

**C-1**

**BOARD OF DENTAL EXAMINERS**

Title 4, Chapter 11, State Board of Dental Examiners, Article 12

**Amend:** R4-11-1202, R4-11-1206, R4-11-1207



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** January 4, 2021

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

**FROM:** Council Staff

**DATE:** December 14, 2021

**SUBJECT:** Arizona State Board of Dental Examiners

Amend R4-11-1202

Amend R4-11-1206

Amend R4-11-1207

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This Regular Rulemaking from the State Board of Dental Examiners (Board) seeks to amend three rules in Title 4, Chapter 11, Article 12, regarding Continuing Dental Education and Renewal Requirements. The Board indicates the rules need to be amended in order to update the license renewal deadlines consistent with SB1013.

The Board is seeking a regular 60-day delayed effective date.

The Board received an exception from Executive Order 2021-02 from the Governor's Office on June 28, 2021.

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

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

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

No, the rules do not establish a new fee or fee increase.

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

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

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

The amendment spreads out the licensee renewal expiration date(s) over the course of an entire calendar year as opposed to just one expiration date.

No costs will be incurred to the Arizona State Board of Dental Examiners. The benefits spread out the renewal dates as opposed to one date per year. No new costs will be incurred to individuals; they are the same whether the licensee renews on their birthdate(s) or June 30. The licensees may experience less of a delay in their renewals due to the spreading out of the workload over 12 months versus June 30. Consumers, like the licensee, can experience a benefit knowing that there will be less of delay in the licensee being renewed, and therefore, continuity of care will continue.

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 Arizona State Board of Dental Examiners believes that by amending its rules to conform with the passage of SB1013 is the less intrusive and less costly alternative.

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

The Arizona State Board of Dental Examiners is the only state agency affected by the rulemaking amendment and there will not be any costs, including the hiring of more personnel to manage the effects of the amendment. The benefits spreads out the renewal dates as opposed to one date per year.

No new costs will be incurred to businesses; they are the same whether the licensee renews on their birthdate(s) or June 30. The licensees may experience less of a delay in their renewals due to the spreading out of the workload over 12 months versus June 30.

No new costs will be incurred to individuals; they are the same whether the licensee renews on their birthdate(s) or June 30. The licensees may experience less of a delay in their renewals due to the spreading out of the workload over 12 months versus June 30. Consumers, like the licensee, can experience a benefit knowing that there will be less of delay in the licensee being renewed, and therefore, continuity of care will continue.

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

No, there were no changes between the proposed rulemaking and the final rulemaking.

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

The Board indicates they did not receive any public comments on the proposed rules.

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 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 are no corresponding federal laws to these rules.

11. **Conclusion**

As mentioned above, the Board is seeking to amend three rules in Title 4, Chapter 11, Article 12, regarding Continuing Dental Education and Renewal Requirements. The Board indicates the rules need to be amended in order to update the license renewal deadlines consistent with SB1013.

The Board is seeking a regular 60-day delayed effective date. Council staff recommends approval of this rulemaking.



Douglas A. Ducey,  
Governor

# Arizona State Board of Dental Examiners

“Caring for the Public’s Dental  
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November 3, 2021

Ms. Nicole Sornsins, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 402  
Phoenix, AZ 85007

**Re:           A.A.C. Title 4. Professions and Occupations  
              Chapter 11. State Board of Dental Examiners**

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 September 24, 2021 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 Executive Director;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text;
  - c. Economic, Small Business, and Consumer Impact Statement; and
  - d. Final approval from the Governor’s Office.

Sincerely,

Ryan P. Edmonson  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS**

**PREAMBLE**

**1. Articles, Parts, and Sections Affected**

**Rulemaking Action**

R4-11-1202	Amend
R4-11-1206	Amend
R4-11-1207	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. § 32-1207

Implementing statutes: A.R.S. §§ 32-1201 et seq.

**3. The effective date for the rules:**

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 1232

Notice of Proposed Rulemaking: 27 A.A.R. 1217

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

Name: Ryan P. Edmonson, Executive Director  
Address: Arizona State Board of Dental Examiners  
1740 W. Adams St., Ste. 2470  
Phoenix, AZ 85007

Telephone: (602) 542-4493  
E-Mail: ryan.edmonson@dentalboard.az.gov

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

The Board needs to amend its rules to update the license renewal deadlines consistent with SB1013 (2021).

**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:**

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. Thus, the economic impact is minimized.

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

There were no changes between the proposed rulemaking and the final rulemaking.

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

The Board received no written comments regarding the rulemaking. No one attended the oral proceeding on September 24, 2021.

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

None.

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

The Board issues general permits to licensees who meet the criteria established in statute and rule.

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

Not applicable.

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

No 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 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 11. BOARD OF DENTAL EXAMINERS**  
**ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL**  
**REQUIREMENTS**

Section

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

R4-11-1206. Restricted Permit Holders-Dental

R4-11-1207. Restricted Permit Holders-Dental Hygiene

**ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL  
REQUIREMENTS**

**R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements**

- A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.
- B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:
  - 1. A current cardiopulmonary resuscitation (CPR) healthcare provider certificate from the American Red Cross, the American Heart Association, or another certifying agency;
  - 2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
  - 3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.
- C. A licensee or certificate holder shall include an affidavit affirming the licensee's or certificate holder's completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee's or certificate holder's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

**D.** A licensee or certificate holder shall submit a written request for an extension before the ~~June~~ 30 renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06.

If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.

**E.** The Board shall:

1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

**F.** A licensee or certificate holder shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder participated in during the most recently completed renewal period.

**G.** Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder selected for audit shall provide the Board with documentation of attendance that shows compliance with the continuing dental education requirements within 60 days from the date the licensee or certificate holder received notice of the audit by certified mail.

**H.** If a licensee or certificate holder is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

**R4-11-1206. Restricted Permit Holders - Dental**

In addition to the requirements in R4-11-1202, a dental restricted permit holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 24 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued ~~between July 1 and June 30~~ during the 36 months immediately before the ~~restricted permit holder submits the renewal application~~ deadline prescribed in A.R.S. § 32-1236.
3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education before renewal as follows:
  - a. At least 12 credit hours in one or more of the subjects enumerated in R4-11-1203(1);
  - b. No more than six credit hours in one or more of the subjects enumerated in R4-11-1203(2);
  - c. At least one credit hour in the subjects enumerated in R4-11-1203(3);
  - d. At least one credit hour in the subjects enumerated in R4-11-1203(4).
  - e. At least three credit hours in the subjects enumerated in R4-11-1203(5); and
  - f. At least one credit hour in the subjects enumerated in R4-11-1203(6).

#### **R4-11-1207. Restricted Permit Holders - Dental Hygiene**

In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 18 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education credits accrued ~~between July 1 and June 30~~ during the 36 months immediately before the ~~restricted permit holder submits the renewal application~~ deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
  - a. At least 9 credit hours in one or more of the subjects enumerated in R4-11-1204(1);
  - b. No more than three credit hours in one or more of the subjects enumerated in R4-11-1204(2);
  - c. At least one credit hour in the subjects enumerated in R4-11-1204(3);
  - d. At least two credit hours in the subjects enumerated in R4-11-1204(4) and
  - e. At least three credit hours in the subjects enumerated in R4-11-1204(5).

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS**

1. Identification of the rulemaking:

The Board needs to amend its rules related to license renewals.

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

Licensee renewal expiration date from June 30 of every third year to each licensee's birthdate every third year.

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

The rule is being amended to conform to the changes based on the passage SB1013 during the 2021 legislative session. Not amending the rule would create a conflict between the statute and the rule beginning January 1, 2022.

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

Licensee renewal expiration date from June 30 of every third year to each licensee's birthdate every third year.

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

The amendment spreads out the expiration date(s) over the course of an entire calendar year as opposed to just one expiration date.

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

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

Name: Ryan Edmonson, Executive Director  
Address: Arizona State Board of Dental Examiners  
1740 W. Adams St., Ste. 2470  
Phoenix, AZ 85007  
Telephone: (602) 542-4493  
E-Mail: [ryan.edmonson@dentalboard.az.gov](mailto:ryan.edmonson@dentalboard.az.gov)

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

Other than the costs to the Arizona State Board of Dental Examiners', the costs are shared by the Board's licensees.

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 Arizona State Board of Dental Examiners is the only state agency affected by the rulemaking amendment and there will *not* be any costs, including the hiring of more personnel to manage the affects of the amendment. The benefits, as stated above, spreads out the renewal dates as opposed to one date per year.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

N/A

- c. Costs and benefits to businesses directly affected by the rulemaking:  
No new costs will be incurred to businesses; they are the same whether the licensee renews on their birthdate(s) or June 30. The licensees may experience less of a delay in their renewals due to the spreading out of the workload over 12 months versus June 30.

