S. § 6-126(A)(14);
 4. A sample of the contract intended to be used by the applicant;
 5. Current financial statements as described in R20-4-604(A)(5);
 6. A certified copy of the current articles of incorporation, by-laws, partnership agreement or other organizing documents used to form the applicant business entity; and
 7. Statements of personal history, on the form required by the Superintendent, for each of the applicant's principals, principal officers, trustees, partners, and managing agents.
- B. A debt management company applying to operate a branch office or use an agency shall send the Department an application on the form required by the Superintendent.
- C. A debt management company applying to renew a license shall deliver, on or before June 15 of each year, an application to the Department on the form required by the Superintendent. A debt management company shall apply separately to renew the license of each authorized business location. With each application for renewal, a debt management company shall include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(C)(2).
- D. The Department may require additional information the Superintendent considers necessary in connection with an application under this Section.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-602 recodified from R4-4-602 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-603. Reports

- A. Each debt management company and each nonprofit corporation or association exempt from licensure under A.R.S. § 6-702(4) and (5), shall send the Department an annual report of its business and operations for each place of business during the previous year beginning July 1 and ending June 30, using the form required by the Superintendent. A debt management company shall deliver its report to the Department on or before August 15.
- B. Each debt management company organized as a corporation shall send the Department a copy, date-stamped by the Arizona Corporation Commission, of each annual report and certificate of disclosure filed under the authority of A.R.S. § 10-202 or 10-1622 within ten days of filing the report and certificate with the Arizona Corporation Commission.
- C. Each debt management company shall notify the Department of any change in its ownership or in the names of its officers, directors, trustees, partners, or managing agents within ten days of the change.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-603 recodified from R4-4-603 (Supp. 95-1). Amended by

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final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-604. Records

A. A debt management company shall keep books, accounts, and records adequate to provide a clear and readily understandable record of all its business activity. A debt management company may use an electronic recordkeeping system. The Department shall not require a debt management company to keep a written copy of its books, accounts, and records if the debt management company can generate all information and documentation required by this Section within three days of the Department's request for production of the records for examination or other purposes. A debt management company's books, accounts, and records shall include:

1. A file for each account containing:
 - a. A copy of all correspondence concerning the account;
 - b. Evidence of the notice given to creditors of the debt management contract;
 - c. A subsidiary ledger disclosing all financial transactions concerning the account;
 - d. A copy of each written statement of account given to the debtor;
 - e. The original budget analysis required under R20-4-607; and
 - f. The original contract between the debt management company and the debtor, including all amendments.
 2. A trust account general ledger, kept current daily, that reflects each deposit to and disbursement from the trust account.
 3. Each reconciliation of the debt management company's trust account, prepared at least once a month.
 4. A general ledger, kept current monthly, that reflects each financial transaction by the debt management company except those recorded in its trust account general ledger.
 5. A financial statement produced in accordance with generally accepted accounting principles at least once every three months, or more frequently if directed by the Superintendent, that reflects the financial condition of the debt management company. The financial statement shall include:
 - a. A balance sheet,
 - b. A statement of income and retained earnings,
 - c. A statement of changes in financial condition, and
 - d. Appropriate footnotes that either:
 - i. Explain entries in the documents listed in subsections (A)(5)(a), (b), and (c);
 - ii. Contain material information not required or not reportable in documents listed in subsections (A)(5)(a), (b), or (c); or
 - iii. Contain other disclosures required by generally accepted accounting principles.
 6. A record of all pending litigation naming the debt management company as a party. The debt management company shall keep, during the pendency of each case, a copy of the complaint, and a copy of any answer or motion filed by the debt management company in response to the complaint.
- B. All records required under this Section may be maintained at the debt management company's office in Arizona. A debt management company may keep its records outside this state if it:
1. Makes the records available to the Superintendent, for examination or other purposes, in this state not more than three business days after demand; and

2. Allows its debtor customers to call toll free to obtain information from the records that is not available from the debt management company's office in Arizona.

- C. Each debt management company shall preserve its books, accounts, and records for the period required by A.R.S. §§ 6-709(J) and 6-710(1).

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-604 recodified from R4-4-604 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-605. Reserved

R20-4-606. Reserved

R20-4-607. Budget Analysis

- A. A debt management company shall not accept an account unless it first concludes that the debtor can reasonably meet the payments agreed upon by the debt management company and the debtor. The debt management company's conclusion shall be supported by a written budget analysis kept in the company's records.
- B. The written budget analysis shall either be part of an application form or a separate document. The debtor shall date and sign the written budget analysis before the debt management company draws any conclusions from the budget analysis.
- C. The budget analysis shall disclose the disposable income available for payment to the debt management company after the debtor pays its reasonable and necessary living expenses including taxes, insurance, child support, alimony, and residential rent or mortgage payments.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-607 recodified from R4-4-607 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-608. Reserved

R20-4-609. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-609 recodified from R4-4-609 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-610. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-610 recodified from R4-4-610 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-611. Advertising

- A. A debt management company shall send the Department copies of all advertising, communication, or sales material at least five days before the company uses the advertising, communication, or sales material to promote the sale of the company's services. This requirement applies to every type of promotional material used, whether the company will publish, exhibit, broadcast, or personally distribute the material by any other method or medium.
- B. A debt management company shall not use advertising, communication, or sales material that contains:
1. A false, misleading, or deceptive statement about the debt management company's services or charges. A statement is a violation of this Section if the person making the statement does not state a material fact necessary to make

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the statement true, in light of the circumstances under which it is made;

2. A claim, direct or implied, that the debt management company consolidates debts or makes loans; or
 3. A schedule of payments in any form.
- C. A debt management company's advertising, communication, and sales material shall contain:
1. The name of the debt management company exactly as it appears on the current license; and
 2. The following legend, conspicuously displayed in at least 12 point type and in bold print:
"NOT A LOAN COMPANY."
- D. The Department's failure to object to the advertising, communication, or sales material filed with it is not and shall not be represented as an approval of the material or the statements it contains.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-611 recodified from R4-4-611 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-612. Solvency and Minimum Liquid Assets

- A. A debt management company shall not operate if it is insolvent. For purposes of this Section "insolvent" has the same meaning as in A.R.S. § 47-1201(23).
- B. To determine compliance with A.R.S. § 6-709(A), a debt management company's liquid assets include funds held in its trust account. Liquid assets do not include goodwill and other intangible assets. A debt management company's total liquid assets shall exceed by \$2,500.00 the total of all its current business liabilities together with all balances held for debtors as reflected in the company's subsidiary ledgers.
- C. Except as otherwise provided by this Section, or in a specific ruling by the Superintendent, a debt management company shall use generally accepted accounting principles to compute assets and liabilities.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-612 recodified from R4-4-612 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-613. Reserved

R20-4-614. Reserved

R20-4-615. Reserved

R20-4-616. Reserved

R20-4-617. Reserved

R20-4-618. Reserved

R20-4-619. Reserved

R20-4-620. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-620 recodified from R4-4-620 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

ARTICLE 7. ESCROW AGENTS**R20-4-701. Change in Location of Business**

An escrow agent shall mail the Superintendent written notice of any change in the location of the escrow agent's business. The escrow

agent shall ensure that the Superintendent receives the notice at least five days before the escrow agent conducts business at the new location. The escrow agent shall mail the fee required by A.R.S. § 6-126(A), together with the current escrow license, to the Superintendent with the notice of the location change. The Superintendent shall change the submitted license to reflect the new business location and return it to the escrow agent.

Historical Note

Former Rule 1. R20-4-701 recodified from R4-4-701 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-702. Account Practices and Records

An escrow agent shall maintain records to enable the Superintendent to reconstruct the details of each escrow transaction. The records shall include the following:

1. The seller's name and address;
2. The buyer's name and address;
3. The lender's name and address, if any;
4. The borrower's name and address, if any;
5. The real estate agent's name and address, if any;
6. Complete escrow instructions;
7. Records and supporting documentation for each receipt and disbursement made through the escrow; and
8. A copy of the escrow settlement.

Historical Note

Former Rule 2. R20-4-702 recodified from R4-4-702 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-703. Preservation of Records

An escrow agent shall preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the final settlement date of the transaction. An escrow agent may use an electronic recordkeeping system. The Department shall not require an escrow agent to keep a written copy of the records, books, and accounts if the escrow agent can generate all information and copies of documents required by A.R.S. § 6-831 in a timely manner for examination or other purposes.

Historical Note

Former Rule 3. R20-4-703 recodified from R4-4-703 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-704. Subsidiary Account Records

An escrow agent shall maintain subsidiary account records that identify the funds deposited in each escrow. The total of all credit balances in the subsidiary accounts shall always equal the balance of the general ledger control account.

Historical Note

Former Rule 4. R20-4-704 recodified from R4-4-704 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-705. Reserved

R20-4-706. Repealed

Historical Note

Former Rule 6. R20-4-706 recodified from R4-4-706 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-707. Expired

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). R20-4-707 recodified from R4-4-707 (Supp. 95-1). Section expired

under A.R.S. § 41-1056(J) at 21 A.A.R. 411, effective September 30, 2014 (Supp. 15-1).

R20-4-708. Financial Condition and Resources

The Superintendent shall consider the following criteria in evaluating an escrow agent's, other escrow agent's, or applicant's financial condition and resources under A.R.S. § 6-817:

1. Amount of positive net worth,
2. Amount of tangible net worth,
3. Amount of liquid assets,
4. Amount of cash provided by operations,
5. Ratio of debt to net worth,
6. Owner's personal financial resources,
7. Outside resources available,
8. Profitability,
9. Projected operating results,
10. Status as agent for a title insurance company, and
11. Sources of new business.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

ARTICLE 8. TRUST COMPANIES

R20-4-801. Definitions

In this Article, unless the context otherwise requires:

"Account" means the trust, estate, or other fiduciary relationship established with a trust department or trust company.

"Affiliate" has the meaning stated at A.R.S. § 6-801.

"Certificate" has the meaning stated at A.R.S. § 6-851.

"Fiduciary" has the meaning stated at A.R.S. § 6-851.

"Governing instrument" means a document, and all its operative amendments, that:

- Creates a trust and regulates the trustee's conduct,
- Creates an agency relationship between a trust department or trust company and a client, or
- Otherwise evidences a fiduciary relationship between a trust department or trust company and a client.

"Investment responsibility" means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.

"Person" has the meaning stated at A.R.S. § 1-215.

"Superintendent" has the meaning stated at A.R.S. § 6-851.

"Trust asset" means any property or property right held by a trust department or trust company for the benefit of another.

"Trust business" has the meaning stated at A.R.S. § 6-851.

"Trust company" has the meaning stated at A.R.S. § 6-851.

"Trust department" means a permittee under both A.R.S. § 6-201 et seq. and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.

"Trust funds" means any money held by a trust department or trust company for the benefit of another.

"Trustor" means a person who creates or funds a trust, or both.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-801 recodified from R4-4-801 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-802. Reserved

R20-4-803. Reserved

R20-4-804. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-804 recodified from R4-4-804 (Supp. 95-1). Repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

R20-4-805. Reports

- A. Within 90 days following each December 31, each trust department and trust company shall file an annual report of trust assets with the Superintendent on the form prescribed by the Superintendent. The annual report shall include the current market value of all trust assets held by the trust department or trust company as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by R20-4-812(E) through R20-4-812(G).
- B. Each trust company shall deliver a copy of its annual report and certificate of disclosure to the Superintendent within 10 days of filing the report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Superintendent, as required in this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.
- C. Each trust company shall notify the Superintendent of any change in the directors or officers of the company within 10 days of the change. Any trust company with more than 25 officers may, after obtaining the Superintendent's written approval, limit the officers covered by this subsection to those with substantial involvement in the trust company's corporate operations or in the trust company's trust business in this state.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-805 recodified from R4-4-805 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-806. Records

- A. A trust company may use a computer recordkeeping system if the trust company gives the Superintendent advanced written notice that it intends to do so. Except for records required by subsections (B)(1)(a) and (B)(1)(b), the Department shall not require a trust company to keep a written copy of its records if the trust company can generate all information required by this Section in a timely manner for examination or other purposes. A trust company may add, delete, modify, or customize a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a trust company shall report to the Superintendent any alteration in the computer recordkeeping system's fundamental character, medium, or function if the alteration changes the computer system to a paper-based system.
- B. A trust department or trust company shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the trust department or trust company, including the following:
 1. A file for each account that includes:
 - a. The original of the governing instrument,
 - b. The originals of all contracts and other legal documents,
 - c. Copies of all correspondence,
 - d. Accounting records disclosing all the financial transactions, and
 - e. A listing of all the account's assets and liabilities.
 2. An investment file for each account that includes:

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- a. All original documentary evidence of the account's assets; or
 - b. Copies of the original documentary evidence of the account's assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
 - c. A record of the initial and annual investment reviews for the account.
3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the trust department or trust company for itself, distinguishing them from those relating to the trust department's or trust company's trust business;
 4. Unaudited financial statements. A trust department or trust company shall produce these statements quarterly or more frequently when directed by the Superintendent. The financial statements shall include at least:
 - a. A balance sheet; and
 - b. A statement of income, expenses, and retained earnings.
 5. Adequate records of all pending litigation that names the trust department or trust company as a party.
- C.** A trust department shall keep its fiduciary records separate and distinct from the trust department's corporate records.
- D.** A trust department or trust company shall keep records described in subsections (B)(1) and (B)(2) for at least three years after closing an account. If litigation occurs concerning a particular account, the trust department or trust company shall keep that account's records, described in subsections (B)(1) and (B)(2), for three years after the litigation is resolved.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-806 recodified from R4-4-806 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a trust company conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;
4. Employs an officer or director who violates a corporate fiduciary duty;
5. Is insolvent; or
6. Engages in any conduct that the Superintendent determines constitutes an unsafe or unsound business practice jeopardizing the trust company's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or trust company's principal.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-807 recodified from R4-4-807 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-808. Administration of Fiduciary Powers

- A.** The board of directors and the officers share responsibility for the exercise of fiduciary powers by a trust department or trust company. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the trust department's or trust company's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.
- B.** A trust department or trust company shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The trust department or trust company shall keep a written record of each new account approval and of the closing of each account. The trust department or trust company shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The trust department's or trust company's board shall ensure that an annual review of account assets is conducted for any account in which the trust department or trust company has investment responsibility, to determine whether to retain or dispose of the assets.
- C.** A trust department or trust company exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona to advise and inform the trust department or trust company on fiduciary matters and all other legal issues presented to the trust department or trust company by the conduct of its trust business.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-808 recodified from R4-4-808 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-809. Fiduciary Duties

A trust department or trust company shall perform all fiduciary duties imposed upon it by law, including the following:

1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
2. Use reasonable care and skill to make the account productive;
3. Provide complete and accurate information of the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance with this subsection shall be delivered at least quarterly, unless:
 - a. The trust department or trust company and its account's beneficiary, principal, or authorized person agree otherwise in writing;
 - b. The governing instrument provides otherwise; or
 - c. A different frequency is established by a lawful course of dealing before the effective date of this rule; and
4. Comply with all lawful provisions of the governing instrument.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-809 recodified from R4-4-809 (Supp. 95-1). Amended by

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final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-810. Funds Awaiting Investment or Distribution

- A.** Trust funds held by a trust department or trust company awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.
- B.** A trust department or trust company may keep trust funds in deposit accounts maintained by the trust department or trust company, unless prohibited by law or by the governing instrument. The trust department or trust company shall set aside collateral security for all deposited trust funds under a third party's control. The collateral shall be the following types of securities, in any combination:
1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
 2. Any other obligations fully guaranteed by the United States government as to principal and interest;
 3. Obligations of a Federal Reserve Bank;
 4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
 5. Readily marketable securities that either:
 - a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
 - b. Satisfy state pledging requirements under A.R.S. § 6-245(C).
- C.** The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-810 recodified from R4-4-810 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-811. Investment of Trust Funds

- A.** A trust department or trust company shall invest trust funds according to:
1. The governing instrument; and
 2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7601 through 14-7611.
- B.** A trust department or trust company shall make any collective investment of trust funds exclusively under the terms of R20-4-815.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-811 recodified from R4-4-811 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-812. Self-dealing

- A.** A trust department or trust company shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
1. Its own securities;
 2. Other types of property acquired from the trust department or trust company;

3. Property acquired from the trust department's or trust company's directors, officers, or employees;
 4. Property acquired from the trust department's or trust company's affiliates;
 5. Property acquired from its affiliates' directors, officers, or employees; or
 6. Property acquired from other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- B.** A trust department or trust company may use trust funds to purchase its own securities, or its affiliates' securities:
1. If the trust department or trust company has authority under subsection (A), and
 2. If those securities are offered pro rata to all stockholders of the trust department or trust company.
- C.** A trust department or trust company shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
1. Its directors, officers, or employees;
 2. Its affiliates;
 3. Its affiliates' directors, officers, or employees; or
 4. Other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- D.** However, a trust department or trust company may sell or loan trust property to persons prohibited by subsection (C) if either:
1. Its counsel has advised in writing that, by holding certain property, the trust department or trust company has incurred a contingent or potential liability for breach of fiduciary duty; and
 - a. The proposed sale or loan avoids the contingent or potential liability;
 - b. Its board of directors authorizes the sale or loan by an action duly noted in the trust department's or trust company's minutes;
 - c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
 - d. The affected account is reimbursed, in cash, at no loss to that account; or
 2. The Superintendent requires or approves, in writing, the sale or loan to otherwise prohibited parties.
- E.** A trust department or trust company may sell trust property held in one account to another of its accounts if:
1. The transaction is fair to both accounts; and
 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- F.** A trust department or trust company may loan trust property held in one account to another of its accounts if:
1. The transaction is fair to both accounts; and
 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- G.** A trust department or trust company may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
1. The transaction is fair to the borrowing account; and
 2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-812 recodified from R4-4-812 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000

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(Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-813. Custody of Investments

- A. A trust department or trust company shall keep each account's investments separate from its own assets. It shall place each account's assets in the joint control of at least two officers or employees of the trust department or trust company designated in writing for that purpose by:
1. The trust department's or trust company's board of directors, or
 2. One or more officers authorized by the trust department's or trust company's board of directors to make the designation.
- B. A trust department or trust company shall either:
1. Keep each account's investments separate from all other accounts' investments, except as provided in R20-4-815; or
 2. Adequately identify each account's property in the trust department's or trust company's records.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-813 recodified from R4-4-813 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-814. Compensation

- A. A trust department or trust company acting as a fiduciary may charge a reasonable fee for its services. It shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.
- B. A trust department or trust company shall not permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the trust department or trust company in the administration of an account.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-814 recodified from R4-4-814 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-815. Collective Investments

- A. All collective investments made by a trust department or trust company shall be in a common trust fund established under A.R.S. § 6-871, and maintained by the trust department or trust company exclusively for the collective investment and reinvestment of funds contributed by the trust department or trust company acting as a fiduciary. A trust department or trust company shall not establish a common trust fund unless it first:
1. Prepares a written plan regarding the common trust fund; and
 2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.
- B. The plan shall describe the common trust fund's operational details, including a description of:
1. The trust department's or trust company's investment powers and investment policy over all funds deposited in the common trust fund,
 2. The manner for allocating the common trust fund's income and losses,

3. The criteria for admission to or withdrawal from participating in the common trust fund, and
 4. The method for valuing assets in the common trust fund and the frequency of valuation.
- C. A trust department or trust company shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection (B), and shall provide a copy of the plan upon request.
- D. The annual report required under R20-4-805(A) shall include all common trust funds operated by the trust department or trust company.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-815 recodified from R4-4-815 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

- A. Any trust department that wants to surrender its trust powers shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust department has no remaining fiduciary duties, the Superintendent shall notify the trust department that it no longer has authority to exercise trust powers.
- B. Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Superintendent shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.
- C. After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Superintendent's supervision shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust company has no further fiduciary duties, the Superintendent shall notify the trust company that it no longer has authority to exercise fiduciary powers.
- D. Any trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them cancelled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust department or trust company or its stockholders, directors, or officers.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-816 recodified from R4-4-816 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

Appendix A. Repealed**Historical Note**

Appendix A repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

Appendix B. Repealed

Historical Note

Appendix B repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

ARTICLE 9. MORTGAGE BROKERS**R20-4-901. Reserved****Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-901 recodified from R4-4-901 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-902. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-902 recodified from R4-4-902 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-903. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

- A.** The exemption under A.R.S. § 6-902 (A)(1) only applies to a person whose offers to make or negotiate a mortgage loan, as defined in A.R.S. § 6-901, and all mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.
- B.** The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
 2. The authority to examine a claimant's books and records relating to its mortgage lending activities; and
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage lending activities.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-903 recodified from R4-4-903 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-904. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-904 recodified from R4-4-904 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-905. Repealed**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-905 recodified from R4-4-905 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-906. Equivalent and Related Experience

- A.** An applicant may satisfy the three years' experience requirement of A.R.S. § 6-903 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required for a mortgage broker license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;

2. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage broker with license from another state, or responsible individual for a mortgage broker licensed in another state;
6. Mortgage banker with license from another state, or responsible individual for a mortgage banker licensed in another state;
7. Attorney certified by any state as a real estate specialist.

- B.** An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-903 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage broker or mortgage banker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6. Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-906 recodified from R4-4-906 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-907. Course of Study

- A. A course of study shall be satisfactorily completed if the applicant has:
1. Attended at least 24 hours of class, and
 2. Received a passing grade on the final exam.
- B. A course of study shall meet all the following requirements:
1. The following items shall be submitted by the school to the Superintendent on an annual basis:
 - a. Course materials;
 - b. Class content outlines on a session-by-session basis; and
 - c. Sample final exam.
 2. The following subjects shall be taught:
 - a. Mortgage, deed of trust, and security agreement law;
 - b. Negotiable instrument law;
 - c. Mortgage broker law;
 - d. Escrow agent law;
 - e. Recordkeeping requirements of R20-4-917;
 - f. Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation requirements;
 - g. Ethics;
 - h. Principal and agent law;
 - i. Arithmetical computations common to mortgage brokerage;
 - j. Real estate lending principles;
 - k. Real estate law;
 - l. Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617, and Consumer Credit Protection Act, 15 U.S.C. 1601 through 1666j; and
 - m. Securities law.
 3. A final exam shall be given that substantially tests the student's knowledge of the subjects described above.
- C. The Superintendent shall review the items submitted to the Department and determine within 60 days of submission whether the proposed course of study is satisfactory. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory, or if the Superintendent has not received the course materials, course content outlines, and sample final exam within the prior 13 months, the Superintendent may withhold or suspend approval.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-907 recodified from R4-4-907 (Supp. 95-1).

R20-4-908. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-908 recodified from R4-4-908 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-909. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-909 recodified from R4-4-909 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-910. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-910 recodified from R4-4-910 (Supp. 95-1). Section

repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-911. Qualified Replacement Responsible Individual

If a licensee chooses an individual to serve as a replacement responsible individual and that individual has not satisfactorily completed the course of study required by A.R.S. § 6-903(B)(2) or passed the mortgage broker examination required by A.R.S. § 6-903(B)(3), and is not given the opportunity to do so prior to the expiration of the 90-day time period provided in A.R.S. § 6-903(F), but otherwise meets the requirements of A.R.S. § 6-903(B), the individual shall be qualified as a replacement responsible individual until the next course of study has been held and, if the person successfully completes the course of study, until the mortgage broker examination next following the completion of the course of study has been held and the results of the examination are available. If the individual fails to satisfactorily complete the course of study or fails the mortgage broker examination, the licensee shall then have a new 90-day time period within which to place itself under the active management of a qualified responsible individual. Notwithstanding the foregoing, a licensee shall have no longer than 180 days within which to place the license under the active management of a qualified responsible individual unless the Superintendent grants additional time to the licensee for good cause shown.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-911 recodified from R4-4-911 (Supp. 95-1).

R20-4-912. Restrictions on the Term of a Cash Alternative

If an applicant or a licensee elects to place with the Superintendent a deposit in the form of a certificate of deposit or investment certificate, in addition to the requirements of A.R.S. § 6-903(J), the certificate of deposit or investment certificate shall not be renewable, nor expire, earlier than 12 months from the date of issuance.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-912 recodified from R4-4-912 (Supp. 95-1).

R20-4-913. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-913 recodified from R4-4-913 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-914. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-914 recodified from R4-4-914 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-915. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-915 recodified from R4-4-915 (Supp. 95-1).

R20-4-916. Notification of Change of Address

If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the

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change within five business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the Department the license for the office changing addresses together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-916 recodified from R4-4-916 (Supp. 95-1).

R20-4-917. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system;
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage broker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied, etc.); and
 - f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with a mortgage loan including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose, including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose, including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage broker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;

- g. Amount disbursed;
- h. Date disbursed;
- i. Disbursement's payee and purpose; and
- j. Balance;

6. A file for each application for a mortgage loan containing:
 - a. The agreement with the customer concerning the broker's services, whether as a loan application, fee agreement, or both;
 - b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement, and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents provided to the investor under A.R.S. § 6-907, a copy of the executed note and executed deed of trust or mortgage, and any assignment by the broker to the investor;
 - g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
 - h. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
 7. Samples of every piece of advertising relating to the mortgage broker's business in Arizona;
 8. Copies of governmental or regulatory compliance reviews;
 9. If the licensee is not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action; and
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred

during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

- D.** A licensee shall retain the documents described in subsections (B)(1) and (B)(6) for the length of time provided in A.R.S. § 6-906. For the purposes of A.R.S. § 6-906, a mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
 2. The date a licensee mails written notice to an applicant that the application has been denied, as required by federal law.
- E.** A licensee shall maintain all records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-917 recodified from R4-4-917 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-918. Repealed

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-918 recodified from R4-4-918 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-919. Deposit of Monies Received by a Mortgage Broker

All monies received by a mortgage broker which are required to be deposited into an escrow account with an escrow agent licensed pursuant to A.R.S. § 6-801 et seq. shall be so deposited by 5:00 p.m. on the next business day after receipt of the funds.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-919 recodified from R4-4-919 (Supp. 95-1).

R20-4-920. Requirements for the Testing Committee

- A.** No licensee shall submit more than five names as nominees to serve on the testing committee. The resumes of the nominees shall be included. The names and resumes shall be submitted to the Superintendent no later than August 1 of each even-numbered year. On or before September 30 of each even-numbered year, the Superintendent shall appoint four persons from the nominees submitted and one employee of the Department as members of the testing committee. A person may serve more than one two-year term. If the Superintendent does not find at least four persons from the list to be acceptable, the Superintendent shall solicit additional nominees from licensees.
- B.** In the event of a vacancy on the testing committee, the remaining members of the committee shall submit a list of nominees within 45 days of the vacancy to the Superintendent containing not less than two nominees for each vacancy. The Superintendent shall then appoint a nominee from the list to fill each vacancy for the remainder of the term. If the Superintendent does not find at least one person from the list to be acceptable to fill each vacancy, the remaining members of the committee shall, upon request, submit an additional list of nominees to the Superintendent.
- C.** The Superintendent may remove any member of the committee at any time without cause.
- D.** The committee shall review and revise questions on the test not less than once every two years. All questions used on the

test shall first be submitted to and approved by the Superintendent.

- E.** The committee shall inform the applicant of the applicant's score on the test in writing within 30 days of administration of the test.
- F.** The handbook for mortgage brokers shall be updated by the committee as necessary to reflect changes in the law.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-920 recodified from R4-4-920 (Supp. 95-1).

R20-4-921. Authorizations to Complete Blank Spaces

An authorization, under A.R.S. § 6-909, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties; and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-921 recodified from R4-4-921 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-922. Determining Loan Amounts

In determining the amount of a mortgage loan pursuant to A.R.S. § 6-909(D) or (G), only the principal amount of the loan shall be considered and not any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties or compensation retained by the mortgage broker or its agents.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-922 recodified from R4-4-922 (Supp. 95-1).

R20-4-923. Delay or Cause Delay

A mortgage broker shall not be deemed to have delayed or caused delay if such delay occurs due to events outside the control of the mortgage broker.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-923 recodified from R4-4-923 (Supp. 95-1).

R20-4-924. Receipt and Disbursement of Monies

A licensee is not receiving or disbursing monies in servicing or arranging a mortgage loan if the licensee, at the request of the lender or servicing agent, on an infrequent basis, assists in the collection or servicing of a mortgage loan by receiving from the borrower a check or draft payable to the lender or servicing agent and forwarding such instrument to the lender or servicing agent not later than 5:00 p.m. on the next business day after receipt by the licensee. For the purposes of this rule, an infrequent basis means, with regard to a particular loan, for not more than 25% of the regularly scheduled payments of the mortgage loan during any calendar year.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-924 recodified from R4-4-924 (Supp. 95-1).

R20-4-925. Waiver of Examination and Course of Study

The Superintendent's waiver of the examination and course of study requirement under A.R.S. § 6-903 extends to a person designated as a responsible individual by either an applicant or a licensee under A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-927. Conversion to Commercial Mortgage Broker License

- A. Under A.R.S. § 6-913, a mortgage broker licensee shall only be permitted to convert his or her license to a commercial mortgage broker license during the renewal period established by A.R.S. § 6-904.
- B. The licensee seeking conversion shall not be subject to the 12 continuing education units as prescribed by A.R.S. § 6-903(V).
- C. The licensee seeking conversion shall submit:
 1. The renewal fees required by A.R.S. § 6-126 for commercial mortgage brokers, and
 2. The information and documents required by A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-928. Certificate of Exemption Application and Renewal

- A. Under A.R.S. § 6-912(C), upon application for a certificate of exemption, an applicant shall pay a nonrefundable fee of \$300.
- B. A person holding a certificate of exemption shall pay a renewal fee of \$150.00 on or before December 31 of each year. Certificates of exemption not renewed by December 31 are automatically suspended, and the certificate holder shall not act as a registered exempt person until the certificate is renewed or a new certificate is issued pursuant to A.R.S. § 6-912. While the certificate is suspended, the licensed loan originators sponsored by the registered exempt person may not transact business as a loan originator. A registered exempt person may renew an automatically suspended certificate by paying the renewal fee plus \$25.00 for each day after December 31 that a renewal fee is not received by the Superintendent and applying for renewal as prescribed by the Superintendent. A certificate of exemption that is not renewed by January 31 expires. A certificate of exemption shall not be granted to the holder of an expired certificate of exemption except as provided in A.R.S. § 6-912 for the issuance of an original certifi-

cate of exemption. Each licensed loan originator that is sponsored by a registered exempt person whose certificate has expired shall have his or her license placed on inactive status and shall not transact business in Arizona as a loan originator pursuant to A.R.S. § 6-991.02(M).

- C. In addition to the application fee, on issuance of the certificate of exemption, the Superintendent shall collect the first year's renewal fee prorated according to the number of quarters remaining until the date of the next annual renewal, as required by A.R.S. § 6-126(B).
- D. The following fees are payable to the Department:
 1. To change the name of the federally chartered savings bank on a certificate of exemption: \$250.00.
 2. To change the responsible individual for the exempt entity: \$250.00.
 3. To issue a duplicate or replace a lost certificate of exemption: \$100.00.
 4. To change the address of the federally chartered savings bank on a certificate of exemption: \$50.00.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE**R20-4-1001. Notice of Change of Location of Safe Deposit Repository**

- A. A corporation or association that moves a repository shall give written notice of the location change to the Superintendent and to its customers.
 1. A corporation or association shall provide notice of the location change to the Superintendent by mailing the notice required under this subsection by first class mail no less than 30 days before the scheduled moving date. The corporation or association shall include a copy of the notice to customers required under subsection (B).
 2. A corporation or association shall provide notice of the location change to its customers by:
 - a. Publishing notice of the change of location in:
 - i. An English language newspaper of general circulation in the county where the repository will be closed,
 - ii. In a weekly newspaper for two consecutive publications, or
 - iii. In a daily newspaper for three consecutive days; and
 - b. Publishing the notice no more than 90 days, and no less than 30 days, before the scheduled moving date.
- B. The corporation or association shall include all the following information in the notice:
 1. The date the corporation or association intends to move the repository,
 2. The earliest date a customer can remove contents and transact other business related to the move,
 3. The latest date a customer can remove contents and transact other business related to the move,
 4. The street address of the repository to be closed, and
 5. The street address of the new repository.

Historical Note

Former Rule 1. R20-4-1001 recodified from R4-4-1001 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 5227, effective February 4, 2003 (Supp. 02-4). Preceding Historical Note entry corrected to read 2003 instead of 2002 (Supp. 03-1).

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES

R20-4-1101. Capital structure of banks; defined

“Capital structure” as the term is applied to banks under Article 2, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following reserves and capital accounts of the institution as stated in the institution’s report of condition required by the supervisory banking authority for the year end next preceding the institution’s bid for deposit:

1. Reserve for bad debt losses on loans.
2. Other reserves on loans.
3. Reserves on securities.
4. Capital notes and debentures.
5. Preferred stock -- total par value.
6. Common stock -- total par value.
7. Surplus.
8. Undivided profits.
9. Reserve for contingencies and other capital reserves.

Historical Note

Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1101 recodified from R4-4-1101 (Supp. 95-1).

R20-4-1102. Capital structure of savings and loan associations; defined

“Capital structure” as the term is applied to savings and loan associations under Article 2, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following net worth accounts of the institution as stated in the institution’s report of condition required by the supervisory banking authority for the year end next preceding the institution’s bid for deposit:

1. Capital notes and debentures.
2. Guaranty capital stock.
3. General reserves. (Including bad debt reserves)
4. Other reserves.
5. Paid in surplus.
6. Earned surplus and undivided profits.

Historical Note

Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1102 recodified from R4-4-1102 (Supp. 95-1).

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT

R20-4-1201. Scope of Article

This Article governs procedures in all contested cases and appealable agency actions, including administrative appeals, filed with the Department. The Department shall use the authority of A.R.S. §§ 41-1092 through 41-1092.12, and the Office of Administrative Hearings’ procedural rules to govern the initiation and conduct of proceedings. In a case or action, special procedural requirements in state statute or another Section in this Chapter shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. §§ 41-1092 through 41-1092.12 or the Office of Administrative Hearings’ rules. This Article does not apply to rulemaking or to investigative proceedings before the Superintendent.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1201 recodified from R4-4-1201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1202. Definitions

In this Article, unless the context otherwise requires:

“Administrative law judge” has the meaning stated at A.R.S. § 41-1092(1).

“Appealable agency action” has the meaning stated at A.R.S. § 41-1092 3).

“Contested case” has the meaning stated at A.R.S. § 41-1001(4).

“Department” means the Arizona State Department of Financial Institutions.

“License” has the meaning stated at A.R.S. § 41-1001(10).

“Party” means:

The Department;

The Superintendent;

Each person either named or admitted as a party, and

Each person properly seeking, and entitled, to be a party.

“Superintendent” has the meaning stated in A.R.S. § 6-101(16).

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1202 recodified from R4-4-1202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1203. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1203 recodified from R4-4-1203 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1204. Filing; Service

- A. A person shall either personally deliver all papers permitted or required to be filed with the Superintendent or shall mail them by first class, certified, or express mail, or send them by facsimile transmission (602-381-1225), to the Superintendent at 2910 N. 44th Street, Suite 310, Phoenix, AZ 85018-7270, or shall serve them by any method permitted under R2-19-108. The Department considers papers filed when actually received at the Superintendent’s address stated in this subsection.
- B. A party in a contested case or appeal from an agency action shall make any required or permitted service in the manner permitted under R2-19-108. A party shall make service upon each represented party’s attorney unless the administrative law judge orders separate service on the actual party. A party shall make service upon each unrepresented party by service on the actual party.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1204 recodified from R4-4-1204 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended to correct a typographical error in subsection (B) (Supp. 01-4).

R20-4-1205. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1205 recodified from R4-4-1205 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1206. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1206 recodified from R4-4-1206 (Supp. 95-1). Section

repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1207. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1207 recodified from R4-4-1207 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1208. Commencement of Proceedings; Notice of Hearing

A person may obtain a hearing under A.R.S. § 41-1092.03 (B) on any appealable agency action or contested case, including the following, unless otherwise provided by law.

1. A letter or order granting or denying a license;
2. A license issued with restrictions or conditions;
3. A cease and desist order;
4. An order to remedy unsafe or unsound conditions;
5. An order to remedy an impairment of capital;
6. An order taking possession and control of a financial institution or enterprise;
7. An order assessing a fine;
8. Any other order or matter reviewable in a hearing either under the authority of these rules, a statute or an administrative rule enforced by the Superintendent, or by the order's express terms.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1208 recodified from R4-4-1208 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1209. Answer to Notice of Hearing

- A. The Superintendent may, in a notice of hearing, direct one or more parties to file an answer to the assertions in the notice of hearing. Any party to the proceeding may file an answer without being directed to do so.
- B. A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Superintendent may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.
- C. An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions in the notice of hearing. An answering party that does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny an assertion shall state that inability in its answer. That statement shall have the effect of a denial. A party admits each assertion that it does not deny. An answering party that intends to deny only a part or a qualification of an assertion, or to qualify an assertion, shall expressly admit as much of that assertion as is true and shall deny the remainder.
- D. A party that fails to file an answer required by this Section within the time allowed is in default. The Superintendent may resolve the proceeding against a defaulting party. In doing so, the Superintendent may regard any assertions in the notice of hearing as admitted by the defaulting party.
- E. An answering party waives all defenses not raised in its answer.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1209 recodified from R4-4-1209 (Supp. 95-1). Amended

by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1210. Stays

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Superintendent stay an action or any part of an order that will become effective before the Department can hold a hearing. The Superintendent may, in the Superintendent's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:

1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the Superintendent grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1210 recodified from R4-4-1210 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1211. Intervention

A person may only intervene in a proceeding if the person timely applies and:

1. A statute confers a right to intervene, or
2. The person's claim or defense shares a question of law or fact in common with the main proceeding.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1211 recodified from R4-4-1211 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1212. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1212 recodified from R4-4-1212 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1213. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1213 recodified from R4-4-1213 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1214. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1214 recodified from R4-4-1214 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1215. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1215 recodified from R4-4-1215 (Supp. 95-1). Section

repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1216. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1216 recodified from R4-4-1216 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1217. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1217 recodified from R4-4-1217 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1218. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1218 recodified from R4-4-1218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1219. Rehearing

- A. Except as provided in subsection (H), any party in a contested case who is aggrieved by a decision rendered in that case may file with the Superintendent, within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for rehearing.
- B. A party requesting rehearing under this Section may amend a motion for rehearing at any time before the Superintendent rules on the motion. Any other party, or the Attorney General, may file a response to the motion for rehearing within 15 days after service of the motion for rehearing, or the amended motion for rehearing. The Superintendent may require a written brief of the issues raised in the motion and may allow oral argument.
- C. The Superintendent may grant a motion for rehearing for any of the following causes:
 1. Irregularity in the proceedings before the Superintendent, in any order, or any abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Superintendent, the Superintendent employees, the administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary care;
 4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing;
 7. The decision is not justified by the evidence or is contrary to law.
- D. The Superintendent may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (C). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.
- E. The Superintendent, within the time for filing a motion for rehearing, may without a motion order a rehearing or review of a decision for any reason that would allow the granting of a

motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.

- F. After giving the parties notice and an opportunity to be heard on the matter, the Superintendent may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.
- G. When a motion for rehearing is based on an affidavit, the moving party shall serve the affidavit with the motion. An opposing party or the Attorney General may serve opposing affidavits within 10 days after service of the motion for rehearing.
- H. The Superintendent may issue a final decision, subject only to judicial review, and without an opportunity for rehearing or administrative review if the Superintendent includes in the decision:
 1. An express finding that the decision needs to be made immediately effective to preserve the public peace, health, and safety; and
 2. An express finding that a rehearing or review is:
 - a. Impossible,
 - b. Unnecessary, or
 - c. Contrary to the public interest.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1219 recodified from R4-4-1219 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1220. Consent Agreements

- A. The Department will enter into a consent agreement, either in litigation or in an administrative proceeding, only if the defendant or respondent admits to the allegations in the complaint, notice, or order relating to the jurisdiction of the Superintendent or the jurisdiction of the tribunal that will enter the judgment or order.
- B. A refusal to admit allegations is a denial. However, a defendant or respondent may consent to a judgment or order reciting that it does not admit or deny the allegations except those required by subsection (A). A consent agreement shall contain those additional provisions required by the Superintendent in a given matter, and may include:
 1. Waiving any right to seek judicial review challenging the judgment's or order's validity,
 2. Waiving findings of fact and conclusions of law,
 3. Stating that the agreement is signed only to settle the matter and not as an admission that the defendant or respondent has violated the law.
- C. The Superintendent has sole discretion to decide whether to resolve a matter by consent agreement. Nothing in this Section gives the Superintendent a duty to approve a consent agreement in any matter.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1220 recodified from R4-4-1220 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

ARTICLE 13. LOAN ORIGINATORS

R20-4-1301. Scope of Article

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1302. Course of Study to Qualify for Licensure

- A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- B. An applicant for a loan originator license shall satisfactorily complete a course of study by:
1. Attending at least 20 hours of instruction, and
 2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- C. A pre-licensure course of study shall include 20 hours of instruction in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
 2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;
 3. Non-traditional mortgage product lending standards: Two hours;
 4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: Four hours;
 5. The remaining eight hours should be comprised of instruction in:
 - a. The obligations between principal and agent;
 - b. The statutory and regulatory laws governing loan originators;
 - c. Arithmetical computations common to mortgage lending;
 - d. Principles of real estate lending;
 - e. The purpose and effect of mortgages, deeds of trust, and security agreements;
 - f. The terms and conditions of conforming and non-conforming residential mortgages;
 - g. Real estate appraisal; and
 - h. The principles of appraisal independence.
- D. A continuing education course of study shall include eight hours of instruction each year in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
 2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;

3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: One hour.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1304. Fees

Loan Originator program fees:

1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): \$350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): \$150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. §§ 6-126(C)(13) and 6-991.04(G): \$150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): \$50,
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): \$50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor,
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): \$25 per day after the filing deadline.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since

emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1305. Practice and Procedure

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section repealed; new Section made by renewed emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

ARTICLE 14. INVESTIGATIONS

R20-4-1401. Definitions

In this Article, unless the context otherwise requires:

1. "Examination" means reviewing an applicant's or licensee's operations, books, and records for any lawful purpose, including those listed in A.R.S. § 6-124(A).
2. "Investigation" means an inquiry, other than an examination, into the affairs of a licensed or unlicensed entity including a review of the entity's operations, books, and records, conducted by the Superintendent for any lawful purpose, including those listed in A.R.S. § 6-124(A).
3. "Licensee" means a financial institution or enterprise.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1401 repealed, new Section R4-4-1401 renumbered from R4-4-1402 and amended effective August 14, 1991 (Supp. 91-3). Amended effective August 14, 1991 (Supp. 91-3). R20-4-1401 recodified from R4-4-1401 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1402. Repealed

Historical Note

Former Section R4-4-1402 renumbered to R4-4-1401, new Section R4-4-1402 adopted effective August 14, 1991 (Supp. 91-3). R20-4-1402 recodified from R4-4-1402 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power

The Superintendent may serve a subpoena either by personal delivery or by first class, certified, or express mail, or by facsimile transmission. A Department employee, or an attorney or agent of the Attorney General's office, may accomplish service for the Superintendent. The Superintendent may amend a subpoena at any time, and may serve the amended subpoena as provided in this Section. Under A.R.S. §§ 6-123(3), 6-124(B), and 12-2212, the Superintendent may compel testimony or document production, by subpoena or other means, regardless of whether an examination or investigation is in progress.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1403 repealed, new Section R4-4-1403

renumbered from R4-4-1407 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1403 recodified from R4-4-1403 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1404. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1404 recodified from R4-4-1404 (Supp. 95-1).