6. Impact on private and public employment:

N/A

7. Impact on small businesses<sup>2</sup>:

- a. Identification of the small business subject to the rulemaking:  
The Arizona State Board of Dental Examiners' licensees, but this is no different than currently. There is no financial impact to small businesses other than dental businesses, but there are *no* new costs.
- b. Administrative and other costs required for compliance with the rulemaking:  
Negligible
- c. Description of methods that may be used to reduce the impact on small businesses:  
Minimal, if any, and only based on the cost to employers who pay renewal fees for its hired dental professionals.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No new costs will be incurred to individuals; they are the same whether the licensee renews on their birthdate(s) or June 30. The licensees may experience less of a delay in their renewals due to the spreading out of the workload over 12 months versus June 30. Consumers, like the licensee, can experience a benefit knowing that there will be

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

less of delay in the licensee being renewed, and therefore, continuity of care will continue.

9. Probable effects on state revenues:

No new revenues or expenses will be incurred.

10. Less intrusive or less costly alternative methods considered:

The Arizona State Board of Dental Examiners believes that by amending its rules to conform with the passage of SB1013 is the less intrusive and less costly alternative.

### 32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.
2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.
3. "Board" means the state board of dental examiners.
4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.
6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.
7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.
8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.
9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.
10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.
11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.
12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.
13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:
  - (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
  - (b) Imposition of restrictions on the scope of practice.

- (c) Imposition of peer review and professional education requirements.
- (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

- (a) Charges for services not rendered.
- (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.
- (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.
- (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.
- (e) Any statement that is material to the claim and that the licensee knows is false or misleading.
- (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.
- (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.
24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.
9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.
10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.
11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.
12. Collect and disburse monies.
13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.
14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.
2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.
3. Adopt rules:
  - (a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.
  - (b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.
  - (c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.
4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.
5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.
6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.
2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely

practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for the application of general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than three hundred dollars to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section, "record of complaint" means the document reflecting the final disposition of a complaint or investigation.

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**Re: Arizona State Board of Dental Examiners - NPR (Renewals)**

1 message

**Trista Guzman Glover** <tguzman@az.gov>

Mon, Jun 28, 2021 at 8:42 AM

To: Kristina Gomez &lt;kristina.gomez@dentalboard.az.gov&gt;

Cc: Gabee Lepore &lt;glepore@az.gov&gt;, Ryan Edmonson &lt;ryan.edmonson@dentalboard.az.gov&gt;

Hi, Kristina -

These look good to go. Thanks for looping back with our office.

Trista

**Trista Guzman Glover** | Office of Arizona Governor Doug Ducey*Director, Boards and Commissions*

O. (602) 542-1308

[www.azgovernor.gov](http://www.azgovernor.gov)

On Thu, Jun 17, 2021 at 2:20 PM Kristina Gomez &lt;kristina.gomez@dentalboard.az.gov&gt; wrote:

Good Afternoon Trista and Gabee,

I hope you both are having a good day!

On June 11, the Board reviewed and approved language to amend rules to update the license renewal deadlines consistent with SB 1013 (2021).

We are requesting your review and approval of the attached NPR prior to final submission. If you could kindly let us know if you agree with the final amendment, that would be great.

Thank you in advance for your review of the amended NPR regarding renewals. We are happy to respond to any questions that you may have regarding the attachment.

Respectfully,  
Kristina Gomez  
(602) 542-4451

**ARIZONA STATE RETIREMENT SYSTEM**

Title 2, Chapter 8, State Retirement System Board, Article 4

**Amend:** R2-8-401, R2-9-403



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** January 4, 2022

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

**FROM:** Council Staff

**DATE:** December 8, 2021

**SUBJECT:** **ARIZONA STATE RETIREMENT SYSTEM**  
Title 2, Chapter 8, Article 4, Practice and Procedure before the Board

**Amend:** R2-8-401, R2-8-403

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### **Summary:**

This regular rulemaking from the Arizona State Retirement System (ASRS) relates to rules in Title 2, Chapter 8, Article 4, regarding Practice and Procedure before the Board. In this rulemaking, the ASRS seeks to "amend its rules relating to appeals in order to provide notice to the public of how a member may appeal a health insurance issue under a self-insured program." Further, the ASRS indicates that the rules "will further clarify the appeals process, but the rules do not impose any additional requirements or burdens on members."

The ASRS is seeking an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(1), (3), and (4). The ASRS indicates that an immediate effective date is necessary to "preserve retirees' access to health insurance and to comply with new statutory language that allows the ASRS to administer a self-insured retiree health insurance program, which provides a benefit to the public, but does not impose any penalties."

The ASRS received an exception from Executive Order 2021-02 to initiate this rulemaking on August 26, 2021 and final approval to submit it to the Council on November 8, 2021.

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. These rule amendments do 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 a study in conducting this rulemaking.

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

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 does not issue permits or licenses or charge fees. 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 rulemaking will have minimal economic impact, if any, because it merely clarifies how a member may appeal an issue relating to health insurance.

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 will clarify how members may appeal health insurance decisions without imposing additional requirements on the public.

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

This rulemaking will directly affect and benefit all 608,150 members of the ASRS. The ASRS incurred the cost of the rulemaking.

Members will be required to comply with these rules when submitting a health insurance appeal. Such clarification will benefit members and their dependents by increasing public understanding of how the ASRS administers its retiree health insurance program.

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

No. As identified in Item 10 of the Preamble, the ASRS initially identified R2-8-406 in the Notice of Proposed Rulemaking as a new rule. However, the ASRS moved that language without change into subsections (I) and (J) of R2-8-403.

This change does not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

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

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, license, or agency authorization.

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

No. There are no corresponding federal laws to these rules.

11. **Conclusion**

In this regular rulemaking, the ASRS seeks to amend rules relating to appeals regarding a member’s appeal of a health insurance issue under a self-insured program. ASRS indicates that these rule amendments would clarify the appeals process, but not impose any additional requirements or burdens on members.

The ASRS is requesting an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(1), (3), and (4). Council staff finds that the ASRS demonstrates adequate justification for an immediate effective date and Council staff recommends approval of this rulemaking.

11/15/2021

Ms. Nicole Sornsin, 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. Sornsin:

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

1. Close of record date: The rulemaking record was closed on November 8, 2021 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 requested pursuant to A.R.S. § 41-1032(A).
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**

**PREAMBLE**

<b><u>1. Articles, Parts, and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R2-8-401	Amend
R2-8-403	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. §§ 38-714(E)(1) and 41-1092 et seq.

**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):**

These rules need to be effective immediately on filing with the Secretary of State.

Pursuant to A.R.S. § 41-1032(A)(1), (A)(3), and (A)(4), these rules need an immediate effective date in order to preserve retirees' access to health insurance and to comply with new statutory language that allows the ASRS to administer a self-insured retiree health insurance program, which provides a benefit to the public, but does not impose any penalties.

**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):**

None

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 1591, October 1, 2021

**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: [Ruleswriter@azasrs.gov](mailto:Ruleswriter@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:**

The ASRS needs to amend its rules relating to appeals in order to provide notice to the public of how a member may appeal a health insurance issue under a self-insured program. These rules will further clarify the appeals process, but the rules do not impose any additional requirements or burdens on members.

**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 administers 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 a member may appeal relating to health insurance.

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

The Notice of Proposed Rulemaking identified R2-8-406 as a new rule. However, that language has been moved without change into subsections (I) and (J) of R2-8-403.

**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 November 8, 2021.

**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 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

Section

R2-8-401. Definitions

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

### R2-8-401. Definitions

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

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

### R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:

1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.
- B.** Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
1. The decision the agency is making in response to the letter of appeal; and
  2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C.** A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D.** Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
1. The agency action the ASRS is taking in response to the letter of appeal; and
  2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

- E.** For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
1. The name and mailing address of the member, employer, or other person filing the Request;
  2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  3. A concise statement of the reasons for the appeal.
- F.** The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G.** Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H.** Pursuant to subsection (B):
1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- I.** The Board has delegated to each Health Plan Vendor the authority to:

1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
  2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
  3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.
- J.** An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

1. Identification of the rulemaking:

The ASRS needs to amend two rules relating to appeals in order to provide notice to the public of how a member may appeal a health insurance issue under a self-insured program. These rules will further clarify the appeals process, but the rules do not impose any additional requirements or burdens on members.

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

Currently, the ASRS provides health and dental insurance to approximately 123,200 retirees and dependents. In FY 2021, the ASRS processed approximately 94 health insurance related appeals. Member need to understand how they may submit a health insurance related appeal and how that appeal may be handled. These rules will clarify that appeal process, particularly in light of the ASRS providing health insurance benefits under a self-insured program.

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:

As discussed above, members need to understand how they may appeal a health insurance decision. Amending these rules to clarify how health insurance appeals are processed will increase understandability of health insurance decisions.

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

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

This rulemaking will clarify how the ASRS processes health insurance appeals. As discussed above and below, these rules will increase the clarity and effectiveness of how a member may appeal a health insurance decision, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how health insurance appeals are processed.

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 a member may appeal relating to health insurance.

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: [Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

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

In general, all members 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 608,150.

Specifically, members will be required to comply with these rules in submitting a health insurance appeal. Such clarification will benefit members and their dependents by increasing public understanding of how the ASRS administers its retiree health insurance program.

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 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 businesses<sup>2</sup>:

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

- 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 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 members may appeal health insurance decisions without imposing additional requirements on the public.



## TITLE 2. ADMINISTRATION

### CHAPTER 8. STATE RETIREMENT SYSTEM 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.

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2021 through March 31, 2021.

<a href="#">R2-8-104.</a>	<a href="#">Definitions .....</a>	<a href="#">4</a>	<a href="#">R2-8-207.</a>	<a href="#">Optional Premium Benefit .....</a>	<a href="#">29</a>
<a href="#">R2-8-117.</a>	<a href="#">Return to Work After Retirement .....</a>	<a href="#">7</a>	<a href="#">R2-8-303.</a>	<a href="#">Long-Term Disability Calculation .....</a>	<a href="#">30</a>
<a href="#">R2-8-118.</a>	<a href="#">Application of Interest Rates .....</a>	<a href="#">7</a>	<a href="#">R2-8-404.</a>	<a href="#">Board Decisions on Hearings before the Office of Administrative Hearings .....</a>	<a href="#">32</a>
<a href="#">R2-8-121.</a>	<a href="#">Employer Payments for Ineligible Contributions; Unfunded Liability Invoice .....</a>	<a href="#">8</a>	<a href="#">R2-8-502.</a>	<a href="#">Request to Purchase Service Credit and Notification of Cost .....</a>	<a href="#">34</a>
<a href="#">R2-8-122.</a>	<a href="#">Remittance of Contributions .....</a>	<a href="#">8</a>	<a href="#">R2-8-507.</a>	<a href="#">Required Documentation and Calculations for Forfeited Service Credit .....</a>	<a href="#">35</a>
<a href="#">R2-8-201.</a>	<a href="#">Definitions .....</a>	<a href="#">26</a>	<a href="#">R2-8-901.</a>	<a href="#">Definitions .....</a>	<a href="#">47</a>
<a href="#">R2-8-202.</a>	<a href="#">Premium Benefit Eligibility and Benefit Determination .....</a>	<a href="#">27</a>	<a href="#">R2-8-902.</a>	<a href="#">Remitting Contributions .....</a>	<a href="#">47</a>
<a href="#">R2-8-204.</a>	<a href="#">Premium Benefit Calculation .....</a>	<a href="#">28</a>	<a href="#">R2-8-903.</a>	<a href="#">Accrual of Credited Service .....</a>	<a href="#">47</a>
<a href="#">R2-8-205.</a>	<a href="#">Premium Benefit Documentation .....</a>	<a href="#">28</a>	<a href="#">R2-8-904.</a>	<a href="#">Compensation from An Additional Employer....</a>	<a href="#">47</a>
<a href="#">R2-8-206.</a>	<a href="#">Six-Month Reimbursement Program .....</a>	<a href="#">28</a>			

#### Questions about these rules? Contact:

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: [Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

**The release of this Chapter in Supp. 21-1 replaces Supp. 20-3, 1-53 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

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 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](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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



Administrative Rules Division  
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

Authority: A.R.S. § 38-701 et seq.

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Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-102. Repealed****Historical Note**

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-103. Repealed****Historical Note**

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-104. Definitions**

- A. The definitions in A.R.S. § 38-711 apply to this Chapter.
- B. Unless otherwise specified, in this Chapter:
  1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
  2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
  3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
  4. "Contribution" means:
    - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
    - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
    - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
  5. "Day" means a calendar day, and excludes the:
    - a. Day of the act or event from which a designated period of time begins to run; and

- b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "Party" means the same as in A.R.S. § 41-1001(14).
10. "Person" means the same as in A.R.S. § 41-1001(15).
11. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
12. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
13. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
15. "United States" means the same as in A.R.S. § 1-215(39).

**Historical Note**

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-105. Repealed****Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved****R2-8-107. Reserved****R2-8-108. Reserved****R2-8-109. Reserved****R2-8-110. Reserved****R2-8-111. Reserved****R2-8-112. Reserved****R2-8-113. Emergency Expired**

## CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death**

A. The following definitions apply to this Section unless otherwise specified:

1. "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
3. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
5. "LTD" Means the same as in R2-8-301.
6. "On File" means ASRS has received the information.
7. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
8. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
  - c. Is not currently in a leave of absence status with an Employer;

d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;

e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;

f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;

g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;

h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;

i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and

k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;

l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;

m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.

6. Specify that:

a. The entire amount of the distribution be paid directly to the member,

b. The entire amount of the distribution be rolled over to an eligible retirement plan, or

c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and

7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify;

a. The type of eligible retirement plan; and

b. The name and mailing address of the eligible retirement plan.

E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted

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the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:

1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's termination date;
  4. The member's final pay period ending date;
  5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  6. The Employer's name and telephone number;
  7. The Employer Number;
  8. The name and title of the authorized Employer representative;
  9. Certification by the authorized Employer representative that:
    - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
    - b. There is no agreement to re-employ the member;
    - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F.** If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G.** If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H.** If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I.** Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a certified copy or original DRO that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- J.** A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time

before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.

- K.** If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

**Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-116. Alternate Contribution Rate**

- A.** For purposes of this Section, the following definitions apply:
1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B.** An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C.** In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D.** The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E.** If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F.** A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 with-

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out change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A. Unless otherwise specified, in this Section:
  - 1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
  - 2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
  - 1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  - 2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
  - 1. The retired member's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's full name;
  - 3. The date the member retired;
  - 4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  - 5. The first date of Commencing Employment upon the retired member's return to work;
  - 6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  - 7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.

- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%

- B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
  - 1. Employer and employee contributions;
  - 2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;

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3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C. Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). 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). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-119. Expired****Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Repealed****Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice**

- A. Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D. The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-122. Remittance of Contributions**

- A. Each Employer 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.
- 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.
- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

**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). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A. For the purposes of this Section, "market value" means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
  1. The interest and investment return rate assumptions are determined by the Board.
  2. The actuarial value of assets equals the market value of assets:

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- a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
- b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**Table 1. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 2. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amend-

ments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3. Repealed****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired****Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired****Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

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Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp.

03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).

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- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).
- Historical Note**
- Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).
- R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**
- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
  2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
    - b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
3. "Compensation" means the same as in A.R.S. § 38-711(7).
  4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
  5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
    - a. A change in the employee's primary job responsibilities; and
    - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
    - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
  6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
  7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
  8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B. Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or

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2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H. If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).
6. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
7. "Legal documentation" means:
- One document issued from a United States government entity; or
  - Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
8. "LTD" means the same as in R2-8-301.
9. "Irrevocable PDA" means the same as in R2-8-501.
10. "On File" means the same as in R2-8-115.
11. "Original retirement date" means the later of:
- The date a member retires from the ASRS for the first time; or
  - The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B. A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
- The member's full name;
  - The member's Social Security number or U.S. Tax Identification number;
  - The member's marital status, if not On File with ASRS;
  - The member's current mailing address; if not On File with ASRS;
  - The member's date of birth, if not On File with ASRS;
  - A retirement date according to A.R.S. § 38-764(A);
  - The retirement option the member is electing;
  - If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  - The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - The beneficiary's full name;
    - The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
    - The beneficiary's date of birth;
    - The beneficiary's relationship to the member; and
    - The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  - Whether the member is electing the Optional Health Insurance Premium Benefit;
  - The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
    - Whether the member's spouse consents to the member making a beneficiary election that provides the

**Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-126. Retirement Application**

- A. For the purposes of this Section, the following definitions apply, unless stated otherwise:
- "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
  - "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  - "Applicable retirement date" means the later of:
    - The date a member retires from the ASRS for the first time; or
    - The date a member re-retires from the ASRS after returning to active membership.
  - "Conservator" means the same as in A.R.S. § 14-7651.
  - "DRO" means the same as in R2-8-115.

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- member's spouse with less than 50% of the member's account balance;
- b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
  - c. The member's spouse's full name; and
  - d. The member's spouse's notarized signature;
12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
    - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
    - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
    - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
    - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
  13. Acknowledgement of the following statements of understanding:
    - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
    - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
    - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      - i. The date ASRS receives the most recent Acceptable Documentation; or
      - ii. The retirement date contained in the most recent Acceptable Documentation.
    - d. The member has received the Special Tax Notice Regarding Plan Payments;
    - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
    - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
    - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
    - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
  14. The member's notarized signature.
- E. If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
  - D. If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
  - E. A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
    1. The type of account and account number to which the member is electing to roll over;
    2. The name and address of the financial institution of the account to which the member is electing to roll over; and
    3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
  - F. If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.
  - G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
  - H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
    1. The number of the service purchase invoice;
    2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
    3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
      - a. The amount of the partial lump sum distribution to be applied to that invoice; or
      - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
    4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
    5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
    6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
  - I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
  - J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
  - K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
  - L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement

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date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.

- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
  1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  2. The member's total salary paid during their last fiscal year;
  3. The member's compensation for the last pay period;
  4. The name and title of the authorized Employer representative;
  5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
  1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.

- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
  1. The member's full name;
  2. The member's bank account routing number;
  3. The member's bank account number; and
  4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-127. Re-Retirement Application**

- A. The definitions in R2-8-126 apply to this Section.
- B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
  1. The information identified in R2-8-126(B)(1) through (B)(8);

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2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  3. The information identified in R2-8-126(B)(11);
  4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  6. Acknowledgement of the following statements of understanding:
    - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
    - b. The member understands that as a re-retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
    - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
    - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
    - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
    - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
    - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
  7. The member's notarized signature.
- C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-128. Joint and Survivor Retirement Benefit Options**

- A. The definitions in R2-8-126 apply to this Section.
- B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible

to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.