R20-4-1405. Fingerprints; Background Information

- A. In connection with an examination or investigation, the Superintendent may investigate the following persons' background:
1. An applicant or a licensee, or a person whom the Superintendent reasonably believes may be violating any statute or rule administered by the Superintendent; and
 2. An officer, director, agent, employee, partner, joint venturer, affiliate, or other person associated with a person described in subsection (A)(1), if the other person has or had any involvement in or control over the activities of the person described in subsection (A)(1).
- B. In connection with an examination or investigation, the Superintendent may require a person described in A.R.S. § 6-123.01(A) or (E) to submit a statement of personal history and fingerprints to the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1405 repealed, new Section R4-4-1405 renumbered from R4-4-1409 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1405 recodified from R4-4-1405 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1406. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1406 recodified from R4-4-1406 (Supp. 95-1).

R20-4-1407. Renumbered

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1403 effective August 14, 1991 (Supp. 91-3). R20-4-1407 recodified from R4-4-1407 (Supp. 95-1).

R20-4-1408. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1408 recodified from R4-4-1408 (Supp. 95-1).

R20-4-1409. Renumbered

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1405 effective August 14, 1991 (Supp. 91-3). R20-4-1409 recodified from R4-4-1409 (Supp. 95-1).

R20-4-1410. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1).
 Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1410 recodified from R4-4-1410 (Supp. 95-1).

ARTICLE 15. COLLECTION AGENCIES**R20-4-1501. Definitions**

In this Article, unless the context otherwise requires:

1. "Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.
2. "Active Manager" means the person who is in active management of the conduct of the collection agency's business, and who meets the qualifications listed in A.R.S. § 32-1023(A).
3. "Client" means a person who has hired a collection agency to collect a debt.
4. "Collection agency" has the meaning in A.R.S. § 32-1001(A)(2).
5. "Contact" means to communicate with, and includes attempted communications.
6. "Credit bureau" or "credit reporting agency" means any person engaged exclusively in the business of gathering, recording, and disseminating information about the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension.
7. "Creditor" means a person who offers or extends credit creating a debt, or to whom a debt is owed. The term does not include a person that receives an assignment or transfer of a defaulted debt solely for use in collecting the debt for someone else.
8. "Debt" means a debtor's actual or claimed obligation to pay money, whether or not the obligation has been reduced to judgment.
9. "Debtor" means a person obligated to pay a debt. The term also means a person claimed to be obligated to pay a debt.
10. "Superintendent" has the meaning in A.R.S. § 6-101.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1501 recodified from R4-4-1501 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1502. Applications

- A. An applicant for a license shall complete and file an application, as required by the Department, by delivering the application to the Superintendent, together with the following documents and payment:
 1. The bond required by A.R.S. § 32-1021;
 2. The nonrefundable investigation fee and original license fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126;
 3. A current financial statement in the form required by the Department;
 4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other organizational documents under which the applicant proposes to conduct business; and
 5. A statement of personal history for each principal officer, partner, and manager of the applicant, in the form required by the Department.

- B. An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall complete and file the application required by subsection (A), together with a signed statement declaring that:
 1. The requirements for securing the out-of-state license were, when issued, substantially the same or equivalent to the requirements imposed under A.R.S. Title 32, Chapter 9, Article 2. The statement shall also contain a complete description of those requirements.
 2. The state issuing the out-of-state license extends reciprocity to Arizona licensees under similar circumstances. The statement shall also contain a complete description of the conditions for reciprocity in the other state.
- C. A licensee applying for license renewal shall complete and file an application, as required by the Department, by delivering the renewal application to the Superintendent before January 1, together with the renewal fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126. An application for renewal shall also include a current financial statement in the form required by the Department.
- D. An applicant for a provisional license under A.R.S. § 32-1027 shall complete and file an application as required by the Department, by delivering the application to the Superintendent within 30 days of the event justifying a provisional license. The applicant shall deliver the application together with each of the following:
 1. A bond that satisfies the requirements of A.R.S. § 32-1022;
 2. A current financial statement as required by the Department;
 3. A detailed description of the facts justifying the issuance of a provisional license; and
 4. Evidence that the licensee notified the Superintendent as required by A.R.S. § 32-1023, in the event the licensee has terminated its active manager.
- E. An applicant for a provisional license shall, in each instance, be appropriate to the circumstances justifying the provisional license, as follows:
 1. A licensee's personal representative, or the personal representative's appointee, shall complete and file an application if the licensee, a natural person, has died;
 2. The surviving partners shall complete and file an application if the licensee, a partnership, has dissolved;
 3. A licensee shall complete and file an application if an active manager's employment was terminated.
- F. An applicant for a provisional license shall clearly label the top of the first page with the heading "APPLICATION FOR PROVISIONAL LICENSE UNDER A.R.S. § 32-1027."
- G. The Superintendent may require additional information the Superintendent considers necessary in connection with any application under this rule.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1502 recodified from R4-4-1502 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1503. Reports

- A. A collection agency shall notify the Superintendent in writing of any change in the officers, directors, partners, or active manager of the collection agency not more than ten days after the change. With the notice, the collection agency shall provide the Superintendent with a Statement of Personal History

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for each new officer, director, partner, or active manager on a form obtained from the Department.

- B.** A collection agency shall notify the Superintendent in writing of any change in its place of business not more than 10 days after the change.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1503 recodified from R4-4-1503 (Supp. 95-1).

Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1504. Records

- A.** A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;
- B.** All licensees shall keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including:
1. Records or books of account listing all clients' accounts in numerical order, or in alphabetical order according to the clients' names. If a collection agency keeps books of accounting in numerical order, the collection agency shall alphabetically cross-index each client name with the corresponding account's number. Each account shall reflect its true condition at each calendar month's end, and shall include:
 - a. The client's name and address;
 - b. Each debtor's name worked for collection in that month;
 - c. The amount, description, and date of each debit and each credit to the account; and
 - d. The balance due to, or owing from, the client.
 2. A record and history of each debt for collection that clearly shows:
 - a. The debtor's name;
 - b. The debt's principal amount;
 - c. The interest charged or collected;
 - d. The amount, and a description of any other charges;
 - e. The amount, and date, of each payment received or collected; and
 - f. The current balance due on the debt.
 3. An original of each written contract, between the licensee and a client, including any contract amendments.
 4. A trust general ledger reflecting all deposits to and payments from a trust account. A licensee shall post transactions to its trust general ledger at least every five business days. A licensee shall bring its trust general ledger current within 24 hours when requested by the Superintendent.
 5. The licensee's trust account reconciliation, prepared at least once a month.
 6. Books, records, and files maintained so that the Superintendent can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124.
 7. A copy of all pleadings in pending litigation that names the collection agency as a defendant.

8. A record of fictitious names used by the agency's debt collectors as required by R20-4-1520.

- C.** A person issuing a receipt for a collection agency shall sign the receipt using that person's true name. Each receipt shall also show the collection agency's name.
- D.** A licensee shall maintain all records required under this Section and shall make them available for examination, investigation, or audit in Arizona within three working days after the Superintendent demands the records.
- E.** A licensee shall retain the records required by this Section for the following periods:
1. A licensee shall retain all records described in subsections (B)(1), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), and (B)(8) for at least six years following their creation.
 2. A licensee shall retain all records described in subsection (B)(2) for at least three years from an account's assignment to the licensee. If a licensee collects any money on an account, the licensee shall retain the records described in subsection (B)(2) for at least three years from the last collection date.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1504 recodified from R4-4-1504 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1505. Trust Account

- A.** A licensee that maintains an office in Arizona shall deposit all funds collected for a client in a trust account with an Arizona bank or savings and loan association. A licensee that does not maintain an office in Arizona shall deposit all funds collected for a client in a trust account at a depository in the state where the licensee maintains its principal office. A licensee shall deposit all client funds before the close of its business on the third business day after the licensee receives the funds. Client funds shall remain on deposit as required by this Section until:
1. Paid over to a client, or
 2. Otherwise paid as provided in this Section.
- B.** A licensee shall pay funds from the trust account either:
1. By prenumbered printed checks, or
 2. By electronic payment.
- C.** A licensee shall deposit in its trust account only the funds it has collected for its client. A licensee, its officers, directors, partners, managers, members, or employees shall not commingle, or permit the commingling of, their own funds with client funds. This prohibition includes any funds that a licensee, or any officer, director, partner, manager, member, or employee claims an interest in if that interest arises outside the licensee's contract with a client.
- D.** A licensee shall keep unpaid client funds in its trust account. A licensee may maintain a separate trust account for dormant accounts into which the licensee deposits unpaid funds such as those of a client that cannot be located, or any trust account check issued to a client that is returned without being negotiated. As to all those unpaid funds, under A.R.S. § 44-317, a licensee shall file an abandoned property report at the Arizona Department of Revenue as and when required by law.
- E.** A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly into its own operating account.
- F.** A licensee shall not pay funds from its trust account except as:
1. Provided in this Section,
 2. Expressly authorized in its contract with a client, or

3. Authorized in writing by the Superintendent.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1505 recodified from R4-4-1505 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents

- A. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Superintendent, an officer of the collection agency shall:
1. Certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
 2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.
- B. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.
- C. A collection agency not organized as a corporation shall file with the Superintendent a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1506 recodified from R4-4-1506 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1507. Representations of Collection Agency's Identity

In all communications with debtors, either orally or in writing, all the following rules apply:

1. A collection agency shall represent itself as a collection agency.
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not.
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency.
4. A collection agency shall not directly or indirectly claim to be a law firm.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1507 recodified from R4-4-1507 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1508. Representations of the Law

A collection agency shall not:

1. Misrepresent the state of the law to a debtor,
2. Send a debtor written material that simulates legal process, or

3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1508 recodified from R4-4-1508 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required

- A. A collection agency shall neither threaten to collect, nor attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.
- B. A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.
- C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.
- D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.
- E. A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in that collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1509 recodified from R4-4-1509 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1510. Representations as to Rights Waived or Remedies Available

- A. A collection agency shall not inform a debtor that the debtor waives any legal right or legal defense by a failure to contact the collection agency.
- B. A collection agency shall not inform a debtor that the collection agency has the power or right to bypass the legal process.
- C. A collection agency shall not misrepresent the remedies available to the collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1510 recodified from R4-4-1510 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1511. Prohibition of Harassment

- A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.
- B. A collection agency shall not use written or oral communications that either ridicule, disgrace, or humiliate any person or tend to ridicule, disgrace, or humiliate any person.
- C. A collection agency shall not state, imply, or tend to imply, in written or oral communications that any person is guilty of fraud or any other crime.
- D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.

- E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1511 recodified from R4-4-1511 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1512. Contacts with Debtors and Others

- A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.
- B. A collection agency shall not contact a third party, including a debtor's friend, relative, neighbor, or employer and:
1. Inform the third party of the debt;
 2. Ask the third party to pressure the debtor into paying the debt, or;
 3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.
- C. A collection agency shall not threaten to contact a third party listed in subsection (B) for any purpose listed in subsection (B).
- D. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1512 recodified from R4-4-1512 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1513. Cessation of Communication with the Debtor

- A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through that lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.
- B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
1. Refuses to pay the debt, or;
 2. Wants the collection agency to stop all further communication with the debtor.
- C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
1. The collection agency has stopped trying to collect the debt, or
 2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.
- D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1513 recodified from R4-4-1513 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1514. Disclosure of Information to Debtor

- A. Within five days after the initial communication with the debtor, a collection agency shall obtain, and be able to inform the debtor of:
1. The name of the creditor;
 2. The time and place of the creation of the debt;
 3. The merchandise, services, or other value provided in exchange for the debt; and
 4. The date when the account was turned over to the collection agency by the creditor.
- B. A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).
- C. At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1514 recodified from R4-4-1514 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1515. Aiding and Abetting

A collection agency shall not help or encourage, directly or indirectly, any other person to evade or violate any provision of:

1. This Article, or
2. A.R.S. Title 32, Chapter 9.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1515 recodified from R4-4-1515 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1516. Advertising

A collection agency shall not use any form of communication to state or imply that it is:

1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1516 recodified from R4-4-1516 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1517. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days

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(Supp. 78-5). Adopted effective December 6, 1978
(Supp. 78-6). R20-4-1517 recodified from R4-4-1517
(Supp. 95-1). Section repealed by final rulemaking at 12
A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1518. Agreements with Clients

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court or to practice law in any other way is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction,
2. The terms or rate of compensation paid to the collection agency,
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1518 recodified from R4-4-1518 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1519. Licensee Names and Control

- A. The Department shall not issue a license with a name that is:
 1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
 2. Descriptive of any business activity that the applicant does not actually conduct;
 3. The same as, or similar to, the name of any existing collection agency, or;
 4. Otherwise deceptive or misleading.
- B. The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the other collection agency.
- C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1519 recodified from R4-4-1519 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1520. Representations of Collection Agency Employees' Identity or Position

- A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:
 1. Misrepresent the person's true position with the collection agency,
 2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law, or
 3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee, or

4. Claim to be, or imply that the person is, any other third party.

- B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.
- C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:
 1. The true name of each debt collector that uses a fictitious name,
 2. Each fictitious name used by the debt collector, together with the dates when the name is used, and
 3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1520 recodified from R4-4-1520 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1521. Duty of Investigation

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney on request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

1. The debtor has been misidentified,
2. The debt has been paid,
3. The debt has been discharged in bankruptcy, or
4. Based on any other reasonable claim, the debt is not owed.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1521 recodified from R4-4-1521 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1522. Reserved**R20-4-1523. Reserved****R20-4-1524. Reserved****R20-4-1525. Reserved****R20-4-1526. Reserved****R20-4-1527. Reserved****R20-4-1528. Reserved****R20-4-1529. Reserved****R20-4-1530. Repealed****Historical Note**

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1530 recodified from R4-4-1530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS

R20-4-1601. Definitions

In this Article, unless the context otherwise requires:

“Acquiring party” means a person who intends to acquire control of a bank, trust company, savings and loan association, or controlling person under A.R.S. Title 6, Chapter 1, Article 4.

“Acquisition of control” has the meaning stated in A.R.S. § 6-141.

“Bank” has the meaning stated in A.R.S. § 6-101.

“Control” has the meaning stated in A.R.S. § 6-141.

“Controlling person” has the meaning stated in A.R.S. § 6-141.

“Person” has the meaning stated in A.R.S. § 6-141.

“Savings and loan association” means a person required to possess a permit issued by the Superintendent under A.R.S. Title 6, Chapter 3.

“Superintendent” has the meaning stated in A.R.S. § 6-101.

“Target company” means a bank, savings and loan association, trust company, or controlling person to be acquired by an acquiring party.

“Trust company” has the meaning stated in A.R.S. § 6-851.

“Voting security” has the meaning stated in A.R.S. § 6-141.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1601 recodified from R4-4-1601 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

A. An applicant seeking approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. Title 6, Chapter 1, Article 4, shall file with the Superintendent copies of all application documents filed with federal regulatory agencies in connection with the planned acquisition of control.

B. As used in this subsection, “executive officer” includes the chairman of the board, president, each vice president, cashier, secretary, treasurer, and every other person who participates in major policymaking functions of the applicant. Under A.R.S. § 6-145(A), an applicant seeking approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. Title 6, Chapter 1, Article 4 shall supply all information the Superintendent requires under this subsection. The Superintendent may require an applicant to supplement or amend its application based on issues raised by the initial submission. The initial application shall consist of the following items:

1. A copy of the signed purchase agreement,
2. The applicant’s audited financial statement,
3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party,
4. Each executive officer’s and each director’s audited financial statement,
5. A fingerprint card for each executive officer and each director, and
6. A copy of each executive officer’s and each director’s driver’s license.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp.

79-1). R20-4-1602 recodified from R4-4-1602 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1603. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1603 recodified from R4-4-1603 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1604. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1604 recodified from R4-4-1604 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

R20-4-1701. Definitions

In this Article, unless the context otherwise requires:

“Acquire” has the meaning stated at A.R.S. § 6-321(1).

“Applicant” means an out-of-state financial institution that intends to acquire control of an in-state financial institution.

“Control” has the meaning stated at A.R.S. § 6-321(2).

“In-state financial institution” has the meaning stated at A.R.S. § 6-321(5).

“Out-of-state financial institution” has the meaning stated at A.R.S. § 6-321(6).

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1701 recodified from R4-4-1701 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1702. Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution’s Charter

A. An applicant shall give written notice of an acquisition to the Superintendent in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Superintendent not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Superintendent may impose conditions on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.

B. An acquired in-state financial institution shall surrender, by delivery to the Superintendent, all permits and certificates issued by the Superintendent within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand alone subsidiary under the authority of its existing Arizona banking permit.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1702 recodified from R4-4-1702 (Supp. 95-1). Amended

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by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1703. Repealed**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1703 recodified from R4-4-1703 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1704. Public Notice

- A.** An applicant shall transmit to the Superintendent of Banks two copies of each notice and the publisher's affidavit of publication required by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.
- B.** An applicant shall provide the Superintendent of Banks copies of any protests known to have been received by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1704 recodified from R4-4-1704 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1705. Repealed**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1705 recodified from R4-4-1705 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1706. Repealed**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1706 recodified from R4-4-1706 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

ARTICLE 18. MORTGAGE BANKERS**R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States**

- A.** The exemption under A.R.S. § 6-942(A)(1) only applies to a person whose offers to make or negotiate a "mortgage banking loan" or a "mortgage loan," as those terms are defined in A.R.S. § 6-941, and all mortgage banking loans and mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.
- B.** The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
 2. The authority to examine a claimant's books and records relating to its mortgage banking activities or mortgage lending activities, or both; and
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage banking activities, mortgage lending activities, or both.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1802. Equivalent and Related Experience

- A.** An applicant may satisfy the three years' experience requirement of A.R.S. § 6-943 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required either for a mortgage banker license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
 2. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
 3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
 4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
 5. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
 6. Mortgage broker with license from another state, or responsible individual for the mortgage broker;
 7. Attorney certified by any state as a real estate specialist.
- B.** An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-943 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited toward qualifying for a license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).
1. Attorney without state bar certified real estate specialty...3:2
 2. Paralegal with experience in real estate matters...3:2
 3. Loan underwriter...3:2
 4. Mortgage banker or mortgage broker from another state without license...3:2
 5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
 6. Escrow officer...3:2
 7. Trust officer with a title company...3:2
 8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
 9. Title officer with a title company...3:1.5
 10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
 11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
 12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
 13. Real property salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
 14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1805. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent at least five business days before the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-1806. Recordkeeping Requirements

- A.** The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system; or
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B.** In addition to any statutory requirement regarding records, a record maintained by a mortgage banker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;

- d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose including identification of a related loan, if any;
 3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
 4. Bank account activity source documents for the mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices;
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose; and
 - j. Balance;
 6. A file for each application for a mortgage banking loan or a mortgage loan containing:
 - a. The agreement with the customer concerning the mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is closed in the licensee's name, and funded by a lender that is not an institutional investor as defined at A.R.S. § 6-943, a copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and;
 - g. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
 7. Samples of every piece of advertising relating to the mortgage banker's business in Arizona;

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8. Copies of governmental or regulatory compliance reviews;
 9. If the licensee is not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action;
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them;
 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-946. For the purposes of A.R.S. § 6-946, the mortgage banking loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
 2. The date a licensee mails written notice to an applicant that an application has been denied, as required by federal law.
- E.** A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1807. Providing Copies of Records

For each loan closed in an Arizona mortgage broker's name with a concurrent assignment of beneficial interest to a mortgage banker, the mortgage banker licensee shall provide to the mortgage broker in whose name the loan closed a copy of:

1. The closing instructions;
2. Any applicable rescission notice;
3. The HUD-1 settlement statement;
4. The final truth-in-lending disclosure;
5. The note;
6. The executed deed of trust or mortgage; and
7. Each assignment of beneficial interest by the mortgage banker licensee.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1808. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-947, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1809. Determining Loan Amounts

The amount of a mortgage banking loan or a mortgage loan under A.R.S. § 6-947(E) or 6-947(K), is the principal amount of the loan and does not include any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties, or compensation retained by a mortgage banker or its agents.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1810. Delay or Cause Delay

A mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1811. Impound Account

The total of all funds retained by a mortgage banker from all periodic payments made by a borrower to maintain a cushion, as defined in R20-4-102, shall not exceed 1/6th of the estimated total annual payments from the impound account.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1813. Conversion to Mortgage Broker License

Under A.R.S. § 6-949 to apply for a conversion from a mortgage banker license to a mortgage broker license, the applicant shall submit during the renewal period all applicable renewal documents and renewal fees required by A.R.S. §§ 6-126 and 6-903 for mortgage brokers.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1901. Exemption for an Institutional Investor

- A. The exemption from the licensure requirement for an institutional investor, solely as that term is used in A.R.S. §§ 6-971, 6-972, and this Article, applies only if a person claiming the exemption meets all the following criteria:
1. The claimant originates or directly or indirectly makes, negotiates, or offers to make or negotiate commercial mortgage loans that are all exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971;
 2. The claimant does so in the regular course of business;
 3. The claimant makes only commercial mortgage loans, as defined in A.R.S. § 6-971;
 4. The claimant makes each loan on the security of commercial property, as defined in A.R.S. § 6-971; and
 5. The claimant makes only loans of more than \$250,000.
- B. If a claimant makes even one commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption is invalid, and that person shall not engage in any lending activity before obtaining a license.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

- A. The exemption under A.R.S. § 6-972(9) only applies to a person whose offers to make or negotiate a "commercial mortgage loan," as that term is defined in A.R.S. § 6-971, and all commercial mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.
- B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
 2. The authority to examine a claimant's books and records relating to its commercial mortgage lending activities;
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's commercial mortgage lending activities.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1903. Equivalent and Related Experience

- A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-973 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience towards the three years required either for a commercial mortgage banker license, or as a responsible individual, both under A.R.S. § 6-973(D). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;

2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
 3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
 4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
 5. Lender's branch manager, with responsibility primarily for loans secured by lien interests on commercial real property;
 6. Commercial mortgage banker with license from another state, or Responsible Individual for the commercial mortgage banker;
 7. Mortgage broker with license from another state, or Responsible Individual for the mortgage broker;
 8. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
 9. Attorney certified by any state as a real estate specialist.
- B. The experience of an applicant with insufficient actual experience of the types listed in subsection (A) is reviewed and evaluated on a case by case basis.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office

A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One Person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1906. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within five business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1907. Recordkeeping Requirements

- A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete,

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modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any material alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B.** In addition to any statutory requirement regarding records, a record maintained by a commercial mortgage banker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
 2. A record, such as a cash receipts journal, of all money received in connection with commercial mortgage loans including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose including identification of a related loan, if any;
 3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
 4. Bank account activity source documents for the commercial mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose, and
 - j. Balance.
 6. A file for each application for a commercial mortgage loan containing:
 - a. The agreement with the customer concerning the commercial mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. The documents showing the application's final disposition, such as a settlement statements, a denial or withdrawal letter, or internal memorandum;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement, and escrow instructions to or with any depository;
 - e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and
 - f. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee.
 7. Samples of every piece of advertising relating to the commercial mortgage banker's business in Arizona;
 8. Copies of governmental or regulatory reviews;
 9. If the licensee is a not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction.
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the commercial mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-983. For the purposes of A.R.S. § 6-983, the commercial mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from the applicant; or
 2. The date a licensee mails written notice to an applicant that an application has been denied; or
 3. The date of a licensee's internal memorandum closing a loan file.
- E.** A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1908. Impound Accounts

The total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as defined in R20-4-102, is limited only by the written agreement of the parties, if at all.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1909. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-984, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing party, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO

DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1910. Delay or Cause Delay

A commercial mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the commercial mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-704. Application for license; bonds; contract

A. An application for a license shall be in writing, under oath and in a form prescribed by the superintendent, and shall contain the name and address, both of the residence and place of business, of the applicant and if the applicant is an association or society, of every member thereof, and if a corporation or partnership, of every officer and director thereof and a copy of the articles of incorporation, and the specific address or addresses at which the business is to be conducted. The superintendent may require as part of the application a credit report and such other information as he deems necessary.

B. At the time of filing the application the applicant shall furnish a cash or surety bond payable to the people of the state in the sum of not less than five thousand dollars for licensees disbursing less than one hundred thousand dollars each year and for the following amounts based on the amounts disbursed by the licensee in the previous license year:

Yearly disbursements	Amount of bond
\$100,000 - \$250,000	\$10,000.00
\$250,001 - \$500,000	\$15,000.00
\$500,001 - \$1,000,000	\$20,000.00
More than \$1,000,000	\$25,000.00

C. Each bond prescribed in subsection B shall be conditioned upon the faithful accounting of all monies collected upon accounts entrusted to such person engaged in debt management, and their employees and agents, and upon the faithful observance of the provisions of this article and the contract between the licensee and the debtor. The bond shall be approved by the superintendent and filed in the office of the superintendent. The bond shall remain in force and effect until the surety is released from liability by the superintendent, or until the surety bond is canceled by the surety. The surety may cancel the surety bond and be relieved of further liability by delivering thirty days' written notice to the superintendent. The cancellation does not affect any liability incurred or accrued prior to the termination of the thirty-day period. Any person who suffers any loss or damage by reason of the neglect or default of a licensee or his employees or agents or by the licensee's violation of any of the provisions of this article or of the contract between him and the debtor shall have a right of action against the licensee and the sureties on his bond. No action may be brought on the bond by any person after the expiration of two years from the time when the act or default occurred. When an action is commenced on the bond of a licensee, the superintendent may require the filing of a new bond, and immediately upon the recovery of any action on the bond the licensee shall file a new bond. Failure to file a new bond within ten days of the recovery on a bond, or within ten days after notification that a bond is required, constitutes sufficient grounds for the suspension or revocation of a license.

D. In addition to the bond provided in subsection B, the superintendent may require an applicant to obtain an adequate fidelity bond for each officer, employee, or agent having access to funds collected by or for the licensee or having authority to draw against such funds. The fidelity bond required to be filed in accordance with this section shall remain in force and effect until the surety is released from liability by the superintendent, or until the bond is canceled by the surety. The surety may cancel the bond and be relieved of further liability by delivering thirty days' written notice to the superintendent. The cancellation shall not affect any liability incurred or accrued prior to the termination of the thirty-day period.

E. Each applicant for a license shall file with his application a blank copy of the contract intended to be used between the licensee and the debtor and shall file with the superintendent a copy of all changes and amendments thereto.

6-709. Requirements

A. A licensee at all times shall maintain minimum liquid assets of at least two thousand five hundred dollars in excess of his business liabilities and of his liabilities on account of monies received in the business of a debt management company. The superintendent may determine by general rule what assets are liquid assets within the meaning of this section and may determine by specific ruling or demand that a particular asset is or is not a liquid asset within the meaning of this section.

B. A licensee shall make a written contract between himself and a debtor and immediately furnish the debtor with a copy of the completed contract. The licensee shall concurrently furnish the debtor with a list of the creditors, as of the time of the signing of the contract, with whom he agrees to manage the debtor's obligations. All contracts shall contain a provision allowing the termination of the contract by either party at any time. Such termination shall be without penalty, except that the licensee shall retain the retainer fee if the termination is by the debtor. Termination shall only be upon a five-day notice to the other party.

C. The basis of fees charged to a debtor by a licensee for assuming the responsibility of debt management shall be agreed upon in advance and clearly stated in the contract. The fees charged to a debtor shall not exceed:

1. A retainer fee of thirty-nine dollars.

2. Three-quarters of one per cent of the total indebtedness or fifty dollars, whichever is less, may be charged monthly and shall be due and payable at the time such deposited funds are remitted to the creditors. Unusual and necessary "out of pocket" expense items by the licensee may be charged to the debtor's account if the incurrence of the expense has advance written approval of the debtor and superintendent.

D. The total debt shall be calculated not less often than annually and the charges adjusted based on the new total debt. Any fees charged by the licensee shall not be based on a total debt which includes a mortgage on the residence or a rent payment as a liability or a debt.

E. A licensee shall not be entitled to any fee until he has given notice of the debt management contract to all creditors listed in the application form.

F. A licensee shall make remittances to creditors within seven days after receipt of any funds, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a certain sum.

G. A licensee shall upon request furnish the debtor with a written statement of his account each month or a verbal accounting at any time the debtor may request it during normal business hours.

H. A licensee shall, if a compromise of a debt is arranged by the licensee with any one or more creditors, allow the debtor the full benefit of that compromise.

I. A licensee shall maintain a trustee checking account in a bank in this state for the benefit of debtors in which all payments received from the debtors shall be deposited and in which all payments shall remain until disbursed by the licensee in accordance with the terms of the contract.

J. A licensee shall keep and use in his business books, accounts and records which will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules of the department. Each licensee shall preserve such books, accounts and records for at least three years after making the final entry on any transaction recorded in the books, accounts or records.

K. If a licensee desires to change his place of business or the name of the company under which the license is issued, he shall give written notice of the change within fifteen days to the superintendent and shall submit the license to the superintendent who shall enter an order permitting the change and who shall amend the license accordingly.

L. A licensee shall, within fifteen days after termination of a debt management company, a branch office or an agency, inform the superintendent of the name and address of such company, branch office or agency and shall surrender the license to the superintendent.

M. A licensee shall annually on or before August 15 file a report with the superintendent giving such relevant information as the superintendent may require concerning the business and operations of each place of business during the preceding year beginning July 1 and ending June 30. The superintendent may assess a penalty of five dollars for each day the licensee fails to file such report.

6-710. Prohibitions

It is unlawful for a licensee to:

1. Accept an account unless it appears on the basis of a reasonable budget analysis, reduced to writing, that the debtor can reasonably meet the payments agreed upon by the licensee and the debtor and that the agreed upon payment is sufficient to pay the service charges to the licensee and the full amount of the proposed payments to creditors as agreed upon by the licensee and debtor. The licensee shall retain the written budget analysis for at least three years after the termination of the contract in the files of the licensee. The licensee shall make the analysis available for inspection by the superintendent, except that such a budget analysis is not deemed unreasonable if facts which would prove it to be such were not furnished to the licensee by the debtor upon request.
2. Unless agreed upon by the debtor, attempt to alter any scheduled payment listed on the original application from the debtor to any figure other than the amount agreed upon by the debtor and creditors in those cases when a contractual installment exists. Acceptance of the proposed payment by the creditor shall not alter any rights the creditor has under his original contract with the debtor.
3. Purchase from a creditor any obligation of a debtor.
4. Operate as a collection agent and as a licensee as to the same debtor's account.
5. Execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in.
6. Receive or charge any fee in the form of a promissory note or other promise to pay or receive or accept any mortgage or other security for any fee either as to real or personal property.
7. Pay any bonus or other consideration to any person for the referral of a debtor to his business, nor accept or receive any bonus, commission or other consideration for referring any debtor to any person for any reason.
8. Advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcasted or televised his services in any manner whatsoever in which any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee or the charges to be made for those services.

6-714. Advertising

The rules and regulations of the superintendent shall include standards and criteria for proper advertising and may include specific prohibitions as to improper advertising by a licensee.

6-814. Procedure for licensing; surety bond

A. Every escrow agent before engaging in the escrow business shall file with the superintendent an application for a license, in writing, verified by oath and in the form prescribed by the superintendent. It shall state the location of the principal office and all branch offices in this state, the name or style of doing business, the names and residence and business addresses of all persons holding an interest in the business as principals, partners, officers, trustees and directors, specifying as to each his capacity and title, the general plan and character of operation and the length of time they have been engaged in the escrow business.

B. The superintendent may require additional information he considers necessary in connection with any application for a license under this article.

C. At the time of filing an application for a license and at all times while holding the license, the applicant shall deposit and maintain with the superintendent a corporate surety bond in the amount of one hundred thousand dollars payable to any person injured by the failure of the licensee to comply with the requirements of this chapter or for the wrongful act, default, fraud or misrepresentation of the licensee or his employees and to this state for the benefit of the person injured and executed by a surety company qualified to do business in this state.

D. Notwithstanding section 35-155, in lieu of the total corporate surety bond required by this section, an applicant or licensee may deposit with the superintendent a deposit in the form of cash or alternatives to cash in the amount of one hundred thousand dollars. The superintendent may accept as an alternative to cash any of the following:

1. Certificates of deposit or investment certificates which are payable or assigned to the state treasurer, issued by banks doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

2. Certificates of deposit, investment certificates or share accounts which are payable or assigned to the state treasurer, issued by a savings and loan association doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

3. Certificates of deposit, investment certificates or share accounts which are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

E. The superintendent shall deposit the cash or alternatives to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post the bond. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall not exceed ten dollars for each cash or alternatives to cash deposit and shall be paid by the licensee. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

F. A deposit of cash or an assignment of an alternative to cash shall contain an affirmative statement by the assignor that the monies assigned are not derived from any escrow deposit. In addition to such other terms and conditions as the superintendent prescribes by rule, the principal amount of the deposit shall be released only on written authorization of the superintendent or on the order of a court of competent jurisdiction, but in any event the principal amount of the deposit shall not be released before the expiration of three years from the date of substitution of a bond for a cash alternative, the surrender of the license pursuant to section 6-838 or the revocation or expiration of the license, whichever occurs first.

G. No suit may be commenced on a bond or cash or alternative to cash after the expiration of three years following the act or acts on which the suit is based, except that time for purposes of claims for fraud shall be measured as provided in section 12-543, paragraph 3. If an injured person commences an action for a judgement to collect from the bond or cash alternative deposited in lieu of a bond, the injured person shall notify the

superintendent of the action in writing at the time of commencement of the action and shall provide copies of all documents relating to the action to the superintendent upon request.

H. The superintendent shall examine the application for a license and if he is satisfied that the applicant should not be refused a license under section 6-817, he shall issue the license.

6-831. Records

All escrow agents shall keep and maintain at all times in their principal places of business complete and suitable records of all escrow transactions made by them, together with books, papers and data clearly reflecting the financial condition of the business of such agents.

6-834. Deposit of monies; definition

A. Unless all of the parties to the escrow otherwise instruct the escrow agent in writing, the escrow agent shall deposit and maintain all monies deposited in escrow to be delivered on the close of the escrow or on any other contingency in a bank, savings bank or savings and loan association doing business in this state and the escrow agent shall keep all of the escrow monies separate, distinct and apart from monies belonging to the escrow agent. Notwithstanding the parties' instructions to the escrow agent, the escrow agent shall not deposit the escrow monies in an institution outside the United States. When deposited, the monies shall be designated as "escrow accounts" or given some other appropriate designation indicating that the monies are not the monies of the escrow agent. These monies shall be deposited immediately on receipt or as soon thereafter as is reasonably practicable.

B. A person shall not knowingly keep or cause to be kept any monies in any bank or savings and loan association under the heading of "escrow accounts" or any other name designating the monies as belonging to the clients of any escrow agent, except actual escrow monies deposited with such escrow agent.

C. Escrow property is not subject to execution or attachment on any claim against the escrow agent.

D. Not later than three business days after receipt of any escrow monies, the escrow agent shall provide to each depositing buyer or seller, adequate notice of his right to earn interest on all deposited monies. The notice shall accurately set forth the following information with respect to this right:

1. A brief description of the depositor's right to earn interest on escrowed monies through an interest-bearing deposit account.
2. The dollar charge that may be imposed by the escrow agent solely to set up the interest-bearing account.
3. A good faith estimate of the amount of interest that may be earned during the life of the escrow account, or an example of a typical transaction calculated on a one thousand dollar deposit, using the prevailing savings account interest rate for a thirty day period.
4. A brief description of how the interest-bearing account can be established, including the name, address and telephone number of the escrow agent to be contacted.

E. An escrow agent shall not receive from any depository institution any interest earned or other benefit from monies deposited with an escrow agent in connection with any escrow. Nothing in this subsection prohibits the escrow agent from receiving accounting, data processing or other services directly related to the administration of escrow accounts.

F. For the purposes of this article, "adequate notice" means a printed notice to the depositing buyer or seller that sets forth the pertinent facts clearly and conspicuously. The notice shall be printed on the escrow instructions or on an independent document and given to the depositing customer in a manner reasonably assuring the customer's receipt of the notice.

6-817. Refusal to license; suspension; revocation

A. The superintendent may upon investigation refuse to license any applicant, or may suspend or revoke any license pursuant to title 41, chapter 6, article 10 by entering an order to that effect, together with findings in respect to the order and by notifying the applicant or escrow agent either personally or by certified mail, return receipt requested sent to the agent's stated address, upon the determination by the superintendent that the applicant or escrow agent:

1. Is unable to pay debts as they fall due in the regular course of business.
2. Has not conducted the applicant's or agent's business in accordance with law or has violated this chapter or the rules relating to this chapter.
3. Is in such financial condition that the applicant or agent cannot continue in business with safety to the applicant's or agent's customers or the public.
4. Has been found guilty of fraud in a legal or administrative proceeding in this jurisdiction or any other jurisdiction.
5. Has made any material misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of the escrow business.
6. Has knowingly made or caused to be made to the superintendent any false representation of a material fact, or has suppressed or withheld from the superintendent any information which the applicant or agent possesses, and which if submitted by the applicant or agent would have caused the issuance of a license to be withheld or be grounds for the suspension or revocation of a license.
7. Has failed to account properly for escrow property as required by the terms of the escrow.
8. Refuses to permit an examination or investigation by the superintendent of the applicant's or agent's books and affairs, or has refused or failed within a reasonable time to furnish any information or make any report required by the superintendent under this chapter or rules relating to this chapter.
9. Has been convicted of any criminal offense involving moral turpitude within the last fifteen years.
10. Does not have the financial resources, experience, character or competence to adequately serve the public or to warrant the belief that the business will be operated lawfully, honestly, fairly and efficiently pursuant to this chapter.
11. Has disbursed monies in violation of escrow instructions.
12. Has failed to maintain an adequate internal control structure as prescribed by section 6-841.
13. Has caused or allowed any overdraft or returned check for insufficient funds on any of the escrow agent's trust or fiduciary accounts.
14. Has failed to authorize each financial institution with which it has deposited trust or fiduciary funds to notify the superintendent of any overdraft or check returned for insufficient funds on any trust or fiduciary accounts of the escrow agent.

B. It is sufficient cause for refusal, suspension or revocation of a license, in case of a partnership, a corporation or any other group or association, if any member of such persons, or officer or director thereof, has been guilty of any act or omission which would be cause for refusing a license or suspending or revoking the license of an individual agent.

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-861. Reports

- A. The superintendent may require reports of financial condition and relevant information concerning the business operations of each trust company, shall fix and extend the time for the filing of such reports and shall assess a penalty of fifty dollars for each day the trust company is delinquent.
- B. The president, chief executive officer or chief operating officer shall examine the books and accounts of the trust company for the purpose of making the report and shall verify the report by providing an affidavit stating that the information contained in the report is accurate to the best of the president's or officer's knowledge or belief.
- C. The report shall contain statements and information regarding the affairs, business conditions, resources and implementation of internal controls as safeguards for the protection of fiduciary beneficiaries, creditors, shareholders and the public.
- D. Excluding weekends and holidays, within forty-eight hours after the date of discovery, a trust company that is the victim of a robbery, the shortage of funds of more than five thousand dollars or the apparent misapplication of trust funds by an officer, director, agent or employee shall issue a written report to the superintendent explaining the loss.
- E. Within thirty days after the service of the complaint, the trust company shall issue a written report to the superintendent stating any adverse legal actions involving allegations of fraud, breach of fiduciary duty, breach of contract or misapplication or commingling of trust funds, including complaints that are dismissed within thirty days of service.