- D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits an original or certified copy of a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits an original or certified copy of a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-129. Period Certain and Life Annuity Retirement Options**

- A. The definitions in R2-8-126 apply to this Section.
- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to

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- any retirement reductions applicable at the member's Original Retirement Date.
- C.** According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D.** According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E.** A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or an original or certified copy of a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F.** A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant or an original or certified copy of a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G.** A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H.** A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I.** A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J.** A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K.** Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L.** A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M.** In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
  5. The member's notarized signature acknowledging the following statements of understanding:
    - a. For rescinding a retirement election:
      - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or an original or certified copy of a DRO is required if the member retired or re-retired on or after July 1, 2008;
      - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
    - b. For changing a contingent annuitant or beneficiary:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
    - c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's

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- contingent annuitant as of the effective date of the member's request according to this Section;
- iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
    - a. Full name;
    - b. Social Security number, if the contingent annuitant is a U.S. citizen;
    - c. Date of birth; and
    - d. Legal relationship to the member.
  7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
    - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
    - c. The member changing or ending the spouse's contingent annuitant status.
  8. Whether the spouse's consent is not required because:
    - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
    - b. The member is divorced and if so, provide an original or certified copy of a DRO.
- N.** If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O.** The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P.** According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of an original or certified copy of a DRO.
- Q.** The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.
- Historical Note**
- New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).
- R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**
- A.** The definitions in R2-8-126 apply to this Section.
  - B.** In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
    1. The Member's full name and one or more of the following information:
      - a. The Member's Social Security number or U.S. Tax Identification number; or
      - b. The Member's address; or
      - c. The Member's date of birth;
    2. The following information for the beneficiary:
      - a. The full name of the person or entity the member is designating as beneficiary;
      - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
      - c. The percentage of the benefit the member is allocating to the beneficiary; and
    3. The member's notarized signature.
  - C.** If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
  - D.** If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
  - E.** Effective July 1, 2013, a married member:
    1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
      - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
      - b. The spouse consents to an alternate beneficiary;
    2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
      - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
      - b. The spouse consents to an alternate contingent annuitant; or
      - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
  - F.** The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
  - G.** Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
  - H.** Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
  - I.** In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
    1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
    2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
  - J.** A married member who re-retires according to A.R.S. § 38-766:
    1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or

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2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
    - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
    - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
  2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's assertion to the spouse's right to community property;
  4. An original or copy of the marriage certificate; and
  5. An original or certified copy of the member's death certificate.
- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** An original or certified copy of a DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
  2. Member's Social Security number or U.S. Tax Identification number;
  3. Whether the member's spouse is consenting to one or more of the following:
    - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member naming a contingent annuitant other than the spouse; and
    - d. The spouse's notarized signature.
- T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's full name;
  4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
  2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the benefi-

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ciary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
  2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
  3. Address; and
  4. Notarized signature acknowledging the following statements:
    - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
    - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
    - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
    - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
    - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-133. Survivor Benefit Applications**

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
  1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;
      - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - i. Whether the bank account is a checking or savings account;
      - ii. The name of the banking institution to which the benefit is being sent;
      - iii. The routing number;
      - iv. The account number; and
    - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      - i. Full name;
      - ii. Mailing address, if not On File with ASRS;
      - iii. Date of birth, if applicable; and
      - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    - g. The following statements of understanding:
      - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
        - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
        - (2) They are not subject to backup withholding because:

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- (a) They are exempt from backup withholding, or
  - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
  - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
  - (3) They are a legal resident of the United States, unless they are an estate or trust.
  - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
  - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
  - vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
    - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
- 1. The claimant's name;
  - 2. The claimant's Social Security number or U.S. Tax Identification number;
  - 3. The claimant's mailing address;
  - 4. The member's name;
  - 5. The member's Social Security number or U.S. Tax Identification number;
  - 6. The date of the member's death;
  - 7. The state and county where the member died;
  - 8. Statements indicating:

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- a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
- b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
- c. The claimant is the successor of the member and is entitled to the member's personal property because:
- i. The claimant is named in the member's will; or
  - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
- d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
- e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
- f. If there are other surviving heirs, then the name and relationship of each surviving heir;
- g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
- h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The minor beneficiary's full name;
  4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  5. The full name of the minor beneficiary's legal guardian;
  6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**Table 1. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026,

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valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026,

valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed****Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed****Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**







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December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 6. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 7. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 1. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 2. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 3. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 4. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 5. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 6. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT****R2-8-201. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).

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5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-202. Premium Benefit Eligibility and Benefit Determination**

- A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
  1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are

retired members or Disabled members, is eligible for the greater of:

- a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
- b. One Family Calculation of the Premium Benefit described in R2-8-204(B).

- B. Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C. Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D. A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E. Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  1. Not reduce the retired member's pension amount; and
  2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible

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for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:

1. Not reduce the retired member's pension amount; and
  2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E.** If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F.** If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G.** If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H.** If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
1. The actual cost of the Coverage premium; or
  2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I.** If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A.** A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B.** A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C.** A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.

- D.** Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-205. Premium Benefit Documentation**

- A.** Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B.** An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C.** Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  5. The type of change that is being made to the Coverage;
  6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth; and
    - d. Medicare number, if applicable.
  7. The old and new premium amounts for Coverage;
  8. The effective date of the change, deletion, and/or enrollment;
  9. The Employer's name and telephone number;
  10. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-206. Six-Month Reimbursement Program**

- A.** For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).

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- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
  2. The retired member's or Disabled member's full name;
  3. The retired member's or Disabled member's mailing address and phone number;
  4. The retired member's or Disabled member's date of birth;
  5. The retired member's or Disabled member's status with the ASRS;
  6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
  7. The following Coverage information for the Coverage policy holder:
    - a. First and last names;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  9. Six-month reimbursement totals identified by:
    - a. The month and year the premium is due for Coverage;
    - b. The total medical plan premium per month;
    - c. The total dental plan premium per month;
    - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
    - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
    - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
  10. The Employer's name;
  11. The Employer's phone number;
  12. The Employer's email address;
  13. The name of the Employer's representative; and
  14. The dated signature of the Employer's representative.
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).
- R2-8-207. Optional Premium Benefit**
- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
  2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
  3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
    - a. The Social Security number or U.S. Tax Identification number;
    - b. The full name; and
    - c. The date of birth, if not On File; and
  4. Certification of understanding by the retired member's dated signature of the following statements:
    - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
    - b. I must elect a Joint & Survivor or Period-Certain annuity option;
    - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
    - d. I must provide proof of birth date for my Contingent Annuitant;
    - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
    - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:

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1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G.** Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H.** Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I.** Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**ARTICLE 3. LONG-TERM DISABILITY****R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
2. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
3. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.

4. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
6. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-302. Application for Long-Term Disability Benefit**

- A.** In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B.** Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C.** Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D.** Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-303. Long-Term Disability Calculation**

- A.** The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B.** For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C.** The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D.** Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

**R2-8-304. Payment of Long-Term Disability Benefit**

- A.** The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no

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sooner than six months after the date the disabled member became disabled.

- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).  
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-305. Social Security Disability Appeal**

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
  1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

**R2-8-306. Approval of Social Security Disability**

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD****R2-8-401. Definitions**

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

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3).

**R2-8-402. General Procedures**

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action**

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
  1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
  1. The decision the agency is making in response to the letter of appeal; and
  2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
  1. The agency action the ASRS is taking in response to the letter of appeal; and
  2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

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- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
1. The name and mailing address of the member, employer, or other person filing the Request;
  2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  2. Misconduct of the Board, the hearing officer, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

**R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision**

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.
- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before

- the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  2. Misconduct of the Board, the hearing officer, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final

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rulemaking at 23 A.A.R. 487, effective April 8, 2017  
(Supp. 17-1).

**ARTICLE 5. PURCHASING SERVICE CREDIT****R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;
  - b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service under A.R.S. § 38-745, and Other Public Service that an Eligible Member may purchase.
22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
  - a. After accepting an offer to work for a new Employer;
  - b. While working as an active member for a different Employer; or
  - c. Before returning to work with any Employer within 120 days of terminating employment.
26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18

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A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A.** An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
1. Name;
  2. Mailing address;
  3. Date of birth;
  4. Marital status;
  5. Gender;
  6. Primary email address;
  7. Primary phone number; and
  8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B.** An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
  2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C.** Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  2. Instructions for electing method of payment; and
  3. The date payment election is due.
- D.** An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E.** An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December

5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A.** To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B.** An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C.** The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
1. Leave of Absence Service;
  2. Military Service;
  3. Forfeited Service; and
  4. Other Public Service.
- D.** An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E.** If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
1. The amount the Eligible Member wants to apply, and
  2. The Eligible Member's dated signature.
- F.** On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A.** An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B.** Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C.** Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the

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following based on the length of the Eligible Member's service year:

1. Leave of Absence Service;
2. Military Service; and
3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:

1. One year of credited service in any plan year, or
2. One month of credited service in any one calendar month.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A.** For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B.** The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A.** An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
  2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B.** Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C.** Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

- D.** The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A.** An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
    - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
  2. Acknowledgement of the following statements of understanding:
    - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
    - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
    - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
  3. The Eligible Member's dated signature.
- B.** Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C.** If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information pro-

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vided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.

- D.** Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E.** The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A.** An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
    - b. The branch of the Uniformed Services the Eligible Member was in;
    - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
    - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
    - e. Acknowledgement that the Eligible Member will submit to the ASRS:
      - i. Proof of honorable separation for each type of Military Service listed on the form; and
      - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
    - f. Acknowledgement of the following statements of understanding:
      - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
      - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B.** The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

- C.** The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D.** If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**

- A.** An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
1. The Eligible Member's full name;
  2. The Eligible Member's Social Security number;
  3. The start date of Military Call-up Service;
  4. The end date of Military Call-up Service;
  5. The date the Eligible Member returned to work for the Employer;
  6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  7. The name of a contact individual for the Employer, and that individual's business telephone number;
  8. The contact individual's dated signature;
  9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the

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Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;

- d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
  - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B.** An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C.** The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D.** The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E.** If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F.** If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A.** An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
1. The name and mailing address of the Other Public Service employer;
  2. The position the Eligible Member held while working for the Other Public Service employer;
  3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the

retirement plan, identifying whichever one of the following applies:

- a. The approximate date the Eligible Member took a return of retirement contributions;
  - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or
  - c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B.** The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
- C.** Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A.** An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B.** By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A.** An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B.** If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:

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- i. The authorized payroll deductions are completed; or
  - ii. The Eligible Member terminates employment.
  - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
  - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
  - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
  - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
  - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
  - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B)(1)(e); and
2. Statements of Understanding:
- a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
  - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
  - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
  - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
  - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
    - i. Terminating employment;
    - ii. Terminating LTD without returning to work with an Employer; or
    - iii. The effective ASRS retirement date;
  - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
  - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
  - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
  - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
- 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;
    - c. Understands that the election to use Termination Pay is binding and irrevocable;
    - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
  - 2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E. The ASRS shall:
- 1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  - 2. Limit the payroll deduction time period to a maximum of 520 payments; and
  - 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F. The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G. If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H. A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable

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PDA at the time of termination or retirement as specified in this Section.

- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
  2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  3. Eligible Member terminates all ASRS employment without transferring employment; or
  4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
  2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
  3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.
3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or
  - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A.** An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B.** By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C.** An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);

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- iv. Governmental 457 pre-tax only;
  - v. 403(a) pre-tax only;
  - vi. 408 Traditional IRA pre-tax only;
  - vii. 408(k) SEP IRA pre-tax only;
  - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
- c. The ASRS shall not accept the following fund types:
- i. Roth funds;
  - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
  - iii. Inherited IRA;
  - iv. Coverdale Education Savings Account funds;
  - v. Hardship distributions;
  - vi. Funds not includable in gross income;
  - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
  - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
  - ix. One of a series of substantially equal periodic payments made for 10 years or more;
  - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
- d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
- e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
- f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
- g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
- D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
- 1. The Eligible Member's full name;
  - 2. The last 4 digits of the Eligible Member's Social Security number;
  - 3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
- 4. The Authorized Representative's name and title;
  - 5. The Authorized Representative's telephone number; and
  - 6. Certification by the Authorized Representative's dated signature that:
    - a. The plan is either:
      - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
      - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
      - iii. An annuity contract described in IRC § 403(b); or
      - iv. An IRA described in A.R.S. § 38-747(H)(3);
    - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
    - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and
    - d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by

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final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
  1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly

deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and

- g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
  - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
  - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
  - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
  - E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
  - F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.
  - G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
  1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.

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- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING****R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;

3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
1. The name and current address of the person submitting the petition,
  2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  3. The signature of the person submitting the petition, and
  4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
1. The name and current address of the person submitting the objection;
  2. Identification of the rule;
  3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other

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compliance costs, necessary to achieve the underlying regulatory objective.

4. The signature of the person submitting the objection; and
  5. The date the person signs the objection.
- B.** The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A.** A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
  2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B.** The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C.** A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  4. Explain the background and general content of the proposed rulemaking;
  5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D.** A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A.** A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:

1. Name and current address of the person submitting the petition;
  2. Identification of the proposed rule;
  3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  4. Reason why the public interest will not be harmed by the delayed effective date;
  5. Signature of the person submitting the petition; and
  6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD****R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-702. General Information**

- A.** The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.

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- B. The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C. The ASRS shall not waive payment of contributions or interest owed under this Article.
- D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).  
Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).  
Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A. If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;

- b. The range of dates that any contribution was not withheld;
- c. The member's position title during the date range listed in subsection (b);
- d. Whether the member was Engaged to Work for the Employer; and
- e. Dated signature of the member certifying the member understands:
  - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
  - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.

- B. If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703.

- C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).  
Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B. Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  2. The employee participates in:

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- a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
  - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D. If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E. The ASRS shall provide to each, the Employer and the member, an invoice with the following:
1. The amount of Eligible Service for which contributions were not withheld,
  2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  5. The dollar amount of contributions to be paid to the ASRS by the member.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-707. Submission of Payment**

- A. Within 90 days from the date on the statement identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B. The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C. If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D. A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-708. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS****R2-8-801. Definitions**

For purposes of this article, the following definitions apply, unless specified otherwise:

1. "DRO" means the same as in R2-8-120.
2. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
3. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
4. "LTD benefit" means the same as in R2-8-301
5. "Overpayment" means:
  - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
  - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A. The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.

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- D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E. Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

- A. Upon the ASRS discovering that it has made an overpayment to a member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B. A person who reimburses the ASRS for an overpayment shall do so by remitting a check, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- D. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).

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- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).  
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. COMPENSATION****R2-8-901. Definitions**

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-902. Remitting Contributions**

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-903. Accrual of Credited Service**

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-904. Compensation from An Additional Employer**

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
  2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
  3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
  4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation

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includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-905. Expired****Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

**ARTICLE 10. MEMBERSHIP****R2-8-1001. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1002. Employee Membership**

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.

- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;
  6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
  1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
  1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and

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- c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
6. The Employer's name;
7. The date employee's employment began; and
8. The name and dated signature of the Employer's representative.
- J.** A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.
- Historical Note**  
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).
- R2-8-1003. Charter School Employer Membership**
- A.** Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B.** In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C.** Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D.** In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E.** Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F.** Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.
- Historical Note**  
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).
- R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**
- A.** A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;

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2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B.** Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.
- C.** In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D.** Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1005. Employer Reporting**

- A.** An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B.** Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C.** For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. § 15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D.** For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E.** Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;

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- d. The person's email address;
  - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  - 3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  - 4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  - 5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  - 6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  - 7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F.** An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G.** Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H.** Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I.** Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J.** Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K.** Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
- 1. The employee's full name;
  - 2. The number of hours per week the employee works for the Employer;
  - 3. The title of the employee's position;
  - 4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  - 5. Whether the employee is retired from the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1006. Prior Service Purchase Cost for New Employers**

- A.** Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B.** The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service credit pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential

Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:

- 1. The employee's full name;
- 2. The employee's date of birth;
- 3. The employee's Social Security number;
- 4. The employee's current salary; and
- 5. The date the employee began employment with the potential Employer.

- C.** An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
- 1. Member's full name;
  - 2. Member's date of birth;
  - 3. Member's Social Security number;
  - 4. Member's date of employment;
  - 5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
  - 6. Member's current salary as of the effective date of joining the ASRS; and
  - 7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D.** The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E.** An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F.** If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**ARTICLE 11. TRANSFER OF SERVICE CREDIT****R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

- 1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
- 2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
- 3. "Irrevocable PDA" means the same as in R2-8-501.

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4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
  5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
    - a. The purchase of service credit;
    - b. Contributions not withheld; and
    - c. Previous transfers of service credit.
  6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
  7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
  8. "Other public service" means the same as in R2-8-501.
  9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.
1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
  1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
  1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
  1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- E. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- F. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- G. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- H. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- I. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- J. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- K. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- L. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may

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be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A.** Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  2. The Member's Accumulated Contribution Account Balance in the ASRS.
- B.** Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C.** If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:
1. The member's full name;
  2. The last four digits of the member's Social Security number;
  3. The name of the Other Retirement Plan; and
  4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D.** Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
1. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member's Accumulated Contribution Account Balance in the ASRS.
  2. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan's Actuarial Present Value specified in subsection (C); or
    - b. The Member's Accumulated Contribution Account Balance in the ASRS.
- E.** Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F.** Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

### 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.

#### 38-714. Powers and duties of ASRS and board

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's

behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.

4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.

3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to \$215 per month if either:
  - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided

or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.
5. 5.0 to 5.9 years of credited service, fifty percent.

6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

(b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period

certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.
2. "Credited service" includes prior service.
3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.
4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

### 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.

[41-1092.01. Office of administrative hearings; director; powers and duties; fund](#)

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.

2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.

7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and

appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions: application of procedural rules: exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.