6-859. Records; audits; preservation of records; protection; insurance; bond; contingency plan

A. A bank, savings and loan association or trust company shall keep and use in its business any books, accounts and records which will enable the superintendent to determine whether the bank, savings and loan association or trust company is complying with the provisions of this article and the rules of the superintendent. The superintendent by rule may provide the periods of time and the manner in which such books, accounts and records shall be preserved.

B. A certified public accountant shall audit the corporate records and trust business of each trust company at least once each fiscal year. The trust company shall file a copy of the audit report with the superintendent not more than one hundred twenty days after the end of the trust company's fiscal year. The audit requirement may be satisfied by filing a copy of the audit report of the parent of the trust company if the audit report is prepared by a certified public accountant and includes a detailed examination of the trust company's assets and liabilities and trust business. If the trust company shows good cause the superintendent may extend the time to file the audit report by not more than ninety days.

C. The audit shall include an examination of the trust company's internal control structure over the financial reporting and accounting of the trust business plus any reportable conditions of the trust company's internal control structure. For purposes of this subsection, "reportable conditions" means significant deficiencies in the design or operation of the internal control structure that would adversely affect the trust company's ability to perform its business activities and carry out its fiduciary duties and responsibilities consistent with the safe, sound and lawful operation of the trust business.

D. The board of directors of a trust company shall require protection and indemnity for the trust company, pursuant to section 6-868, against dishonesty, fraud, defalcation, forgery, theft, embezzlement, and other similar insurable losses, with corporate insurance or surety companies authorized to do business in this state. Coverage against such losses shall include all agents who do not otherwise provide protection and indemnity for the trust company, directors, officers and employees of the trust company acting independently or in collusion or combination with any person or persons whether or not they draw salary or compensation.

E. The board of directors shall require suitable insurance to protect the trust company against burglary, robbery, theft and other insurable hazards to which it may be exposed in the operation of the business.

F. The board of directors shall procure errors and omissions insurance of at least five hundred thousand dollars.

G. At least once each year the board of directors shall review the fidelity bond and the errors and omissions insurance to determine the adequacy of coverage in relation to the exposure. The minimum amount of insurance required in this chapter does not automatically represent adequate bond and insurance coverage in relation to the exposure. The actions by the board of directors shall be recorded in the minutes of the board. Immediately after procuring the bonds, the board of directors shall file them with the superintendent.

H. The board of directors and senior management shall:

1. Establish policies, procedures and responsibilities for comprehensive contingency planning.
2. Annually review and approve the trust company's contingency plans and record the actions in the minutes of the board of directors.

I. If the trust company receives information processing from a service bureau the board of directors and senior management shall:

1. Evaluate the adequacy of contingency plans for its service bureau.
2. Ensure that the trust company's contingency plan is compatible with its service bureau's plan.

6-863. Suspension or revocation of certificate

A. The superintendent may suspend or revoke the certificate of a trust company pursuant to title 41, chapter 6, article 10 if the superintendent determines that:

1. The trust company has failed or refused to comply with any order issued pursuant to section 6-137.
2. The application for a certificate or for renewal of a certificate or any report submitted to the superintendent contained a false representation or omission of a material fact.
3. Any officer or agent of the trust company, in connection with the submission of any report or information to the superintendent or an application for a certificate or for renewal of a certificate, knowingly made a false representation of a material fact or failed to disclose a material fact to the superintendent or the duly authorized agent of the superintendent.
4. The trust company has violated any applicable law, rule or order.
5. The trust company is impaired or insolvent and the trust company is unable to pay debts as they become due in the regular course of its business.
6. The trust company refuses to permit an examination or investigation by the superintendent of its books and affairs or has failed or refused to furnish within thirty days any information or to make any report that may be required by the superintendent.
7. The trust company is unable to maintain the amount of capital required by law.
8. The trust company failed to conduct business in a safe, sound and lawful manner.
9. Any officer, director, employee or agent of the trust company has been convicted in any state of a felony or a crime of moral turpitude, breach of trust, fraud, theft or dishonesty.
10. Any officer, director, employee or agent of the trust company is not honest or truthful and does not demonstrate good character.
11. The trust company's certificate or authorization to engage in trust business in any state or country has been revoked, suspended or denied.
12. A final judgment has been entered in a civil action against any officer, director, employee or agent of the trust company involving fraud, deceit or misrepresentation and the conduct is contrary to the interest of the public to permit the person to engage in a trust business, to control or manage a trust company or to work for a trust company handling trust funds.
13. An order by an administrative agency of this state, another state, the federal government, a territory of the United States or another country has been entered against any officer, director, employee or agent of the trust company involving fraud, deceit or misrepresentation and the conduct is contrary to the interest of the public to permit the person to engage in a trust business, to control or manage a trust company or to work for a trust company handling trust funds.

B. The superintendent may suspend the certificate if an indictment or information is issued against any officer, director, employee or agent of the trust company for forgery, embezzlement, retaining monies under false pretenses, extortion, criminal conspiracy to defraud or a like offense and a certified copy of the indictment or information or other proper evidence of the indictment or information is filed with the superintendent.

C. Pursuant to subsection A of this section, the superintendent may suspend or revoke the certificate for the acts and omissions of:

1. Any officer, director, employee or agent of the trust company while acting in the course of the trust business.
2. A person entitled to vote more than fifteen per cent of the outstanding voting shares of the trust company.

6-865. Unsafe condition; receivership

If the deficiency in capital has not been made good or the trust company is in an unsafe or unsound condition that is not remedied within the time prescribed under an order of the superintendent issued pursuant to section 6-137, the superintendent may apply to the superior court to be appointed receiver for the liquidation or rehabilitation of the company. The expense of such receivership shall be paid out of the assets of the trust company.

6-860. Duty of trustee, escrow officer or agent to produce trust or escrow records for inspection; violation; classification

A. Any trustee, escrow officer or agent shall produce for inspection any trust or escrow records concerning the assets, existence, condition, management and administration and the names of the parties, including any or all beneficiaries, of any trust or escrow of which he or she is the trustee, escrow officer or agent, to any peace officer or local, state or federal law enforcement agency, provided such person requesting information signs and submits a sworn statement to the trustee, escrow officer or agent that the request is made in the lawful performance of such person's duties. The peace officer or local, state or federal law enforcement agency shall be prohibited from using or releasing said information except in the proper performance of his or her duties.

B. Any trustee, escrow officer or agent shall produce for inspection required by law any trust or escrow records of any trust or escrow of which he or she is the trustee, escrow officer or agent to the superintendent or to any state or federal administrative agency lawfully requiring such disclosure. The superintendent or any state or federal administrative agency shall be prohibited from using or releasing said information except in the proper performance of his or her duties.

C. Any person who knowingly fails to produce records pursuant to this section or who obtains information under subsection A or B and is prohibited from releasing such information but does release such information is guilty of a class 2 misdemeanor.

6-862. Trust funds

All monies received by a trust company as fiduciary on trust business within this state shall be deposited in a bank or savings and loan association in this state in a specially designated account or accounts, shall not be commingled with any funds of the trust company and shall remain on deposit until disbursed or invested in accordance with powers and duties of the trust company in its capacity as such fiduciary.

6-870.02. Prohibited acts

- A. A trust company shall not permit a person, other than a director, officer, agent or employee of the trust company or the legal or beneficial owner of the trust funds or the authorized representative of the owner, to access, examine or inspect the fiduciary records of the trust company.
- B. A trust company shall not make a loan to or make other use of monies from a fiduciary account to or for the benefit of another fiduciary account unless the transaction is authorized by a court order or a governing instrument of the fiduciary account or its amendments from which the loan or use of monies is made.
- C. A director, officer, agent or employee of a trust company shall not:
1. Knowingly make or publish, or concur in making or publishing, a written report, exhibit or statement of the trust company's affairs or financial condition containing any material statement that is false.
 2. Wilfully refuse or neglect to make a proper entry in the trust company's books, wilfully refuse or neglect to exhibit the trust company's books to the department or allow the department to inspect or extract the trust company's books.
 3. Knowingly make a material false promise or statement or a material misrepresentation to the department or to a legal or beneficial owner of trust funds or an authorized representative of the owner in the course of the trust business.
 4. Knowingly conceal an essential or material fact from the department or a legal or beneficial owner of the trust funds or an authorized representative of the owner in the course of the trust business.
- D. A trust company shall not directly or indirectly use funds from a fiduciary account for the benefit of any officer, director or employee of the trust company or any individual with whom there exists a connection, or organization in which there exists an interest, as might affect the exercise of the best judgment of the trust company in performing its fiduciary duties, unless the transaction is authorized by a court order or a governing instrument of the fiduciary account.
- E. A trust company shall not charge a fee except in accordance with a governing instrument or its amendments, a court order or a written communication.
- F. A trust company shall not refuse to disclose to the public a general statement of the trust company's financial condition and its assets and liabilities or the last report of financial condition submitted to the superintendent pursuant to section 6-861.
- G. A person shall not receive compensation for engaging in the trust business if the person is not licensed or exempt from licensing pursuant to this article.
- H. A director, officer, agent or employee of the trust company who knowingly violates this article is liable for the damages the trust company or the legal or beneficial owners of the trust funds sustain because of the violation. A director, officer, agent or employee is individually liable for the amount of a loss of trust funds if the director, officer, agent or employee knowingly participates in an illegal activity which results in a loss of trust funds. A director or officer of a trust company who meets the standards of conduct prescribed by section 10-830 or 10-842 shall not be liable for any loss to the company or to the legal or beneficial owners of the trust funds and shall be entitled to indemnification to the extent permitted by sections 10-850 through 10-858.

6-871. Establishment of common trust funds

A. Any bank, savings and loan association or trust company qualified to act as a fiduciary in this state may establish and administer common trust funds composed of property permitted by law for the investment of trust funds for the purpose of furnishing investments to any one or more of the following:

1. Itself as fiduciary.

2. Itself and others, as cofiduciaries.

3. Any affiliated bank, savings and loan association or trust company, including any foreign affiliated bank, savings and loan association or trust company, as fiduciary.

4. Any affiliated bank, savings and loan association or trust company, including any foreign affiliated bank, savings and loan association or trust company, and others, as cofiduciaries. Any bank, savings and loan association or trust company may as such fiduciary or cofiduciary invest funds which it lawfully holds for investment in interests in such common trust funds administered by itself or by any affiliated bank, savings and loan association or trust company, including any foreign affiliated bank, savings and loan association or trust company, if such investment is not prohibited by the instrument, judgment, decree, order or statute creating and governing such fiduciary relationship, and if, in the case of cofiduciaries, the bank, savings and loan association or trust company procures the consent of its cofiduciaries for such investment.

B. Each common trust fund established under this section is a separate and distinct entity from the fiduciary relationships participating in the fund. A fiduciary in administering a participating fiduciary relationship is not required to make any apportionment or allocation between the principal and income of the relationship different from that made for the common trust fund. A participating fiduciary relationship, or person having an interest in the relationship, is not deemed to have any ownership in particular property of the common trust fund, but each participating fiduciary relationship has a proportionate undivided interest in the fund and its income and the ownership of all property of the common trust fund is in the trustee of the fund.

C. This section applies to all fiduciary relationships, including those established prior to April 21, 1980, whether the relationships are revocable or irrevocable. This section and section 6-872 apply to common trust funds established under this section and the banks, savings and loan associations and trust companies operating these common trust funds.

D. For purposes of this section, two or more banks, savings and loan associations or trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the United States internal revenue code.

E. Nothing in this article shall exempt a common trust fund or any fiduciary thereof from the requirements of title 20, if such common trust fund or fiduciary is used for insurance purposes.

6-864. Continuing jurisdiction

If the certificate of a trust company is surrendered, suspended or revoked, the company shall nevertheless continue to be subject to the provisions of this chapter for so long as it acts as a fiduciary with respect to any trust business previously undertaken.

6-1003. Change of location of repositories

A lessor may, during the term of any lease, move its repositories and the contents to another location upon giving notice to the lessees in the manner and time required by such regulations as the superintendent may adopt.

6-321. Definitions

In this article, unless the context otherwise requires:

1. "Acquire" as applied to an in-state financial institution means any of the following actions or transactions:
 - (a) The merger or consolidation of an in-state financial institution with an out-of-state financial institution.
 - (b) The acquisition by an out-of-state financial institution of the direct or indirect ownership or control of voting shares of an in-state financial institution if, after the acquisition, the out-of-state financial institution will directly or indirectly own or control more than fifteen per cent of the outstanding voting shares of the acquired in-state financial institution.
 - (c) The direct or indirect acquisition of all or substantially all of the assets of an in-state financial institution.
 - (d) The taking of any other action that would result in the direct or indirect control of an in-state financial institution.
2. "Control" means direct or indirect ownership of or power to vote fifteen per cent or more of the outstanding voting shares of an in-state financial institution or to control in any manner the election of a majority of the directors of an in-state financial institution.
3. "De novo entry" means a newly established bank or savings and loan association which is not created through the acquisition of or merger with an in-state financial institution and control is through an out-of-state financial institution.
4. "Filed with the superintendent" means when the complete application including any amendments or supplements containing all the information in the form required by the superintendent is received by the superintendent.
5. "In-state financial institution" means a state or federal bank, savings bank or savings and loan association with its home office in this state, or holding company with its home office in this state.
6. "Out-of-state financial institution" means a state or federal bank, savings bank or savings and loan association with its home office in a state other than this state, or holding company with its home office in a state other than this state.

DEPARTMENT OF REVENUE (F20-0301)

Title 15, Chapter 12, Articles 1-3, Property Tax Oversight Commission



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: December 31, 2019

SUBJECT: DEPARTMENT OF REVENUE (F20-0301)
Title 15, Chapter 12, Articles 1-3, Property Tax Oversight Commission

Summary:

This Five Year Review Report (5YRR) from the Department of Revenue (Department) relates to rules in Title 15, Chapter 12, Articles 1-3 regarding the Property Tax Oversight Commission. The Property Tax Oversight Commission was created by Laws 1987, Ch. 204. Pursuant to A.R.S. § 42-17002(A), the purposes of the Property Tax Oversight Commission is to: (1) further the public confidence in property tax limitations; (2) provide a uniform methodology for determining those limitations; and (3) provide a continuing review of practices for ensuring a fair and equitable administration of the property tax laws.

The rules in this Chapter address the following:

- **Article 1 (General Provisions);**
- **Article 2 (Property Tax Levy Limits); and**
- **Article 3 (Hearing and Appeal Procedure).**

In the previous 5YRR for these rules, which the Council approved on July 7, 2015, the Department stated that it planned to amend approximately 13 rules and submit a rulemaking to the Council by June 30, 2016 or within 18 months of the rulemaking moratorium.

The Department did not complete this proposed course of action. The Department states that it was named as a defendant in a lawsuit that was filed on June 8, 2015, which has since been resolved. The Department states that because the lawsuit was resolved, it now plans to amend the rules once it receives an exemption from the rulemaking moratorium to proceed with the rulemaking process.

Proposed Action:

The Department plans to amend the language of these rules to include fire districts because the Property Tax Oversight Commission now has authority over them. The Department plans to submit a request for an exemption from the rulemaking moratorium to amend these rules by June 30, 2020 and submit a Notice of Final Rulemaking to the Council by September 1, 2020.

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

Yes. The Department cites applicable general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department indicates that the economic impact of the rules in Chapter 12 does not differ significantly from what was originally stated in the economic, small business, and consumer impact statement (EIS) in 1990 and in the subsequent amendments that occurred in 1997, 2000, and 2006.

The stakeholders include the Department, political subdivisions, and the public.

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

The Department states that the rules under review provide the least burdensome and least costly method of achieving their regulatory objectives. The Department believes the rules impose minimal cost and burden to political subdivisions for their compliance in comparison to the benefits of the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons indicated in the report, the Department states that the following rules are inconsistent with other rules and statutes:

- R15-12-106 (Decisions);
- R15-12-201 (Primary Property Tax Calculations);
- R15-12-203 (Levy Limit Worksheets);
- R15-12-204 (Political Subdivision Agreement);
- R15-12-205 (Actual Levies);
- R15-12-301 (Notice of Violation);
- R15-12-302 (Petition);
- R15-12-303 (Grounds for Petition);
- R15-12-305 (Supplementing the Petition);
- R15-12-306 (Withdrawal of the Petition);
- R15-12-308 (Evidence);
- R15-12-311 (Prehearing Issue Resolution); and
- R15-12-312 (Rehearing).

For the reasons indicated in the report, the Department states that the following rules are not clear, concise, and understandable:

- R15-12-201 (Primary Property Tax Calculations);
- R15-12-301 (Notice of Violation);
- R15-12-302 (Petition);
- R15-12-303 (Grounds for Petition);
- R15-12-304 (Manner of Filing);
- R15-12-306 (Withdrawal of Petition); and
- R15-12-312 (Rehearing).

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

Yes. The Department indicates that the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules in this Chapter were not adopted after July 29, 2010 and thus do not require a permit.

9. Conclusion

In this 5YRR, the Department conducted an adequate analysis of the rules as required A.R.S. § 41-1056(A). The Department identifies a number of rules that need to be amended and will request an exemption from the rulemaking moratorium by June 30, 2020 and submit a Notice of Final Rulemaking to the Council by September 1, 2020. The Department indicates that this timeline is due to a historically heavier workload it faces during the first quarter of the year. Council staff finds that this timeline is acceptable for completing the proposed course of action. Council staff recommends approval of this report.

STATE OF ARIZONA
Department of Revenue



December 20, 2019

Douglas A. Ducey
Governor

Carlton Woodruff
Director

VIA EMAIL: grrc@azdoa.gov

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

RE: Department of Revenue, Title 15 Revenue, Chapter 12 Department of Revenue, Property Tax Oversight Commission, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Department of Revenue for Title 15 Revenue, Chapter 12 Department of Revenue, Property Tax Oversight Commission which is due on December 31, 2019.

The Department of Revenue hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Ranjana Burke at 602-716-6750 or RBurke@azdor.gov.

Sincerely,

Dr. Grant Nülle
Deputy Director

DEPARTMENT OF REVENUE
5 YEAR REVIEW REPORT
A.A.C. Title 15 Revenue
Chapter 12 Department of Revenue
Property Tax Oversight Commission
Articles 1, 2, and 3
December 31, 2019

1. Authorization of the rule by existing statutes

All of the rules are generally authorized by A.R.S. § 42-1005, which provides that the Director (“Director”) of the Department of Revenue (“Department”) may make administrative rules as he deems necessary and proper to effectively administer the Department and enforce Arizona Revised Statutes (“A.R.S.”) Title 42 and Title 43. Additionally, A.R.S § 42-17002(A) establishes the Property Tax Oversight Commission (“Commission”) to: (1) further the public confidence in property tax limitations; (2) provide a uniform methodology for determining those limitations; and (3) provide a continuing review of practices for ensuring a fair and equitable administration of the property tax laws. A.R.S. § 42-17002(B) states that the Director of the Department is to serve as chairman of the Commission and A.R.S. § 42-17002(D) states that the Department shall provide secretarial and staff support services to the Commission. The Commission is required “to make rules of practice setting forth the nature and requirements of “those hearing procedures. A.R.S. §41-1003.

Specific Authorization for the Rules:

1. A.R.S. §§ 42-17001 through 42-17003 are the specific statutes upon which the following rules are based:

R15-12-101. Definitions

R15-12-102. Principal Office of the Property Tax Oversight Commission

R15-12-103. Quorum

R15-12-104. Hearings

R15-12-104. Voting

R15-12-106. Decisions

R15-12.107. Copying and Recording Costs

2. A.R.S. §§ 42-17003 and 42-17051 are the specific statutes upon which the following rules are based:

R15-12-201. Primary Property Tax Calculations

R15-12-202. Involuntary Tort Judgments

3. A.R.S. §§ 42-17003 and 42-17054 are the specific statutes upon which the following rules are based:

R15-12-203. Primary Property Tax Calculations

R15-12-204. Involuntary Tort Judgments

R15-12-205. Actual Levies

4. A.R.S. §§ 42-17002 and 42-17004 are specific statutes upon which the following rules are based:

R15-12-301. Notice of Violation

R15-12-302. Petition

R15-12-303. Grounds for Petition

R15-12-304. Manner of Filing

R15-12-305. Supplementing the Petition

R15-12-306. Withdrawal of Petition

R15-12-307. Rescheduling of Hearing

R15-12-308. Evidence

R15-12-309 Subpoena

R15-12-310. Post Hearing Memoranda

R15-12-311. Prehearing Issue Resolution

R15-12.312. Rehearing

2. The objective of each rule:

Rule	Objective
R15-12-101	<i>Definitions:</i> The objective of this rule is to define words and phrases used throughout the chapter.
R15-12-102	<i>Principal Office of the Property Tax Oversight Commission:</i> The objective of this rule is to provide the location of the principal office of the Property Tax Oversight Commission and where inquiries, correspondence, and filings are to be sent and the meeting and hearing are to be held.
R15-12-103	<i>Quorum:</i> The objective of this rule is to require a quorum of the Commission to make orders and decisions and conduct official business.
R15-12-104	<i>Hearings:</i> The objective of this rule is to provide that a quorum of the Commission shall directly conduct all hearings before the Commission regarding contested cases. Under A.R.S. §41-1092.02(F), a commission that directly conducts an administrative hearing is not required to use the services of the Office of Administrative Hearings.
R15-12-105	<i>Voting:</i> The objective of this rule is to provide when Commission members may vote and allows dissenting members to state the reason for their dissent.
R15-12-106	<i>Decisions:</i> The objective of this rule is to explain when Commission decisions are rendered and to whom these decisions must be sent.

R15-12-107	<p><i>Copying and Recording Costs:</i> The objective of this rule is to provide who will bear the costs of copying and the costs of employing a court reporter.</p>
R15-12-201	<p><i>Primary Property Tax Calculations:</i> The objective of this rule is to expound on the proper calculations for determining the maximum allowable primary property tax levy limit and the allowable primary property tax rate.</p>
R15-12-202	<p><i>Involuntary Tort Judgments:</i> The objective of this rule is to provide when the Commission shall recognize an involuntary tort judgment paid by a political subdivision and what the political subdivision may do with the involuntary tort judgment.</p>
R15-12-203	<p><i>Levy Limit Worksheets:</i> The objective of this rule is to provide when and to whom the counties should submit a copy of the final levy limit worksheets. The rule also provides that the County Assessor must certify the copies as true and correct.</p>
R15-12-204	<p><i>Political Subdivision Agreement:</i> The objective of this rule is to provide the procedure and deadlines for a political subdivision to disagree with the county’s levy limit worksheet calculations. The rule also provides that the Commission may allow additional time to present objections to specific items if good cause is shown or on motion by the Commission.</p>
R15-12-205	<p><i>Actual Levies:</i> The objective of this rule is to require the chief county fiscal officers in each county to certify and submit to the Commission the actual amount of primary property tax levied by each political subdivision in their counties within a certain time frame.</p>
R15-12-301	<p><i>Notice of Violation:</i> The objective of this rule is to provide what kind of information must be contained on a notice of violation issued by the Commission</p>
R15-12-302	<p><i>Petition:</i> The objective of this rule is to provide that all objections to the notice of violation must be made by way of a written petition to the Commission. The rule further explains the</p>

	proper form of the petition and what information it must contain.
R15-12-303	<i>Grounds for Petition:</i> The objective of this rule is to require that objections to notices of violations be limited to factual findings and conclusions of law reached by the Commission
R15-12-304	<i>Manner of Filing:</i> The objective of this rule is to provide the manner for filing the petition. The rule specifies the number of copies of the petition that must be filed, that the Commission shall record the petition and supporting memorandum, and that no fee shall be charged for filing.
R15-12-305	<i>Supplementing the Petition:</i> The objective of this rule is to provide that the Commission may allow additional time, not to exceed 15 days, to supplement the petition
R15-12-306	<i>Withdrawal of Petition:</i> The object of this rule is to provide the procedure for withdrawal of a petition and the result of such a withdrawal.
R15-12-307	<i>Rescheduling of Hearing:</i> The objective of this rule is to allow the Commission to postpone or recess a hearing upon a showing of good cause. The Commission must then state the date, time, and place for the hearing to continue.
R15-12-308	<i>Evidence:</i> The objective of this rule is to describe the kinds of evidence that may be presented at a hearing before the Commission. The rule also provides guidance for admitting evidence and hearing oral evidence.
R15-12-309	<i>Subpoena:</i> The objective of this rule is to allow the Commission to issue subpoenas upon request of a party or its own initiative.
R15-12-310	<i>Post-Hearing Memoranda:</i> The objective of this rule is to provide information concerning the submission of post-hearing memoranda.
R15-12-311	<i>Prehearing Issue Resolution:</i> The objective of this rule is to explain the treatment of any agreement or resolution of issues prior to hearing between

	the Commission and a political subdivision.
R15-12-312	<i>Rehearing:</i> The objective of this rule is to provide a rehearing process and the circumstances under which a rehearing may be granted. The rules also provide the proper time frame for the Commission to grant or order a rehearing.

3. **Are the rules effective in achieving their objectives?** Yes No

4. **Are the rules consistent with other rules and statutes?** Yes No

The following rules identified below are not consistent with other rules and statutes as written.

Rule	Explanation
R15-12-106	<i>Decisions:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-201	<i>Primary Property Tax Calculations:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-203	<i>Levy Limit Worksheets:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-204	<i>Political Subdivision Agreement:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-205	<i>Actual Levies:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect

	statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-301	<i>Notice of Violation:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-302	<i>Petition:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-303	<i>Grounds for Petition:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-305	<i>Supplementing the Petition:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-306	<i>Withdrawal of Petition:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-308	<i>Evidence:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-311	<i>Prehearing Issue Resolution:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-312	<i>Rehearing:</i> The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect

	statutory changes made by Laws 2009, Ch. 118 to include fire districts.
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5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

Rule	Explanation
R15-12-201	<i>Primary Property Tax Calculations:</i> This rule contains language that does not conform to existing rulewriting standards.
R15-12-301	<i>Notice of Violation:</i> This rule contains language that does not conform to existing rulewriting standards.
R15-12-302	<i>Petition:</i> This rule contains language that does not conform to existing rulewriting standards.
R15-12-303	<i>Grounds for Petition:</i> This rule contains language that does not conform to existing rulewriting standards.
R15-12-304	<i>Manner of Filing:</i> This rule contains language that does not conform to existing rulewriting standards.
R15-12-306	<i>Withdrawal of Petition:</i> This rule contains language that does not conform to existing rulewriting standards.
R15-12-312	<i>Rehearing:</i> This rule contains language that does not conform to existing rulewriting standards.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes
No

8. **Economic, small business, and consumer impact comparison:**

All of the rules in this chapter with the exception of R15-12-104 were adopted in one package in 1990. R15-12-104 was added in 1997 to replace the old R15-12-104 that was repealed.

In addition, ten of the rules in this chapter were amended in 1997. Two more rules were amended in 2000. And, finally, two rules were amended in 2006.

The Property Tax Oversight Commission was created by Laws 1987, Ch. 204. Prior to the original adoption of these rules in 1990, the Property Tax Oversight Commission did not have any rules. Therefore, the original economic impact statement estimated that the Department of Revenue, Property Tax Oversight Commission, the Attorney General's Office and the political subdivisions would all experience cost savings due to the standardization of the Property Tax Oversight Commission's practices and procedures. A cost savings was also expected because of the streamlining and increased definitiveness of the contested issues and facts required by the rules. In addition, by placing the responsibility for arranging for special services on the party that makes the request, burden on Department of Revenue clerical support is reduced thereby reducing the costs to the Department and possibly increasing the costs of the political subdivision that makes the special request. These amounts could not be quantified. The Department also estimated minimal costs associated with the publishing of the rules and the public hearing process. Political subdivisions, other state agencies and the public would incur costs in obtaining copies of the rules.

On October 7, 1997, the Governor's Regulatory Review Council approved the amendment of R15-12-105, R15-12-202, R15-12-203, R15-12-305, and R15-12-307 through R15-12-312. In addition, a new R15-12-104 was added to replace the old R15-12-104 that was repealed. The economic impact statement estimated decreased costs from increased clarity of the rules to operate the Commission. This would eliminate the need to provide individual instruction to each representative of the 72 political subdivisions governed by the Commission. The Department of Revenue would decrease costs by not having to provide a hearing officer to the Commission. The Commission would save by not having to pay the Office of Administrative Hearings to administer the hearings. The only increased costs were the result of the rulemaking process and were estimated to be minimal. "Minimal" is defined as an impact of less than \$1,000 in costs.

On October 4, 2000, the Department amended R15-12-101 and R15-12-103. The economic impact statement expected that the benefits of the rules would be greater than the costs. The amendment of these rules would benefit the political subdivisions that deal with the Property Tax Oversight Commission and the public by making the rules more accurate as well as clearer and easier to understand. The Department would incur the costs associated with the rulemaking process. The political subdivisions and the public were not expected to incur any expense in the amendment of these rules other than the cost of obtaining copies.

On May 13, 2006, the Department amended R15-12-101 and R15-12-204. The economic impact statement expected minimal costs in amending the rules to conform to current rule writing standards and statutory changes. The Department and the Commission expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from the political subdivisions on issues that are addressed by each rule. The political subdivisions would experience cost savings due to the increased clarity and correctness of the rules. The public was

not expected to incur any expense in the amendment of these rules other than the cost of obtaining copies.

The Department of Revenue believes that the economic impacts projected in the original adoption of the rules and in the subsequent amendments in 1997, 2000 and 2006 are accurate.

9. Has the agency received any business competitiveness analyses of the rules?

No analysis regarding the property tax commission rules' impact on business competitiveness in this state compared with the impact on businesses in other states has been submitted to the Department within the last five years.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In the 2015 five-year-review report approved by the Council, the Department indicated that it planned to amend the thirteen rules listed in the report with the intention of submitting them to the Council by June 30, 2016 or within eighteen months after the expiration of the current rulemaking moratorium.

A lawsuit was filed on June 8, 2015 which named the Property Tax Oversight Commission directly as a defendant. The lawsuit was resolved. With the resolution of the lawsuit, the Department currently plans to amend the rules once it receives an exception to the moratorium to proceed with the rulemaking process. More specifically, it was the intention of the Department to amend the language to include fire districts. The amended statute provides the Commission with authority over the fire districts. Amending the rules to include fire districts clarifies that the commission has the authority over them. In the definitions section of Arizona Revised Statutes §42-17001, "political subdivision" includes school districts as part of the definition. Therefore, the Department would not need to amend the rules to specifically include the school district language. The Department plans to submit these rulemaking changes for an exception to the moratorium on or before June 30, 2020.

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

The rules impose minimal cost and burden to political subdivisions for their compliance in comparison to the benefits of the rules. For example, the requirement for a political subdivision to submit documentation of involuntary tort judgments for the Attorney General to certify prior to

including the amount in their primary property tax levy is minimal. The rules clarify what is necessary for both the political subdivision and the Attorney General. Property taxpayers benefit from the Attorney General's review to ensure the property tax levy is in compliance. Likewise, a political subdivision is able to include the involuntary tort judgment in their primary property tax levy which could be an important component in their budget. Thus, this rule reduces the possibility of a potential dispute between the Property Tax Oversight Commission and a political subdivision.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

There are no corresponding federal laws. The rules are based on state 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:

None of the rules were adopted after July 29, 2010.

14. Proposed course of action

The Department will submit recommended changes to the following rules by September 1, 2020 pursuant to Executive Order 2019-01 or any new executive order:

The requested dates are based on the historically heavier workload the Department faces during the first quarter of the year. This heavier workload is generally due to legislative issues which require an immediate response, and responding to taxpayers inquiries regarding the new legislative changes.

Rule	Explanation
R15-12-106	<i>Decisions</i>
R15-12-201	<i>Primary Property Tax Calculations</i>
R15-12-203	<i>Levy Limit Worksheets</i>
R15-12-204	<i>Political Subdivision Agreement</i>
R15-12-205	<i>Actual Levies</i>
R15-12-301	<i>Notice of Violation</i>
R15-12-302	<i>Petition</i>
R15-12-303	<i>Grounds for Petition</i>
R15-12-304	<i>Manner of Filing</i>
R15-12-305	<i>Supplementing the Petition</i>

R15-12-306	<i>Withdrawal of Petition</i>
R15-12-308	<i>Evidence</i>
R15-12-311	<i>Prehearing Issue Resolution</i>
R15-12-312	<i>Rehearing</i>

TITLE 15. REVENUE

CHAPTER 12. DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT COMMISSION

(Authority: A.R.S. §§ 42-105 and 42-306)

ARTICLE 1. GENERAL PROVISIONS

Section

- R15-12-101. Definitions
 R15-12-102. Principal Office of the Property Tax Oversight Commission
 R15-12-103. Quorum
 R15-12-104. Hearings
 R15-12-105. Voting
 R15-12-106. Decisions
 R15-12-107. Copying and Recording Costs

ARTICLE 2. PROPERTY TAX LEVY LIMITS

Section

- R15-12-201. Primary Property Tax Calculations
 R15-12-202. Involuntary Tort Judgments
 R15-12-203. Levy Limit Worksheets
 R15-12-204. Political Subdivision Agreement
 R15-12-205. Actual Levies

ARTICLE 3. HEARING AND APPEAL PROCEDURE

Section

- R15-12-301. Notice of Violation
 R15-12-302. Petition
 R15-12-303. Grounds for Petition
 R15-12-304. Manner of Filing
 R15-12-305. Supplementing the Petition
 R15-12-306. Withdrawal of Petition
 R15-12-307. Rescheduling of Hearing
 R15-12-308. Evidence
 R15-12-309. Subpoena
 R15-12-310. Post-Hearing Memoranda
 R15-12-311. Prehearing Issue Resolution
 R15-12-312. Rehearing

ARTICLE 1. GENERAL PROVISIONS

R15-12-101. Definitions

Unless the context requires otherwise, the following definitions shall apply:

1. "Excess collections" means the amount collected during the previous fiscal year in excess of the previous fiscal year's maximum allowable primary property tax levy.
2. "Excess expenditures" means the amount under A.R.S. § 42-17051(C) that is certified by the Auditor General's office.
3. "Quorum" means a majority of the members of the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
 Amended by final rulemaking at 6 A.A.R. 4114, effective October 4, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 1096, effective May 13, 2006 (Supp. 06-1).

R15-12-102. Principal Office of the Property Tax Oversight Commission

The principal office of the Property Tax Oversight Commission shall be the Department of Revenue Building, 1600 West Monroe, Phoenix, Arizona 85007. All inquiries, correspondence, and filings shall be delivered to the Property Tax Oversight Commission at this

location. All meetings and hearings shall be held at this location unless designated in writing by the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-103. Quorum

The Commission shall have a quorum for making orders and decisions or transacting other official business, as delineated in A.R.S. § 42-17003.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
 Amended by final rulemaking at 6 A.A.R. 4114, effective October 4, 2000 (Supp. 00-4).

R15-12-104. Hearings

A quorum of the Commission shall directly conduct all hearings regarding contested cases before the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Section repealed; new Section adopted effective October 10, 1997 (Supp. 97-4).

R15-12-105. Voting

- A. A Commission member may vote on decisions if:
1. The member was present at all hearings during which the matter being voted on was discussed;
 2. The member was not present at all hearings but the member reviewed the evidence submitted at the hearings and attended or listened to tape recordings of all hearings during which the matter being voted on was discussed; or
 3. The parties submitted the matter for a decision based on a joint stipulation of facts.
- B. Any member who dissents may state the reasons for the member's dissent.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Section amended effective October 10, 1997 (Supp. 97-4).

R15-12-106. Decisions

- A. A Commission decision is rendered when signed by the Chairman.
- B. Decisions of the Commission shall be sent to the affected political subdivision and the affected County Board of Supervisors.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-107. Copying and Recording Costs

- A. The costs of copying shall be paid by the person making the request.
- B. Court reporting arrangements and costs shall be the responsibility of the person employing the court reporter.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

ARTICLE 2. PROPERTY TAX LEVY LIMITS

R15-12-201. Primary Property Tax Calculations

- A. The Commission shall calculate the maximum allowable primary property tax levy limits for political subdivisions as follows:

1. The maximum allowable primary property tax rate shall equal the resulting value of the following rounded to four decimal places:
 - a. 102% of the sum of the previous fiscal year's maximum primary property tax levy divided by;
 - b. the sum of the values provided by the County Assessor's office and the Department for the current year's value of the previous year's centrally assessed, locally assessed real, locally assessed secured personal, and locally assessed unsecured personal property, divided by 100.
 2. The maximum allowable primary property tax levy limit shall equal the sum of the current value of the current year's property as provided by the County Assessor and the Department including centrally assessed, locally real, locally assessed secured personal, and locally assessed unsecured personal property, divided by 100 and multiplied by the maximum allowable primary property tax rate.
 3. Political subdivisions may request that a specific alternative methodology be considered by the Commission. If the Commission determines the alternative methodology will more accurately calculate the levy limit of the political subdivision, such alternative methodology shall be used.
- B.** The Commission shall calculate the allowable primary property tax levy limit by reducing the maximum allowable primary property tax levy limit by the sum of the amount of excess levies, excess collections and excess expenditures.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-202. Involuntary Tort Judgments

- A.** A political subdivision that paid an involuntary tort judgment may only use the judgment to:
1. Offset excess collections from the previous fiscal year; or
 2. Justify a primary property tax levy limit being set above the maximum allowable rate in the current fiscal year.
- B.** The Commission shall recognize an involuntary tort judgment if:
1. The judgment is pursuant to a court order or settlement agreement;
 2. The judgment is approved for payment by the political subdivision's governing board;
 3. The Attorney General certifies that the judgment is an involuntary tort judgment; and
 4. The political subdivision submits copies of the court order or settlement agreement and the minutes of the governing board's pay approval to the Commission on or before the 1st Monday of July.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Spelling of the word "tort" in subsection (A) corrected (Supp. 94-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-203. Levy Limit Worksheets

- A.** The counties shall simultaneously submit copies of the final levy limit worksheets for all political subdivisions in their respective counties to the Commission and the affected political subdivision. The County Assessor shall verify that the copies are true and correct and, if so, certify the copies.
- B.** The counties shall deliver the worksheets to affected political subdivisions and the Commission on or before the 2nd Monday of August.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-204. Political Subdivision Agreement

- A.** If a political subdivision disagrees with the county's final levy limit worksheet calculations, the political subdivision shall, within 10 days of receipt of the county's calculations, file in writing with the Commission a statement of disagreement and the figures it deems appropriate. Failure to act within the 10 days shall be deemed agreement by the political subdivision.
- B.** Upon timely petition of the political subdivision for good cause shown, or on its own motion, the Commission may permit the political subdivision to present objections to specific items at a later date.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended by final rulemaking at 12 A.A.R. 1096, effective May 13, 2006 (Supp. 06-1).

R15-12-205. Actual Levies

The chief county fiscal officers shall certify and submit to the Commission the amount of the primary property tax levied for each political subdivision within their counties within three days after each levy is determined.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

ARTICLE 3. HEARING AND APPEAL PROCEDURE

R15-12-301. Notice of Violation

The notice of violation shall specify the violations found and the monetary amount in dispute. The notice shall inform the political subdivision of the right to petition on or before October 1 for a hearing on the Commission's finding of violation.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-302. Petition

- A.** All objections to the Commission's notice of violation shall be by written petition to the Commission. The petition shall include the following information:
1. Name, title, address, and phone number of the political subdivision's contact person;
 2. A particularized statement of the errors allegedly committed by the Commission in its findings;
 3. A statement of facts upon which the political subdivision relies to support the assignment of errors alleged to have been committed by the Commission;
 4. The relief sought; and
 5. Whether an oral hearing is requested.
- B.** The petition shall be addressed to the Chairman of the Commission.
- C.** The petition shall be in a form that can readily be duplicated on standard office equipment.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-303. Grounds for Petition

- A.** Objections to notices of violation shall be limited to disputing the factual findings and conclusions of law of the Commission.
- B.** The Commission shall refuse all petitions not based on a dispute of its factual findings or conclusions of law. Financial impacts on the political subdivision shall not be considered by the Commission in its decision-making.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-304. Manner of Filing

- A. An original and six copies of the petition and any supporting memoranda shall be filed with the Chairman.
- B. No fee shall be charged for the filing of any petition or supporting memoranda.
- C. Upon receipt of a petition, the Commission staff shall record the filing of the petition and supporting memoranda.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-305. Supplementing the Petition

The Commission may grant a political subdivision's request for an additional period of time, not to exceed 15 days, within which to supplement a timely filed petition. The Commission shall not consider a supplement to the petition that the political subdivision files after the additional period of time granted.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-306. Withdrawal of Petition

- A. The petition may be withdrawn at the written request of the political subdivision before a final decision by the Commission is issued.
- B. When the petition is withdrawn, the Commission's finding shall be deemed final and shall not be subject to any further appeal.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-307. Rescheduling of Hearing

The Commission may postpone or recess the hearing for good cause shown. The Commission shall specify the date, time, and place for the hearing to continue.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-308. Evidence

- A. The political subdivision and the Commission may:
 1. Call and examine witnesses,
 2. Introduce exhibits,
 3. Cross-examine opposing witnesses on any matter relevant to the issues, even though the matter was not covered in the direct examination,
 4. Impeach any witness regardless of which party first called the witness to testify,
 5. Rebut the evidence against it, and
 6. Call and examine as if under cross-examination a party or its employees, agents, or officers.
- B. The Commission shall be liberal in admitting evidence, but the Commission shall consider objections to the admission of and comments on the weakness of evidence in assigning weight to the evidence.
- C. The Commission shall take oral evidence only on oath or affirmation.
- D. Legible copies may be admitted into evidence or substituted in place of the original documents.
- E. The original records and files of the Commission or the Department of Revenue shall not be removed from their offices for use as evidence or for other purposes.
- F. The Commission may take official notice of the records maintained by the Department of Revenue.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-309. Subpoena

The Commission may, on request of a party or on its own initiative, issue subpoenas.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-310. Post-Hearing Memoranda

If the Commission desires the submission of post-hearing memoranda or information, the Commission shall, at the time of the hearing, direct the parties to submit the post-hearing memoranda or information within a period of time set by the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-311. Prehearing Issue Resolution

If the Commission and a political subdivision agree as to the resolution of some or all of the issues prior to the hearing, the Commission shall stipulate to the agreed issues in the record and shall consider those issues withdrawn. The Commission shall then issue an order of partial resolution that becomes part of the Commission's record. The Commission shall forward copies of the order to the political subdivision, County Assessor and the Department of Revenue.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-312. Rehearing

- A. Any party in a contested case before the Commission may file a petition for rehearing or review with the Commission within 30 days after receiving the final decision. The party shall attach a supporting memorandum, specifying the grounds for the petition.
- B. The party who filed the petition for rehearing or review may amend it at any time before the Commission rules. Any other party to the original hearing may file a response within 5 days after the Commission's receipt of the petition for rehearing or review. The party shall support the response with a memorandum discussing the legal and factual issues. Either party or the Commission may request oral argument.
- C. The Commission may grant a rehearing or review of the decision for any of the following causes that materially affect a party's rights:
 1. Irregularity in the administrative proceedings, or any order or abuse of discretion which deprived a party of a fair hearing;
 2. Misconduct of the Commission, its staff, or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 6. The decision is not justified by the evidence or is contrary to law.
- D. The Commission shall not consider the financial impact to the political subdivision as a cause for rehearing.