7. The department of juvenile corrections.
  8. The department of transportation, except as provided in title 28, chapter 30, article 2.
  9. The department of economic security except as provided in section 46-458.
  10. The department of revenue regarding:
    - (a) Income tax or withholding tax.
    - (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
  11. The board of tax appeals.
  12. The state board of equalization.
  13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:
    - (a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
    - (b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.
  14. The board of fingerprinting.
  15. The department of child safety except as provided in sections 8-506.01 and 8-811.
- B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.
- C. Except as provided in subsection A of this section:
1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.
  2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.
- D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

[41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability](#)

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

D. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

#### 41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

#### 41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.
2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.
2. Consider amendments to any pleadings.
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
5. Schedule deadlines, hearing dates and locations if not previously set.
6. Allow the parties opportunity to discuss settlement.

[41-1092.06. Appeals of agency actions and contested cases: informal settlement conferences: applicability](#)

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

#### 41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas

for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.

2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

#### 41-1092.08. Final administrative decisions: review: exception

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on the agency. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the

agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

#### 41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

#### 41-1092.10. Compulsory testimony: privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

**41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal**

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

**41-1092.12. Private right of action; recovery of costs and fees; definitions**

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.

2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.

3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by

the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:

(a) A decision.

(b) An inspection.

(c) An investigation.

(d) The entry of private property.

2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.

3. "Costs and fees" means reasonable attorney and professional fees.

4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

**C-3**

**BOARD OF ATHLETIC TRAINING**

Title 4, Chapter 49, Board of Athletic Training, Articles 1, 2, and 4

**Amend:** R4-49-101, R4-49-102, R4-49-202, R4-49-203, R4-49-208, R4-49-401,  
R4-49-403, R4-49-404

**New Section:** R4-49-406



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

---

**MEETING DATE:** January 4, 2022

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

**FROM:** Council Staff

**DATE:** December 9, 2021

**SUBJECT: BOARD OF ATHLETIC TRAINING**  
Title 4, Chapter 49, Articles 1, 2, and 4, Board of Athletic Training

**Amend:** R4-49-101, R4-49-102, R4-49-202, R4-49-203, R4-49-208,  
R4-49-401, R4-49-403, R4-49-404

**New Section:** R4-49-406

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### **Summary:**

This regular rulemaking from the Board of Athletic Training (Board) relates to rules in Title 4, Chapter 49, Articles 1, 2, and 4. In this rulemaking, the Board is amending the rules to reduce some fees, reduce unnecessary burdens, and streamline application requirements. The Board also seeks to add one rule to clarify the scope of practice for athletic training relating to the practice of "dry needling."

The Board is requesting the standard 60-day delayed effective date for this rulemaking. The Board received an exception from Executive Order 2020-02 on January 8, 2021 to initiate this rulemaking and final approval to submit the rulemaking to the Council on October 29, 2021.

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

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

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

No. This rulemaking does not establish a new fee or contain a fee increase. In this rulemaking, the Board is seeking to reduce fees.

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

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

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

The rulemaking impacts applicants, licensed athletic trainers, patients of licensed athletic trainers, and the Board. The rulemaking clarifies the current rules and thus, amends existing requirements already established in rule. The Board seeks to eliminate some fees, reduce burdens and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers. The overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures, and enhancing access to care. No new full time employees (FTEs) are required to implement the proposed rule changes.

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

The overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures and enhancing access to care. No new FTEs are required to implement the proposed rule changes. The Board does not identify any less costly alternative.

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

Expanded access to the therapeutic modality of dry needling and reduced costs for licensees should have a positive economic impact, if any, on private or public business/employment.

The Board is the only state agency this rulemaking affects. The rulemaking is not expected to create costs to the Board or to the State, and will further streamline the application process as well as improve public protection.

Some athletic trainers practice in a small business setting, and the proposed rule amendments positively impact athletic trainers. The expected economic impact on small businesses, if any, is positive.

Expanded access to the therapeutic modality of dry needling, with protection of the public through efficient and effective rules regarding practice and education of athletic trainers, will benefit consumers by increasing access to care and providing greater continuity of care.

The Board is a 90/10 agency, with the Board retaining 90% of revenue and 10% going to the State General Fund. While the Board anticipates that the addition of dry needling to its rules will attract additional licensees from other states, the Board does not expect a significant increase in the amount transferred to the General Fund when combined with the proposed fee waiver.

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

No. As indicated in the Board's Preamble, the Board made two minor, clarifying changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

These changes do not result in rules that are "substantially different" pursuant to A.R.S. § 41-1025.

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

As indicated in the Preamble, the Board received 73 comments on this rulemaking, with 69 being in support of the new rule regarding dry needling. The Board did not make any changes to the rules in response to the comments it received.

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

No. These rules do not require a permit, license, or agency authorization.

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

The Board indicates that there are no corresponding federal laws to these rules.

**11. Conclusion**

In this regular rulemaking, the Board seeks to make changes to the rules to reduce fees, reduce unnecessary burdens, and streamline application requirements. The Board also seeks to add a new rule regarding the practice of “dry needling.” The Board is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



**ERIC FREAS**  
Chair

**ARIZONA BOARD OF ATHLETIC TRAINING**

1740 West Adams Street, Suite 3407  
Phoenix, Arizona 85007

[www.at.az.gov](http://www.at.az.gov)

(602) 589-6337 Fax: (602) 589-8354

December 14, 2021

Nicole Sornsin, Chairperson  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 305  
Phoenix, AZ 85007

Re: Arizona Board of Athletic Training Rule Package

Dear Ms. Sornsin:

Pursuant to A.A.C. R1-6-201(A), the Arizona Board of Athletic Training hereby submits to the Governor's Regulatory Review Council a final rule package for Title 4, Chapter 49, Articles 1 through 4. The Board requests that this rulemaking be placed on a future Council agenda.

The Board provides the following information regarding the rule package, as required by A.A.C. R1-6-104(A):

- a. The record for this rulemaking closed on August 3, 2021, at 5:00 p.m.
- b. This rulemaking relates, in part, to a five-year review report approved by Council on November 1, 2016.
- c. The rule does not establish any new fees.
- d. The rule does not contain fee increases.
- e. An immediate effective date is not requested.
- f. The preamble discloses a reference to any study relevant to the rules that the Department reviewed and either did or did not rely on in its evaluation or justification for the rules. No studies were reviewed.
- g. The economic, small business, and consumer impact statement states that no new full-time employees are necessary for the Board to implement and enforce the rules.
- h. The following items are included in this rule package in the following order:
  1. This cover letter.
  2. Exemption approvals
  3. The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule.
  4. The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
  5. Written comments received by the Board concerning the proposed rule.
  6. Not Applicable – Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
  7. Material incorporated by reference, and;
  8. The general and specific statutes authorizing the rule, including relevant statutory definitions; and

Nicole Sornsin  
December 14, 2021  
Page 2

In this rule package, no analysis was submitted to the Board comparing the rule's impact on the competitiveness of businesses in this state to the impact on businesses in other states.

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact me at 602-589-8353.

Regards,

*/s/ Karen Whiteford*

Karen Whiteford  
Executive Director

Enclosures



**ERIC FREAS**  
Chair

**ARIZONA BOARD OF ATHLETIC TRAINING**

1740 West Adams Street, Suite 3407  
Phoenix, Arizona 85007

[www.at.az.gov](http://www.at.az.gov)

(602) 589-6337 Fax: (602) 589-8354

November 18, 2021

Nicole Sornsin, Chairperson  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 305  
Phoenix, AZ 85007

Re: Arizona Board of Athletic Training Rule Package

Dear Ms. Sornsin:

Pursuant to A.A.C. R1-6-201(A), the Arizona Board of Athletic Training hereby submits to the Governor's Regulatory Review Council a final rule package for Title 4, Chapter 49, Article 2s 1 through 4. The Board requests that this rulemaking be placed on a future Council agenda.

The Board provides the following information regarding the rule package, as required by A.A.C. R1-6-104(A):

- a. The record for this rulemaking closed on August 3, 2021, at 5:00 p.m.
- b. This rulemaking relates, in part, to a five-year review report approved by Council on November 1, 2016.
- c. The Rule does not establish any new fees.
- d. The rule does contain fee increases.
- e. An immediate effective date is not requested.
- f. The preamble discloses a reference to any study relevant to the rules that the Department reviewed and either did or did not rely on in its evaluation or justification for the rules. No studies were reviewed.
- g. The economic, small business, and consumer impact statement states that no new full-time employees are necessary for the Board to implement and enforce the rules.
- h. The following items are included in this rule package in the following order:
  1. This cover letter.
  2. Exemption approvals
  3. The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule.
  4. The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
  5. Written comments received by the Board concerning the proposed rule.
  6. Not Applicable – Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
  7. Material incorporated by reference, and;
  8. The general and specific statutes authorizing the rule, including relevant statutory definitions; and

Nicole Sornsin  
November 18, 2021  
Page 2

In this rule package, no analysis was submitted to the Board comparing the rule's impact on the competitiveness of businesses in this state to the impact on businesses in other states.

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact me at 602-589-8353.