- E. The Commission may grant a rehearing or review within 15 days after its receipt of the petition for rehearing or review. The Commission may grant a petition for rehearing or review for a reason not stated in the petition. An order modifying a decision or granting a rehearing shall specify the ground or grounds for the order, and any rehearing shall only cover those matters. If the Commission fails to take action on a petition for rehearing or review within 15 days of the Commission's receipt of the petition, the petition shall be deemed denied.
- F. The Commission may on its own initiative order a rehearing or review within 15 days after its decision is rendered for any reason set forth in subsection (C) of this rule. The order shall specify the grounds for rehearing or review.
- G. The petitioner shall include all affidavits with the petition for rehearing or review when the petition for rehearing is based upon affidavits. An opposing party may, within 5 days after the petition for rehearing or review is filed, submit opposing affidavits. The Commission may extend this period for an additional period of time not to exceed 5 days for good cause shown. Reply affidavits may be permitted.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

Amended effective October 10, 1997 (Supp. 97-4).

42-17001. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the property tax oversight commission established by section 42-17002.
2. "Fire district" means a fire district established pursuant to title 48, chapter 5.
3. "Political subdivision" means a county, charter county, city, charter city, town, community college district or school district.

42-17003. Duties; notification

A. The commission shall:

1. Establish procedures for deriving the information required by sections 15-905.01, 15-1461.01 and 42-17107, article 2 of this chapter, section 48-254 and paragraph 4 of this subsection.
2. Review the primary property tax levy of each political subdivision to determine violations of sections 15-905.01, 15-1461.01 and 42-17107 and article 2 of this chapter.
3. Beginning in tax year 2017, review the secondary property tax levy of each special taxing district to determine violations of section 48-254.
4. Review the secondary property tax levy of each county, city, town and community college district to identify violations of constitutional and statutory requirements.
5. Review the secondary property tax levy of each fire district to determine violations of section 48-807.
6. Review for accuracy the tax levy and rate as prescribed by section 15-992.
7. Review the reports made by the department concerning valuation accuracy.
8. Hold hearings to determine the adequacy of compliance with articles 2 and 3 of this chapter.
9. Upon the request of a county, city, town or community college district, hold hearings as prescribed in section 42-17004 regarding the calculation of the maximum allowable primary property tax levy limits prescribed in section 42-17051, subsection A.

B. If the commission determines that a political subdivision has violated section 15-905.01, 15-1461.01 or 42-17107 or article 2 of this chapter, that a special taxing district has violated section 48-254, that a fire district has violated section 48-807 or that a school district incorrectly calculated the tax levy and rate as prescribed by section 15-992, on or before September 15 the commission shall notify the political subdivision or district, and the county board of supervisors, in writing, of:

1. The nature of the violation.
2. The necessary adjustment to:
 - (a) The primary property tax levy and tax rate to comply with section 15-905.01, 15-1461.01 or 42-17107 or article 2 of this chapter.
 - (b) The secondary property tax levy and tax rate to comply with sections 48-254 and 48-807.
 - (c) For school districts, the tax levy and rate to comply with section 15-992.

C. If the commission determines that a county, city, town or community college district has levied a secondary property tax in violation of constitutional or statutory law, on or before December 31 the commission shall notify in writing the affected political subdivision, the county board of supervisors, the county attorney and the attorney general of the violation.

42-17051. Limit on county, municipal and community college primary property tax levy.

A. In addition to any other limitation that may be imposed, a county, charter county, city, charter city, town or community college district shall not levy primary property taxes in any year in excess of an aggregate amount computed as follows:

1. Determine the maximum allowable primary property tax levy limit for the jurisdiction for the preceding tax year.
2. Multiply the amount determined in paragraph 1 by 1.02.
3. Determine the assessed value for the current tax year of all property in the political subdivision that was subject to tax in the preceding tax year.
4. Divide the dollar amount determined in paragraph 3 by one hundred and then divide the dollar amount determined in paragraph 2 by the resulting quotient. The result, rounded to four decimal places, is the maximum allowable tax rate for the political subdivision.
5. Determine the finally equalized valuation of all property, less exemptions, appearing on the tax roll for the current tax year including an estimate of the personal property tax roll determined pursuant to section 42-17053.
6. Divide the dollar amount determined in paragraph 5 by one hundred and then multiply the resulting quotient by the rate determined in paragraph 4. The resulting product is the maximum allowable primary property tax levy limit for the current year for all political subdivisions.
7. The allowable levy of primary property taxes for the current fiscal year for all political subdivisions is the maximum allowable primary property tax levy limit less any amounts required to reduce the levy pursuant to subsections B and C of this section.

B. Any monies that a political subdivision received from primary property taxation in excess of the sum of the amount of taxes collectible pursuant to section 42-15054 and the allowable levy determined under subsection A of this section shall be maintained in a separate fund and used to reduce the primary property tax levy in the following year. Monies that are received and that are attributable to the payment of delinquent taxes that were properly assessed in prior years shall not be applied to reduce the levy in the following year.

C. If, pursuant to section 41-1279.07, the auditor general determines that in any fiscal year a county has exceeded its expenditure limitation, the allowable levy of primary property taxes of the county determined under subsection A of this section shall be reduced in the fiscal year following the auditor general's hearing by the amount of the expenditures that exceeded the county's expenditure limitation.

D. The limitations prescribed by this section do not apply to levies made pursuant to section 15-994 or article 5 of this chapter.

E. The levy limitation for a political subdivision is considered to be increased each year to the maximum permissible limit under subsection A of this section regardless of whether the county, city, town or district actually levies taxes in any year up to the maximum permissible amount.

F. For purposes of determining a county's levy limit under this article, remote municipal property, as defined in section 42-15251, is considered to be taxable property in the county.

42-17054. [Levy limit worksheet](#)

A. When the county assessor transmits valuations under section 42-17052, the assessor shall prepare and transmit a final levy limit worksheet to each city, town and community college district that imposes a primary property tax, to each fire district that imposes a secondary property tax and to the property tax oversight commission.

B. Each city, town, community college district and fire district shall notify the property tax oversight commission in writing within ten days of its agreement or disagreement with the final levy limit worksheet.

42-17002. Property tax oversight commission

A. The property tax oversight commission is established to:

1. Further the public confidence in property tax limitations.
2. Provide a uniform methodology for determining those limitations.
3. Provide a continuing review of practices for ensuring a fair and equitable administration of the property tax laws.

B. The commission consists of:

1. The director of the department of revenue or the director's designee, who serves as chairman.
2. Four persons who are knowledgeable in the area of property tax assessment and levy, one appointed by the governor and three appointed jointly by the president of the senate and the speaker of the house of representatives. The appointive members' terms are three years.

C. An appointment to fill a vacancy on the commission resulting from other than expiration of a term is for the unexpired portion of the term only.

D. The department shall provide secretarial and staff support services to the commission.

E. The private citizen members of the commission shall receive fifty dollars per day for time spent in performing their duties.

F. The commission shall meet at least annually and, in addition, at the call of the chairman. The commission shall meet at such other times and places as convenient or necessary to conduct its affairs and shall render its findings, reports and recommendations in writing to the governor, to the director of the department of revenue and to the legislature.

42-17004. Hearing and appeals of commission findings

A. If the commission notifies a political subdivision of a violation of section 15-905.01, 15-1461.01 or 42-17107 or article 2 of this chapter, notifies a special taxing district of a violation of section 48-254, notifies a fire district of a violation of section 48-807 or notifies a school district of an incorrect calculation of the tax levy and rate as prescribed by section 15-992, and the political subdivision, special taxing district or fire district disputes the commission's findings, then on or before October 1 the political subdivision, special taxing district or fire district may request a hearing before the commission to attempt to resolve the dispute.

B. A governing body of a county, city, town, community college district, school district or fire district may request a hearing before the commission regarding the calculation of the maximum allowable primary or secondary property tax levy limits prescribed in section 42-17051 or 48-807 or the calculation of the tax levy and rate as prescribed in section 15-992, as applicable. The commission may resolve any disputes.

C. The commission shall conduct the hearing as prescribed in title 41, chapter 6, article 10.

D. If the dispute is resolved at the hearing, the commission shall immediately notify the county board of supervisors of the proper primary or secondary tax levy and tax rate.

E. If a political subdivision, special taxing district or fire district continues to dispute the commission's findings after the hearing under this section, the political subdivision, special taxing district or fire district may:

1. Appeal the matter to tax court within thirty days after the commission renders the decision.
2. Levy primary or secondary property taxes in the amount that the political subdivision, special taxing district or fire district considers to be proper, pending the outcome of the appeal.

DEPARTMENT OF REVENUE (F20-0303)

Title 15, Chapter 10, Articles 1-5, General Administration



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: December 31, 2019

SUBJECT: DEPARTMENT OF REVENUE (F20-0303)
Title 15, Chapter 10, Articles 1-5, General Administration

Summary:

This Five Year Review Report (5YRR) from the Department of Revenue relates to rules in Title 15, Chapter 10, Articles 1-5, regarding General Administration. The rules address the following:

- **Article 1 (Appeal Procedures);**
- **Article 2 (Administration);**
- **Article 3 (Authorized Transmission of Funds);**
- **Article 4 (Reimbursement of Fees and Other Costs Related to an Administrative Proceeding); and**
- **Article 5 (Electronic Filing Program).**

In the previous 5YRR for these rules, which the Council approved on July 7, 2015, the Department proposed to amend eleven rules: R15-10-101 (Definitions); R15-10-105 (Petition); R15-10-106 (Incomplete Petition); R15-10-107 (Timeliness of Petition); R15-10-131 (Review of Decision of the Hearing Officer or ALJ); R15-10-132 (Appeal of the Final Order of the Department of Revenue); R15-10-302 (General Requirements); R15-10-303 (Voluntary Participation); R15-10-501 (Definitions); R15-10-502 (Recordkeeping Requirements); and R15-10-504 (Electronic Signatures for Transaction Privilege, Use, and Withholding Tax).

The Department did not complete the proposed course of action for five of these rules: R15-10-101, R15-106, R15-10-107, R15-10-131, and R15-10-132. However, in this 5YRR, the Department notes that it completed more recent rulemakings in 2016, 2017, 2018, and 2019 that addressed other rules it proposed to amend in its previous 5YRR.

Proposed Action:

The Department proposes to amend R15-10-101, R15-10-106, R15-10-107, R15-10-131, and R15-10-132 to update administrative code references, add/or delete statutory references, remove archaic language, and to update the rules to be consistent with statute by September 1, 2020.

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

Yes. The Department cites applicable general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department believes that previously projected economic impacts, as summarized in the 5YRR, are accurate. The Department, the Council, Secretary of State, other state agencies, private entities, and taxpayers incur minimal costs of reviewing, publishing, and obtaining copies of the rules, while all such stakeholders benefit from increased clarity of the rules.

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?

Yes. The Department believes that the probable benefits of the rules in this Chapter outweigh the probable costs and that the rules impose the least burden and costs to persons regulated by them, including paperwork and other costs, necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. For the reasons stated in the report, the Department indicates that the following rule is not effective in achieving its objective:

- **R15-10-132 (Appeal of the Final Order of the Department of Revenue).**

For the reasons stated in the report, the Department indicates that the following rule is inconsistent with other rules and statutes:

- **R15-10-101 (Definitions).**

For the reasons stated in the report, the Department indicates that the following rules are not clear, concise, and understandable:

- **R15-10-101 (Definitions);**
- **R15-10-106 (Incomplete Petition);**
- **R15-10-107 (Timeliness of Petition); and**
- **R15-10-131 (Review of Decision of the Hearing Officer or ALJ).**

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

Yes. The Department indicates that the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

None of the rules reviewed require a permit, license, or agency authorization.

9. Conclusion

In this 5YRR, the Department identifies five rules that need to be amended to improve their clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. The Department plans to submit a rulemaking to amend these rules by September 1, 2020. The Department states that this date to complete the proposed course of action is due to a historically heavier workload the Department faces during the first quarter of the year. Council staff finds this explanation to be plausible. Council staff recommends approval of this report.

STATE OF ARIZONA
Department of Revenue



December 19, 2019

Douglas A. Ducey
Governor

Carlton Woodruff
Director

VIA EMAIL: grrc@azdoa.gov

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

RE: Department of Revenue, Title 15 Revenue, Chapter 10 Department of Revenue, General Administration, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Revenue for Title 15 Revenue, Chapter 10 Department of Revenue, General Administration which is due on December 31, 2019.

The Department of Revenue hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Bryan Jensen at 602-716-6089 or bjensen@azdor.gov.

Sincerely,

Dr. Grant Nülle
Deputy Director

Arizona Department of Revenue

FIVE-YEAR-REVIEW REPORT

Title 15 Revenue
Chapter 10 Department of Revenue
General Administration

Articles 1, 2, 3, 4 and 5

For the

GOVERNOR'S REGULATORY REVIEW COUNCIL

December 19, 2019

5 YEAR REVIEW REPORT
Title 15 Revenue
Chapter 10 Department of Revenue
General Administration
Articles 1, 2, 3, 4 and 5
December 19, 2019

1. Authorization of the rule by existing statutes

General Statutory Authority:

- A.R.S. § 42-1005
- A.R.S. § 41-1003

Specific Statutory Authority:

1. A.R.S. §§ 41-1003 and 42-1251 are the specific statutes on which the following rules are based.

R15-10-101 Definitions
R15-10-102 Scope of Article 1
R15-10-103 Taxpayer Hearing Rights
R15-10-105 Petition
R15-10-106 Incomplete Petition
R15-10-107 Timeliness of Petition
R15-10-110 Withdrawal of Petition
R15-10-115 Request for Hearings; Waiver
R15-10-116 Hearing Procedure
R15-10-117 Evidence
R15-10-119 Stipulation of Facts
R15-10-120 Official Notice
R15-10-121 Subpoena by Petitioner
R15-10-122 Transcripts and Records
R15-10-130 Decisions and Orders
R15-10-131 Review of Decision of the Hearing Officer or ALJ
R15-10-132 Appeal of the Final Order of the Department of Revenue

2. A.R.S. § 42-2056 is the specific statute on which the following rule is based.

R15-10-201 Closing Agreements Relating to Tax Liability

3. A.R.S. § 42-1129 is the specific statute on which the following rules are based.

R15-10-301 Definitions
R15-10-302 General Requirements
R15-10-303 Voluntary Participation
R15-10-304 Authorization Agreement

- R15-10-305 Methods of Electronic Funds Transfer
- R15-10-306 Procedures for Payment
- R15-10-307 Timely Payment

4. A.R.S. § 42-2064 is the specific statute on which the following rules are based.

- R15-10-401 Application for Reimbursement of Fees and Other Costs Related to an Administrative Proceeding
- R15-10-402 Documentation of Payment of Fees and Other Costs
- R15-10-403 Filing an Application
- R15-10-404 Decisions

5. A.R.S. §§ 42-1103.03, 42-1105, 42-1105.01, 42-1105.02, and 42-1125.01 are the specific statutes on which the following rules are based.

- R15-10-501 Definitions
- R15-10-502 Recordkeeping Requirements
- R15-10-503 Electronic Signatures for Income Tax Returns
- R15-10-504 Electronic Signatures for Withholding Tax
- R15-10-505 Electronic Signatures for Transaction Privilege and Use Tax
- R15-10-506 Transaction Privilege and Use Tax Electronic File Bulk Transmitters

2. The objective of each rule:

Rule	Objective
R15-10-101	<i>(Definitions)</i> This rule defines terms used in the rules governing the Department’s hearing procedures.
R15-10-102	<i>(Scope of Article 1)</i> This rule clarifies the applicability of hearing procedure rules to any administrative matter for which a formal departmental hearing is required.
R15-10-103	<i>(Taxpayer Hearing Rights)</i> This rule informs taxpayers of their right in a protest hearing to review and obtain documents applicable to their protest.
R15-10-105	<i>(Petition)</i> This rule explains how to file a petition and delineates what must be included in the petition.
R15-10-106	<i>(Incomplete Petition)</i> This rule informs taxpayers that so long as the petition is complete within the original or extended time allowed to file a petition, they may correct incomplete petitions initially filed. The Hearing Officer may grant additional time upon a showing of good cause.
R15-10-107	<i>(Timeliness of Petition)</i> This rule delineates the specific time frames for filing petitions regarding taxes administered by the Department, provides that the Hearing Officer may grant an extension of time not to exceed 60 days to file the petition, and informs taxpayers who fail to timely file the petition that they may apply for a refund after paying the assessment in full.
R15-10-110	<i>(Withdrawal of Petition)</i> This rule allows taxpayers to withdraw petitions prior to the Hearing Officer issuing a decision.
R15-10-115	<i>(Request for Hearings; Waiver)</i> This rule requires an oral hearing if requested by either the taxpayer or the Department, and delineates the actions the Hearing Officer may take if any party to the hearing fails to appear.
R15-10-116	<i>(Hearing Procedure)</i> This rule explains how a hearing may be conducted and conveys that the procedure is open and relaxed.
R15-10-117	<i>(Evidence)</i> This rule explain the types of evidence that may be presented at a hearing.
R15-10-119	<i>(Stipulation of Facts)</i> This rule allows the taxpayer and the Department to file a stipulation

	of facts.
R15-10-120	<i>(Official Notice)</i> This rule allows the Hearing Officer to take official notice of certain items.
R15-10-121	<i>(Subpoena by Petitioner)</i> This rule addresses the procedure for requesting a subpoena.
R15-10-122	<i>(Transcripts and Records)</i> This rule requires the Hearing Office to record all oral proceedings, allows a party to arrange for the hearing to be manually transcribed at that party's expense, requires that the party citing a transcript submit a copy of the transcript to the Department's Hearing Officer, and gives the parameters for the use of the Department's records.
R15-10-130	<i>(Decisions and Orders)</i> This rule requires the Hearing Officer to issue a written decision containing the reasons for the decision and to forward the decision to applicable parties.
R15-10-131	<i>(Review of Decision of the Hearing Officer or ALJ)</i> This rule addresses the process by which the Director may review a decision of the Hearing Officer or Administrative Law Judge.
R15-10-132	<i>(Appeal of the Final Order of the Department of Revenue)</i> This rule informs taxpayers that if they dispute the final order of the Department, they may appeal to the State Board of Tax Appeals or, if the amount in dispute is not an individual income tax dispute less than \$5,000, bring an action in Tax Court.
R15-10-201	<i>(Closing Agreements Relating to Tax Liability)</i> This rule explains the application of closing agreements and addresses the procedure for entering into a closing agreement.
R15-10-301	<i>(Definitions)</i> This rule defines terms used in the rules regarding the authorized transmission of funds.
R15-10-302	<i>(General Requirements)</i> This rule specifies which taxpayers are required to remit tax payments by electronic funds transfer.
R15-10-303	<i>(Voluntary Participation)</i> This rule allows taxpayers that do not meet the tax liability threshold to voluntarily participate in and withdraw from the electronic funds transfer program.
R15-10-304	<i>(Authorization Agreement)</i> This rule requires participants in the electronic funds transfer program to complete an authorization agreement and delineates the information required in an authorization agreement.
R15-10-305	<i>(Methods of Electronic Funds Transfer)</i> This rule prescribes the methods of electronic funds transfer that are acceptable to the Department and specifies the conditions under which each method may be used.
R15-10-306	<i>(Procedures for Payment)</i> This rule prescribes the procedures for making tax payments under the automated clearing house debit method and under the automated clearing house credit method.
R15-10-307	<i>(Timely Payment)</i> This rule prescribes the procedures to follow to ensure timely payment of taxes and informs taxpayers of the penalty if payments are not timely made.
R15-10-401	<i>(Application for Reimbursement of Fees and Other Costs Related to an Administrative Proceeding)</i> This rule delineates the procedures for applying for reimbursement of fees and other costs related to an administrative proceeding.
R15-10-402	<i>(Documentation of Payment of Fees and Other Costs)</i> This rule explains what documentation a taxpayer must submit with an application for reimbursement of fees and other costs related to an administrative hearing.
R15-10-403	<i>(Filing an Application)</i> This rule explains to the taxpayer how to determine when the conclusion of administrative proceedings has occurred for purposes of filing an application for reimbursement of fees.
R15-10-404	<i>(Decisions)</i> This rule tells the taxpayer when and how the problem resolution officer will

	inform the taxpayer of the decision made concerning the taxpayer's application for reimbursement.
R15-10-501	<i>(Definitions)</i> This rule defines terms used in the rules regarding the electronic filing program.
R15-10-502	<i>(Recordkeeping Requirements)</i> This rule sets forth the length of time an electronic return preparer must keep the documents specified in A.R.S. § 42-1105(F).
R15-10-503	<i>(Electronic Signatures for Income Tax Returns)</i> This rule lists the methods by which an electronically filed individual income tax return may be signed by an individual taxpayer.
R15-10-504	<i>(Electronic Signatures for Withholding Tax)</i> This rule provides taxpayers with information regarding the use of the taxpayer's signature, as obtained through either the business registration process or the taxpayer service center registration process, to sign the taxpayer's withholding tax returns.
R15-10-505	<i>(Electronic Signatures for Transaction Privilege and Use Tax)</i> This rule provides taxpayers with information regarding the use of the taxpayer's signature, as obtained through either the business registration process or the taxpayer service center registration process, to sign the taxpayer's transaction privilege and use tax returns.
R15-10-506	<i>(Transaction Privilege and Use Tax Electronic File Bulk Transmitters)</i> This rule provides a taxpayer with instructions on what is required to participate in the Department's bulk electronic filing program.

3. **Are the rules effective in achieving their objectives?** Yes ___ No X

The rule below is not effective in meeting its stated objective.

Rule	Explanation
R15-10-132	<i>(Appeal of the Final Order of the Department of Revenue).</i> The Department proposes to amend this rule to remove R15-10-132(B) to allow a taxpayer to continue with its appeal to the Board of Tax Appeals or the Tax Court without the Director having to complete a review of the decision. This would reduce regulation and allow the taxpayer to continue with its appeal without delay.

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

The rule below is not consistent with other rules and statutes

Rule	Explanation
R15-10-101	<i>(Definitions)</i> The Department proposes to amend the rule to remove the definition of the term "day." This rule is considered unnecessary because the issues dealt with in the definition are already dealt with in statute. See A.R.S. § 1-218 (filing by mail; date of filing) and A.R.S. § 42-1105.02 (date of filing by electronic means; definition).

5. **Are the rules enforced as written?** Yes X No ___

The rules are enforced as written.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

The following rules are not clear, concise, and understandable.

Rule	Explanation
R15-10-101	<i>(Definitions)</i> The Department proposes to amend the rule to remove the definition of the term “day.” This definition is considered unnecessary because the issues dealt with in the definition are already addressed in statute. See A.R.S. §1-218 (filing by mail; date of filing) and A.R.S. §42-1105.02 (date of filing by electronic means; definition).
R15-10-106	<i>(Incomplete Petition)</i> The Department proposes to amend the rule to remove the term “dismiss” and replace it with the term “reject.”
R15-10-107	<i>(Timeliness of Petition)</i> The Department proposes to amend rule 15-10-107(F) to include a statutory reference to A.R.S. § 42-1251(B) which prescribes the exact time for filing a petition protesting a deficiency.
R15-10-131	<i>(Review of Decision of the Hearing Officer or ALJ).</i> The Department proposes to amend the rule to add a section to clarify when a taxpayer is deemed to receive a notice and clarify when a decision is deemed to be received. The Department proposes to add new rule to indicate that the notice or decision will be deemed to be received when the taxpayer actually receives it or ten days after mailing, whichever is later, unless the Department has knowledge that the taxpayer did not receive the mail. If the Department has knowledge that the taxpayer did not receive the mail then it must mail the notice or decision a second time by regular mail. The notice or decision will be deemed received five days after the second mailing.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

The Department has not received any written criticisms during the last five years of any of the rules in Chapter 10.

8. **Economic, small business, and consumer impact comparison:**

1. Rules in A.A.C. Title 15, Chapter 10, Article 1

The majority of the rules in Article 1 were adopted effective June 22, 1981. There is no available economic, small business, and consumer impact statement (“EIS”) or other economic impact documentation regarding the predicted economic impact at the time of the original adoption of Article 1.

Effective December 23, 1993, Article 1 was repealed and a new article was adopted. The July 15, 1991 impact statement provided that the Department, the Attorney General, the Board of Tax Appeals, and private entities were expected to benefit from increased clarity of the hearing procedures. The Department would incur the costs of meeting Administrative Procedure Act requirements and, other state agencies would incur the cost of reviewing, publishing, or obtaining copies of the rules. The impact statement stated that the Department’s hearing office would experience time and cost savings in the more efficient running of hearings and in the enhanced flow of information from the taxpayer.

R15-10-131 was amended effective October 11, 1995. The proposed economic impact statement provided that the Department would incur costs meeting the Administrative Procedure Act but that the Department would benefit from having additional time to file a petition for review by the Director of the Department. The economic impact statement stated that other state agencies would incur costs noticing, obtaining copies and reviewing the proposed amendment to the rule. It was believed that private entities would incur a direct cost of obtaining copies of the new rule but would benefit from having additional time to prepare and file a petition for review of the hearing office decision to the Director.

R15-10-101, R15-10-105, R15-10-107, R15-10-117, R15-10-121, R15-10-130, R15-10-131 and R1510132 were amended effective January 20, 1998. In addition, R15-10-102 was repealed and a new R1510102 was added effective January 20, 1998. The EIS provided that the Department would incur the costs of meeting the Administrative Procedure Act requirements and other state agencies would incur the cost of reviewing, publishing, or obtaining copies of the rules. The economic impact statement stated that rules would result in time and cost savings to the Department since it would reduce the need for Department personnel to explain to taxpayers the requirements and procedures addressed in the rules. The Department also expected taxpayers to benefit from these rules by having definitive requirements and procedures to follow when appealing a decision of the Department.

Rules 15-10-102, 15-10-105, 15-10-106, 15-10-110, 15-10-115, 15-10-116, 15-10-119, 15-10-120 and 15-10-122, were amended effective June 13, 2001. The EIS provided that the Department, the Governor's Regulatory Review Council and the Secretary of State's Office would incur costs because of the rulemaking. However, the EIS provided that the Department and public would benefit from increased clarity of the rule.

Rule R15-10-122 was amended effective January 30, 2010. The EIS stated that changes to the rule are intended to allow the Hearing Office to be efficient in the administration of hearing procedures by allowing the Hearing Office to use recording equipment other than a tape recorder. The EIS provided that the amended rule may result in time and cost savings from the use of recording devices other than outdated tape recorders.

Effective January 7, 2016 rule R15-10-105 was amended. The probable costs were minimal, if any, as the rule change required no additional hiring of Department personnel, and the benefit was found to exceed the cost as the rule change allowed for a streamlined and quicker processing of a taxpayer's assessment appeal.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

2. Rules in A.A.C. Title 15, Chapter 10, Article 2

Rule 15-10-201 was adopted effective September 16, 1987. Former Section R15-10-201 was later renumbered to R15-5-2207 and new Section R15-10-201 was renumbered from R15-2-231. R15-2-231 was adopted effective December 22, 1981. There was no EIS requirement for administrative rules adopted in 1981.

The February 11, 1994 letter to the Governor's Regulatory Review Council stated that the proposed amendment and renumbering of R15-10-201 would result in costs to the Department, the Department of Administration, the Office of the Attorney General, and the Secretary of State's Office. This statement provided that the rule making would result in clarification and guidance to the Department, private entities and taxpayers.

The EIS for the amendment of Rule 15-10-201 effective January 20, 1998 stated that the Department would incur minimal costs in meeting the Administrative Procedure Act requirements, and that the Secretary of State and other state agencies would incur minimal costs amending R15-10-201.

When Rule 15-10-201 was amended effective June 13, 2001, the EIS provided that the Department, the Governor's Regulatory Review Council, and the Secretary of State's Office would incur costs because of the rulemaking. However, the EIS provided that the Department and public would benefit from increased clarity of the rule.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

3. Rules in A.A.C. Title 15, Chapter 10, Article 3

The rules in Article 3 were adopted as a group effective July 30, 1993. At the time the rules were adopted, the Department determined that the Department would incur the costs of meeting the Administrative Procedure Act requirements, but would have time and cost savings from relieving personnel of explaining the requirements and procedures covered in the rules to taxpayers. Other state agencies would incur the costs of reviewing, publishing, or obtaining copies of the rules. The Department estimated that private entities could incur the direct cost of obtaining copies of the new rule. The Department stated that there would be no direct or indirect costs or benefits to consumers. The Department estimated that there would be no additional reporting or compliance requirements for small businesses.

R15-10-302 and R15-10-303 were amended effective December 17, 1993. In the 1993 rules package the estimated consequences to the Department, other state agencies, private entities, consumers, and small businesses were similar to those estimated at the time the rules were originally adopted.

R15-10-302 and R15-10-303 were amended effective October 4, 1996. The Department estimated that these changes would increase the number of taxpayers using electronic funds transfer to pay corporate income and withholding taxes and, that the number of taxpayers using electronic funds transfer for the additional tax types would also increase. The Department estimated the lower thresholds would result in increased cash flow of an additional day's interest with a positive impact on the general fund.

Effective June 15, 1998, R15-10-301, R15-10-303, R15-10-304, R15-10-305, R15-10-306, and R15-10-307 were amended. The Department expected that the Department would incur minimal costs in meeting the Administrative Procedure Act requirements and that other state agencies would incur minimal costs in processing the rules and obtaining copies. Private entities could also incur a minimal cost in obtaining copies of the rules and changing their processing and accounting systems.

Effective June 13, 2001, Rule 15-10-307 was amended. The EIS stated that the Department, the Governor's Regulatory Review Council, the Secretary of State and businesses would incur costs associated with the rulemaking. The Department estimated that the Department and businesses would benefit from the increased clarity of the rules regarding the Department's hearing process.

Effective July 1, 2017, rules R15-10-301, R15-10-302, R15-10-303, R15-10-303, R15-10-304, R15-10-305 and R15-10-306 were amended. The EIS found the changes resulting from the rule change did not require the Department to hire additional personnel and any costs associated with the change were minimal in comparison to the anticipated economic benefit. Accordingly, the Department anticipated the rule change benefits would exceed the costs as they lead to improved cash flows.

Effective January 1, 2018, rules R15-10-302, and R15-10-303 were amended. The EIS anticipated minimal costs to the Department, as the implementation did not require any additional personnel or capital expenditures, and only minimal costs to certain taxpayers who might be affected by the rulemaking. The Department estimated the savings in processing returns and payments and increased accuracy and efficiency, exceeded the anticipated costs.

Effective October 1, 2019, rules R15-10-301 and R15-10-532 were amended. Laws 2019, 1st Reg. Sess., Ch. 273, § 32 exempted the rulemaking package from the requirements of an EIC.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

4. Rules in A.A.C. Title 15, Chapter 10, Article 4

All the rules in Article 4 were adopted as a group effective March 13, 1998. The economic impact statement estimated minimal costs to the Department for meeting Administrative Procedure Act requirements, to other

state agencies for printing and obtaining copies of the rules, and to taxpayers or consumers for obtaining copies of the rules and preparing an application, as prescribed by the rules, when the reimbursement of fees and other costs is sought. Both taxpayers or consumers and the Department benefit from time and cost savings in having definitive requirements and procedures available for those who wish to apply for reimbursement of fees and other costs relating to administrative procedures.

Rule 15-10-401 was amended effective June 13, 2001. The EIS stated that the Department, the Governor's Regulatory Review Council, the Secretary of State and businesses would incur costs associated with the rulemaking. The Department estimated that the Department and businesses would benefit from the increased clarity of the rules regarding the reimbursement of fees and other costs related to an administrative proceeding.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

5. Rules in A.A.C. Title 15, Chapter 10, Article 5

Rule 15-10-501, R15-10-502 and R15-10-503 were adopted effective November 8, 2001. The EIS estimated that the Department would incur minimal costs in meeting the Administrative Procedure Act rulemaking requirements and in changing the instructions to the Arizona tax forms. The Department was expected to experience time and cost savings in processing electronically filed returns instead of paper tax returns. Taxpayers were expected to incur minimal costs with the adoption of these rules. The EIS stated that the Secretary of State, other state agencies and the Governor's Regulatory Review Council would incur costs in noticing, printing, reviewing and analyzing the new rules. Overall, the benefits were expected to be greater than the costs.

R15-10-501 and R15-10-502 were amended effective November 4, 2003. R15-10-504 was adopted effective November 4, 2003. The EIS provided that the Department, Governor's Regulatory Review Council and the Secretary of State would incur costs because of the rulemaking. The Department stated that Department personnel would experience time and cost savings in processing electronically filed returns because the Department would not have to process any paper documents related to the electronic return.

Effective January 7, 2016, rules R15-10-501, R15-10-502 and R15-10-504 were amended. R15-10-505 was adopted effective January 7, 2016. The EIS anticipated that the Department would bear the burden of the cost and any costs to the political subdivisions would be minimal. However, the benefits to the political subdivisions of the State and current and prospective TPT license holders outweighed any associated costs. The EIS stated that the Department would experience savings in time and costs in processing license applications with the rule changes.

Effective January 1, 2018, rule R15-10-505 was amended. The EIS anticipated minimal costs to the Department, as the implementation did not require any additional personnel or capital expenditures, and only minimal costs to certain taxpayers who might be affected by the rulemaking. The Department estimated the savings in processing returns and payments and increased accuracy and efficiency exceeded the anticipated costs.

Effective October 1, 2019, rules R15-10-501 and R15-10-502 were amended. Laws 2019, 1st Reg. Sess., Ch. 273, § 32 exempted the rulemaking package from the requirements of an EIC.

Effective December 1, 2019, rules R15-10-502 and R15-10-503 were amended. The EIS found the benefits of having a simplified procedure for both filing and processing returns which piggy backed on the federal filing authorization exceeded the costs of implementation. It was anticipated if the new rules were not adopted taxpayers would incur costs of increased return preparation time and for the Department in providing education and customer assistance in assisting taxpayers.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

No analysis regarding the Department’s general administration rules impacts on business competitiveness in this state compared with the impact on businesses in other states has been submitted to the Department within the last five years.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In the previous five year review the Department considered proposed action for eleven (11) rules, R15-10-101, R15-10-105, R15-106, R15-10-107, R15-10-131, R15-10-132, R15-10-302, R15-10-303, R15-10-501, R15-10-502, and R15-10-504.

However, due to the rules moratorium, the anticipated amendments for the following five (5) rules, R15-10-101, R15-106, R15-10-107, R15-10-131 and R15-10-132 were not made. The Department did not seek an exception to the rules moratorium.

However, please note the following recent rule changes that were implemented as proposed in the 2015 Five-Year-Review Report or in response to new legislation.

Rule	Rules Amended By Final Rulemaking at 22 A.A.R. 116, Effective January 7, 2016
R15-10-105	<i>(Petition)</i> Amended so that a taxpayer could include the jurisdiction(s) from which an assessment is being appealed in his petition. R15-10-105(C) was amended to permit a taxpayer to file a petition by hand delivering the petition to the appropriate section of the Department to reflect the current procedure.
R15-10-501	<i>(Definitions)</i> Amended to remove obsolete definitions. New definitions added to reflect electronic filing procedure.
R15-10-502	<i>(Recordkeeping Requirements)</i> Amended to remove the requirement for electronic return preparers to maintain certain documents.
R15-10-504	<i>(Electronic Signatures for Withholding Tax)</i> Amended to remove TPT and use tax from the old electronic filing procedures since they were only still applicable to withholding taxes.

Rule	Rules Amended By Final Rulemaking at 23 A.A.R. 1899, Effective July 1, 2017
R15-10-301	<i>(Definitions)</i> Amended to exclude the definition and concepts related to the data collection center which was no longer used to process electronic payments and to add the definition of AZTaxes.gov and ALTO which were the new Department portals through which electronic tax payments are now initiated and processed.
R15-10-302	<i>(General Requirements)</i> Amended to expand the tax types required to remit payment electronically to include TPT and tobacco tax. The rule was changed to require taxpayers with TPT or withholding annual liability of over \$20,000 to remit tax payments electronically.
R15-10-303	<i>(Voluntary Participation)</i> Amended to allow taxpayers that do not meet the \$20,000 tax liability threshold amount and taxpayers with liquor tax liability of any amount to participate in the electronic payment process.
R15-10-304	<i>(Authorization Agreement)</i> Amended to alter the type of information included in the ACH debit authorization agreement to reflect current statutory requirements.

R15-10-305	<i>(Methods of Electronic Funds Transfer)</i> Amended to expand the methods permitted for electronic payments to include the Department’s payment portals on AZTaxes.gov and ALTO. It also allowed payors to remit payment via wire transfer and removed the requirement for payors to state a reason why payment cannot be remitted through ACH debit or credit.
R15-10-306	<i>(Procedures for Payment)</i> Amended to update the procedure for initiating electronic payment of taxes to include the Department’s AZTaxes.gov and ALTO portals and removed references to the old data collection center procedures.

Rule	Rules Amended By Final Rulemaking at 23 A.A.R. 3308, Effective January 1, 2018
R15-10-302	<i>(Voluntary Participation)</i> Amended in response to Laws 2017 (HB2280) to allow taxpayers that do not meet the \$20,000 tax liability threshold amount and taxpayers with liquor tax liability of any amount to participate in the electronic payment process.
R15-10-303	<i>(Voluntary Participation)</i> Amended in response to Laws 2017 (HB2280) to allow taxpayers that do not meet the \$20,000 tax liability threshold amount and taxpayers with liquor tax liability of any amount to voluntarily participate in the electronic payment process.
R15-10-505	<i>(Electronic Signatures for Transaction Privilege and Use Tax)</i> Amended in response to Laws 2017 (HB2280) to reflect the changes requiring certain taxpayers to file electronically.

Rule	Rules Amended By Final Rulemaking at 25 A.A.R. 3023, Effective October 1, 2019 <i>NOTE: These changes are not reflected on the most recent cumulative rules on the Secretary of State’s website.</i>
R15-10-301	<i>(Definitions)</i> In response to Laws 2019 (HB 2757), this rule was amended to add cross-references to the statutory definitions of “marketplace facilitator” and “remote seller.”
R15-10-302	<i>(Voluntary Participation)</i> In response to Laws 2019 (HB 2757), this rule was amended to require marketplace facilitators and remote sellers who meet or reasonably expect to meet the threshold requirements in A.R.S. § 42-5044 on or after October 1, 2019 to make TPT payments through electronic funds transfer unless the Departments grants a waiver.
R15-10-501	<i>(Definitions)</i> In response to Laws 2019 (HB 2757), this rule was amended to add cross-references to the statutory definitions of “marketplace facilitator” and “remote seller.”
R15-10-502	<i>(Recordkeeping Requirements)</i> In response to Laws 2019 (HB 2757), this rule was amended to require marketplace facilitators and remote sellers who meet or reasonably expect to meet the threshold requirements in A.R.S. § 42-5044 on or after October 1, 2019 to make TPT payments through electronic funds transfer unless the Departments grants a waiver.

Rule	Rules Amended By Final Rulemaking at 25 A.A.R. 3057, Effective December 1, 2019 <i>NOTE: These changes are not reflected on the most recent cumulative rules on the Secretary of State’s website.</i>
R15-10-502	<i>(Recordkeeping Requirements)</i> Amended in response to Laws 2017 (HB2280) to remove the term “individual” to provide for any type of income tax return preparer filing electronically to retain certain required documentation for four years.
R15-10-503	<i>(Electronic Signatures for Income Tax Returns)</i> Amended in response to Laws 2017 (HB2280) to allow the Department to accept electronically filed income tax returns for fiduciary, partnership, corporate and S corporations.

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

After analysis, the probable benefits of all of Chapter 10’s rules within this state outweigh the probable costs and the rules impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes No X

The Department has determined after analysis that there are no federal laws that apply or correspond to the rules being reviewed.

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:

None of the rules being reviewed require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

- A. The Department proposes to amend the following rules to update administrative code references, add/or delete statutory references, remove archaic language, to update to be consistent with statute.
- B. The Department will submit recommended changes to the following rules by September 1, 2020 pursuant to Executive Order 2019-01 or any new executive order:

The requested date for recommended changes is based on the historically heavier workload the Department faces during the first quarter of the year. This heavier workload is generally due to legislative issues which require an immediate response, and responding to taxpayers inquiries regarding the new legislative changes.

Rules	
R15-10-101	Definitions
R15-10-106	Incomplete Petition
R15-10-107	Timeliness of Petition
R15-10-131	Review of Decision of the Hearing Officer or ALJ
R15-10-132	Appeal of the Final Order of the Department of Revenue



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 15. Revenue

Chapter 10. Department of Revenue - General Administration

Sections, Parts, Exhibits, Tables or Appendices modified

Article 3. Authorized Transmission of Funds

R15-10-302 and R15-10-303

Article 5. Electronic Filing Program

R15-10-505

REMOVE Supp. 17-2
Pages: 1 - 12

REPLACE with Supp. 17-4
Pages: 1 - 12

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 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

(Authority: A.R.S. § 42-105)

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Article 6, consisting of Sections R15-10-602 through R15-10-607, emergency expired effective October 27, 2009 (Supp. 09-4).

Article 6, consisting of Sections R15-10-602 through R15-10-607, made by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2).

Article 6, consisting of Sections R15-10-602 through R15-10-607, emergency expired effective March 20, 2004 (Supp. 09-2).

Article 6, consisting of Sections R15-10-602 through R15-10-607, made by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3).

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R15-10-607. Emergency Expired 12

ARTICLE 7. EMERGENCY EXPIRED

Article 7, consisting of Sections R15-10-702 through R15-10-705, made by emergency rulemaking at 21 A.A.R. 2621, effective August 29, 2016, for 180 days (Supp. 16-3). Emergency expired (Supp. 17-2).

Article 7, consisting of Sections R15-10-702 through R15-10-704, and R15-10-706 made by emergency rulemaking at 21 A.A.R. 1243, effective August 19, 2015, for 180 days (Supp. 15-3). Emergency expired (Supp. 16-1).

Article 7, consisting of Sections R15-10-702 through R15-10-706, made by emergency rulemaking at 17 A.A.R. 1864, effective August 31, 2011, for 180 days (Supp. 11-3). Emergency expired.

Section

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R15-10-706. Emergency Expired 12

ARTICLE 1. APPEAL PROCEDURES**R15-10-101. Definitions**

For purposes of this Article:

1. "ALJ" means an administrative law judge who issues decisions on behalf of the Office of Administrative Hearings established by A.R.S. § 41-1092.01.
2. "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
3. "Department" means the Arizona Department of Revenue as represented by personnel of the applicable section or area.
4. "Notice" means a written notification, issued by the Department, of a tax assessment, refund denial, or any other action taken or proposed to be taken that is subject to appeal as a contested case or an appealable agency action under A.R.S. Title 41, Chapter 6.
5. "Petition" means a written request for hearing, correction, or redetermination, including all applicable attachments.
6. "Petitioner" means the taxpayer or the representative of the taxpayer who files a petition.
7. "Refund denial" means a taxpayer's claim for a refund of tax, penalty, interest, or refundable credit that has been denied by the Department.
8. "Tax assessment" means any tax issue whether associated with a proposed amount due or the application of penalties and interest.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-102. Scope of Article 1

A Department hearing officer shall conduct all hearings regarding the taxes under A.R.S. § 42-1101, unless A.R.S. § 41-1092.02 requires that an ALJ hear the matter.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Section repealed, new Section adopted effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-103. Taxpayer Hearing Rights

With respect to a protest hearing, the taxpayer has the right, subject to confidentiality laws, to:

1. Review documents applicable to the protest, or
2. Obtain from the Department copies of documents relevant to the taxpayer at the discretion of the Hearing Officer.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-103 renumbered to R15-10-105, new Section R15-10-103 adopted effective December 23, 1993 (Supp. 93-4).

R15-10-104. Repealed**Historical Note**

Adopted effective June 22, 1981 (Supp. 81-3). Repealed effective December 23, 1993 (Supp. 93-4).

R15-10-105. Petition

- A. A taxpayer may protest a tax assessment or a refund denial by filing a petition that includes the following:
 1. The taxpayer's name, address, federal identification number, and all applicable state identification numbers;
 2. An explanation of the difference between the taxpayer's name in the notice and the taxpayer's name in the petition, if applicable;
 3. The last known name and address of both individuals if the petition concerns a married-filing-joint return;
 4. A copy of the notice or a statement that references the:
 - a. Tax type,
 - b. Tax period involved,
 - c. The amount of the tax assessment or refund claimed including tax, penalties, interest, and refundable credits, and
 - d. The jurisdiction or jurisdictions to which the tax assessment or refund denial relates.
 5. A statement of the amount of the tax assessment or refund denial being protested;
 6. A statement of any alleged error committed by the Department in determining the tax assessment or refund denial being protested;
 7. A statement of facts and legal arguments upon which the taxpayer relies to support the petition;
 8. The relief sought;
 9. The payment for all unprotested amounts of tax, interest, and penalties; and
 10. The petitioner's signature.
- B. A taxpayer may protest a matter other than a tax assessment or refund denial by filing a petition that includes the following:
 1. The taxpayer's name, address, federal identification number, and all applicable state identification numbers;
 2. An explanation of the difference between the taxpayer's name in the notice and the taxpayer's name in the petition, if applicable;
 3. A copy of the notice or a statement describing the Department's action, proposed action, or determination for which a hearing is sought;
 4. A statement of any alleged error committed by the Department in its action, including the jurisdiction or jurisdictions to which the alleged error relates;
 5. A statement of facts and legal arguments upon which the taxpayer relies to support the petition;
 6. The relief sought; and
 7. The petitioner's signature.
- C. The petitioner shall file the petition by:
 1. Mailing the petition to the applicable section at the Department of Revenue headquarters in Phoenix, Arizona; or
 2. Hand-delivering the petition to the applicable section at the Department of Revenue headquarters in Phoenix, Arizona. A petitioner who hand-delivers a petition shall clearly mark the envelope to indicate that it is a petition. The Department shall provide a receipt to a petitioner who hand-delivers a petition.
- D. The Department shall not charge a fee for filing a petition or any supporting documents.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-105 renumbered to R15-10-107, new Section R15-10-105 renumbered from R15-10-103 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R.

116, effective January 7, 2016 (Supp. 16-1).

R15-10-106. Incomplete Petition

- A. The Department hearing officer may dismiss a petition for a hearing that does not contain all of the information required by R15-10-105, unless the petitioner completes the petition within the time allowed to file the petition under R15-10-107, including any extension.
- B. The Department hearing officer may, on a showing of good cause by the petitioner, grant additional time to complete a timely-filed petition.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-107. Timeliness of Petition

- A. A petition regarding taxes other than individual income tax is timely filed with the Department if it is filed as prescribed by R15-10-105(A) within 45 days after the taxpayer receives the tax assessment or refund denial from the Department.
- B. A petition for an individual income tax assessment or refund denial is timely filed with the Department if it is filed as prescribed by R15-10-105(A) within 90 days after the Department mails a notice to the taxpayer.
- C. A petition or an extension request filed by mail is considered filed on the date shown by its U.S. Postal Service postmark.
- D. A taxpayer or the taxpayer's representative may request that the Hearing Office grant an extension of time to file a petition.
 1. The taxpayer or the taxpayer's representative shall submit an extension request before the expiration of the time allowed for filing the petition in subsection (A) or subsection (B). The request shall be in writing and shall show good cause for the extension. The Department may grant additional time not to exceed 60 days at the discretion of the Hearing Office or on stipulation of the parties.
 2. If the Hearing Office does not grant the request for an extension in writing, the petition is due on the date specified in subsection (A) or (B).
- E. The Hearing Office shall dismiss a petition which the Hearing Office determines is not timely filed.
- F. If the taxpayer does not file a petition protesting a deficiency assessment within the time prescribed, the taxpayer may, after paying the tax assessment in full, apply for a refund pursuant to statutory provisions.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-107 renumbered to R15-10-109, new Section R15-10-107 renumbered from R15-10-105 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-108. Expired

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-108 renumbered to R15-10-110, new Section R15-10-108 adopted effective December 23, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 1197, effective July 7, 2015 (Supp. 15-3).

R15-10-109. Expired

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-109 renumbered to R15-10-115, new

Section R15-10-109 renumbered from R15-10-107 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 1197, effective July 7, 2015 (Supp. 15-3).

R15-10-110. Withdrawal of Petition

- A. The petitioner may submit a written request to withdraw a petition at any time before the Department hearing officer issues a written decision.
- B. If the Department and the petitioner resolve the matters protested before the hearing, the parties shall submit a written agreement or stipulation to the hearing officer, and the hearing officer shall deem the petition withdrawn.
- C. The hearing officer shall issue an order that the petition is withdrawn and that the matter is closed at the hearing office.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-110 repealed, new Section R15-10-110 renumbered from R15-10-108 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-111. Repealed

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed effective December 23, 1993 (Supp. 93-4).

R15-10-112. Renumbered

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-112 renumbered to R15-10-116 effective December 23, 1993 (Supp. 93-4).

R15-10-113. Renumbered

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-113 renumbered to R15-10-119 effective December 23, 1993 (Supp. 93-4).

R15-10-114. Renumbered

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-114 renumbered to R15-10-117 effective December 23, 1993 (Supp. 93-4).

R15-10-115. Request for Hearings; Waiver

- A. The hearing officer shall schedule an oral hearing upon request of the petitioner or the Department. If neither the petitioner nor the Department requests an oral hearing, the hearing officer shall:
 1. Consider the petition submitted for decision based on the petition and any memoranda filed, or
 2. Schedule an oral hearing.
- B. The hearing officer may, for good cause shown by any party to the hearing, postpone, recess, or continue an oral hearing to a specified date, time, and place. The hearing officer shall notify all the parties regarding a rescheduled hearing.
- C. If any party to the hearing fails to appear at the oral hearing without good cause, the hearing officer may:
 1. Proceed with the hearing,
 2. Reschedule the hearing, or
 3. Issue a decision based on the petition and memoranda provided.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-115 renumbered to R15-10-120, new Section R15-10-115 renumbered from R15-10-109 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-116. Hearing Procedure

- A. The hearing officer may hold hearings:
1. In person,
 2. By telephone,
 3. By the submission of memoranda, or
 4. By a combination of these methods.
- B. For hearings by memoranda, the hearing officer shall prescribe a schedule for the submission of the memoranda.
- C. The hearing officer may:
1. Conduct the hearing in an informal manner,
 2. Accept a stipulation of facts,
 3. Allow any party in the hearing to make an opening statement,
 4. Allow each party to state its position and present evidence,
 5. Allow each party to reply to any statements or arguments, and
 6. Allow any party to make closing statements or arguments.
- D. The hearing officer may remand any matter to the applicable section of the Department at the request of either party or at the hearing officer's discretion.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-116 renumbered to R15-10-121, new Section R15-10-116 renumbered from R15-10-112 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-117. Evidence

- A. Each party to a hearing may:
1. Call and examine witnesses,
 2. Introduce exhibits,
 3. Cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination,
 4. Dispute the testimony of any witness regardless of which party first called the witness to testify, and
 5. Challenge the evidence presented.
- B. The Hearing Officer shall admit any relevant evidence, but shall consider objections to the admission of and comments on the weakness of evidence in assigning weight to the evidence. The Hearing Officer may deny admission of evidence that the Hearing Officer considers irrelevant, immaterial, or unduly repetitious.
- C. A party may substitute an exact copy of an original exhibit.
- D. The Hearing Officer may call anyone at the hearing to testify.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-117 renumbered to R15-10-118, new Section R15-10-117 renumbered from R15-10-114 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-118. Expired**Historical Note**

Adopted effective June 22, 1981 (Supp. 81-3). Former

Section R15-10-118 renumbered to R15-10-122, new Section R15-10-118 renumbered from R15-10-117 and amended effective December 23, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 1197, effective July 7, 2015 (Supp. 15-3).

R15-10-119. Stipulation of Facts

The petitioner and the Department may file a stipulation of facts stating:

1. The facts upon which they agree,
2. The facts that are in dispute, and
3. The reasons for the dispute.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Amended effective July 24, 1986 (Supp. 86-4). Former Section R15-10-119 renumbered to R15-10-130, new Section R15-10-119 renumbered from R15-10-113 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-120. Official Notice

The Department hearing officer may take official notice of the following:

1. The records that the Department maintains,
2. Tax returns filed with the Department for or on behalf of the taxpayer or any affiliated person together with related records on file with the Department, or
3. A fact that is generally known in this state or that is capable of accurate and ready determination by reference to a source whose accuracy cannot reasonably be questioned.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-120 repealed, new Section R15-10-120 adopted effective July 24, 1986 (Supp. 86-4). Former Section R15-10-120 renumbered to R15-10-131, new Section R15-10-120 renumbered from R15-10-115 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-121. Subpoena by Petitioner

- A. A petitioner requesting a subpoena shall apply, to the Hearing Officer submitting a proposed subpoena at least 10 days before the hearing.
- B. The Hearing Office shall not issue a subpoena for confidential or privileged information.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-121 repealed, new Section R15-10-121 adopted effective July 24, 1986 (Supp. 86-4). Former Section R15-10-121 renumbered to Section R15-10-132, new Section R15-10-121 renumbered from R15-10-116 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-122. Transcripts and Records

- A. The hearing officer shall record all oral hearings. Upon request of any party to the hearing, the hearing office shall provide a copy of the recording of the hearing, without charge, to the requesting party.
- B. A party to an oral hearing may:
1. Transcribe the hearing at the party's own expense; and
 2. Cite a transcript in any proceeding, if the party provides a full copy of the transcript to the opposing party and the hearing officer.

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- C. The petitioner shall not remove the records and files of the Department from the Department for use as evidence or other purposes. The Department shall, as permitted by law, provide a certified copy of Department records and files as requested by the petitioner for use in the proceedings. The Department shall provide the copy at a reasonable charge not to exceed the commercial rate for the service.

Historical Note

Renumbered from R15-10-118 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 15 A.A.R. 2140, effective January 30, 2010 (Supp. 09-4).

R15-10-123. Reserved

R15-10-124. Reserved

R15-10-125. Reserved

R15-10-126. Reserved

R15-10-127. Reserved

R15-10-128. Reserved

R15-10-129. Reserved

R15-10-130. Decisions and Orders

- A. The Hearing Officer shall issue a written decision, which sets forth the reasons for the decision, after reviewing the evidence submitted by the petitioner and the Department.
- B. A decision dismissing a petition as incomplete or not timely filed shall be based on the Hearing Officer's review of the petition, documents available, and any information officially noticed.
- C. The Hearing Office shall mail the decision of the Hearing Officer, by certified mail, to the last known address of the taxpayer. The Hearing Office shall immediately forward a copy of the decision to the applicable section in the Department of Revenue and to the Director.

Historical Note

Renumbered from R15-10-119 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-131. Review of Decision of the Hearing Officer or ALJ

- A. The decision of the Hearing Officer or ALJ is the final order of the Department of Revenue 30 days after the taxpayer receives the decision unless prior to that time:
1. The petitioner or the Department petitions the Director to review the decision, or
 2. The Director independently determines that the decision requires review.
- B. The Director may grant an extension of time for filing a petition for review on a showing of good cause, if the request for an extension is in writing and is filed with the Director before the expiration of the 30-day period prescribed in subsection (A).
- C. A petition or an extension request filed by mail is considered filed on the date shown by the U.S. Postal Service postmark.
- D. The Director may grant a review of the decision of the Hearing Officer or ALJ if one of the parties asserts that any of the following causes has materially affected the party's rights:
1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law;

2. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Material evidence which has been newly discovered;
 5. Error in admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action; or
 6. That the decision is the result of bias or prejudice.
- E. The Director may independently determine to review a decision of the Hearing Officer or ALJ if it appears that any of the causes listed in subsection (D) may have materially affected a party's rights.
- F. The petition for review of the Hearing Officer's or ALJ's decision shall be in writing, shall state the grounds upon which the petition is based, and the Director may grant leave to amend the petition at any time before it is ruled upon by the Director. At the time of filing, the petitioning party shall also serve a copy of the petition on the other party.
- G. If the Director has independently determined that the decision requires review, the Director shall send, by certified mail, notification of intent to review to the taxpayer, not more than 30 days after the taxpayer's receipt of the Hearing Officer's or ALJ's decision.
- H. On petition for review, or on the Director's independent review:
1. The Director may open the decision of the Hearing Officer or ALJ, take additional evidence, amend findings of fact and conclusions of law, or make new findings and conclusions, and issue a new decision;
 2. The Director may issue a decision that summarily affirms the decision of the Hearing Officer or ALJ; or
 3. The Director may remand any matter to the Hearing Office, the Office of Administrative Hearings, or the appropriate section or area of the Department at the request of either party or at the Director's discretion.
- I. The Director's decision shall be sent by certified mail to the taxpayer, at the taxpayer's last known address.
- J. The taxpayer may appeal a Director's decision or a decision that is final pursuant to subsection (A) to the State Board of Tax Appeals or tax court under R15-10-132.

Historical Note

Renumbered from R15-10-120 and amended effective December 23, 1993 (Supp. 93-4). Amended effective October 11, 1995 (Supp. 95-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-132. Appeal of the Final Order of the Department of Revenue

- A. Within 30 days of the date an order of the Department becomes final, a taxpayer disputing the final order of the Department of Revenue may:
1. File an appeal with the State Board of Tax Appeals, or
 2. Bring an action in tax court, unless the case involves an individual income tax dispute of less than \$5,000.
- B. If the Director is reviewing the Hearing Officer's or ALJ's decision under R15-10-131, such review by the Director shall be completed before an appeal can be taken to the State Board of Tax Appeals or an action can be brought in tax court.

Historical Note

Renumbered from R15-10-121 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

ARTICLE 2. ADMINISTRATION**R15-10-201. Closing Agreements Relating to Tax Liability**

- A. A closing agreement under A.R.S. § 42-1113 or A.R.S. § 42-2056 may relate to any taxable period.
1. The Department and a taxpayer may enter into a closing agreement for:
 - a. A taxable period that ends before the date of the agreement that:
 - i. Relates to one or more separate items affecting the liability of the taxpayer, or
 - ii. Relates to the total liability of the taxpayer.
 - b. A taxable period that ends after the date of the agreement only if the agreement relates to one or more separate items affecting the liability of the taxpayer.
 2. The Department and the taxpayer may enter into a closing agreement even if under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates.
 3. The Department and a taxpayer may enter into more than one closing agreement for a taxable period relating to the liability of the taxpayer.
- B. A closing agreement shall be in writing and shall state the conditions of the agreement.
- C. A closing agreement is not effective until it is signed by the taxpayer or an authorized representative of the taxpayer and by an authorized representative of the Department.

Historical Note

Adopted effective September 16, 1987 (Supp. 87-3). Former Section R15-10-201 renumbered to R15-5-2207 (Supp. 94-1). New Section R15-10-201 renumbered from R15-2-231 (Supp. 94-1). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-202. Expired**Historical Note**

Adopted effective April 26, 1989 (Supp. 89-2). Section R15-10-202 renumbered to R15-5-601 (Supp. 94-1). New Section R15-10-202 renumbered from R15-2-326 at 5 A.A.R. 1619, May 28, 1999 (Supp. 99-2). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 1197, effective July 7, 2015 (Supp. 15-3).

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS**R15-10-301. Definitions**

The following definitions apply for purposes of this Article:

1. “ACH” means an automated clearing house that is a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.
2. “ACH credit” means an electronic funds transfer generated by a payor, cleared through an ACH for deposit to the Department account.
3. “ACH debit” means an electronic transfer of funds from a payor’s account, as indicated on a signed authorization agreement, that is generated at a payor’s instruction on AZTaxes.gov and cleared through an ACH for deposit to the Department account.
4. “Addenda record” means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R15-10-306(B).
5. “ALTO” is the Arizona Luxury Tax Online web site, luxury.aztaxes.gov or such other web site as the Department may determine from time to time, and means the Depart-

ment’s luxury taxpayer service center web site that provides luxury taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.

6. “Authorized means of transmission” means the deposit of funds into the Department account by electronic funds transfer.
7. “AZTaxes.gov” means the Department’s taxpayer service center web site, or such other web site as the Department may determine from time to time, that provides taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.
8. “Cash Concentration or Disbursement plus” or “CCD plus” means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.
9. “Department” means the Arizona Department of Revenue.
10. “EFT Program” means the payment of taxes by electronic funds transfer as specified by this Article.
11. “Electronic Funds Transfer” or “EFT” means the electronic transfer of funds from one bank account to another via computer based systems, where the person initiating the transfer orders, instructs, or authorizes a financial institution to debit or credit an account using the methods specified in these rules.
12. “Financial institution” means a state or national bank, a trust company, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.
13. “Payment information” means the data that the Department requires of a payor making an electronic funds transfer payment.
14. “Payor” means a taxpayer or payroll service.
15. “Payroll service” means a third party, under contract with a taxpayer to provide tax payment services on behalf of the taxpayer.
16. “State Servicing Bank” means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.
17. “Tax type” means a tax that is subject to electronic funds transfer, each of which shall be considered a separate category of payment.
18. “Wire transfer” or “Fedwire” means an instantaneous electronic funds transfer initiated by a payor.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2).

R15-10-302. General Requirements

- A. For tax periods beginning on or after January 1, 1997, corporations which had an Arizona income tax liability during the prior tax year of \$20,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.
- B. For tax periods beginning on or after July 1, 2017, taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of \$5,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission.
- C. The average Arizona quarterly withholding tax liability is determined by dividing the taxpayer’s total Arizona withholding tax liability for the calendar year by 4.

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- D.** For tax periods beginning on and after July 1, 2017, any taxpayer who under A.R.S. Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability during the prior calendar year of \$20,000 or more shall remit these tax payments by an authorized means of transmission.
- E.** For tax periods after July 1, 2015, tobacco tax taxpayers are required to remit tobacco tax payments by an authorized means of transmission.
- F.** Unless otherwise waived pursuant to A.R.S. § 42-1129, for tax periods beginning on or after the following tax years, any taxpayer, other than an individual income taxpayer, that had a tax liability equal to or more than the following amounts during the prior tax year or that can reasonably anticipate tax liability in the current tax year exceeding the following amounts, shall remit tax payments to the Department by an authorized means of transmission. For periods on or after:
1. January 1, 2018, prior tax year or expected current year tax liability of \$20,000;
 2. January 1, 2019, prior tax year or expected current year tax liability of \$10,000;
 3. January 1, 2020, prior tax year or expected current year tax liability of \$5,000;
 4. January 1, 2021, prior tax year or expected current year tax liability of \$500.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective December 17, 1993 (Supp. 93-4). Amended effective October 4, 1996 (Supp. 96-4). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 23 A.A.R. 3308, effective January 1, 2018 (Supp. 17-4).

R15-10-303. Voluntary Participation

- A.** For tax periods beginning on or after January 1, 1997, a taxpayer who, during the prior tax year, had a corporate income tax liability of less than \$20,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.
- B.** For tax periods beginning on or after July 1, 2017, a taxpayer who, during the prior tax year, had an average quarterly withholding tax liability of less than \$5,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.
- C.** For tax periods beginning on and after July 1, 2017, any taxpayer who has a liquor tax liability may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.
- D.** For tax periods beginning on and after July 1, 2017, any taxpayer who, under Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability of less than \$20,000 during the prior calendar year may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.
- E.** For tax periods beginning on or after January 1, 2018, any taxpayer, other than an individual income taxpayer, that does not meet the statutory requirements under A.R.S. § 42-1129 and A.A.C. R15-10-302(F) to remit tax payments to the Department electronically, may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

- F.** A taxpayer authorized to participate in the EFT Program shall provide at least 30 days prior written notice to the Department if the taxpayer elects to cease voluntary participation in the EFT Program.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective December 17, 1993 (Supp. 93-4). Amended effective October 4, 1996 (Supp. 96-4). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 23 A.A.R. 3308, effective January 1, 2018 (Supp. 17-4).

R15-10-304. Authorization Agreement

- A.** The payor shall register for an account and complete an electronic funds transfer authorization agreement on AZTaxes.gov, ALTO or ACH Credit Form prescribed by the Department, as applicable, or such other form prescribed by the Department at least 30 days prior to initiation of the first applicable transaction. The form shall include the following information:
1. Name and address of the taxpayer;
 2. The taxpayer's tax identification number including a federal identification number, withholding tax identification number, transaction privilege tax identification number or other tax identification number, as appropriate;
 3. Name and phone number of taxpayer's EFT contact person;
 4. Name and address of any payroll service, if applicable;
 5. Name and phone number of the payroll service's EFT contact person, if applicable;
 6. For payments initiated on AZTaxes.gov or ALTO, the information must include the type of bank account, the bank account number and the bank routing transit number.
- B.** A payor shall submit a revised authorization agreement to the Department at least 30 days prior to any change in the information required in subsection (A).

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2).

R15-10-305. Methods of Electronic Funds Transfer

- A.** Payors shall use the ACH debit transfer method available through registration on AZTaxes.gov or ALTO to remit payment by electronic funds transfer unless the Department grants permission to use the ACH credit method.
- B.** The Department may authorize under a form prescribed by the Department in R15-10-304 the use of the ACH credit method for payors desiring to use this method. A payor that chooses to use the ACH credit method shall provide the payment information required in R15-10-306(B)(2).
- C.** The Department may withdraw permission to use the ACH credit method of payment if the payor shows disregard for the requirements and specifications of these rules by failing to:
1. Make timely electronic funds transfer payments,
 2. Provide timely payment information,
 3. Provide the required addenda record with the electronic funds transfer payment, or
 4. Make correct payment.
- D.** Payors who are unable to use their established method of payment may request that the Department accept deposits to the Department account via wire transfer in accordance with the following:

1. The payor shall contact the Department, and obtain verbal approval to wire transfer the tax payment to the Department account prior to initiating the transmission.
2. Approved wire transfers shall be accompanied by an addenda record, that includes the same information required for ACH credit transfers under R15-10-306(B)(2).

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2).

R15-10-306. Procedures for Payment

- A. Payors using the ACH Debit Method shall log in to their account on AZTaxes.gov or ALTO as appropriate and, unless registering for the first time, shall arrange for electronic payment of the applicable taxes no later than the time prescribed by the AZTaxes.gov or ALTO on the last business day before the due date of the payment. Payment information shall be communicated automatically to the Department through AZTaxes.gov or ALTO, as applicable, once payment arrangements have been made by payors and accepted by AZTaxes.gov or ALTO.
- B. Payors authorized to use the ACH credit method shall initiate payment transactions directly with a financial institution in a timely manner to ensure that the payment is deposited to the Department account on or before the payment due date.
 1. All ACH credit transfers shall be in the CCD-plus addenda format. Payments not in this format may be rejected.
 2. The addenda format, as specified in subsection (B)(1), shall include the following information:
 - a. Taxpayer identification number,
 - b. Tax type,
 - c. Payment amount,
 - d. Tax period,
 - e. Taxpayer verification number,
 - f. Department account number, and
 - g. American Bank Association 9-digit number of the receiving bank.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2).

R15-10-307. Timely Payment

- A. A taxpayer remitting a tax payment through an electronic funds transfer shall initiate the transfer so that the payment is deposited to the Department account on or before the payment due date.
- B. If a tax due date falls on a Saturday, Sunday, or legal holiday, the deposit by an electronic funds transfer shall be made no later than 5:00 p.m. on the next banking day.
- C. A taxpayer required to, or who voluntarily elects to, participate in the EFT Program is subject to the penalty prescribed by A.R.S. § 42-1125(D) if the payment is not deposited to the Department account on or before the payment due date.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER COSTS RELATED TO AN ADMINISTRATIVE PROCEEDING

R15-10-401. Application for Reimbursement of Fees and Other Costs Related to an Administrative Proceeding

- A. To apply for reimbursement of reasonable fees and other costs, as provided in A.R.S. § 42-2064, a taxpayer shall file a written application with the Department's problem resolution officer.
- B. An application shall include the following:
 1. Taxpayer's name, address, and identification number;
 2. Identification of the tax type and the administrative proceeding for which reimbursement is sought;
 3. An explanation of why the taxpayer alleges that the position of the Department in the administrative proceeding was not substantially justified;
 4. If multiple issues were presented in the administrative proceeding and the taxpayer did not prevail on all issues, an explanation of:
 - a. The issue or set of issues on which the taxpayer prevailed,
 - b. The issue or set of issues on which the taxpayer did not prevail, and
 - c. The issue or set of issues on which the taxpayer prevailed and why the issue or set of issues presented in the administrative proceeding is the most significant.
 5. A statement that the taxpayer did not unduly and unreasonably protract the administrative proceeding for which reimbursement is sought;
 6. A statement that the reason the taxpayer prevailed is not due to an intervening change in the applicable law; and
 7. A detailed explanation of the nature and amount of each specific item for which reimbursement is sought.
- C. An application may also include any other matters that the taxpayer wishes the Department's problem resolution officer to consider in determining whether and in what amount reimbursement should be made.
- D. The taxpayer shall sign the application and verify under penalty of perjury that the information provided in the application and any accompanying material is accurate and complete.
- E. If a paid representative of the taxpayer prepares the application, the representative shall also sign the application and verify under penalty of perjury that the information provided in the application and all accompanying material is accurate and complete.
- F. Fees and costs incurred in making application for reimbursement or regarding an appeal of a decision for reimbursement do not relate to an administrative proceeding in connection with an assessment, determination, collection, or refund of tax and are not reimbursable.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-402. Documentation of Payment of Fees and Other Costs

The taxpayer shall submit with the application documentation which shows payment of the fees and costs for which the taxpayer seeks reimbursement. The taxpayer shall submit a separate itemized statement for each firm or individual that provided services covered by the application. The itemized statement shall show the hours spent in connection with the administrative proceeding by each individual, a description of the specific services performed, and the rates used in computing each fee. Each statement shall reflect payment or the taxpayer shall attach proof of payment to the statement.

Separate, itemized statements of any other costs incurred by the taxpayer, together with proof of payment, shall also accompany an application.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1).

R15-10-403. Filing an Application

- A.** A taxpayer shall file an application for reimbursement of fees and other costs only after the conclusion of administrative proceedings, but not later than 30 days after the conclusion of administrative proceedings.
- B.** For purposes of this rule, the conclusion of administrative proceedings is determined as follows:
1. For a decision of a hearing officer or administrative law judge, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision unless, within the 30-day period, one of the following occurs:
 - a. The taxpayer appeals the decision, or any part of the decision, to the State Board of Tax Appeals;
 - b. The taxpayer or the Department petitions the Director to review the decision, or any part of the decision;
 - c. The Director independently determines that the decision, or any part of the decision, requires review.
 2. When a decision of a hearing officer or administrative law judge is subject to a review by the Director, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the Director's decision unless, within the 30-day period, the taxpayer appeals the decision, or any part of the decision to the State Board of Tax Appeals.
 3. When a taxpayer appeals a decision, or any part of a decision, to the State Board of Tax Appeals, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision of the State Board of Tax Appeals.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1).

R15-10-404. Decisions

- A.** The Department's problem resolution officer shall issue a written decision on each application for reimbursement of fees and other costs. The problem resolution officer shall issue the decision within 30 days after receipt of the application and shall set forth the reason for the decision.
- B.** The problem resolution officer's decision is issued when mailed to the taxpayer's address furnished in the application.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1).

ARTICLE 5. ELECTRONIC FILING PROGRAM

R15-10-501. Definitions

In addition to the definitions provided in A.R.S. §§ 42-1101.01, 42-1103.01, 42-1103.02, 42-1103.03, and 42-1105.02, unless the context provides otherwise, the following definitions apply to this Article and to A.R.S. Title 42, Chapter 2:

"AZTaxes.gov" means the Department's taxpayer service center web site that provides taxpayers with the ability to conduct transactions and review tax account information over the internet.

"Authorized user" means an individual, primary user or delegate user, including a return preparer or electronic return preparer as defined in A.R.S. § 42-1101.01, granted authority by the taxpayer, an owner of the taxpayer or an authorized officer

of the taxpayer to access taxpayer information available on the AZTaxes.gov web site.

"Bulk Transmitter" is an Electronic Return Transmitter that submits multiple electronic returns, statements or other documents to the Department for filing or processing at one time.

"Delegate User" means any registered customer of the AZTaxes.gov web site authorized by a taxpayer, an owner of the taxpayer or an authorized officer of the taxpayer to access the taxpayer's account information on AZTaxes.gov. A Delegate User that uses a PIN to sign and file transaction privilege or use tax returns on behalf of a taxpayer shall be presumed to be authorized by that taxpayer to take such action on behalf of the taxpayer.

"Electronic return, statement or other document" means all data entered into a return, statement, or other document that is prepared using computer software and transmitted electronically to the Department.

"Electronic return transmitter" includes a person who is part of the chain of transmission of an electronic return, statement, or other document from the taxpayer or from an electronic return preparer to the Department even though the person did not receive the transmitted return, statement, or other document directly from the taxpayer or electronic return preparer.

"Electronic signature" means the electronic method or process as defined in A.R.S. § 41-132.

"License" means one or more transaction privilege, use, or withholding tax licenses or registrations obtained from the Department by completing and submitting a mail-in Arizona Joint Tax Application or by completing the online AZTaxes.gov business registration process and, where applicable, submitting an executed AZTaxes.gov Registration Signature Card.

"PIN" means a Self-Select Personal Identification Number made up of a prescribed number of characters and used as an electronic signature to sign returns, statements or other documents submitted to the Department through AZTaxes.gov or by any other electronic means.

"Primary User" means the taxpayer, an owner of the taxpayer or any authorized officer of the taxpayer who registers to use AZTaxes.gov. A Primary User has the unlimited ability to access the taxpayer's online accounts, conduct online transactions for the taxpayer, designate Delegate Users, specify the level of access granted to a Delegate User and modify or terminate the access of any Delegate User.

"Registered customer" means any individual that has, by means of providing specific information requested by the Department through its AZTaxes.gov web site registration process, obtained a username and password entitling that taxpayer to conduct transactions and access information through the AZTaxes.gov web site.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5383, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5044, effective November 4, 2003 (Supp. 03-4). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 1852, effective June 24, 2016 (Supp. 16-2).

R15-10-502. Recordkeeping Requirements

For each electronic return of individual income or withholding tax filed with the Department, the electronic return preparer shall keep

the documents listed in A.R.S. § 42-1105(F) for four years following the later of the date on which the return was due to be filed with the Department or was presented to the taxpayer for signature.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5383, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5044, effective November 4, 2003 (Supp. 03-4). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1).

R15-10-503. Electronic Signatures for Individual Income Tax

- A.** If a taxpayer electronically signs the taxpayer's federal individual income tax return, the taxpayer may elect to use the electronic signature from the federal return to sign the taxpayer's Arizona individual income tax return. By electing to use the federal electronic signature for the Arizona electronic return, the taxpayer is declaring, under penalties of perjury, that the electronic return is, to the best of the taxpayer's knowledge and belief, true, correct, and complete.
- B.** A taxpayer makes an election under subsection (A) by doing the following:
1. If the taxpayer is preparing the taxpayer's Arizona electronic return, the taxpayer makes the election by signifying the election during the electronic filing process.
 2. If the taxpayer uses an electronic return preparer to prepare the taxpayer's Arizona electronic return, the taxpayer makes the election by:
 - a. Signifying the election during the electronic filing process, or
 - b. Authorizing, in writing on a form prescribed by the Department, the electronic return preparer to make the election on behalf of the taxpayer.
- C.** A taxpayer that does not elect to electronically sign the taxpayer's federal income tax return shall not electronically sign the taxpayer's Arizona electronic return.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5383, effective November 8, 2001 (Supp. 01-4).

R15-10-504. Electronic Signatures for Withholding Tax

- A.** A taxpayer that has obtained a withholding tax license from the Department shall do the following to become a registered customer of the AZTaxes.gov web site:
1. Provide the following information during the AZTaxes.gov web site registration process:
 - a. The legal name of the registrant and any one of the following numbers:
 - i. The registrant's federal employer identification number, and
 - ii. The registrant's social security number, if the registrant is a sole proprietor, or
 - iii. Any other identification number assigned to the registrant by the Department or the Internal Revenue Service for the purpose of electronic filing.
 - b. The registrant's e-mail address,
 - c. Agree to the Department's Terms of Service, and
 2. Submit to the Department an executed AZTaxes.gov Registration Signature Card as evidence of the following:
 - a. If submitted during web site registration, the information provided during the AZTaxes.gov registration process is true and correct,
 - b. If previously submitted, the information contained in the Arizona Joint Tax Application or submitted

during the online business registration is true and correct, and

- c. The signatory is duly authorized to act on behalf of the business, receive confidential information, and waive any rights of confidentiality.
- B.** A taxpayer that has not obtained a withholding tax license from the Department shall do the following to become a registered customer of the AZTaxes.gov web site:
1. Obtain a withholding tax license by completing either the mail-in Arizona Joint Tax Application or the online business registration,
 2. Provide the following information during the AZTaxes.gov web site registration process:
 - a. The legal name of the registrant and any one of the following numbers:
 - i. The registrant's federal employer identification number,
 - ii. The registrant's social security number, if the registrant is a sole proprietor, or
 - iii. Any other identification number assigned to the registrant by the Department or the Internal Revenue Service for the purposes of electronic filing, and
 3. Submit to the Department either the executed, mail-in Arizona Joint Tax Application or the AZTaxes.gov Registration Signature Card as evidence of the following:
 - a. If submitted during web site registration, the information provided during the AZTaxes.gov registration process is true and correct,
 - b. The information contained in the Arizona Joint Tax Application or submitted during the online business registration is true and correct, and
 - c. The signatory is duly authorized to act on behalf of the business, receive confidential information, and waive any rights of confidentiality.
- C.** A taxpayer or authorized user shall use the taxpayer's signature on the document submitted under subsection (B)(3) to electronically sign a taxpayer's electronic withholding tax returns. Use of the taxpayer's signature is the taxpayer's declaration, under penalties of perjury that the electronic return is, to the best of the taxpayer's knowledge and belief, true, correct, and complete.
- D.** To file an electronic withholding tax return under subsection (C):
1. If the taxpayer is preparing the taxpayer's electronic return, the taxpayer, shall access the AZTaxes.gov web site and electronically file the return.
 2. If the taxpayer's authorized user is preparing the taxpayer's electronic return, the taxpayer shall:
 - a. Access the AZTaxes.gov web site and electronically file the return, or
 - b. Authorize, in writing on a form prescribed by the Department, the authorized user to access the taxpayer's account on the AZTaxes.gov web site and electronically file the return on behalf of the taxpayer.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5044, effective November 4, 2003 (Supp. 03-4). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1).

R15-10-505. Electronic Signatures for Transaction Privilege and Use Tax

Department of Revenue – General Administration

- A. A taxpayer, primary user or delegate user shall do the following to become a registered customer of the AZTaxes.gov web site for transaction privilege and use tax purposes:
1. Provide his legal name and e-mail address,
 - a. Create a unique username and password which shall be used to gain access to AZTaxes.gov web site,
 - b. Select a prescribed number of security questions and submit their answers,
 - c. Create a PIN, and
 - d. Agree to the Department's Terms of Service.
 2. By registering as a customer of the AZTaxes.gov website or by continuing to use the AZTaxes.gov website, the taxpayer, primary user or delegate user declares that:
 - a. The information provided during the AZTaxes.gov registration process is accurate and complete, and
 - b. If previously submitted, the information contained in the Arizona Joint Tax Application is accurate and complete.
- B. A taxpayer that has not obtained a transaction privilege or use tax license from the Department shall obtain a license by completing either the mail-in Arizona Joint Tax Application or the online application. From and after January 9, 2016 a taxpayer, primary user or delegate user may use his PIN to electronically sign the taxpayer's online Arizona Joint Tax application.
- C. A Delegate User shall do the following to become associated with a taxpayer on the AZTaxes.gov web site:
1. Provide answers to prescribed questions about the taxpayer if the taxpayer has a license, or
 2. Complete the online or mail-in Joint Tax Application and provide answers to prescribed questions about the taxpayer.
- D. If filing a taxpayer's transaction privilege or use tax return by electronic means, an Authorized User of the AZTaxes.gov web site shall, from and after July 5, 2016, use his PIN to electronically sign a taxpayer's electronic transaction privilege, or use tax returns. By using his PIN, the Authorized User is making a declaration, under penalties of perjury that the electronic return is, to the best of his knowledge and belief, true, correct, and complete.
- E. To file an electronic transaction privilege or use tax return under subsection (D) above a taxpayer, primary or delegate user preparing the electronic return may access the AZTaxes.gov website or other website and electronically file the return after signing the return with his PIN.
- F. From and after July 5, 2016, unless otherwise required by Article 3 of this Title and Chapter, an Authorized User of the AZTaxes.gov website may pay its transaction privilege and use tax liability by electronic check.
- G. For tax periods beginning on or after the following years, any taxpayer who, under A.R.S. Title 42 Chapters 5 and 6, had total annual tax liability of at least the following amounts during the prior tax year or can reasonably anticipate that its current year tax liability will exceed the following amounts, shall, unless otherwise waived pursuant to A.R.S. § 42-5014, file the required return using an electronic filing program established by the Department. For periods on or after:
1. January 1, 2018, prior tax year or expected current year total tax liability of \$20,000;
 2. January 1, 2019, prior tax year or expected current year total tax liability of \$10,000;
 3. January 1, 2020, prior tax year or expected current year total tax liability of \$5,000;
 4. January 1, 2021, prior tax year or expected current year total tax liability of \$500.
- H. Any taxpayer who, under A.R.S. Title 42 Chapters 5 and 6, was required to file a return using an electronic filing program

pursuant to subsection (G) of this rule and that fails to do so after notice and demand by the Department shall, unless reasonable cause exists, be subject to the penalty imposed under A.R.S. § 42-1125(X) and (Y).