Regards,

*/s/ Karen Whiteford*

Karen Whiteford  
Executive Director

Enclosures

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**Re: Athletic Training Board Rulemaking Exemption Request**

1 message

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**Trista Guzman Glover** <tguzman@az.gov>  
To: Karen Whiteford <karen.whiteford@otboard.az.gov>

Fri, Jan 8, 2021 at 11:16 AM

Karen -

Thank you for submitting this updated rulemaking proposal related to dry needling. This email serves as an approved exemption from the rulemaking moratorium.

Trista

**Trista Guzman Glover** | Office of Arizona Governor Doug Ducey  
Director, Boards and Commissions  
O. (602) 542-1308  
[www.azgovernor.gov](http://www.azgovernor.gov)



On Mon, Jan 4, 2021 at 4:27 PM Karen Whiteford <[karen.whiteford@otboard.az.gov](mailto:karen.whiteford@otboard.az.gov)> wrote:

Trista,

After several discussions with members of the Arizona Athletic Trainers' Association and review of the Board's rules at two Board meetings, we were able to identify two more items to be removed from the Board's rules. They are as follows:

**R4-49-202. Original License Application**

**B.** An applicant shall submit or cause to be submitted on the applicant's behalf the following:

~~4. Two letters attesting to the applicant's good moral character from health care providers licensed pursuant to A.R.S § 32-4101 et seq. and~~

The good moral character letters required for an initial license in the above rule are ineffectual and cause an unnecessary burden on the applicant.

**R4-49-204. Expired License: Reinstatement**

**B.** An expired license may be reinstated within three years of expiration of the license if:

~~5. THE FORMER LICENSEE'S EMPLOYER ATTESTS, IN WRITING, ON LETTERHEAD, THAT THE LICENSEE HAS NOT PRACTICED ATHLETIC TRAINING IN ARIZONA DURING THE TIME THE LICENSE WAS EXPIRED.~~

The requirement for a letter from the reinstating applicant's employer was originally requested from the Board in approximately 2018. After reviewing at the December 2020 Board meeting, the Board voted to remove the requested language because it was overly burdensome on the applicant.

A revised, marked-up version of the proposed rule changes is attached. I assure you that I, the members of the Board of Athletic Training, and the members of the Board of the Arizona Athletic Trainers' (as well as their legal counsel), have gone through each and every item to remove any unnecessary or overly-burdensome rules.

Please keep these efforts in mind when deciding whether to continue the rulemaking exemption request so that we may move forward with these proposed rule changes.

Regards,

Karen Whiteford  
Executive Director  
Arizona Board of Athletic Training  
Arizona Board of Occupational Therapy Examiners  
(602)589-8353

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On Mon, Nov 16, 2020 at 9:22 AM Trista Guzman Glover <[tguzman@az.gov](mailto:tguzman@az.gov)> wrote:

Hi, Karen -

So for this rulemaking request, draft R4-49-406 would be one rule, even though there are many subsections.

Trista

**Trista Guzman Glover | Office of Arizona Governor Doug Ducey**  
*Director, Boards and Commissions*  
O. (602) 542-1308  
[www.azgovernor.gov](http://www.azgovernor.gov)



On Thu, Nov 12, 2020 at 3:30 PM Karen Whiteford <[karen.whiteford@otboard.az.gov](mailto:karen.whiteford@otboard.az.gov)> wrote:

Trista,

Were you able to provide clarification on the question in my previous email?

Regards,

Karen Whiteford  
Executive Director  
Arizona Board of Athletic Training  
Arizona Board of Occupational Therapy Examiners  
(602)589-8353

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On Mon, Oct 26, 2020 at 4:24 PM Karen Whiteford <[karen.whiteford@otboard.az.gov](mailto:karen.whiteford@otboard.az.gov)> wrote:

Trista,

When you say "rule" do you mean entire sections? For instance, if the Athletic Training Board added a section on dry needling, would three sections have to be repealed? Or would repealing three items within a section suffice?

Karen Whiteford  
Executive Director  
Arizona Board of Athletic Training  
Arizona Board of Occupational Therapy Examiners  
(602)589-8353

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On Thu, Oct 15, 2020 at 10:22 AM Trista Guzman Glover <[tguzman@az.gov](mailto:tguzman@az.gov)> wrote:

Good Morning, Karen -

Thank you for submitting this rulemaking proposal related to lessening the burden on the AT community. This email serves as an approved exemption from the rulemaking moratorium.

As a reminder, in accordance with EO2020-02, for every rule added, three rules must be identified for repeal. Please keep this in mind as you move forward with rulemaking.

Please let me know if I can be of further assistance.

Best,  
Trista

**Trista Guzman Glover** | Office of Arizona Governor Doug Ducey

*Director, Boards and Commissions*

O. (602) 542-1308

[www.azgovernor.gov](http://www.azgovernor.gov)



On Fri, Sep 25, 2020 at 11:52 AM Karen Whiteford <[karen.whiteford@otboard.az.gov](mailto:karen.whiteford@otboard.az.gov)> wrote:

Trista,

Attached, please find a scanned copy of the request from the Athletic Training Board for an exemption from the rulemaking moratorium. The redlined copy of the Board's rules is also attached (both with and without comments.)

These documents are also being sent to you via interagency mail.

Regards,

Karen Whiteford  
Executive Director  
Arizona Board of Athletic Training  
Arizona Board of Occupational Therapy Examiners  
(602)589-8353

[How am I doing? Please take a moment to complete a survey.](#)

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**Re: Request for Final Approval of Proposed Rules**

1 message

**Trista Guzman Glover** <tguzman@az.gov>  
To: Karen Whiteford <karen.whiteford@otboard.az.gov>  
Cc: Gabee Lepore <glepore@az.gov>

Fri, Oct 29, 2021 at 9:19 AM

Thank you, Karen. This final rulemaking package is good to go to GRRC.

Trista

**Trista Guzman Glover** | Office of Arizona Governor Doug Ducey

Director, Boards and Commissions

O. (602) 542-1308

[www.azgovernor.gov](http://www.azgovernor.gov)

On Wed, Oct 20, 2021 at 12:20 PM Karen Whiteford <karen.whiteford@otboard.az.gov> wrote:

Trista,

Pursuant to Executive Order 2021-02 Item 2, the Arizona Board of Athletic Training requests written final approval of the attached proposed rulemaking.

The public comment period for the proposed rules ended August 2, 2021. The Board reviewed all comments (attached) submitted during their September 13 Board meeting. Of all comments submitted, only one expressed concerns about athletic trainers performing dry needling, particularly in the high school setting. No changes were made to the proposed rulemaking in response to the public comments.

Please contact me if you have any questions or concerns regarding this matter.

Karen Whiteford  
Executive Director  
Arizona Board of Athletic Training  
Arizona Board of Occupational Therapy Examiners  
(602)589-8353

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----- Forwarded message -----

From: **Karen Whiteford** <karen.whiteford@otboard.az.gov>  
Date: Wed, Sep 22, 2021 at 1:05 PM  
Subject: Request for Final Approval of Proposed Rules  
To: Gabee Lepore <glepore@az.gov>  
Cc: Trista Guzman Glover <tguzman@az.gov>

Gabee,

Pursuant to Executive Order 2021-02 Item 2, the Arizona Board of Athletic Training requests written final approval of the attached proposed rulemaking.

The public comment period for the proposed rules ended August 2, 2021. The Board reviewed all comments (attached) submitted during their September 13 Board meeting. Of all comments submitted, only one expressed concerns about athletic trainers performing dry needling, particularly in the high school setting.

Please contact me if you have any questions or concerns regarding this matter.

Regards,

Karen Whiteford  
Executive Director  
Arizona Board of Athletic Training  
Arizona Board of Occupational Therapy Examiners  
(602)589-8353

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NOTICE OF FINAL RULEMAKING  
TITLE 4. PROFESSIONS AND OCCUPATIONS  
CHAPTER 49. BOARD OF ATHLETIC TRAINING

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**      **Rulemaking Action**
- |           |             |
|-----------|-------------|
| R4-49-101 | Amend       |
| R4-49-102 | Amend       |
| R4-49-202 | Amend       |
| R4-49-203 | Amend       |
| R4-49-208 | Amend       |
| R4-49-401 | Amend       |
| R4-49-403 | Amend       |
| R4-49-404 | Amend       |
| R4-49-406 | New Section |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 32-4103(A)(7)  
Implementing statute: A.R.S. §§ 32-4101, 32-4103(A)(6), 32-4123(A) and (B), and 32-4151
- 3. The effective date of the rule:**
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable
- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
- Not applicable
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
- Notice of Rulemaking Docket Opening: 27 A.A.R. 875, June 11, 2021  
Notice of Proposed Rulemaking: 27 A.A.R. 951, July 2, 2021
- 5. The agency’s contact person who can answer questions about the rulemaking:**
- Name:                      Karen Whiteford  
Address:                    1740 West Adams Street, Suite 3407

Phoenix, AZ 85007  
Telephone: (602) 589-8353  
Fax: (602) 589-8354  
E-mail: Karen.whiteford@otboard.az.gov  
Web site: <http://www.at.az.gov>

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

The Board is amending its rules to eliminate some fees, reduce unnecessary burdens, and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers. A new section is being added to Article 4 to clarify the scope of practice for athletic trainers. Multiple subsections are removed to comply with paragraph 2 of Executive Order 2020-02. An exemption from Executive Order 2020-02 was provided by Trista Guzman Glover in an e-mail dated January 8, 2021. Final approval was obtained from Trista Guzman Glover on October 29, 2021. (The Board may add, delete, or modify Sections as necessary.)