Historical Note

New Section made by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 1852, effective June 24, 2016 (Supp. 16-2). Amended by final rulemaking at 23 A.A.R. 3308, effective January 1, 2018 (Supp. 17-4).

R15-10-506. Transaction Privilege and Use Tax Electronic File Bulk Transmitters

- A. A transaction privilege and use tax Bulk Transmitter shall complete and submit to the Department an application to participate in the Department's bulk electronic filing program as a direct transmitter of transaction privilege or use tax returns. The application shall contain the following information:
1. The company name;
 2. The product name, software ID and specifications;
 3. The company's website address and IP address or addresses;
 4. Contact name and information; and
 5. Such other information as the Department may require to be completed from time to time in its application form.
- B. As part of the application process the Bulk Transmitter shall sign a memorandum of understanding with the Department outlining the terms under which it will be allowed to transmit electronic returns directly to the Department.
- C. After the application is reviewed by the Department, the Bulk Transmitter shall submit any software it created or will use for the transmittal process to the Department for testing and certification.
- D. Upon certification by the Department, the Department shall issue authorization codes to the Bulk Transmitter for the purpose of accessing its servers.

Historical Note

New Section made by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 1852, effective June 24, 2016 (Supp. 16-2).

ARTICLE 6. EMERGENCY EXPIRED**R15-10-601. Emergency Expired****Historical Note**

Section reserved by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3). Emergency expired, effective March 20, 2004 (Supp. 09-2). New Section reserved by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2). Emergency expired, effective October 27, 2009 (Supp. 09-4).

R15-10-602. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3). Emergency expired, effective March 20, 2004 (Supp. 09-2). New Section made by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2). Emergency expired, effective October 27, 2009 (Supp. 09-4).

R15-10-603. Emergency Expired

Historical Note

New Section made by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3). Emergency expired, effective March 20, 2004 (Supp. 09-2). New Section made by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2). Emergency expired, effective October 27, 2009 (Supp. 09-4).

R15-10-604. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3). Emergency expired, effective March 20, 2004 (Supp. 09-2). New Section made by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2). Emergency expired, effective October 27, 2009 (Supp. 09-4).

R15-10-605. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3). Emergency expired, effective March 20, 2004 (Supp. 09-2). New Section made by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2). Emergency expired, effective October 27, 2009 (Supp. 09-4).

R15-10-606. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3). Emergency expired, effective March 20, 2004 (Supp. 09-2). New Section made by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2). Emergency expired, effective October 27, 2009 (Supp. 09-4).

R15-10-607. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 9 A.A.R. 4443, effective September 22, 2003 for a period of 180 days (Supp. 03-3). Emergency expired, effective March 20, 2004 (Supp. 09-2). New Section made by emergency rulemaking at 15 A.A.R. 825, effective April 30, 2009 for a period of 180 days (Supp. 09-2). Emergency expired, effective October 27, 2009 (Supp. 09-4).

ARTICLE 7. EMERGENCY EXPIRED**R15-10-701. Reserved****R15-10-702. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 17

A.A.R. 1864, effective August 31, 2011 for 180 days (Supp. 11-3). Emergency expired February 27, 2012.

New Section made by emergency rulemaking at 21 A.A.R. 1830, effective August 19, 2015 for 180 days (Supp. 15-3). Emergency expired February 11, 2016 (Supp. 16-1). New Section made by emergency rulemaking at 21 A.A.R. 2621, effective August 29, 2016 for 180 days (Supp. 16-3). Emergency expired February 25, 2017 (Supp. 17-2).

R15-10-703. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 17 A.A.R. 1864, effective August 31, 2011 for 180 days (Supp. 11-3). Emergency expired February 27, 2012. New Section made by emergency rulemaking at 21 A.A.R. 1830, effective August 19, 2015 for 180 days (Supp. 15-3). Emergency expired February 11, 2016 (Supp. 16-1). New Section made by emergency rulemaking at 21 A.A.R. 2621, effective August 29, 2016 for 180 days (Supp. 16-3). Emergency expired February 25, 2017 (Supp. 17-2).

R15-10-704. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 17 A.A.R. 1864, effective August 31, 2011 for 180 days (Supp. 11-3). Emergency expired February 27, 2012. New Section made by emergency rulemaking at 21 A.A.R. 1830, effective August 19, 2015 for 180 days (Supp. 15-3). Emergency expired February 11, 2016 (Supp. 16-1). New Section made by emergency rulemaking at 21 A.A.R. 2621, effective August 29, 2016 for 180 days (Supp. 16-3). Emergency expired February 25, 2017 (Supp. 17-2).

R15-10-705. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 17 A.A.R. 1864, effective August 31, 2011 for 180 days (Supp. 11-3). Emergency expired February 27, 2012 (Supp. 15-3). New Section made by emergency rulemaking at 21 A.A.R. 2621, effective August 29, 2016 for 180 days (Supp. 16-3). Emergency expired February 25, 2017 (Supp. 17-2).

R15-10-706. Emergency Expired**Historical Note**

New Section made by emergency rulemaking at 17 A.A.R. 1864, effective August 31, 2011 for 180 days (Supp. 11-3). Emergency expired February 27, 2012.

New Section made by emergency rulemaking at 21 A.A.R. 1830, effective August 19, 2015 for 180 days (Supp. 15-3). Emergency expired February 11, 2016 (Supp. 16-1).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.
2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.
3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.
4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.
5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.
6. Provide such assistance to the governor and the legislature as they may require.
7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-1251. Appeal to the department; hearing

A. Except in the case of individual income taxes, a person from whom an amount is determined to be due under article 3 of this chapter may apply to the department by a petition in writing within forty-five days after the notice of a proposed assessment made pursuant to section 42-1109, subsection B or the notice required by section 42-1108, subsection B is received, or within such additional time as the department may allow, for a hearing, correction or redetermination of the action taken by the department. In the case of individual income taxes, the period is ninety days after the date the notice is mailed. The petition shall set forth the reasons why the hearing, correction or redetermination should be granted and the amount in which any tax, interest and penalties should be reduced. If only a portion of the deficiency assessment is protested, all unprotested amounts of tax, interest and penalties must be paid at the time the protest is filed. The department shall consider the petition and grant a hearing, if requested. To represent the taxpayer at the hearing or to appear on the taxpayer's behalf is deemed not to be the practice of law.

B. Except in the case of individual income taxes, at any time during which an appeal to the department under subsection A of this section is pending, a person that has conferred with a designated appeals officer of the department to clarify any fact or legal issue in dispute and to discuss the availability of additional documentation that may assist in resolving outstanding issues may bypass the hearing process before the department's hearing officer or the office of administrative hearings and either:

1. Appeal to the state board of tax appeals by filing a notice of appeal in writing pursuant to section 42-1253, subsection A.

2. Bring an action in tax court by filing a notice of appeal in writing pursuant to section 42-1254, subsection C.

C. If the department fails to schedule a meeting within forty-five days after the time a person files a written request with the department to confer with a designated appeals officer about bypassing the hearing process before the department's hearing officer or the office of administrative hearings, the person may bypass the meeting and appeal directly to the state board of tax appeals or bring an action in tax court.

D. If the taxpayer does not file a petition for hearing, correction, redetermination or appeal within the period provided by subsection A, B or C of this section, the amount determined to be due becomes final at the expiration of the period. The taxpayer is deemed to have waived and abandoned the right to question the amount determined to be due, unless the taxpayer pays the total deficiency assessment, including interest and penalties. The taxpayer may then file a claim for refund pursuant to section 42-1118 within six months after paying the deficiency assessment or within the time limits prescribed by section 42-1106, whichever period expires later.

E. All orders or decisions made on the filing of a petition for a hearing, correction or redetermination under subsection A of this section become final thirty days after notice has been received by the petitioner, unless the petitioner appeals the order or decision to the state board of tax appeals.

42-2056. Closing agreements in cases of extensive taxpayer misunderstanding or misapplication; attorney general approval; rules; definition

A. If the department determines that noncompliance with tax obligations results from extensive misunderstanding or misapplication of provisions of this title or title 43 it may enter into closing agreements with those taxpayers under the following terms and conditions:

1. Extensive misunderstanding or misapplication of the tax laws occurs if the department determines that more than sixty per cent of the persons in the affected class have failed to properly account for their taxes owing to the same misunderstanding or misapplication of the tax laws.
2. The department shall make an initial determination as to the existence of an affected class of taxpayers. After a review of the taxpayer's request, the department may determine that there has not been an extensive misunderstanding or misapplication of the tax laws by an affected class of taxpayers. At that time, the department will notify the taxpayer that the request is denied.
3. The department shall publicly declare the nature of the possible misunderstanding or misapplication and the proposed definition of the class of affected taxpayers and shall conduct a public hearing to hear testimony regarding the extent of the misunderstanding or misapplication and the definition of the affected class. Within sixty days after close of the public hearing, the department shall notify the attendees at the public hearing and publish a public notice on its website stating whether relief will be granted.
4. If, after the public hearing, the department determines that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws it shall issue a tax ruling announcing that finding and publish the ruling in a newspaper of general circulation.
5. A closing agreement under this section may abate some or all of the penalties, interest and tax that the taxpayers have failed to remit, or the agreement may provide for the prospective treatment of the matter as to the class of affected taxpayers. Notwithstanding section 42-1113, all taxpayers in the class shall be offered the opportunity to enter into a similar agreement for the same tax periods.
6. Taxpayers in the affected class who have properly accounted for their tax obligations for these tax periods shall be offered the opportunity to enter into a similar closing agreement providing for a pro rata credit or refund of their taxes previously paid, subject to section 42-1104, subsection A and section 42-1106, subsection A.
7. The closing agreement shall require the taxpayers to properly account for and pay such taxes in the future. If a taxpayer fails to comply with that requirement, the agreement is voidable by the department and the department may assess the taxpayer for the delinquent taxes. The department may issue such a proposed assessment within six months after the date that it declares the agreement void or within the period prescribed by section 42-1104, whichever is later.

B. A person who filed a written request for relief under this section but has been denied relief as the result of the department's determination that the elements of subsection A, paragraph 3 of this section have not been established may appeal that determination pursuant to the same procedure as provided in chapter 1, article 6 of this title. A person who files an appeal under this subsection, who also has another appeal pending pursuant to chapter 1, article 6 of this title on a matter solely related to the matter at issue in the department's determination under this section, may petition the relevant appellate forum to hold that appeal in abeyance pending the resolution of the person's appeal pursuant to this section, and the agency, tribunal or court must grant the petition.

C. Before entering into closing agreements pursuant to this section, the department shall secure the approval of the attorney general of the tax ruling and the agreements. The department may not enter into the agreements without such approval from the attorney general.

D. After a closing agreement has been signed pursuant to this section, and subject to the taxpayer's compliance with the requirements of subsection A, paragraph 6 of this section, it is final and conclusive except on a showing of fraud, malfeasance or misrepresentation of a material fact. The case shall not be reopened as to the matters agreed on, and the agreement shall not be modified by any officer, employee or agent of the state. The agreement or any determination, assessment, collection, payment abatement, refund or credit made pursuant to the agreement shall not be annulled, modified, set aside or disregarded in any suit, action or proceeding.

E. The department shall report in writing its activities under this section to the governor, the president of the senate and the speaker of the house of representatives on or before February 1 of each year.

F. The department may adopt rules to implement this section.

G. For the purposes of this section, "affected class" means taxpayers who are similarly situated and directly affected by the department's position in a tax matter. For transaction privilege or use tax purposes, affected class may include taxpayers in the same industry code under the North American industrial classification system code, if applicable to the tax matter or taxpayers that directly compete with each other. For the purposes of this section, affected class shall not be broadly described unless such description increases the number of taxpayers who are eligible for relief.

42-1129. Payment of tax by electronic funds transfer

A. The department may require by rule, consistent with the state treasurer's cash management policies, that any tax administered pursuant to this article, except for individual income tax or as required under section 42-3053, be paid on or before the payment date prescribed by law in monies that are immediately available to this state on the date of the transfer as provided by subsection B of this section by any taxpayer that owes:

1. \$20,000 or more for any taxable year beginning before January 1, 2019.
2. \$10,000 or more for any taxable year beginning from and after December 31, 2018 through December 31, 2019.
3. \$5,000 or more for any taxable year beginning from and after December 31, 2019 through December 31, 2020.
4. \$500 or more for any taxable year beginning from and after December 31, 2020.

B. A payment in immediately available monies shall be made by electronic funds transfer, with the state treasurer's approval, that ensures the availability of the monies to this state on the date of payment.

C. A taxpayer may apply to the director, on a form prescribed by the department, for an annual waiver from the electronic payment requirement prescribed by subsection B of this section. The application must be received by the department on or before December 31. The director may grant the waiver, which may be renewed, if any of the following applies:

1. The taxpayer has no computer.
2. The taxpayer has no internet access.
3. Any other circumstance considered to be worthy by the director exists, including the taxpayer having a sustained record of timely payments and no delinquent tax account with the department.

D. The taxpayer shall furnish evidence as prescribed by the department that an electronic payment was remitted on or before the due date.

E. A taxpayer who is required to pay by electronic funds transfer but who fails to do so may be subject to the civil penalties prescribed by section 42-1125, subsection O.

F. A failure to make a timely payment in immediately available monies as prescribed pursuant to this section is subject to the civil penalties prescribed by section 42-1125, subsection D.

42-2064. Reimbursement of fees and other costs; definitions

A. A taxpayer who is a prevailing party may be reimbursed for reasonable fees and other costs related to an administrative proceeding that is brought by or against the department in connection with an assessment, determination, collection or refund of any tax listed in section 42-1101. For the purposes of this subsection, a taxpayer is considered to be a prevailing party only if both of the following are true:

1. The department's position was not substantially justified.
2. The taxpayer prevails as to the most significant issue or set of issues.

B. Reimbursement under this section may be denied if any of the following circumstances apply:

1. During the course of the proceeding the taxpayer unduly and unreasonably protracted the final resolution of the matter.
2. The reason that the taxpayer prevailed is due to an intervening change in the applicable law.

C. The taxpayer shall present an itemization of the reasonable fees and other costs to the taxpayer problem resolution officer within thirty days after the conclusion of the administrative proceedings. The taxpayer problem resolution officer shall determine the validity of the fees and other costs within thirty days after receiving the itemization. The taxpayer problem resolution officer's decision is considered the department's final decision or order and is subject to appeal to the state board under section 42-1253.

D. The department of revenue shall pay the fees and other costs awarded as provided in this section from any monies appropriated for such purpose. If the department of revenue does not pay the fees and other costs within thirty days after demand by a person who has received an award pursuant to this section, and if no further review or appeals of the award are pending, the person may file a claim for the fees and other costs with the department of administration, which shall pay the claim within thirty days, in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1. If, at the time the department of revenue failed to pay the award, it had appropriated monies either designated or assignable for the purpose of paying such awards, the legislature shall reduce the department of revenue's operating appropriation for the following year by the amount of the award and appropriate the amount of the reduction to the department of administration, risk management division, as reimbursement for the loss.

E. Reimbursement to a taxpayer under this section shall not exceed seventy-five thousand dollars or actual monies spent, whichever is less. The reimbursable attorney or other representative fees shall not exceed three hundred fifty dollars per hour or actual monies spent, whichever is less, unless the state board of tax appeals determines that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys for the proceeding involved justifies a higher fee.

F. For each calendar year beginning from and after December 31, 2015, the income dollar amounts for maximum awards made pursuant to subsection E of this section shall be adjusted by the attorney general according to the average annual change in the metropolitan phoenix consumer price index published by the United States bureau of labor statistics. The revised dollar amounts shall be raised to the nearest whole dollar. The income dollar amounts may not be revised below the amounts prescribed in the prior calendar year.

G. The department shall adopt administrative rules to implement this section.

H. Notwithstanding any provision of title 12, chapter 3, article 5, a taxpayer who is a prevailing party may only be reimbursed pursuant to this section.

I. For the purposes of this section:

1. "Administrative proceeding" means any review proceeding or appeal pursuant to section 42-1251 that is conducted under the authority of section 42-1003 and an appeal to the state board of tax appeals pursuant to section 42-1253.
2. "Reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, but not exceeding the amounts actually spent for expert witnesses, the cost of any study, analysis, report, test or project that is found to be necessary to prepare the party's case and necessary fees for attorneys or other representatives.

42-1103.03. Suspension from electronic filing program

A. The department may suspend an electronic return preparer from participating in the electronic filing program if the department determines that the electronic return preparer has failed to comply with any of the department's electronic filing program requirements, including requirements that are set forth in rules, manuals, rulings or procedures prescribed by the department for the program.

B. Within one hundred eighty days of the mailing date of the notice of suspension from the electronic filing program, the electronic return preparer may petition the department to review the action taken pursuant to section 42-1251. The petition shall set forth the reasons why the suspension should be lifted. Within fifteen days after the request for review, the department shall determine whether the suspension should be lifted.

C. Within thirty days after the department notifies the electronic return preparer of the determination under subsection B of this section, the electronic return preparer may bring a civil action in tax court for a determination under this subsection. Within twenty days after service of process is made on the department, the tax court shall determine whether the suspension should be lifted. If the electronic return preparer requests an extension of the twenty day period and establishes reasonable grounds why an extension should be granted, the court may grant an extension of not more than forty additional days. A determination made by the tax court under this subsection is final except as provided in section 12-170, subsection C.

42-1105. Taxpayer identification, verification and records; retention

A. The federal taxpayer identification number, assigned pursuant to section 6109 of the internal revenue code, is the taxpayer identifier for purposes of the taxes administered pursuant to this article. Each person who is required to make a return, statement or other document shall include the identifier in order to secure the person's proper identification. If the return, statement or other document is made, electronically or otherwise, by another person on behalf of the taxpayer, the taxpayer shall furnish the identifier to the other person, and the person shall furnish both the taxpayer's identifier and the person's own identifier with the return, statement or document.

B. The department may prescribe by administrative rule alternative methods for signing, subscribing or verifying a return, statement or other document required or authorized to be filed with the department that have the same validity and consequence as the actual signature or written declaration of the taxpayer or other person required to sign, subscribe or verify the return, statement or other document. While the department is adopting a rule prescribing alternative methods for signing, subscribing or verifying a return, statement or other document, the director, by tax ruling, may waive the requirement of a signature for a particular type or class of return, statement or other document required to be filed with the department. For purposes of this subsection, "tax ruling" has the same meaning prescribed in section 42-2052.

C. A person who is a return preparer or an electronic return preparer shall furnish a completed copy of the return, statement or other document to the taxpayer no later than the time the return, statement or other document is presented for the taxpayer's signature.

D. Except as provided in section 42-3010, every person who is subject to the taxes administered pursuant to this article shall keep and preserve copies of filed tax returns, including any attachments to the tax return, any signature documents used for the tax return, suitable records and other books and accounts necessary to determine the tax for which the person is liable for the period prescribed in section 42-1104. The books, records and accounts shall be open for inspection at any reasonable time by the department or its authorized agent.

E. Except as provided in section 42-3010, a return preparer or electronic return preparer shall keep copies of the return, statement or other document for six years for transaction privilege and use tax returns and four years for all other returns, statements and other documents following the date on which the return, statement or other document was due to be filed or was presented to the taxpayer for signature, whichever is later.

F. Except as provided in section 42-3010, the department may require by administrative rule electronic return preparers to keep for each prepared return, statement or other document the following documents for six years for transaction privilege and use tax returns and four years for all other returns, statements and other documents following the later of either the date on which the return, statement or other document was due to be filed with the department or was presented to the taxpayer for signature:

1. The signature document or tax return form bearing the taxpayer's original signature in a manner prescribed by the department by administrative rule or tax ruling.
2. Any attachments to the return, statement or other document required to be submitted to the department if the return, statement or other document had not been electronically transmitted to the department.

G. The operator of a swap meet, flea market, fair, carnival, festival, circus or other transient selling event shall maintain a current list of vendors conducting business on the premises as sellers. The list shall include each vendor name, business name and business address. On written notice, the department may require an operator to submit a copy of the list at any time to the department.

H. For at least the period of time prescribed by section 42-1104, the department shall retain any return, statement or other document, as defined in section 42-1101.01, as a record pursuant to sections 41-151.14, 41-151.15, 41-151.16, 41-151.17 and 41-151.19. Anything submitted with the return, statement or other document as defined in section 42-1101.01 that is not required, authorized or requested by the department is not part of the record and may be destroyed, unless it is, at the department's reasonable discretion, of more than de minimis value. Copies

of original documents of which the department reasonably expects the taxpayer has retained any originals are presumed to be of de minimis value for purposes of this section. If the department determines that any document that is not required, authorized or requested by the department pursuant to this subsection is of more than de minimis value, within ten days after receipt the department shall notify the taxpayer in writing or by electronic means of its intent to destroy the document. If the taxpayer requests the return of any document included in the notice, the department shall immediately comply, although the director may require the taxpayer to pay any shipping costs to return the document. If the taxpayer does not request the return of the documents within thirty days after the date on the notice or the taxpayer consents to the destruction of the documents, whichever occurs first, the department may destroy the documents included in the notice.

42-1105.01. Signatures; return preparers and electronic return preparers; definition

Any person who is a return preparer or an electronic return preparer shall sign the prepared return, statement or other document according to the department's administrative rules or tax rulings. For the purposes of this section, "tax ruling" has the same meaning prescribed in section 42-2052.

42-1105.02. Date of filing by electronic means; definitions

A. Any return, statement or other document that is electronically filed pursuant to an electronic filing program established by the department shall be deemed filed and received by the department on the date of the electronic postmark. If the taxpayer and the electronic return preparer or the electronic return transmitter are in different time zones, it is the taxpayer's time zone, as determined by the taxpayer's address, that controls the timeliness of the electronically filed return, statement or other document. When a return, statement or other document has been electronically received on the host system of more than one electronic return preparer or electronic return transmitter during its ultimate transmission to the department, the return, statement or other document shall be deemed filed and received by the department on the date of the earliest electronic postmark.

B. Any return, statement or other document that is filed under subsection A of this section and that is not received by the department shall be deemed filed and received on the date of the electronic filing, as evidenced by the electronic postmark if the sender:

1. Establishes the date of the electronic filing.
2. Files a duplicate filing with the department within ten days after the department notifies the sender in writing of the nonreceipt of the filing.

C. If the due date of any return, statement or other document filed under subsection A of this section falls on a Saturday, Sunday or legal holiday, the filing shall be considered timely if it is performed on the next business day.

D. In this section, unless the context otherwise requires:

1. "Electronic filing program" means any program established by the department that authorizes the electronic filing of a return, statement or other document.
2. "Electronic postmark" means a record of the date and time in a particular time zone that the return, statement or other document is electronically received on the host system of the electronic return preparer or electronic return transmitter that participates in the transmission of the electronic return, statement or other document to the department.

42-1125.01. Civil penalties for return preparers, electronic filing and payment participants

- A. If a return preparer or electronic return preparer fails to furnish a completed copy of any return, statement or other document to the taxpayer when the return, statement or other document is presented for the taxpayer's signature, the return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.
- B. If a return preparer or electronic return preparer fails to sign any return, statement or other document, the return preparer or electronic return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer or electronic return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.
- C. If a return preparer or electronic return preparer fails to furnish the preparer's identifying number on any return, statement or other document, the return preparer or electronic return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer or electronic return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.
- D. If a return preparer or electronic return preparer fails to retain a copy of any return, statement or other document for six years for transaction privilege and use tax returns and four years for all other returns, statements or other documents following the later of either the date on which the return, statement or other document was due to be filed with the department or was presented to the taxpayer for signature, the return preparer or electronic return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer or electronic return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.
- E. If a return preparer or electronic return preparer fraudulently endorses or negotiates any check that is issued to a taxpayer, the return preparer or electronic return preparer shall pay a penalty of five hundred dollars.
- F. An electronic return preparer or electronic return transmitter that fails to comply with any electronic filing program requirement shall pay a penalty of fifty dollars for each failure unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer, electronic return preparer or electronic return transmitter under this subsection during any calendar year shall not exceed twenty-five thousand dollars.
- G. The penalties provided in this section are in addition to other penalties provided by law.
- H. All penalties are payable on notice and demand from the department.
- I. This section applies to all taxes administered by the department.

STATE PARKS BOARD (F20-0201)

Title 12, Chapter 8, Articles 1-3, Arizona State Parks Board



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2020

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

FROM: Council Staff

DATE: January 9, 2020

SUBJECT: STATE PARKS BOARD (F20-0201)
Title 12, Chapter 8, Articles 1-3, Arizona State Parks Board

Summary

This Five-Year Review Report (5YRR) from the Arizona State Parks Board (Board) relates to all rules in Title 12, Chapter 8, Articles 1-3, related to general provisions, board operations, and State Historic Preservation Office (SHPO) programs. The Board indicates that it did not review R12-8-207 (Board Concession Approval Policy) with the intention that this rule expires pursuant to A.R.S. § 41-1056(J). The Board indicates that the underlying purpose of R12-8-207 is to notify potential vendors of partnership opportunities and the means to do so. However, the Board indicates that the rule is not consistent with current practice. Specifically, the Board indicates that it simply directs interested parties to the resources and procurement guidelines a potential partner needs to partner with the Board and such procurement laws would supersede any Board Concession Approval Policy. As such, R12-8-207 is redundant.

This report was originally due by June 2019. However, the Board received a 120-day extension pursuant to R1-6-303(A) and the report was submitted by the end of October 2019 and is now before the Council.

In the last 5YRR for these rules, approved by the Council in June 2014, the Board did not propose to take any actions on the rules in Articles 1, 2, or 3.

Proposed Action

The Board indicates the findings discussed in this report were presented at the September 2019 Board meeting; however, since that was the first time the Board was able to review the changes collectively, they could not vote on an action at that time.

The Board indicates that staff is in the process of adding rule changes to the board agenda and once a quorum is reached, the Board can request a vote on an action to move forward on the rule development process. If the Board approves the action to engage in rule development, Board staff will request a rule moratorium exception from the Governor's Office and the Board will pursue an expedited rulemaking pursuant to A.R.S. § 41-1027.

The Board is proposing the following timeline to address the rules discussed in this report and summarized below:

- Approximately March 2020 - Board vote to pursue rulemaking.
- March to April 2020 – Rule Exemption Request Process
- May 2020 – Stakeholder Process on Rule Development
- June 2020 – Incorporate Stakeholder Comments into Rule Language
- July 2020 – Finalize Rule Language and Submit Rule Package to GRRC

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board oversees the management of all Arizona State Parks. Since the last 5-year review report, there have been no changes to the economic impact of the rule.

The stakeholders include: the State Parks Board, State Parks Board Staff, State Park visitors, and the general public.

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

The Board has reviewed the current rules and determined there is minimal cost that is outweighed by the Board's contribution to tourism and safety of all park guests. The Board believes that the rules allow for the protection of the resources from overuse and eliminate potential costly damages, fires, or cleanup that would be a burden to Arizona taxpayers.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it has not received any written criticism of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

The Board indicates its rules are generally clear, concise, understandable. However, the Board indicates that the following rules could be made more clear, concise, and understandable:

- **R12-8-101 (Definitions):** Since the last update of this rule, the Board has developed cabins and does not call sites cabana in operations. The Board proposes to (1) eliminate “Cabana Site” as antiquated terminology, and camping unit definition can encompass a camping unit with a shelter and electricity available; and (2) modify definition of “camping unit” from “a defined space within an area designed for overnight use in a state park” to “a defined space or structure within an area designed for overnight use in a state park” to clearly encompass the cabins.
- **Exhibit A: Fee Schedule:** The Board indicates the fee schedule may need to be made more accessible for the public. The Board indicates the current schedule does not define the basis for the tiers of cabins and campsites, and does not clearly provide the public guidance regarding the costs that may be assessed for overnight and oversized parking. The Board indicates staff will continue to review the organization and display of the fee schedule to ensure if any changes are necessary within the formal rules to update the guest or potential guests of expectations.
- **R12-8-301 (Definitions); R12-8-302 (Criteria for Evaluation); R12-8-303 (Processes of Registration):** The Board indicates these rules do not clearly delineate the National Register evaluation process. The Board is reviewing to see if clarifying the definitions will improve an applicant to the federal register’s understanding of the process.
- **R12-8-304 (Factors for Determining Register Eligibility):** In addition to discussing eligibility, this rule addresses decertification of historic properties. The Board indicates it is evaluating if factors for “Determining Certification Eligibility” should be changed to “Certification of Historic Property Tax Classification” to address the breadth of activities. Since tax verification is by individual property, the Board is examining if (A)(1) should be deleted for clarity.

The Board indicates the rules are generally consistent with other rules and statutes. However, the Board indicates that in R12-8-119 (Weapons), the reference to A.R.S. § 13-3102(F) is outdated and must be updated to be consistent with statute.

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

The Board indicates that the rules are generally enforced as written. However, the Board indicates that R12-8-303 (Process for Registration) references an outdated step stating the

Recommendation of Eligibility Form must be completed by the SHPO officer after receiving the History Property Inventory form, but the form is not in use. The Board indicates that, currently, staff may choose to complete an internal form to facilitate review after receipt of the application.

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

With regards to the rules in Article 1, the Board indicates that they found no evidence that state recreational laws were more stringent than corresponding federal laws. The Board reviewed 7 U.S.C.1011(F), 16 U.S.C. 4601-6d, 551, 620(f), 1133(c) to d(1), 1246 (I), and Code of Federal Regulations, Title 36, Chapter II, Part 261.

The Board indicates that there are no corresponding federal laws related to Article 2.

The Board indicates the rules in Article 3 are consistent with the National Historic Preservation Act (6 U.S.C. 470) and 36 CFR Part 6(i) (j).

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable.

9. **Conclusion**

As outlined above, the Board has identified the following rules as in need of modification:

- Article 1 - General Provisions: R12-8-101: Definitions and Exhibit A: Fee Schedule for clarity for the public paying fees, and R12-8-119 to update outdated statutory reference.
- Article 3 - SHPO Programs, the Board identified that delineating terminology and a sub-process involving a form in 12-8-301, 12-8-302, 12-8-303, and 12-8-304 would improve clarity for potential state or federal historic register applicants.

The Board has also not reviewed R12-8-207 with the intention that it expires as it does not mirror current practices that conform with procurement law.

The Board indicates a timeline for rulemaking activity and proposes to submit a rulemaking package to GRRC by July 2020. Council Staff recommends approval of this report.



Doug Ducey
Governor

ARIZONA STATE PARKS & TRAILS

Bob Broscheid
Executive Director



Oct 28, 2019

VIA EMAIL: grrc@azdoa.gov

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

**RE: State Parks Board, Title 12, Chapter 8, Article 1-3,
Five Year Review Report**

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of State Parks Board (statutory name for Arizona State Parks & Trails) for Title 12, Chapter 8, Articles 1-3 which is due on October 28, 2019 based on the extension granted under A.R.S. § 41-1056(I).

State Parks Board did not review the following rules with the intention that those rules expire under A.R.S. § 41-1056(J): R12-8-207- Board Concession Approval Policy. This is contingent upon review and approval by the appointed State Parks Board in mid-November; statutes designates rulemaking authority with the Board. The multi-step detailed rule is not consistent with current practice. The rule's underlying purpose is to notify potential vendors of partnership opportunities and the means to do so. We value partnerships with the private sector and will continue to highlight opportunities and direct interested parties to the resources and procurement guidelines they need to partner with us.

State Parks Board hereby certifies compliance with A.R.S. § 41-1091. State Parks Board has identified no substantive policies published in the Arizona Administrative Register. We will continue to review our operations, and publish substantive policies as required under the law.

For questions about this report, please contact Tim Franquist at (602) 542-2251 or tfranquist@azstateparks.gov.

Sincerely,


Robert Broscheid
Director, Arizona State Parks & Trails



Doug Ducey
Governor

ARIZONA STATE PARKS & TRAILS

Bob Broscheid
Executive Director



November 21, 2019

VIA EMAIL: grrc@azdoa.gov

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

**RE: State Parks Board, Title 12, Chapter 8, Article 1-3,
Five Year Review Report**

Dear Ms. Sornsin:

On October 28, 2019, the State Parks Board (Arizona State Parks & Trails) submitted our Five Year Review Report for Title 12, Chapter 8, Articles 1-3 with a note that we did not review R12-8-207- Board Concession Approval Policy with the intention that the rule expire under A.R.S. § 41-1056(J) contingent upon review by the appointed State Parks Board in mid-November.

Statute reserves rulemaking authority with the appointed State Parks Board. The appointed State Parks Board approved not reviewing R12-8-207 with the intent that the rule expire at the November 14, 2019 board meeting.

If you have any further questions, please contact Tim Franquist at (602) 542-2251 or tfranquist@azstateparks.gov.

Sincerely,


Robert Broscheid
Director, Arizona State Parks & Trails

State Parks Board
5 YEAR REVIEW REPORT
Title 12, Chapter 8,
State Parks Board (SPB)
October 28, 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 41-511.04 and A.R.S. § 41-511.05

Specific Statutory Authority: A.R.S. § 41-511.01(B): R12-8-201 to R12-8-204
A.R.S. § 41-511.04(A)(9, 11): R12-8-301 to R12-8-307
A.R.S. § 41-511.05(8): R12-8-108 to R12-8-110,
R12-7-125, Exhibit A
A.R.S. § 41-511.05(9)(11): R12-8-101 to R12-8-107,
R12-8-111 to R12-8-124, R12-8- 126.
A.R.S. § 42-12101: R12-8-304 to R12-8-307
A.R.S. § 42-12105(B)(4)

2. The objective of each rule:

Article 1	General Provisions: Article 1 sets standards of behavior for persons in the park, limitations on use that the SPB may institute for protection and peace in the parks pursuant to A.R.S. § 41-511.05(9), as well as rules related to fees and charges pursuant to A.R.S. § 41-511.05(8). Article 1 was last modified in 2007, with the exception of Exhibit A modified pursuant to A.R.S. § 41-1005 in 2018.
R12-8-101	Definitions. To define terms and phrases used in 12 A.A.C. 8, Article 1 allowing for consistent interpretation of Article 1. This rule defines “state park” as the lands, waters, monuments, historical sites, recreation areas, or other areas” under authority of the State Parks Board and “persons” as individuals, corporations, firms, partnerships, or associations. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-102	Permission to Enter or Remain in a State Park. To establish conditions for a person to enter, use or remain in a state park and provide authority for removing and delaying the return of a person violating statute or regulation. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-103	Vandalism. To authorize the removal of a person for the defacement, injury, destruction, removal or unauthorized use of any public facilities/property, wildlife, plant, animal, and objects (archaeological/geological/historical). These actions are unlawful in a state park. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-104	Hours of Use; Closed. To set hours of use and the process for the Director to modify operational hours and/or temporarily close or limit the use of a state park. Specific Authority: A.R.S. § 41-511.05(9)
	General Provisions (Continued)

R12-8-106	Limited Waivers on Christmas. To notify users of limited access to staff and facilities at a park on Christmas Day. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-107	Litter & Waste. To delineate the standards for the disposal of trash, garbage, or human or animal waste within a state park to protect public resources. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-108	Payment of Fees: To set rules for the collection of fees and charges for the state park system. Specific Authority: A.R.S. § 41-511.05(8)
R12-8-109	Fees & Permits. To set fee structure for the use of agency resources and facilities and notify public. Specific Authority: A.R.S. § 41-511.05(8)
R12-8-110	Fee Waivers. To establish and notify the public of Director’s authority to waive entrance fees for certain groups and volunteers and to modify any fee or charge for a discount/promotional rate. Specific Authority: A.R.S. § 41-511.05(8)
R12-8-111	Camping. To set standards for overnight stays at a designated camping unit (excludes Board-approved concessionaire areas) in a park to protect public resources. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-112	Campfires. To set requirements and notify the public of regulations for outdoor fires to protect the life, health, and safety of users and protect park resources. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-113	Vehicles, Speed Limits, and Parking. To set and notify the public of standards for the use and parking of motor vehicles at a state park. The rule establishes that driving a motor vehicle is restricted to a maintained roadway, parking area, or other areas designated by signs. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-114	Watercraft, Launching, and Mooring. To set and notify the public of the authority of the Director to prohibit mooring or launching from a shore to protect access to the shoreline for recreation and safety reasons. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-115	Pets. To set standards of leashed pets, delineate certain exceptions, and prohibit pets in buildings and areas designated by the Director (excludes service animals) for safety and protection of park resources. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-116	Glass Containers. To prohibit glass or ceramic containers in public beach or swim area for the safety of staff and the public. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-119	Weapons. To establish and notify the public of standards for the carrying, transportation, storage of a prohibited weapon in a state park. R12-8-101 defines “prohibited weapon” as a “firearm as defined by A.R.S. § 13-3101, including a BB or pellet gun, bow, or slingshot. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-120	Fireworks & Explosives. To establish fireworks and explosives can only be discharged in a state park with a special-use permit to protect the public and park resources. Specific Authority: A.R.S. § 41-511.05(9)
R12-8-122	Commercial Use of a State Park. To limit unauthorized commercial activities, soliciting, and panhandling. Specific Authority: A.R.S. § 41-511.05(9)
cle 1	General Provisions (Continued)
R12-8-124	Disorderly Conduct. To set standards for disturbing the peace at a state park to allow for the safety and peace of the public and staff. Specific Authority: A.R.S. § 41-511.05(9)

R12-8-125	Special Use Permits. To set standards and process for authorizing special use activities in the park.
R12-8-126	Violation. To specify penalty of a Class 2 misdemeanor for non-compliance with this chapter or state law under A.R.S. § 41-411.13. Specific Authority: A.R.S. § 41-511.05(9)
Exhibit A	Fees. To set and notify the public of the fee range for park system. Fee schedule published in the Arizona Administrative Register in May 2018. Specific Authority: A.R.S. § 41-511.05(8)

Article 2	Board Operations: Article 2 authorizes SPB to adopt rules for the conduct of meetings as authorized specifically in A.R.S. § 41-511.01(B). Article 2 was last modified in 2001.
R12-8-201	Meetings. To set requirements for the frequency, public notice, and preparation for board meetings.
R12-8-202	Organization of the Board. To set procedures for the selection of officers and define the duties of officers.
R12-8-203	Committees. To establish a special committee may be appointed by the chair as necessary, but there are no set committees.
R12-8-204	Procedures at Meetings. To establish voting and general meeting procedures for the Board.

Article 3	State Historic Preservation Office (SHPO) Programs: Article 3 rules are the program rules called for in statute for the SHPO to administer the State and National Register of Historic Places under A.R.S. § 41-511.04(9)(11) and the administrative tasks assigned to SHPO in Arizona’s State Historic Tax Program pursuant to A.R.S. § 41-511.04(9)(11), A.R.S. § 42-12101, A.R.S. § 42-12105. With the exception of R12-8-305 modified in 2007, the bulk of Article 3 was last modified in 2001.
R12-8-301	Definitions. To define the terms used in the SHPO Programs rules. Specific Authority: A.R.S. § 41-511.04(9)(11)
R12-8-302	Criteria for Evaluation. To establish criteria for evaluating a project as a listed property on the Arizona Register of Historic Places. Specific Authority: A.R.S. § 41-511.04(9)(11)
R12-8-303	Process of Registration. To establish the processes by which a property is registered as a Historic Property on the Arizona and/or National Register. Specific Authority: A.R.S. § 41-511.04(9)(11)
R12-8-304	Factors for Determining Certification Eligibility. To establish the factors for determining eligibility for the National Register of Historic Places and certify historic properties for tax purposes under A.R.S. § 42-12101. Specific Authority: A.R.S. § 41-511.04(9)(11), A.R.S. § 42-12101.
Article 3	SHPO Programs (Continued)
R12-8-305	Verification of Eligibility for Property Tax Reclassification. To establish process for reclassifying a property as Commercial or Non-Commercial Historic Property and verification of the eligibility

	form. Specific Authority: A.R.S. § 41-511.04(11), A.R.S. § 42-12101, A.R.S. § 42-12105
R12-8-306	Minimum Maintenance Restoration/Standards. To establish standards for the minimum maintenance standards for properties to maintain eligibility as mandated in statute. Specific Authority: A.R.S. § 41-511.04(11), A.R.S. § 42-12101, A.R.S. § 42-12105
R12-8-307	Documentation Requirements, Reports, and Inspection. To establish a process for reporting requirements of an owner of a certified Historic Property and to inform owners of the statutory authority the SHPO has to require reports from property owners. Specific Authority: A.R.S. § 41-511.04(11), A.R.S. § 42-12101, A.R.S. § 42-12105

3. Are the rules effective in achieving their objectives?

Yes, the rules are effective in achieving their objectives.

4. Are the rules consistent with other rules and statutes?

Yes, the majority of rules are consistent with other rules and statutes. For the identified rule below, SPB staff is reviewing with the appointed Board and our policy advisor to discuss any possible modifications in the future. The appointed board has the statutory authority to make rules. This is described in more detail under Question 14.

Article 1: General Provisions	R12-8-119 - Weapons: We found the reference to A.R.S. § 13-3102(F) to be outdated. Staff and the appointed Board are now reviewing this rule's consistency with statute.
Article 2: Board Operations	NA
Article 3: SHPO Programs	NA

Agency analyzed statutes outside of the agency statutes that overlap with the rules, but did not find inconsistencies. For Article 1, the reviewed statutes included: Arizona State Native Plants Law (Title 3, Chapter 7), Arizona Antiquities Act, Criminal Code (A.R.S., Title 13). For Article 2, the reviewed statutes included: Administrative Procedure Act (A.R.S., Title 41, Chapter 6), Open Meeting Law (Title 38, Chapter 3, Article 3.1).

5. Are the rules enforced as written?

Yes, the rules are enforced as written. For the identified rule, SPB staff is reviewing with the appointed Board and our policy advisor to discuss any possible modifications in the future. The appointed Board has the statutory authority to make rules. This is described in more detail under Question 14.

Article 1: General Provisions	Yes, Article 1 is enforced as written.
Article 2: Board Operations	Yes, Article 2 is enforced as written.
Article 3: SHPO Programs	Yes, Article 3 is generally enforced as written. R12-8-303 - Process for Registration. This rule references an outdated step stating the Recommendation of Eligibility Form must be completed by the SHPO officer after receiving the Historic Property Inventory form, but the form is not in use. Currently, staff may choose to complete an internal form to facilitate review after receipt of the application.

6. Are the rules clear, concise, and understandable?

With the exception of the areas below, the rules are clear, concise, and understandable. For the rules identified below, SPB staff is reviewing with the appointed Board and our policy advisor to discuss any possible modifications in the future. The appointed Board has the statutory authority to make rules. This is described in more detail under Question 14.

Article 1:	<p>R12-8-101 - Definitions. Since the last update of this rule in 2007, ASPT has developed cabins and does not call sites cabana in operations.</p> <ul style="list-style-type: none"> • Eliminate “Cabana Site” is antiquated terminology, and camping unit definition can encompass a camping unit with a shelter and electricity available. • Modify definition of “camping unit” from “a defined space within an area designed for overnight use in a state park” to “a defined space or structure within an area designed for overnight use in a state park” to clearly encompass the cabins. <p>Exhibit A: Fee Schedule. The fee schedule may need to be made more accessible for the public. The current schedule does not define the basis for the tiers of cabins and campsites, and does not clearly provide the public guidance regarding the costs that may be assessed for overnight and over-sized parking. Staff will continue to review the organization and display of the fee schedule to ensure if any changes are necessary within the formal rules to update the guest or potential guests of expectations.</p>
Article 2: Board Operations	NA
Article 3: SHPO Programs	<p>R12-8-301. Definitions. R12-8-302. Criteria for Evaluation. R12-8-303. Processes of Registration.</p> <p>The rules do not clearly delineate the National Register evaluation process. We are reviewing to see if clarifying the definitions will improve an applicant to the federal register’s understanding of the process.</p> <p>R12-8-304. Factors for Determining Register Eligibility. In addition to discussing eligibility, this rule addresses decertification of historic properties. We are evaluating if</p>

	factors for “Determining Certification Eligibility” should be changed to “Certification of Historic Property Tax Classification” to address the breadth of activities. Since tax verification is by individual property, we are examining if (A)(1) should be deleted for clarity.
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7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No x__

ASPT is not aware of any written criticism of the rule.

8. Economic, small business, and consumer impact comparison:

Article 1 General Provisions	<p>The last ERIS from 2007 indicated there was no significant impact. There have been no changes to the rules other than the fee schedule since 2007, and there are no changes to impact at this time. The State Parks Board rules focus on outlining the requirements and expectations for park users for the safety and peace of all guests, and there is a minimal cost that is outweighed by the contributions the State Parks Board mission makes to its mandate and tourism especially in rural communities.</p> <p>In addition, the park system contributes to the state Parks enhance state’s economy, tourism and business. As discussed by the Arizona Office of Tourism and previous Parks studies, the parks and other programs administered by the agency provide a very important economic impact on rural economies. According to the Arizona Office of Tourism, tourism spending results in \$1.0 billion in state taxes and \$1.1 billion in local taxes. Tourists directly spend \$24.0 billion annually. (Source: AZ Office of Tourism, 2018 Annual Report of Economic Impacts).</p>
Article 2 Board Operations	See above.
Article 3 SHPO Programs	<p>There are no changes in the economic impact of these rules on small businesses and/or consumers since the previous rule revisions. The State Parks Board reported that the voluntary program for historic property designation and certification place no economic impact on the property owners, public or small business in the 2007 ERIS document.</p> <p>SHPO rules delineate the administrative processes for federal and state law related to historic property designation and certification of properties for historic tax purposes. The rules delineating expectations and timeline processes do not have an impact, and staff work to ensure that they are meeting statutory directives in a cost effective and timely way. The SHPO does not charge the public, and the costs are covered by federal monies and the State Parks Board. As discussed above, historical preservation contributes to tourism and economic development in the State of Arizona. These rules provide an indirect</p>

	contribution to such endeavors.
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9. Has the agency received any business competitiveness analyses of the rules?

No, SPB has not received any business competitive analysis of the rules. The agency uses private concessionaires via a competitive Request for Proposals process to generate revenue to run the parks, and collaborates with private industry.

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

State Parks Board proposed no course of action in the previous five-year review report.

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

<p>Article 1 General Provisions</p>	<p>As analyzed below, the rules benefit the public by ensuring the safety and protection of the resources and providing recreational, educational, and cultural areas for the enjoyment and education of Arizona residents. The visitor fees generate funds that are used to run the parks, and the visitors are provided rules to ensure peace in the park and protection of the resources. If the rules were not in place, there is an increased risk of costly occurrences that would impact the future enjoyment of the visitors and the pocketbooks of all Arizonans. The rules allow for the protection of the resources from overuse and eliminate potential costly damages, fires, or cleanup that would be a burden to Arizona taxpayers.</p>
<p>Article 2 Board Operations</p>	<p>The agency concurs with previous submissions that the cost of the appointed Board is minimal. This cost is outweighed by the benefits of a public body appointed by the governor to evaluate public input and provide guidance on agency decisions as to the best means of fulfilling the agency’s mission.</p>
<p>Article 3 SHPO Programs</p>	<p>Article 3 benefits the public by providing a transparent process and deadlines for administrative processes required of the SHPO by state and federal law for the Arizona Register of Historic Places, the National Register of Historic Places, and the State Historic Property Tax Program. Participation in these programs is voluntary, and have the choice to adopt the participation requirements.</p> <p>These requirements provide a net benefit to the participants and taxpayers. The rules support law enacted by legislators to preserve cultural resources in the state by setting up efficient transparent process and criteria at no charge for the timely and just voluntary certification of historic properties for recognition and/or tax preferences. In doing so, they make an indirect contribution to the benefits of historic rehabilitation: improving blight, increasing tourism, and generating economic development.</p> <p>Voluntary applicants may view the process of waiting for the Historic Sites Review</p>

	Committee to be a burden on their project timeline and costs. Current rule or statute does not dictate the frequency of the Historic Site Review Committee meetings or place a term limits on members. Beyond contributing to a just and public review of nominations, the Historic Site Review Committee is mandated in the federal law for the National Register of Historic Places.
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12. Are the rules more stringent than corresponding federal laws?

Article 1 General Provisions	No. Staff reviewed federal statute of the National Park Service to assess if the state rules had corresponding federal laws and if state statute was more stringent than the federal laws. Staff did not find evidence of corresponding laws, but looking at those that were similar we found no evidence that state recreational laws were more stringent. We reviewed: 7 U.S.C.1011(F), 16 U.S.C. 4601-6d, 551, 620(f), 1133(c) to d(1), 1246 (I) , Code of Federal Regulations, Title 36, Chapter II, Part 261. Please note that in certain cases federal standards may be applicable to a certain state park since we have long-term lease agreements or partnerships that would differ from our general rules. When this is the case, the relevant standards are posted.
Article 2 Board Operations	No. There are no corresponding federal laws related to Article 2.
Article 3 SHPO Programs	No. The rules are consistent with the National Historic Preservation Act (6 U.S.C. 470) and 36 CFR Part 6(i) (j).

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The agency does not have rules adopted after July 29, 2010 subject to A.R.S. 41-1037.

14. Proposed course of action

The authorization for rulemaking rests with the Arizona State Parks Board and there is also a process for the legislature to approve, disapprove, or modify the rules.¹ State Parks Board was presented with the findings discussed in this report at the September 2019 board meeting; however, since that was the first time the board was able to review the changes collectively, they could no vote on an action at that time.

ASPT staff is in the process of adding rule changes to the board agenda and once a quorum is reached, ASPT can request a vote on an action to move forward on the rule development process. If the Board approves the action to engage in rule development, ASPT staff will request a rule moratorium exception from the Governor’s Office and ASPT will pursue an expedited rule making pursuant to Arizona Revised Statute 41-

¹ The authority for rulemaking rests with the appointed Board. ASPT is exempt from rulemaking as relates to fees and charges pursuant to A.R.S. § 41-511.05.

1027.

ASPT is proposing the following time line to address the rules discussed in this report and summarized below:

- Approximately March 2020 - Board vote to pursue rule making.
- March to April 2020 – Rule Exemption Request Process
- May 2020 – Stakeholder Process on Rule Development
- June 2020 – Incorporate Stakeholder Comments into Rule Language
- July 2020 – Finalize Rule Language and Submit Rule Package to GRRC

This report identified the following rules as in need of possible modification:

- For Article 1- General Provisions: R12-8-10: Definitions and Exhibit A: Fee Schedule for clarity for the public paying fees, and R12-8-119 to update outdated statutory reference.
- For Article 3- SHPO Programs, we identified that delineating terminology and a sub-process involving a form in 12-8-301, 12-8-302, 12-8-303, and 12-8-304 would improve clarity for potential state or federal historic register applicants.

Expiring Rules

As discussed in our cover letter, the SPB is not reviewing R12-8-207 with the intention that it sunset as state procurement statute and rules supersede ASPT outdated rule language.

Substantive Policy

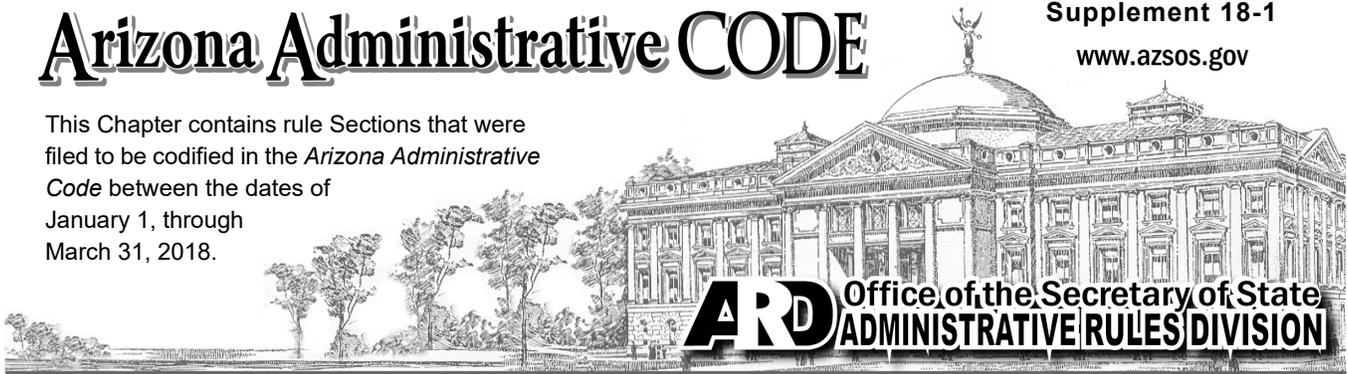
In addition, State Parks Board staff did not find evidence of any substantive policy statements as defined by A.R.S. § 41-1091 filed in the Arizona Administrative Register. Staff are reviewing division practices to identify the need for any substantive policy statements for the agency to be identified, publicly reviewed, published in the A.A.R., and retained on our website. Notices and substantive policy statements are currently being posted to be in compliance with state requirements.

Arizona Administrative CODE

Supplement 18-1

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, through March 31, 2018.



TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

[Exhibit A.](#) [May 1, 2018, Regular Fee Schedule](#) 8

Questions about these rules? Contact:

Agency: Arizona State Parks
Name: James Keegan
Address: 23751 N. 23rd Ave., #190
Phoenix, AZ 85085
Telephone: (602) 542-6920
Fax: (602) 542-4188
E-mail: jkeegan@azstateparks.gov

The release of this Chapter in supplement 18-1 replaces supplement 14-4, 1-13 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

Authority: A.R.S. § 41-511 et seq.

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).

Editor's Note: Sections in this Chapter were adopted and amended under an exemption from the provisions of the Arizona Administrative Procedure Act, pursuant to A.R.S. § 41-1005(A)(21). Exemption from this Act means that this Section was not reviewed or approved by the Governor's Regulatory Review Council; notice of this rule was not submitted to the Office of the Secretary of State for publication in the Arizona Administrative Register; and no public comment period or public hearings were required to be held on this rule. Because this Chapter contains rules which were adopted under a rulemaking exemption, the Chapter is printed on blue paper.

ARTICLE 1. GENERAL PROVISIONS

Table listing sections R12-8-101 through R12-8-125 with corresponding page numbers (e.g., Definitions 2, Permission to Enter or Remain in a State Park 2, etc.)

Table listing sections R12-8-126 through R12-8-127 with corresponding page numbers (e.g., Violation; Classification 7, Exhibit A. May 1, 2018, Regular Fee Schedule 8)

ARTICLE 2. OPERATION OF THE BOARD

Table listing sections R12-8-201 through R12-8-207 with corresponding page numbers (e.g., Meetings 10, Organization of the Board 10, etc.)

ARTICLE 3. STATE HISTORIC PRESERVATION OFFICE PROGRAMS

Table listing sections R12-8-301 through R12-8-307 with corresponding page numbers (e.g., Definitions 11, Criteria for Evaluation 11, etc.)

Arizona State Parks Board

ARTICLE 1. GENERAL PROVISIONS**R12-8-101. Definitions**

In this Chapter:

“Board” means the Arizona State Parks Board.

“Cabana site” means a camping unit with a shelter and electricity available.

“Camp or camping” means overnight use of a camping unit.

“Camping unit” means a defined space within an area designated for overnight use in a state park.

“Commercial activity” means soliciting funds, offering to sell a good or service, advertising, receiving money or another thing of value in exchange for a good, service, or activity, or conducting a business or a portion of a business, whether for profit or on behalf of a non-profit entity, on property managed by the Board. Commercial activity does not include distributing written material that describes how to make a donation at a location that is not on property managed by the Board.

“Concession” means a contract issued by the Board for the use of land managed by the Board to provide goods, services, or facilities to the public.

“Day-use area” means a space within a state park that is closed to camping but open to the public during established hours.

“Director” means the Executive Director of the Board or a representative of the Executive Director.

“Disorderly conduct” has the same meaning as prescribed in A.R.S. § 13-2904.

“Fee area” means a space in a state park for which a fee is charged to use, occupy, or enter.

“Hook-up site” means a camping unit with a connection for water, sewer, or electricity.

“Interpretive program” means a scheduled program conducted by an employee or volunteer of the Board at a state park, to inform, educate, or interpret resources for the public.

“Park Officer” means an employee of the Board who is appointed under A.R.S. § 41-511.09 as a park ranger law enforcement officer with the authority and power of a peace officer.

“Park Ranger” means an employee of the Board responsible for protecting and preserving the property at a state park and providing information services to park visitors.

“Person” means an individual, corporation, firm, partnership, club, or association.

“Service animal” has the same meaning as prescribed in A.R.S. § 11-1024.

“Special use” means the following categories of use of property managed by the Board:

Private special event: A non-public use that requires exclusion of the general public;

Public special event: A commercial activity that is not conducted under a concession or commercial rental or retail permit;

Festival special event: An exhibition, performance, or competition, whether for profit or non-profit, that is open to the public and for which a special entrance fee is charged; and

Commercial photography use: Taking photographs for any medium or making a motion picture or video.

“State-park annual pass” means a document authorizing the holder to enter, remain in, and use state parks multiple times during one year, subject to some restrictions.

“State Park System” or “state park” means the lands, waters, monuments, historical sites, state recreation areas, and any other areas managed by the Board.

“Wildlife” has the same meaning as prescribed in A.R.S. § 17-101.

Historical Note

Former Rule 1; Former Section R12-8-01 repealed, new Section R12-8-01 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-02 renumbered and amended as Section R12-8-101 effective November 1, 1981 (Supp. 81-5). Amended effective March 7, 1991 (Supp. 91-1). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-102. Permission to Enter or Remain in a State Park

- A.** A person who enters, remains in, or uses a state park shall comply with state law, including this Chapter.
- B.** A person who violates state law, including this Chapter, while in a state park shall leave the state park upon order of a Park Ranger or Park Officer.
- C.** A person who leaves a state park under subsection (B) shall not reenter the state park for at least 72 hours.

Historical Note

Former Rule 2; Former Section R12-8-02 repealed, new Section R12-8-02 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-01 renumbered and amended as Section R12-8-102 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-103. Vandalism

Within a state park, a person shall not deface, injure, destroy, remove, or use, without authority, any:

1. Public facility or property;
2. Wildlife, plant, or animal; or
3. Archaeological, geological, or historical object.

Historical Note

Former Rule 3; Former Section R12-8-03 repealed, new Section R12-8-03 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-03 and R12-8-06 renumbered and amended as Section R12-8-103 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-104. Hours of Use; Closure

- A.** Camping areas are open to public use at all hours.
- B.** Day-use areas are open to the public during the hours posted.
- C.** The Director may temporarily restrict the hours of public use or close all or a portion of a state park in the interest of public safety or to protect the property.
- D.** The Director may modify the hours of use on a temporary basis to accommodate unusual or seasonal circumstances. The Director shall post any exception to usual hours of public use at the entrance to the state park.

Arizona State Parks Board

Historical Note

Former Rule 4; Former Section R12-8-04 repealed, new Section R12-8-04 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-04 and R12-8-05 renumbered and amended as Section R12-8-104 effective November 1, 1981 (Supp. 81-5). Amended subsections (A) and (C) effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1). R12-8-104(A) corrected as filed at the request of the Board on May 29, 2014; published at 13 A.A.R. 1119 (Supp. 14-4).

R12-8-105. Repealed**Historical Note**

Former Rule 5; Former Section R12-8-05 repealed, new Section R12-8-05 adopted effective January 28, 1976 (Supp. 76-1). Amended effective June 29, 1979 (Supp. 79-3). Former Section R12-8-05 renumbered and amended as Section R12-8-105 effective November 1, 1981 (Supp. 81-5). Amended effective March 23, 1990 (Supp. 90-1). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Section repealed by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-106. Limited Services on Christmas

State park facilities are not staffed on Christmas except in an emergency. On Christmas, caves, museums, contact stations, and visitor centers are closed. Other state park areas are open for public use as posted.

Historical Note

Former Rule 6; Former Section R12-8-06 repealed, new Section R12-8-06 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-05 renumbered and amended as Section R12-8-106 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-107. Litter and Waste

- A. Within a state park, a person shall not leave or discard trash, garbage, or human or animal waste unless the person:
1. Confines the trash, garbage, or human or animal waste in a sanitary manner; and
 2. Deposits the trash, garbage, or human or animal waste in a facility specifically designated to receive it.
- B. Within a state park, a person shall not deposit trash, garbage, or human or animal waste collected from a private residence, business, or other place outside the state park.

Historical Note

Former Rule 7; Former Section R12-8-07 repealed, new Section R12-8-07 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-14 renumbered and amended as Section R12-8-107 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-108. Payment of Fees

- A. Before entering, remaining in, or using a fee area, a person shall:
1. Pay the required fee,
 2. Purchase a current state-park annual pass, or
 3. Obtain permission from the Director.

- B. A fee paid under subsection (A)(1) to enter, remain in, or use one state park does not authorize entering, remaining in, or using another state park.

Historical Note

Former Rule 8; Former Section R12-8-08 repealed, new Section R12-8-08 adopted effective February 1, 1976 (Supp. 76-1). Amended effective June 30, 1978 (Supp. 78-3). Former Section R12-8-07 renumbered and amended as Section R12-8-108 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

Editor's Note: The Arizona State Parks Board amended this Section effective March 2, 1998, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 98-1).

Editor's Note: The Arizona State Parks Board amended this Section effective January 1, 1998, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 97-4).

Editor's Note: The Arizona State Parks Board repealed the old Section text as specified in the following Editor's Note, effective January 12, 1996, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 96-1).

Editor's Note: The Arizona State Parks Board adopted a new R12-8-109 under an exemption from the provisions of the Arizona Administrative Procedure Act but did not repeal the old rule. Therefore the text of both the old Section and the new Section appear here, with the old Section appearing first and the new Section appearing second. The agency will repeal the old text in January 1996.

Editor's Note: The following Section was amended under an exemption from the provisions of the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not reviewed by the Governor's Regulatory Review Council or the Attorney General; notice of this rule was not submitted to the Office of the Secretary of State for publication in the Arizona Administrative Register; and no public comment period or public hearings were required to be held on this rule.

Editor's Note: The following Section was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act.

R12-8-109. Fees and Permits

- A. Annual fee review. The Board shall annually review and set fees for entrance, camping, and overnight parking at a state

Arizona State Parks Board

park. The Board shall base the fees upon an analysis of the following criteria:

1. Fee and permit charges of state park agencies in the 11 western states,
 2. Fee and permit charges of entities with similar facilities within Arizona,
 3. Operational and developmental costs of the Board,
 4. Public demand for services, and
 5. Public-use impacts upon park resources.
- B.** The Board shall ensure that fees for entrance, camping, and overnight parking are posted at each state park and printed in state-park literature intended for public information.
- C.** Fee schedule. Entrance, camping, and overnight parking fees for each state park are listed in Exhibit A.
- D.** Special use fees. The Director shall negotiate a fee for a special use if the Director determines that a fee greater than the fee listed in Exhibit A is justified based upon analysis of the following criteria:
1. Board expenses resulting from the special use,
 2. Loss of revenue resulting from the special use,
 3. Impacts upon park resources and visitors as a result of the special use, and
 4. The goodwill produced for sponsors of the special use.
- E.** Interpretive program fees. The Director may establish a special fee for or waive the usual state park entrance fee during an interpretive program. The Director shall determine whether to assess a special fee or waive the usual state park entrance fee for an interpretive program using the criteria specified in subsection (D). If the Director establishes a special fee for an interpretive program, the Director shall ensure that the special fee is posted and printed in state-park literature in advance of the interpretive program.
- F.** Commercial permit. A person that intends to enter a state park to conduct any portion of a business that is not covered by a concession or special use permit shall obtain either a commercial retail or commercial rental permit from the Board before entering the state park. A commercial permit authorizes one commercial vehicle carrying no more than four individuals to enter the state park for which the commercial permit is issued.

Historical Note

Former Rule 9; Former Section R12-8-09 repealed, new Section R12-8-09 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-08 renumbered and amended as Section R12-8-109, subsections (A), (B) and (D), effective November 1, 1981, subsection (C) effective January 1, 1982 (Supp. 81-5). Amended by adding subsection (E) effective July 12, 1984 (Supp. 84-4). Amended subsections (B) and (D) and added subsection (F) effective January 1, 1985 (Supp. 84-6). Amended effective April 22, 1988 (Supp. 88-2). Repealed due to legislative exemption which was amended into the Arizona Administrative Procedure Act. New Section adopted effective January 1, 1994, under an exemption from the provisions of the Arizona Administrative Procedure Act; filed in the Office of the Secretary of State December 28, 1993 (Supp. 93-4). Amended effective January 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(21); filed in the Office of the Secretary of State December 23, 1994 (Supp. 95-3). New Section adopted effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-1005(A)(21); filed in the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Text of Section in effect before January 1, 1996, repealed effective January 11, 1996, pursuant to an exemption from A.R.S. Title 41, Chapter 6, specified in

A.R.S. § 41-1005(A)(21) (Supp. 96-1). Amended effective January 1, 1997, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 9, 1996 (Supp. 96-4). Amended effective January 1, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 11, 1997 (Supp. 97-4). Amended effective March 2, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State February 13, 1998 (Supp. 98-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

Editor's Note: The Arizona State Parks Board amended this Section effective January 1, 1998, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 97-4).

Editor's Note: The Arizona State Parks Board repealed the old Section text as specified in the following Editor's Note, effective January 12, 1996, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council. (Supp. 96-1).

Editor's Note: The Arizona State Parks Board adopted a new R12-8-109 under an exemption from the provisions of the Arizona Administrative Procedure Act but did not repeal the old rule. Therefore the text of both the old Section and the new Section appear here, with the old Section appearing first and the new Section appearing second. The agency will be repealing the old text soon.

Editor's Note: The following Section was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not reviewed by the Governor's Regulatory Review Council; notice of this rule was not submitted to the Office of the Secretary of State for publication in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the Attorney General has not certified this rule.

R12-8-110. Fee Waivers

- A.** The Director may waive the entrance fee listed in Exhibit A for the following groups. If the Director does not waive the entrance fee, members of the group shall pay the entrance fee listed in Exhibit A:
1. A preschool or K-12 school group and accompanying chaperons;
 2. A group of professional individuals participating in a parks and recreation, historic, or interpretive seminar or conference tour; and
 3. A group of disabled individuals affiliated with an organization or agency established to care for, rehabilitate, train, or serve the disabled individuals. For the purpose of this subsection, disabled means blind or visually impaired,

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deaf or hard of hearing, mobility impaired, or developmentally impaired.

- B. An individual who serves as a volunteer and has a signed volunteer agreement with the Board is exempt from entrance fees listed in Exhibit A.
- C. The Director may modify any fee prescribed under R12-8-109 to grant a discount or promotional rate.

Historical Note

Adopted effective July 12, 1984 (Supp. 84-4). Repealed due to legislative exemption which was amended into the Arizona Administrative Procedure Act. New Section adopted effective January 1, 1994, under an exemption from the provisions of the Arizona Administrative Procedure Act; filed in the Office of the Secretary of State December 28, 1993 (Supp. 93-4). Adopted effective January 1, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act; filed in the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Text of Section in effect before January 1, 1996, repealed effective January 11, 1996, pursuant to an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-1005(A)(21) (Supp. 96-1). Amended effective January 1, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 11, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-111. Camping

- A. Camping is permitted only in a designated camping unit.
- B. Except when camping at a Board-approved concession area within a state park, a person using a camping unit shall not:
 1. Camp in a state park for more than 15 days within a 30-day period unless authorized by the Director;
 2. Camp in a state park for more than 29 days within a 45-day period that is posted as a long-term stay period unless authorized by the Director;
 3. Leave an occupied camping unit unattended overnight without written permission from the Director; or
 4. Allow the number of persons occupying a camping unit or the number of vehicles in the camping unit to exceed the limits posted at the entrance to the state park or camping unit.
- C. A camping unit is considered occupied after the use fee is paid and the camper establishes a conspicuous presence. A person shall not occupy a camping unit in violation of instructions from the Director or if there is reason to believe that the camping unit is occupied by another camper.
- D. A Park Ranger shall allow the occupants of a single vehicle to register for more than one camping unit only if the number of occupants exceeds the posted occupancy limit for the camping unit.
- E. A person shall pay the fee for a permit to use a camping unit on a per-day basis. Payment authorizes use of the camping unit until 2:00 p.m. on the day the permit expires.
- F. A person shall remove all personal property from a camping unit by 2:00 p.m. on the day that a permit expires or purchase an additional permit if eligible under subsection (B).

Historical Note

Former Rule 11; Former Section R12-8-11 repealed, new Section R12-8-11 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-09 and R12-8-10 renumbered and amended as Section R12-8-111 effective November 1, 1981 (Supp. 81-5). Amended subsection (A), Paragraph (1) effective November 27, 1987 (Supp. 87-4). Amended by final rulemaking at 7 A.A.R. 1010,

effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-112. Campfires

- A. A person shall ignite an outdoor fire only in a camping unit or day-use area specifically designated for an outdoor fire.
- B. A person who ignites an outdoor fire shall ensure that the fire is confined to a grill, fire ring, or other facility provided by the state park.
- C. A person shall not ignite or maintain a fire when a high wind is blowing or when open burning is prohibited by order of the Director.
- D. A person who ignites an outdoor fire shall ensure that the fire is attended and controlled at all times.

Historical Note

Former Rule 12; Former Section R12-8-12 repealed, new Section R12-8-12 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-11 renumbered and amended as Section R12-8-112 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-113. Vehicles, Speed Limits, and Parking

- A. The operator of a motor vehicle within a state park shall drive the motor vehicle only on a maintained roadway, parking area, or other area designated by signs for motor vehicle use.
- B. The operator of a motor vehicle within a state park shall comply with all state law regarding operation of a motor vehicle and shall not drive the motor vehicle at a speed greater than is reasonable and prudent under the circumstances and conditions or in excess of a posted limit.
- C. The operator of a motor vehicle within a state park shall not park or leave the motor vehicle unattended except in a designated parking area or parking zone. The Director may remove an unattended motor vehicle that is illegally parked or left standing upon a roadway or in a park area in a manner that may obstruct traffic or impair normal activities of the state park.

Historical Note

Former Rule 29; Former Section R12-8-13 repealed, new Section R12-8-13 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-12 renumbered and amended as Section R12-8-113 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-114. Watercraft; Launching and Mooring

A person shall not moor or launch a watercraft from a shore within a state park if the Director has determined that it is in the best interest of the state park to prohibit mooring or launching of watercraft and has posted notice of the prohibition at the shore.

Historical Note

Former Rule 14; Former Section R12-8-14 repealed, new Section R12-8-14 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-13 renumbered and amended as Section R12-8-114 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-115. Pets

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- A. Except as provided in subsection (B), a person shall keep a dog, cat, or other pet on a leash that does not exceed six feet or otherwise restrain the animal while in a state park.
- B. The restraint requirement in subsection (A) does not apply to a dog in an area open to hunting or field trials if the dog is participating in these activities.
- C. A person shall not take a pet into a state park building, cabana site, developed beach, or other area that the Director has determined is environmentally or ecologically sensitive. This restriction does not apply to a service animal.

Historical Note

Former Rule 15; Former Section R12-8-15 repealed, new Section R12-8-15 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-15 renumbered and amended as Section R12-8-115 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-116. Glass Containers

A person shall not possess a glass or ceramic container in a state park area that is designated as a public beach or swimming area, or posted "No Glass Containers."

Historical Note

Adopted effective January 3, 1989 (Supp. 89-1). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-117. Reserved**R12-8-118. Reserved****R12-8-119. Weapons**

- A. The following definitions apply to this Section:
 1. "Improved recreation area" means a camping unit, roadway, amphitheater, boat launching ramp, developed picnic area, developed swimming beach, and any other area within a state park that is designated by the Director and reserved for an assembly or other temporary gathering of persons.
 2. "Prohibited weapon" means a firearm as defined by A.R.S. § 13-3101, including a BB or pellet gun, bow, or slingshot.
- B. A peace officer or private security guard employed by the holder of a park concession is authorized to carry a firearm in a state park if:
 1. The peace officer is certified under state law, or
 2. The holder of the park concession complies with A.R.S. § 32-2606(3) regarding private security guards.
- C. Unless authorized under subsection (B), a person shall not enter or remain in an improved recreation area while carrying a prohibited weapon after a reasonable request from a park ranger to remove it. A request to remove a prohibited weapon is reasonable if a park ranger believes that the person carrying the prohibited weapon poses a danger or threat to others lawfully present. If, after a reasonable request is made, a person carrying a prohibited weapon within an improved recreation area chooses to remain in the improved recreation area, the person shall place the weapon in the custody of a park ranger until the person leaves the improved recreation area.
- D. A firearm may be transported or stored in a vehicle on any state park area as allowed by A.R.S. § 13-3102(F).
- E. A hunter who holds a current license issued by the Arizona Game and Fish Department may carry a lawful hunting

weapon in any state park area designated for hunting and may carry the hunting weapon through the state park to reach the state park area designated for hunting.

Historical Note

Adopted effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-120. Fireworks and Explosives

A person shall not discharge fireworks or any other explosive device within a state park without first obtaining from the Director a special use permit that authorizes the discharge of fireworks or any other explosive device.

Historical Note

Former Rule 20. Former Section R12-8-20 repealed, new Section R12-8-20 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-20 renumbered and amended as Section R12-8-120 adopted effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-121. Reserved**R12-8-122. Commercial Use of a State Park**

- A. A person shall not engage in a commercial activity within a state park unless the commercial activity is authorized by:
 1. A special use permit issued under R12-8-125,
 2. A concession, or
 3. A commercial rental or retail permit.
- B. Subsection (A) does not apply to an individual who enters a state park in a commercially marked vehicle if the individual intends to, provide service to the holder of a special use permit, concession, or commercial rental or retail permit, or respond to an emergency.

Historical Note

Former Rule 22. Former Section R12-8-22 repealed, new Section R12-8-22 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-22 and R12-8-23 renumbered and amended as Section R12-8-122 effective November 1, 1981 (Supp. 81-5). Amended subsection (A) effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-123. Reserved**R12-8-124. Disorderly Conduct**

- A. A person shall not engage in disorderly conduct within a state park.
- B. Within a state park, a person shall not knowingly disturb the peace of an area or another person, make unreasonable noise, engage in violent behavior, use provocative language or gestures, or recklessly handle, display, or discharge a deadly weapon or dangerous instrument.
- C. A person shall not use a loudspeaker in a state park without first obtaining from the Director a special use permit that authorizes the use of a loudspeaker.

Historical Note

Former Rule 24. Former Section R12-8-24 repealed, new Section R12-8-24 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-24 renumbered and amended as Section R12-8-124 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-125. Special Use Permits

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- A.** Special use permit required. Within a state park, a person shall obtain a special use permit from the Board before:
1. Engaging in an activity that is prohibited by this Chapter without a permit;
 2. Excluding the general public from an area or facility within the state park;
 3. Engaging in a commercial activity not covered by a concession or commercial rental or retail permit;
 4. Engaging in a spectator event designed to attract a large crowd;
 5. Engaging in an activity that requires a permit from another entity such as the Coast Guard, Arizona Game and Fish Department, or a city, county, or municipality;
 6. Engaging in an activity that requires a reservation outside an area designated for use by reservation; or
 7. Using a state park area for a purpose different from that for which the area is designated.
- B.** General terms and conditions. The Board shall issue a special use permit only subject to the following general terms and conditions:
1. An application for the special use permit is submitted less than one year before the planned special use;
 2. The special use permit may be revoked if the Board determines that the permit holder fails to comply with state park statutes, this Chapter, and all Board policies that are terms of the special use permit;
 3. The special use permit does not conflict with a concession without written approval from the concession holder;
 4. The special use permit is issued to the first person that applies for a special use permit for a particular day at a particular location;
 5. The special use permit is issued only after the applicant complies with any indemnity and insurance requirements that the Board determines are necessary to protect the state;
 6. The special use permit is issued only after the applicant pays required fees or obtains a fee waiver under R12-8-110;
 7. The special use does not conflict with the Board's management goals for the state park; and
 8. The special use does not create a safety hazard to participants, spectators, or the general public.
- C.** Private special event. The Board shall issue a special use permit for a private special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a private special event requests the special use permit for no more than seven consecutive days of use and no more than 14 days of use in a calendar year;
 2. The private special event does not significantly interfere with the public's use of the state park; and
 3. The person holding a special use permit for a private special event does not engage in commercial activity within a state park.
- D.** Public special event. The Board shall issue a special use permit for a public special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a public special event requests the special use permit for no more than four consecutive days of use in a calendar quarter and no more than 16 days of use in a calendar year at a particular state park; and
 2. No more than two special use permits for a public special event are issued per day per state park.
- E.** Festival special event. The Board shall issue a special use permit for a festival special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a festival special event requests the special use permit at least 120 days before the festival special event if no more than 1,500 people are expected to attend each day of the festival special event or at least 180 days before the festival special event if more than 1,500 people are expected to attend each day;
 2. The person requesting a special use permit for a festival special event requests no more than seven consecutive days of use and no more than 14 days of use in a calendar year at a particular state park;
 3. No more than one special use permit for a festival special event is issued per day per state park;
 4. The person requesting a special use permit for a festival special event provides to the Board a detailed plan regarding security, sanitary facilities, medical services, parking, food and drink facilities, booths, and sponsorships at least 90 days before the festival special event; and
 5. The person requesting a special use permit for a festival special event obtains all permits required by other entities such as a city, county, municipality, or agency and submits a copy of all permits to the Board at least 30 days before the festival special event.
- F.** Commercial photography special use. The Board shall issue a special use permit for commercial photography only subject to the following specific terms and conditions:
1. The person requesting a special use permit for commercial photography requests the special use permit at least 30 days before the commercial photography event;
 2. The person requesting a special use permit for commercial photography requests no more than seven consecutive days of use and no more than 14 days of use in a calendar year at a particular state park; and
 3. The person holding a commercial photography special use permit does not engage in commercial activity within a state park.

Historical Note

Former Rule 25; Former Section R12-8-25 repealed, new Section R12-8-25 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-25 renumbered and amended as Section R12-8-125 effective November 1, 1981 (Supp. 81-5). Amended subsections (A) and (C) effective November 27, 1987 (Supp. 87-4). Amended effective January 1, 1997, under an exemption from A.R.S. Title 41, Chapter 6; filed in the Office of the Secretary of State December 9, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-126. Violation; Classification

Under A.R.S. § 41-511.13, an individual who violates a provision of this Chapter commits a class 2 misdemeanor.

Historical Note

Adopted effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

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Exhibit A. May 1, 2018, Regular Fee Schedule

ARIZONA STATE PARKS FEE SCHEDULE
EFFECTIVE MAY 1, 2018

- 1: Adult is defined as an individual 14 years of age and older.
- 2: Camping fees reflect a "Range" dependent upon specific site location and seasonality. Call individual Park facility for current information.
- 4: Over-sized Parking is an additional fee for those vehicles or vehicle/trailer units that exceed 55' in total length.
- 5: Additional Program Fees may apply, see "OTHER FEES."
- 6: For Lodge, Cabins & Yurts an additional overnight fee of \$5.00 per pet per night will be assessed.
- 7: Camping by Reservation only. Contact the Park Facility directly for availability and details.

These fees are charged on a "per vehicle" basis that includes up to 4 Adults per vehicle. Additional fees for vehicles containing more than 4 Adults will be assessed.

50% discount off regular entrance fee for Active Duty, National Guard or Reserve members of the United States Military, Arizona residents who are United States Military Retired or Service Disabled Veterans and their families.

100% discount off regular entrance fee for Arizona residents who are 100% Service Disabled Veterans and their families. Does not apply to Kartchner Caverns State Park tour tickets, special use fees, special event fees, special event admission fees, reservation fees, camping or overnight parking.

PARK NAME	DAILY ENTRANCE			NIGHTLY CAMPING ²								
	Per Vehicle 1-4 Adults ¹	Individual/Bicycle	Over-Size Parking ⁴	Non-Electric Campsite	Electric Site	Premium	Standard	Rustic	Unique	Cabin ⁶	Yurt ⁶	Lodge ⁶
ALAMO	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
BOYCE THOMPSON	(Separate Fee Schedule)											
BUCKSKIN MOUNTAIN	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00	50 - 300.00		
BUCKSKIN RIVER ISLAND	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
CATALINA	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
CATTAIL COVE	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00	50 - 300.00		
Boat-In sites Day Use only	10.00					15 - 50.00	15 - 50.00	15 - 50.00				
DEAD HORSE RANCH	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
FOOL HOLLOW	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
HOMOLOVI	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
KARTCHNER <small>(Daily Entrance Fee is waived for reserved tour ticket holders)</small>	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
LAKE HAVASU	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
LOST DUTCHMAN	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
LYMAN LAKE	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00	35 - 50.00	
ORACLE ⁵	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
PATAGONIA LAKE	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00	50 - 300.00		
PICACHO PEAK ⁵	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
RED ROCK ⁵				(educational groups only: 15 - 25.00/group of 1-6 persons)								
ROPER LAKE	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
ROCKIN RIVER RANCH	5 - 30.00	2 - 5.00	10.00	15 - 25.00	20 - 50.00	15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		
SLIDE ROCK ⁵	5 - 30.00	2 - 5.00										
SONOITA CREEK ⁷				15 - 25.00		15 - 50.00	15 - 50.00	15 - 50.00				
TONTO NATURAL BRIDGE						15 - 50.00	15 - 50.00	15 - 50.00		50 - 300.00		400 - 1500.00

Children ages 0-6, when accompanied by a paying adult age 18 years or older, will be admitted free as long as the child is not part of an organized group. Group discounts maybe available where listed. A group is 15 persons or more with prearranged arrival. All persons in a group, regardless of age, apply toward a group's number. Group discounts do not apply to Program Fees.

PARK NAME	DAILY ENTRANCE FEES			GROUP FEES	
	Ages 0-6	Ages 7-13	Ages 14 & up	Ages 14 & up	
FORT VERDE ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
JEROME ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
MCFARLAND ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
RED ROCK ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
TOMBSTONE ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
TONTO NATURAL BRIDGE	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
TUBAC PRESIDIO ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
YUMA QUARTER MASTER DEPOT ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	
YUMA TERRITORIAL PRISON ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	

Group discounts are available where listed. A group is 15 persons or more with prearranged arrival. All persons in a group, regardless of age, apply toward a group's number.

PARK NAME	DAILY ENTRANCE FEES			GROUP FEES	
	Ages 0-6	Ages 7-13	Ages 14 & up	Ages 7-13	Ages 14 & up
RIORDAN MANSION ⁵	free	2.00 - 10.00	2.00 - 10.00	20% off current rate	20% off current rate

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KARTCHNER CAVERNS

TOURS	Ages 0 – 6	Ages 7 – 13	Ages 14 & Up
Rotunda Tour	free	9 – 15.00	18.00 – 30.00
Big Room Tour	n/a	9 – 15.00	18.00 – 30.00
COMMERCIAL GROUP TOURS*			
	Ages 0 – 6	Ages 7 – 13	Ages 14 & Up
Rotunda Tour	free	20% off current rate	20% off current rate
Big Room Tour	n/a	20% off current rate	20% off current rate

*A commercial tour is pre-arranged by a commercial tour operator who organizes tours in a package with transportation and a destination or tour for one price. A group tour for Kartchner Caverns cave tour is defined as 12 persons or more.

OTHER FEES

Pet Fee for Cabins & Yurts	5.00	per pet per night.
Overnight Parking	<i>Over-night Parking is described as: "A legally parked, unattended and unoccupied vehicle not in a designated campsite, remaining on the park throughout the night." The overnight parking fee is to be charged in addition to the regular Entrance Fee.</i>	

PASSES

Arizona State Parks Premium Annual Entrance Pass	200.00	<i>"Valid at all State Parks for day-use activities only. Additional Program and Special Event Fees may apply."</i>
Arizona State Parks Standard Annual Entrance Pass	75.00	<i>"Valid at all Arizona State Parks facilities for day-use activities. Not valid from April 1st through October 31st at Buckskin Mountain/River Island, Cattail Cove and Lake Havasu State Parks on Fridays, Saturdays, Sundays, and recognized State Holidays. Additional Program and Special Event Fees may apply."</i>

PROGRAM FEES (per person or vehicle)

Students Program:	Variable
Event / Program Fees	Variable
Instructional:	Variable

RESERVATIONS

Kartchner Tours:	3.00
Kartchner Tours Rebooking:	5 – 25.00
Camping, Cabin, Yurt, Ramada, Lodge:	5 – 25.00
Group:	5 – 25.00

SPECIAL USE FEES

Non-Commercial:	25.00 (minimum)
Commercial:	25.00 (minimum)
Damage Deposit:	25.00 (minimum)

FACILITY USE FEES

Ramada	15.00 (minimum)
Group Day Use	15.00 (minimum)
Group Camping	15.00 (minimum)

Dump Station Use	15 – 20.00	Use of a parks dump station without being a registered camper will be equal to one night's camping (low end of the individual Park's range)
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PERMITS

Commercial Retail Permit:	300.00	CONDITIONS OF USE <ul style="list-style-type: none"> • Pass is valid only for customers entering the park in the commercial vehicle. • Individual pass must be presented each time the commercial vehicle enters the park with passengers. • Pass does not permit any private vehicle to enter the park. • Pass is valid through the calendar year in which it was purchased. • Pass must be used in conjunction with commercial business pass. • One voucher permits up to 4 adults in the same commercial vehicle. • Violation of Conditions of Use may result in revocation of all commercial privileges. • All Commercial Vehicle Access Permits expire December 31 of the year for which they were issued. • Permittee clientele will be responsible for all applicable daily entrance fees when entering the park in a separate vehicle from the permittee. However, a discounted Clientele Voucher is available for all permittee clientele who enter the park in the permittee's vehicle and do not occupy a parking space.
Commercial Rental Permit:	350.00	
2 nd Commercial Permit:	150.00	
Clientele Voucher:	5.00	Vouchers are sold only to Permit holders. Vouchers can only be used at the time of entry, and are non-transferable.

Historical Note

Adopted effective January 1, 1997, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 9, 1996 (Supp. 96-4). Amended effective January 1, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 11, 1997 (Supp. 97-4). Amended effective March 2, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State February 13, 1998 (Supp. 98-1). Amended effective March 2, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State February 23, 1998 (Supp. 98-1). Amended effective January 1, 1999, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State November 24, 1998 (Supp. 98-4). Amended by exempt rulemaking at 5 A.A.R. 2173, effective July 1, 1999 (Supp. 99-2). Amended by exempt rulemaking at 7 A.A.R. 5712, effective January 1, 2002 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 3657, effective July 31, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3828, effective August 6, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 569, effective March 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 10 A.A.R. 1889, effective April 13, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 2602, effective June 1, 2004 (Supp. 04-2). Amended by exempt rulemaking

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at 10 A.A.R. 4186, effective October 1, 2004 (Supp. 04-3). Amended by exempt rulemaking at 12 A.A.R. 1700, effective March 1, 2006 (Supp. 06-2). Amended by exempt rulemaking at 14 A.A.R. 422, effective January 1, 2008 (Supp. 08-1). Amended by exempt rulemaking at 14 A.A.R. 4535, effective January 1, 2009 (Supp. 08-4). Amended by exempt rulemaking at 16 A.A.R. 293, effective March 1, 2010 at Department Request, Office File No. M11-81, filed March 8, 2011 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 1998, effective December 1, 2010 (Supp. 10-3). Amended by exempt rulemaking at 18 A.A.R. 629, effective April 1, 2012 (Supp. 12-1). Amended by exempt rulemaking at 19 A.A.R. 3148, effective November 1, 2013 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 4222, effective January 1, 2014 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 3561, effective February 1, 2015 (Supp. 14-4). Amended by exempt rulemaking at 34 A.A.R. 764, effective May 1, 2018 (Supp. 18-1).

ARTICLE 2. OPERATION OF THE BOARD**R12-8-201. Meetings**

- A. There shall be a minimum of one meeting of the Arizona State Parks Board during each calendar year quarter.
- B. The time and place of a meeting shall be designated seven days before the meeting date by either:
 1. The Chairman verbally informing the Director or,
 2. Any four members informing the Director in writing, except that in the case of an emergency, the Director may be verbally informed.
- C. The Director, upon being informed of the time and place of a meeting shall:
 1. Inform each member of the time and place of the meeting at least five days before the meeting date.
 2. Prepare a written agenda consisting of the time and place of the meeting and an outline of the business to be considered. The agenda shall be verbally accepted by the Chairman or the members who set the meeting before it is distributed.
 3. Transmit the agenda to each Board Member and post the agenda in the administrative headquarters of the Board and at the headquarters area of each operational State Park at least two days before the meeting date.
 4. Prepare explanatory material concerning the business contained on the agenda and transmit the material to each Board Member.
- D. In the case of an emergency, the time requirements of subsections (B) and (C) above may be adjusted to the circumstances.

Historical Note

Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-50 renumbered as Section R12-8-201 without change effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-202. Organization of the Board

- A. Selection of Officers
 1. At the first meeting following January 1 of each year, the members present shall select by majority vote a Chairman and a Vice Chairman to serve through the first meeting following January 1 of the year following.
 2. If a vacancy in either the Chairman or Vice Chairman office of the Board occurs, the members present at the first meeting following the occurrence of the vacancy shall select a member by majority vote to fill the unexpired term of the officer.
 3. If the Chairman and Vice Chairman are absent from a meeting of the Board held in accordance with these rules, a Presiding Officer shall be selected by majority vote of the members present.
- B. Duties of the officers are as follows:
 1. The Chairman shall preside over all meetings and functions of the Board.
 2. The Vice Chairman shall take over the duties of the Chairman if the Chairman is absent.

3. The Presiding Officer shall take over the duties as Chairman if the Chairman and Vice Chairman are absent.

Historical Note

Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-51 renumbered as Section R12-8-202 without change effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-203. Committees

- A. There shall be no standing committees.
- B. Special committees may be appointed by the Chairman to make reports to the Board concerning matters of interest to the Board.

Historical Note

Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-52 renumbered as Section R12-8-203 without change effective November 1, 1981 (Supp. 81-5).

R12-8-204. Procedures at Meetings

- A. All actions of the Board shall be by majority vote of the membership present.
- B. Board meetings shall be conducted under Roberts Rules of Order.

Historical Note

Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-53 renumbered as Section R12-8-204 without change effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-205. Repealed**Historical Note**

Adopted effective June 29, 1979 (Supp. 79-3). Former Section R12-8-54 renumbered as Section R12-8-205 without change effective November 1, 1981 (Supp. 81-5). Section repealed by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-206. Repealed**Historical Note**

Adopted effective August 26, 1983 (Supp. 83-4).

R12-8-207. Board Concession Approval Policy

- A. The Board may enter into agreement with a private or public entity for the operation and development of a concession in an area under the jurisdiction of the Board subject to the following conditions:
 1. The proposed concession activity shall be consistent with a Board-approved master plan for development and operation of the park in which the concession is to be located. The plan shall include any amendments or other Board activity.
 2. The proposed concession activity shall be consistent with the purposes of the Board as defined by statute.

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3. The Board determines that there is a need for the proposed type of concession operation and that the proposed concession activity is in the best interest of the state.
 4. The Board issues a formal request for proposals from persons interested in operating a concession.
 5. The Board determines that the concession operator selected is most advantageous to the state according to the criteria identified in the request for proposals.
- B.** The Board shall publish notice of a request for proposals for a concession in accordance with A.R.S. § 41-2533(C). In addition, the Board shall provide notice of a request for proposals at the last known address of each person who has, within the last year, expressed in writing to the Board an interest in operating a concession of the particular nature being noticed.
- C.** A copy of this rule shall be provided by the Board to each person who submits a concession proposal without prior issuance by the Board of a formal request for proposals for a concession.
- D.** The Board may exempt an existing concession renewal, consignment agreement, vending agreement, or agreement with a nonprofit organization or a local historical society from the procedures contained in this rule.

Historical Note

Adopted effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

ARTICLE 3. STATE HISTORIC PRESERVATION OFFICE PROGRAMS**R12-8-301. Definitions**

In this Article, unless the context otherwise requires:

1. "State Historic Preservation Officer" or "Officer" means an employee of the Board who has professional competence and expertise in the field of historic preservation and administers the State Historic Preservation Program.
2. "Arizona Register of Historic Places," "Arizona Register," or "Register" means the state's list of Arizona's historic properties worthy of preservation that serves as an official record of Arizona's historic districts, sites, buildings, structures, and objects of national, state, or local significance in the fields of history, architecture, archaeology, engineering, or culture. Properties listed on or eligible for the Arizona Register of Historic Places may also be eligible for listing on the National Register of Historic Places.
3. "National Register of Historic Places" means the official national list of historic districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, or culture.
4. "Historic Sites Review Committee" or "HSRC" means a standing committee of the Arizona Historical Advisory Commission, which is appointed by the State Historic Preservation Officer under A.R.S. § 41-1352 to review nominations of properties for listing on the National or Arizona Register of Historic Places.
5. "Historic property" means a building, site, district, object, or structure evaluated by the HSRC as historically significant.
6. "State Historic Preservation Office" or "SHPO" means the program staff that work under the supervision of the Officer.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-60 renumbered as Section R12-8-301 without change effective November 1, 1981 (Supp. 81-5).

Amended effective August 26, 1983 (Supp. 83-4). Former Section R12-8-301 renumbered to R12-8-304; new Section R12-8-301 adopted by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-302. Criteria for Evaluation

- A.** Before listing a property in the Register, the State Historic Preservation Office (SHPO), with the advice of the HSRC, will apply the following criteria for evaluating the property:
1. The property conveys significance in one or more of the following contexts: national, state or local history, architecture, archaeology, engineering, or culture;
 2. The property is classified as one of the following types: district, site, building, structure, or object;
 3. The property possesses integrity of location, design, setting, materials, workmanship, feeling, or association; and
 4. The property:
 - a. Is associated with an event that made a significant contribution to the broad pattern of history;
 - b. Is associated with the life of a historically significant person;
 - c. Embodies a distinctive characteristic of a type, period, or method of construction, represents the work of a master, possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction; or
 - d. Has yielded or is likely to yield important pre-historical or historical information.
- B.** The SHPO shall not consider eligible for the Register any property that has achieved significance within the past 50 years unless the property is an integral contributing element of a district that meets the criteria in subsection (A) or the property demonstrates exceptional individual importance.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-61 renumbered as Section R12-8-302 without change effective November 1, 1981 (Supp. 81-5). Amended effective August 26, 1983 (Supp. 83-4). Former Section R12-8-302 renumbered to R12-8-305; new Section R12-8-302 adopted by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-303. Processes of Registration

- A.** The State Historic Preservation Officer shall serve as the keeper of the Register.
- B.** Before listing a property in the Register, the SHPO requires the following:
1. The Historic Property Inventory (HPI) form must be completed by the proponent or owner to determine whether the property is eligible for listing;
 2. The Recommendation of Eligibility form must be completed by the SHPO Officer after receiving the HPI;
 3. If a property is recommended as eligible, the National Register of Historic Places Registration Form or the National Register of Historic Places Multiple Property Documentation Form must be completed by the owner;
 4. The SHPO Officer shall give the owner at least 30 calendar days prior notification of the nomination's review by the HSRC;
 5. The SHPO Officer shall forward the National Register Registration Form to the HSRC; and
 6. The HSRC shall:

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- a. Review the Registration Form, documentation, and any comments concerning the property's significance and integrity,
 - b. Recommend to the SHPO whether the property should be listed in the Arizona Register and forwarded to the keeper of the National Register; and
 - c. Review a refusal of nomination upon request.
- C. The Officer shall determine whether to place the nominated property on the Register in accordance with information provided in subsection (B).
- D. If the SHPO refuses to forward a nomination to the HSRC, the property owner may petition the HSRC Chairman in writing to have the nomination reviewed. The petition shall be filed with the Chairman at least 60 calendar days before the next scheduled meeting.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-62 renumbered as Section R12-8-303 without change effective November 1, 1981 (Supp. 81-5). Former Section R12-8-303 repealed, former Section R12-8-304 renumbered and amended as Section R12-8-303 effective August 26, 1983 (Supp. 83-4). Former Section R12-8-303 renumbered to R12-8-306; new Section R12-8-303 adopted by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-304. Factors for Determining Certification Eligibility

- A. Before the SHPO Officer (Officer) certifies a Historic Property as eligible for a change in property tax classification, the property shall be listed in the National Register of Historic Places:
 - 1. Individually; or
 - 2. As part of a historic district. If within a historic district, the Officer shall determine whether or not the property contributes to the character of the historic district.
- B. After the SHPO Officer determines a property is eligible for reclassification, the SHPO shall certify a historic property as Non-Commercial or Commercial, as defined in A.R.S. § 42-12101.
- C. The following are exclusions from eligibility:
 - 1. The Officer shall not certify a historic property that includes within its legal description a building, structure, improvement, or land area that does not contribute to the historical character and that can be excluded by modifying the legal description. If the legal description in an application includes an element or area of this nature, the applicant shall modify the legal description upon notification by the Officer in order to be eligible for certification.
 - 2. A Historic Property that does not meet the minimum maintenance standards described in R12-8-306 shall not be certified by the Officer. In addition to other reasons established by law, the Officer may disqualify a property certified as a historic property for property tax purposes if the property owner does not comply with these rules and regulations of the Board designated in this Article.
- E. Certification continues through any change of ownership, if the new owner submits required reports and affirms compliance with the program requirements in writing.
- F. Historic Property shall not be decertified by the SHPO without proof, by certified mail, return receipt requested, that the current owner on record with the appropriate County Assessor's Office, has received notice in writing.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-63 renumbered as Section R12-8-304 without change effective November 1, 1981 (Supp. 81-5). Former Section R12-8-304 renumbered and amended as

Section R12-8-303, former Section R12-8-305 renumbered and amended as Section R12-8-304 effective August 26, 1983 (Supp. 83-4). Former Section R12-8-304 renumbered to R12-8-307; new Section R12-8-304 renumbered from R12-8-301 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-305. Verification of Eligibility for Property Tax Reclassification

- A. A person that seeks to have a property reclassified for property tax purposes as either a Commercial or Non-commercial Historic Property shall submit a verification of eligibility form. The person seeking reclassification may obtain the verification of eligibility form from the SHPO or the Assessor's Office in the county where the property is located and shall submit the completed form to the Assessor's Office in the county where the property is located.
- B. A person that seeks to have a property reclassified for property tax purposes as either a Commercial or Non-commercial Historic Property, shall ensure that the verification of eligibility form provides the following information:
 - 1. Address of the property,
 - 2. Legal description of the property,
 - 3. Property classification,
 - 4. Name of owner,
 - 5. Historic property name as listed on the National Register of Historic Places,
 - 6. Date of original construction,
 - 7. Description of any exterior changes to the property since the property was listed on the National Register of Historic Places,
 - 8. Photographs of the property that meet the specifications of the Board, and
 - 9. The owner's written consent for the Officer or the Officer's representative to view the property.
- C. In addition to complying with subsection (B), a person that seeks to have a property reclassified as a Commercial Historic Property shall submit with the verification of eligibility form rehabilitation construction documents including plans and specifications.
- D. Following the assessor's review of the verification of eligibility form and any documents required under subsection (C), the assessor shall submit the verification of eligibility form and documents to the Officer for verification of eligibility for reclassification.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-64 renumbered as Section R12-8-305 without change effective November 1, 1981 (Supp. 81-5). Former Section R12-8-305 renumbered and amended as Section R12-8-304 effective August 26, 1983 (Supp. 83-4). New Section R12-8-305 renumbered from R12-8-302 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-306. Minimum Maintenance/Restoration Standards

- A. The owner of a certified Commercial or Non-Commercial historic property shall maintain the property to preserve the historical integrity of the features, materials, appearance, workmanship, and environment, according to the following standards:
 - 1. Protect the Historic Property against accelerated deterioration due to:
 - a. Vandalism;

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- b. Structural failure;
 - c. Climatic weathering including the affects of water infiltration;
 - d. Biological affects due to insects, animals, or plants;
 - e. Fire; or
 - f. Flooding.
2. Maintain the historic property by:
- a. Keeping it secure;
 - b. Maintaining the windows and doors, or covering them in a manner that does not injure the property's integrity;
 - c. Maintaining security fencing, if applicable;
 - d. Maintaining roofs and drainage systems;
 - e. Minimizing damage from insects, birds, or animals; and
 - f. Maintaining landscaping to reduce fire potential.
- B.** The Officer shall decertify any certified Historic Property that is condemned by a local authority.
- C.** Before implementation of any rehabilitation project, the owner shall submit both a written and graphic proposal (Construction Documents) for the proposed rehabilitation project to the Officer. The Officer has 30 calendar days from receipt of the proposal in which to comment on the appropriateness of the project in relationship to The Secretary of the Interior's Standards for Rehabilitation.
- D.** The Officer shall review all rehabilitation projects done to ensure that the planned project for rehabilitation of the Historic Property is in accordance with the guidelines established by the U.S. Government, Cyclical Maintenance for Historic Buildings, J. Henry Chambers, AIA, 1976, available from the U.S. Government Printing Office and the U.S. Department of the Interior, the National Park Service publication titled, The Secretary of the Interior's Standards for Historic Preservation Projects, Section III, Guidelines, 1983 and The Secretary of the Interior's Standards for Rehabilitation, National Park Service, 1995 available from the National Park Service Technical Preservation Services Division, the State Historic Preservation Office, or the U.S. Government Printing Office. These three documents are incorporated by reference and on file with the

Board and the Office of the Secretary of State. The materials incorporated by reference contain no future editions or amendments.

- E.** The owner shall submit pictures of rehabilitation projects no later than 30 calendar days after completion of the rehabilitation project that illustrate compliance with the standards established in subsection (D).
- F.** If a conflict occurs between the requirements of the Officer or the Officer's representative and local building officials or any applicable laws, a meeting of the appropriate representatives shall be called by the owner to discuss the question and reach an equitable solution.

Historical Note

New Section R12-8-306 renumbered from R12-8-303 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-307. Documentation Requirements, Reports, and Inspection

- A.** The owner of a certified Historic Property shall submit the following information for the requested year's activity to the Officer:
 1. Confirmation of current Historic Property ownership,
 2. A statement signed by the owner indicating that the Historic Property is operated and maintained in accordance with the laws and rules applicable to the classification of the Historic Property for property tax purposes, and
 3. Additional reports and inspections necessary for documentation requirements.
- B.** The owner of a classified Historic Property shall permit the Officer or representative to inspect the property for compliance with these rules. The Officer shall notify the owner by certified mail at least ten days before the inspection.

Historical Note

New Section R12-8-307 renumbered from R12-8-304 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

41-511.01. Compensation and organization of board

A. Appointive members of the board shall serve without compensation.

B. A majority of the membership of the board shall constitute a quorum for the transaction of business. Members of the board shall select one of themselves its chairman for such term as they determine and may appoint from within their membership other officers for such terms as they deem necessary or desirable. The board shall adopt rules for the conduct of its meetings. A record shall be kept of all proceedings and transactions.

41-511.04. Duties; board; partnership fund; state historic preservation officer; definition

A. The board shall:

1. Select areas of scenic beauty, natural features and historical properties now owned by the state, except properties in the care and custody of other agencies by virtue of agreement with the state or as established by law, for management, operation and further development as state parks and historical monuments.
2. Manage, develop and operate state parks, monuments or trails established or acquired pursuant to law, or previously granted to the state for park or recreation purposes, except those falling under the jurisdiction of other state agencies as established by law.
3. Investigate lands owned by the state to determine in cooperation with the agency that manages the land which tracts should be set aside and dedicated for use as state parks, monuments or trails.
4. Investigate federally owned lands to determine their desirability for use as state parks, monuments or trails and negotiate with the federal agency having jurisdiction over such lands for the transfer of title to the Arizona state parks board.
5. Investigate privately owned lands to determine their desirability as state parks, monuments or trails and negotiate with private owners for the transfer of title to the Arizona state parks board.
6. Enter into agreements with the United States, other states or local governmental units, private societies or persons for the development and protection of state parks, monuments and trails.
7. Plan, coordinate and administer a state historic preservation program, including the program established pursuant to the national historic preservation act of 1966, as amended.
8. Advise, assist and cooperate with federal and state agencies, political subdivisions of this state and other persons in identifying and preserving properties of historic or prehistoric significance.
9. Keep and administer an Arizona register of historic places composed of districts, sites, buildings, structures and objects significant in this state's history, architecture, archaeology, engineering and culture that meet criteria that the board establishes or that are listed on the national register of historic places. Entry on the register requires nomination by the state historic preservation officer and owner notification in accordance with rules that the board adopts.
10. Accept, on behalf of the state historic preservation officer, applications for classification as historic property received from the county assessor.
11. Adopt rules with regard to classification of historic property including:
 - (a) Minimum maintenance standards for the property.
 - (b) Requirements for documentation.
12. Monitor the performance of state agencies in the management of historic properties as provided in chapter 4.2 of this title.
13. Advise the governor on historic preservation matters.
14. Plan and administer a statewide parks and recreation program, including the programs established pursuant to the land and water conservation fund act of 1965 (P.L. 88-578; 78 Stat. 897).
15. Prepare, maintain and update a comprehensive plan for the development of the outdoor recreation resources of this state.

16. Initiate and carry out studies to determine the recreational needs of this state and the counties, cities and towns.
 17. Coordinate recreational plans and developments of federal, state, county, city, town and private agencies.
 18. Receive applications for projects to be funded through the land and water conservation fund and the state lake improvement fund on behalf of the Arizona outdoor recreation coordinating commission.
 19. Provide staff support to the Arizona outdoor recreation coordinating commission.
 20. Maintain a statewide off-highway vehicle recreational plan. The plan shall be updated at least once every five years and shall be used by all participating agencies to guide distribution and expenditure of monies under section 28-1176. The plan shall be open to public input and shall include the priority recommendations for allocating available monies in the off-highway vehicle recreation fund established by section 28-1176.
 21. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management and wildfire prevention and suppression as provided by section 37-1302, subsection B.
- B. Notwithstanding section 41-511.21, the board may annually collect and expend monies to plan and administer the land and water conservation fund program, in conjunction with other administrative tasks and recreation plans, as a surcharge to subgrantees in a proportionate amount, not to exceed ten percent, of the cost of each project. The surcharge monies shall be set aside to fund staff support for the land and water conservation fund program.
- C. A partnership fund is established consisting of monies received pursuant to subsection B of this section, monies received from intergovernmental agreements pursuant to title 11, chapter 7, article 3 and monies received pursuant to section 35-148. The board shall administer the fund monies as a continuing appropriation for the purposes provided in these sections.
- D. The state historic preservation officer shall:
1. In cooperation with federal and state agencies, political subdivisions of this state and other persons, direct and conduct a comprehensive statewide survey of historic properties and historic private burial sites and historic private cemeteries and maintain inventories of historic properties and historic private burial sites and historic private cemeteries.
 2. Identify and nominate eligible properties to the national register of historic places and the Arizona register of historic places and otherwise administer applications for listing historic properties on the national and state registers.
 3. Administer grants-in-aid for historic preservation projects within this state.
 4. Advise, assist and monitor, as appropriate, federal and state agencies and political subdivisions of this state in carrying out their historic preservation responsibilities and cooperate with federal and state agencies, political subdivisions of this state and other persons to ensure that historic properties and historic private burial sites and historic private cemeteries are taken into consideration at all levels of planning and development.
 5. Develop and make available information concerning professional methods and techniques for the preservation of historic properties and historic private burial sites and historic private cemeteries.
 6. Make recommendations on the certification, classification and eligibility of historic properties and historic private burial sites and historic private cemeteries for property tax and investment tax incentives.

E. The state historic preservation officer may:

1. Collect and receive information for historic private burial sites and historic private cemeteries from public and private sources and maintain a record of the existence and location of such burial sites and cemeteries located on private or public lands in this state.
 2. Assist and advise the owners of the properties on which the historic private burial sites and historic private cemeteries are located regarding the availability of tax exemptions applicable for such property.
 3. Make the records available to assist in locating the families of persons buried in the historic private burial sites and historic private cemeteries.
- F. For the purposes of this section, "historic private burial sites and historic private cemeteries" means places where burials or interments of human remains first occurred more than fifty years ago, that are not available for burials or interments by the public and that are not regulated under title 32, chapter 20, article 6.

41-511.05. Powers; compensation

The board may, subject to legislative budgetary control within the limitations of this article:

1. Subject to chapter 4, article 4 and, as applicable, article 5 of this title, employ, determine conditions of employment and specify the duties of such administrative, secretarial and clerical workers and technical employees such as naturalists, archaeologists, landscape architects, rangers, park supervisors, caretakers, guides, skilled tradesmen, laborers, historians and engineers, and contract to have the services of such advisors or consultants as are reasonably necessary or desirable to enable it to perform adequately its duties. The compensation of the director and of all workers and employees shall be as determined pursuant to section 38-611.
2. Make such contracts, leases and agreements and incur such obligations as are reasonably necessary or desirable within the general scope of its activities and operations to enable it to perform adequately its duties.
3. Acquire through purchase, lease, agreement, donation, grant, bequest or otherwise real and personal property and acquire real property through eminent domain for state park or monument purposes. No property may be acquired in the manner provided in this paragraph which will require an expenditure in excess of funds budgeted or received for such purposes. No state park or monument, or additions to a state park or monument, shall be created containing in excess of one hundred sixty acres of land unless created by an act of the legislature. This acreage limitation shall not apply in the case of lands given or donated for state park or monument purposes nor to state owned lands that are selected by the board and that are not subject to outstanding leases, permits or other rights for the use of the lands including preferential rights to renew such leases and permits.
4. Sell, lease, exchange or otherwise dispose of real and personal property. Any disposition of real property shall be submitted for approval of the joint committee on capital review. The disposition of office equipment, furnishings, vehicles and other materials is subject to chapter 23, article 8 of this title. The disposition of artifacts and other property of scientific, archaeological, historical or sociological interest is exempt from chapter 23, article 8 of this title, but the board shall consult with the Arizona historical society in disposing of property of historical interest.
5. Construct at state parks and monuments necessary sanitary and other facilities including picnic tables, fireplaces, campsites, service buildings and maintenance shops, and contract with private persons for the construction and operation of cabins, hotels and restaurants, and like establishments.
6. Erect suitable signs and markers at parks and monuments and write, prepare and publish written material describing the historical significance of monuments and other places of historical or other significance.
7. Solicit and work in cooperation with the department of transportation and the highway departments of various counties and the United States federal highway administration for necessary roads and trails within the state parks and monuments and access roads to state parks and monuments. For the purposes of this paragraph, the board may designate roads, spurs and other traffic related appurtenances within state park boundaries as public highways. Designation of roads, spurs or other traffic related appurtenances as public highways shall not prohibit the board from closing such public highways when the park is closed, charging for admission to the park to persons using the public highway within the park or otherwise managing such public highways in the same manner as other lands within the park.
8. Levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided under the jurisdiction of the board. The board may enter into agreements for the purpose of accepting payment for fees or other charges imposed pursuant to this article by alternative payment methods, including credit cards, charge cards, debit cards and electronic funds transfers. The collecting officer shall deduct any fee charged or withheld by a company providing the alternative payment method under an agreement with the board before the revenues are transferred to the board.

9. Make reasonable rules for the protection of, and maintain and keep the peace in, state parks and monuments. Such rules adopted by the parks board are subject to review and approval by the legislature. After a board rule has been finally adopted pursuant to chapter 6 of this title, the board shall immediately forward a certified copy of the rule to the legislature. The legislature may review and, by concurrent resolution, approve, disapprove or modify such rule. However, such rule shall be given full force and effect pending legislative review. If no concurrent resolution is passed by the legislature with respect to the rule within one year following receipt of a certified copy of the rule, the rule shall be deemed to have been approved by the legislature. If the legislature disapproves a rule or a section of a rule, the board shall immediately discontinue the use of any procedure, action or proceeding authorized or required by the rule or section of the rule. If the legislature modifies a rule or section of a rule, the board shall immediately suspend the use of any procedure, action or proceeding authorized or required by the rule or section of the rule until the modified rule has been adopted in accordance with chapter 6 of this title, after which all proceedings pursuant to the rule shall be conducted in accordance with the modified version of the rule.

10. Furnish advisory services to city and county park or recreation boards and organizations.

11. Delegate to the director, the deputy director or the director's designee any of its powers and duties, whether ministerial or discretionary, which are prescribed by law, except that the board may not delegate its power or duty to make rules.

12. Reimburse board volunteers for travel and lodging expenses and per diem subsistence allowances incurred while on public business for the board. Reimbursement amounts shall not exceed those allowed under title 38, chapter 4, article 2.

13. In consultation with the conservation acquisition board, develop a grant program and adopt guidelines for allocating and obligating monies in the land conservation fund pursuant to section 41-511.23. The guidelines shall include consideration of both qualification issues relating to applicants for grants and issues relating to the proposed use of the grant money in a manner consistent with existing municipal, county and regional land use plans.

42-12101. Definitions

In this article, unless the context otherwise requires:

1. "Commercial historic property" means real property that:

(a) Meets the criteria for classification as class one, paragraph 12 pursuant to section 42-12001 or class four pursuant to section 42-12004, subsection A, paragraphs 2 through 9.

(b) Is listed in the national register of historic places established and maintained under the national historic preservation act (P.L. 89-665; 80 Stat. 915; 16 United States Code section 470 et seq.), as amended.

(c) Meets the minimum standards of maintenance established by rule by the Arizona state parks board.

2. "Noncommercial historic property" means real property:

(a) That is listed in the national register of historic places established and maintained under the national historic preservation act (P.L. 89-665; 80 Stat. 915; 16 United States Code section 470 et seq.), as amended.

(b) That meets the minimum standards of maintenance established by rule by the Arizona state parks board.

(c) On which no business or enterprise is conducted with the intent of earning a profit.

42-12105. Disqualification

A. Property shall remain classified and assessed as noncommercial historic property until it becomes disqualified through either:

1. Notice by the taxpayer to the assessor to remove the assessment as noncommercial historic property.
2. Sale or transfer to an ownership that makes it exempt from property taxation.
3. Notification by the state historic preservation officer to the assessor that the property no longer qualifies as noncommercial historic property.

B. Property shall remain classified and assessed as commercial historic property until it becomes disqualified through either:

1. Notice by the taxpayer to the assessor to remove the assessment as commercial historic property.
2. Sale or transfer to an ownership that makes it exempt from property taxation.
3. Notification by the state historic preservation officer to the assessor that the property no longer qualifies as commercial historic property.
4. The failure to maintain the property in a manner consistent with the minimum standards of maintenance established by rule by the Arizona state parks board.

F

CONSIDERATION AND DISCUSSION OF REQUEST FROM INDUSTRIAL COMMISSION OF ARIZONA FOR 1 YEAR EXTENSION TO SUBMIT THE FIVE YEAR REVIEW REPORT FOR 20 A.A.C. CHAPTER 5, ARTICLE 11

**THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR**



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December 19, 2019

Via E-mail (Krishna.Jhaveri@azdoa.gov)

Nicole Sornsins, Chairwoman
Arizona Department of Administration
Governor's Regulatory Review Council
100 North Fifteenth Avenue, Suite 305
Phoenix, Arizona 85007

Re: **Five-Year-Review Report for A.A.C. Title 20, Chapter 5, Article 11**

Dear Ms. Sornsins:

The Industrial Commission of Arizona's five-year-review report for A.A.C. Title 20, Chapter 5, Article 11 is due and scheduled for submission to the Governor's Regulatory Review Council on or before February 29, 2020. The Commission respectfully requests a **one-year** extension for submission of the five-year-review report. The reasons for the request is as follows:

- Article 11 is one of three separate Articles dealing with self-insured employers within the Arizona Workers' compensation Act. The Commission is in the process of creating a new Article, Article 14, to replace the existing Articles 2, 7 and 11. The creation of the new Article will necessitate a lengthy review of the overlapping rules within the three existing Articles, and input from the affected stakeholders. Upon completion of the new Article, it is the commission's intention to have Articles 2, 7 and 11 repealed. The Commission believes the new Article will eliminate the current confusion caused by the three separate Articles.

Thank you for your consideration.

Sincerely,

Gaetano J. Testini
Chief Legal Counsel

G

CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033 (G) PETITION OF ARIZONA STATE BOARD OF COSMETOLOGY RULE R4-10-111



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - PETITION

MEETING DATE: February 4, 2020

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

FROM: Krishna R. Jhaveri, Esq.
Simon Larscheidt, Esq.
Council Staff Attorneys

DATE: January 15, 2020

SUBJECT: Status of A.R.S. 41-1033(G) Petition - Board of Cosmetology

I. Introduction

In response to a request from the Council at the January 14, 2020 Council Meeting, Council staff has prepared a memorandum outlining the current status of the above referenced petition, further analysis of the points raised at the January 7, 2020 Study Session and January 14, 2020 Council Meeting, and potential next steps in the Council's consideration of this petition.

II. Procedural Posture

After considering the petition, the Board's response, and the supporting materials submitted, the Council must make a decision that includes findings of fact and conclusions of law. The conclusions of law shall specifically address the agency's authority to act consistent with A.R.S. § 41-1030. *See* A.R.S. § 41-1033(K).

If the Council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be

necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of A.R.S. § 41-1033(G), the Council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. *See* A.R.S. § 41-1033(J).

Pursuant to A.R.S. § 41-1033(H)(1), the Council must make its decision by March 2, 2020 (within 90 days after receipt of the fourth council member's request to hear the petition, which occurred at the December 3, 2019 Council Meeting).

III. Background

As described in Council staff's November 13, 2019 memo, on November 1, 2019, GRRC staff received a letter dated October 28, 2019 (petition) from Kathleen Tucker, a nail technician in Tucson, Arizona. She asks the Council to review Arizona State Board of Cosmetology ("Board") rule R4-10-111 (Display of Licenses and Signs), which requires a licensee performing mobile services to "prominently display a duplicate personal and establishment license in the area where mobile services are provided." Ms. Tucker believes this rule is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern pursuant to A.R.S. § 41-1033(G).

In her petition, she states that "[r]equiring us to purchase another license for every single location where we work would be/is a hardship that serves no safety concern, and does not seem to be a written practice of AZBOC." She asks the Council to "consider that requiring multiple purchases of the same license (as opposed to displaying a clear copy of a licensee's valid AZBOC license), is an undue burden on all AZBOC licensees that it does not serve the needs or safety of the public in the least."

In its written response, the Board makes the following points:

- Under the rule, a licensee can obtain a Board-issued duplicate personal and establishment license for a fee of \$20, which is less than the statutory maximum of \$30;
- The licensee providing mobile services can use the duplicate license in multiple locations statewide and is not required to obtain a separate duplicate license for each location they provide mobile services;
- The requirement of obtaining a duplicate license for a fee of \$20 and posting the duplicate license is not an "unduly burdensome" requirement as those terms are defined in Black's Law Dictionary; and
- The rule is necessary to specifically fulfill a public health, safety, and welfare concern: the requirement protects against fraud, it assures the public that they are receiving services from a licensee who has the required training and education, and the requirement addresses the issue of unlicensed individuals holding themselves out as licensed professionals for financial gain, which was highlighted in the Governor's Executive Order 2019-01.

At the January 7, 2020 Study Session, Ms. Tucker appeared and reiterated the relevant points in her petition. The Board did not appear at the January 7, 2020 Study Session. However, the Board appeared at the January 14, 2020 Council Meeting.

At the Council Meeting, the Board made three main points: (1) the duplicate license requirement is necessary to prevent fraud; (2) the requirement is necessary to protect customers; and (3) that the requirement is enforced because it is contained in the rule at issue. Council staff notes that the Board did not directly respond to Ms. Tucker's contention that this requirement is "unduly burdensome" and not specifically necessary to fulfill a public health, safety, or welfare concern. The Board and Ms. Tucker both stated that there is no visual difference between an original license and a duplicate license. Furthermore, the Board acknowledged at the Council Meeting that either an original or duplicate license can be counterfeited, seemingly undercutting the argument that the duplicate license requirement is intended to protect against fraud. The Board stated that if someone wants to commit fraud, they are going to find a way to do it. When a Council Member asked why a licensee could not then simply use a photocopy of their original license in place of a duplicate license, the Board's response was that it has been the process for years and years.

IV. Analysis

A. Statutory Authority

Council staff was asked by the Council to analyze whether the requirements in R4-10-111(D) were statutorily based or only found in the Board's rules. After analysis, Council staff finds that there is no specific statutory authority to require licensees to purchase and display a "duplicate" personal or establishment license in the area where mobile services are provided. Council staff finds that the Board has general authority to "[p]rescribe standards and requirements for the provision of salon services through mobile units and in customer locations." See A.R.S. § 32-504(A)(9). Further, the Board may "[d]elegate authority to its executive director to issue licenses to applicants who meet the requirements of this chapter." See § A.R.S. 32-504(B)(2).

B. Duplicate License Requirement

Pursuant to A.R.S. § 32-507 (Fees), the maximum fee the Board may charge for a "duplicate license" is \$30.00. The Board stated at the Council Meeting that it charges a fee of \$20.00 for the duplicate license. However, Council staff's understanding of the fee statute is that the "duplicate license" is meant to replace an original license that is destroyed, lost, stolen, or otherwise misplaced prior to renewal. A duplicate license is not meant to supplement or complement an establishment or personal license. Duplicate and original licenses are functionally identical. Moreover, the term "duplicate license" is not defined in the rules, and the rule at issue does not require a *Board-issued* duplicate license, as opposed to a licensee-made photocopy.

This understanding is bolstered by the requirement in A.R.S. § 32-507(C) that “[t]he board shall *only* issue a duplicate license on receipt of a written request that states the reason for the request for a duplicate license.” In Council staff’s view, the statutory requirement that a person must provide a reason for requesting a duplicate license is inconsistent with R4-10-111’s requirement that a person who provides mobile services must obtain a duplicate license. This potentially leads to a situation where the Board may deny a request for a duplicate license, thus denying an applicant the ability to perform mobile services.

C. Non-applicability Statutes

The Board indicated at the January 14, 2020 Council Meeting that A.R.S. § 32-506 (Nonapplicability of chapter) and A.R.S. § 32-574 (Unlawful acts; violation; classification) were relevant in this matter. However, in Council staff’s determination, they are not. Specifically, while A.R.S. § 32-506(9) states, [t]his chapter does not apply to...[p]ersons who apply makeup, oils and cosmetics to patients in a hospital, nursing home or residential care institution with the consent of the patient and the hospital, nursing home or residential care institution”, it does not apply to nail technicians such as Ms. Tucker.

Additionally, A.R.S. § 32-574(A)(5) states, “[a] person shall not...[p]ractice or attempt to practice...nail technology...in any place other than in a salon licensed pursuant to this chapter unless the person is requested by a customer to go to a place other than a salon licensed pursuant to this chapter and is sent to the customer from the salon, except that a person who is licensed pursuant to this chapter may practice, without the salon's request...nail technology...in a health care facility, hospital, residential care institution, nursing home or residence of a person requiring home care because of an illness, infirmity or disability.” However, this statute does not exempt a nail technician from complying with the display of licenses requirements found in R4-10-111. Therefore, this statute is irrelevant to whether the Board’s requirement pursuant to R4-10-111(D) is unduly burdensome or necessary to specifically fulfill a public health, safety or welfare concern.

D. Online License Verification System

Council staff notes the Board maintains an online license verification system on its website¹ that allows a member of the public, or any interested party, to look up a Board licensee. Moreover, the search feature on this verification system only requires a name *or* license number to search for a licensee. Thus, a licensee could display a photocopy of their original personal license or even post their license number while providing mobile services. This would allow the person receiving services to verify that the licensee holds a valid, active license without requiring the licensee to pay a fee for and display a duplicate license. The existence of an online license verification system demonstrates that the duplicate license requirement in R4-10-111(D) is not the least burdensome way of achieving the regulatory objectives of the rule, which the Board contends is to protect against fraud.

¹ <https://boc.az.gov/license-verification>

V. Conclusion

At the January 14, 2020 Council Meeting, the Council voted to table consideration of the petition to the next meeting cycle: the Study Session on January 28, 2020 and the Council Meeting on February 4, 2020.

Pursuant to R1-6-402, no later than seven days after the Council makes a decision on this petition, the Chair shall send a letter to the affected agency head and the person filing the petition advising them of the reasons for, and date of, the decision. Thus, if the Council makes a decision at the February 4, 2020 Council Meeting, the Chair must send a letter stating the decision to the parties no later than February 11, 2020.