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

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

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

Not applicable.

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

The rulemaking impacts applicants, licensed athletic trainers, patients of licensed athletic trainers, and the Board. Most of the rulemaking clarifies the current rules and thus, amends existing requirements already established in rule. The proposed rules seek to eliminate some fees, reduce burdens and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers.

The overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures and enhancing access to care. No new FTEs are required to implement the proposed rules changes.

Expanded access to the therapeutic modality of dry needling and reduced costs for licensees should have a positive economic impact, if any, on private or public business/employment.

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

A minor change was made to R4-49-403 between the proposed and final rulemaking. This change updates the publication date of the Board of Certification Standards of Professional Practice from October 2017 to November 2020.

The Board made a minor, clarifying change to R4-49-406(A) between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The agency received 73 comments from the public regarding the proposed rulemaking. Of those comments, 69 were in support of the addition of R4-49-406. One member of the public suggested increasing the education requirement for dry needling and add a requirement that a parent/guardian be present when dry needling is being performed on a minor. Two additional comments were in favor of the rulemaking, in general. No changes were made to the proposed rules in response to the comments.

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

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

The rules do not require a permit.

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

Federal law is not applicable to the rules.

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

No analysis was submitted.

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

A.R.S. § 32-401, Definitions R4-49-101

A.R.S. § 38-431.03 (B), Confidential record R4-49-101 (7) (a)

A.R.S. § 41-1010, Confidential record R4-49-101 (7) (f)

A.R.S. § 41-4101 (7), Direct Supervision R4-49-101 (12)

A.R.S. § 41-4153, Good Moral Character R4-49-101 (15)

A.R.S. § 32-121.03, Fees R4-49-102 (C)

A.R.S. § 41-1077, Fees R4-49-102 (D)

A.R.S. § 32-4103 (B), Renewal of License R4-49-203 (B) (9)

A.R.S. § 41-4155, Continuing Education R4-49-208 (F)

A.R.S. § 41-4156, Continuing Education R4-49-208 (F)

A.R.S. § 41-4101(4), Scope of Practice R4-49-401 (F)

A.R.S. § 32-4153 (10), Code of Ethics R4-49-404

A.R.S. § 32-4101 (4)(D), Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality R4-49-406 (A)

A.R.S. § 32-4151 (A), Code of ethics R4-49-404, Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality R4-49-406 (C)(2)

A.R.S. § 32-4153 (18), Code of ethics R4-49-404, Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality R4-49-406 (C)(3)

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

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

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

## ARTICLE 1. GENERAL PROVISIONS

### Section

- R4-49-101. Definitions
- R4-49-102. Fees

## ARTICLE 2. LICENSURE

### Section

- R4-49-202. Original License Application
- R4-49-203. Renewal of License
- R4-49-208. Continuing Education

## ARTICLE 4. ATHLETIC TRAINING PRACTICE

### Section

- R4-49-401. Scope of Practice
- R4-49-403. Standards of Practice
- R4-49-404. Code of Ethics
- R4-49-406. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality

## ARTICLE 1. GENERAL PROVISIONS

### **R4-49-101. Definitions**

In addition to the definitions at A.R.S. § 32-4101, in this Chapter:

- ~~1.~~ ~~“Accredited educational institution” means an educational institution accredited by the CAATE or its predecessors.~~
- ~~2.~~1. ~~“Active~~ Actively ~~pursuit of pursuing~~ athletic training certification” means:
  - a. Current enrollment in an educational program to fulfill academic requirements for athletic training certification; or
  - b. Current participation in fieldwork experience to fulfill the fieldwork experience requirements for athletic training certification.
- ~~3.~~2. ~~“Applicant” means an individual requesting an original license, a temporary license, a renewal license, or a reinstated license from the Board.~~
- ~~4.~~ ~~“Application packet” means the forms and documents the Board requires an applicant to submit or to be submitted on an applicant’s behalf.~~
- ~~5.~~ ~~“Approved national athletic training certifying agency” means the BOC.~~
- ~~6.~~3. ~~“Approved provider” means an educational provider approved by the BOC.~~
- ~~7.~~ ~~“Athlete” means:~~

- ~~a. A person participating in, or preparing for, a competitive team or individual sport; or~~
- ~~b. A member of a professional athletic team.~~
- 8.4. “Athletic training certification” means current athletic trainer certification provided by the BOC.
- 9.5. “BOC” means the Board of Certification, Inc.
- 10.6. “CAATE” means the Commission on Accreditation of Athletic Training Education.
- 11. ~~“Completed application” means an application packet that is correctly completed and includes the verified signature of the applicant, applicable fees, and all required documentation.~~
- 12.7. “Confidential record” means:
  - a. Minutes of executive sessions except as provided in A.R.S. § 38-431.03(B);
  - b. A record classified as confidential by another law, rule, or regulation applicable to the Board;
  - c. College or university grades, medical or mental health information, and professional references of an applicant except that the applicant who is the subject of the information may view or copy the record;
  - d. An applicant’s driver license number, Social Security number, home address, home phone number, place of birth, and birth date;
  - e. A record for which the Board determines that public disclosure will have a significant adverse effect on the Board’s ability to perform its duties or will otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the record no longer exists, the Board shall make the record available for public inspection and copying; and
  - f. Information regarding a complaint under investigation except as provided in A.R.S. § 41-1010.
- 13.8. “Contact hour” means an actual clock hour spent in direct participation in a structured education format as a learner. ~~One CEU is equivalent to one contact hour.~~
- 14.9. “Continuing education” means a structured learning process required of a licensee to maintain licensure that includes study in the areas of athletic training practice through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in athletic training.
- 15.10. “Continuing education unit” or “CEU” means one contact hour of participation in a continuing education course.
- 16.11. “Day” means a calendar day.
- 17.12. In addition to A.R.S. § 32-4101(7), “Direct supervision” means:
  - a. The athletic trainer can intervene on behalf of the patient, and
  - b. The athletic trainer reviews the performance of the athletic training student every grading period
- 13. “Dry needling” means “a therapeutic modality that is performed by an athletic trainer and that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular and connective tissues to evaluate and manage neuromusculoskeletal conditions, pain and movement impairments”.
- 18.14. “Facility of practice” means the principal location of an agency or organization where an athletic

trainer provides athletic training services but excludes areas used predominantly for athletic sport or competition.

~~19-15.~~ “Good moral character” means the applicant has not taken any action that is grounds for disciplinary action against a licensee under A.R.S. § 32-4153.

~~20.~~ “Good standing” means that an athletic trainer in this state or any other jurisdiction:

- ~~a. Has a current license;~~
- ~~b. Is not presently subject to any disciplinary action, consent order, or settlement agreement; and~~
- ~~c. Has no disciplinary action, consent order, or settlement agreement pending before any licensure Board or court.~~

~~21-16.~~ “Licensee” means a person licensed in Arizona as an athletic trainer.

~~22-17.~~ “National examination” means the national athletic training certification examination provided by the BOC.

#### **R4-49-102. Fees**

A. An applicant shall pay the following:

- 1. Application for original license: \$300;
- 2. Renewal of license: \$175;
- 3. Reinstatement of a license: ~~\$200~~ \$100. This is in addition to the renewal license fee;
- 4. Duplicate license: ~~\$25~~ \$10.

**B.** Applicants who are military service members, military veterans, and military spouses:

- 1. The Board shall waive the application fees and expedite the issuance of a license for an active duty military service member and the member’s spouse, or honorable discharged military veteran who has been discharged not more than two years before application; and
- 2. In order to request a waiver of application fees and expedited services, the military service member, military veteran, or military spouse must submit a copy of the uniformed services military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

~~B.C.~~ The Board shall charge 25¢ per page for copies of records, documents, letters, minutes, applications, and files or appropriate charges prescribed in A.R.S. § 39-121.03(A).

~~C.D.~~ All fees are nonrefundable except as provided in A.R.S. § 41-1077.

~~D.E.~~ An applicant shall pay original license fees and returned or insufficient fund replacement checks in cash or by cashier’s check, money order, or credit card.

~~E.F.~~ An applicant shall pay renewal, reinstatement, and duplicate license fees in cash or by cashier’s check, money order, personal check, or credit card.

### **ARTICLE 2. LICENSURE**

#### **R4-49-202. Original License Application**

A. An applicant for an athletic trainer license shall submit an original application that includes the following information:

1. Applicant's full name;
  2. Applicant's name as it will appear on the license;
  3. Other names used;
  4. Social Security number;
  5. Residence address and telephone number;
  6. Date of birth;
  7. Applicant's national athletic training certificate number and date of certification;
  8. Post-secondary educational institutions attended;
  9. Professional experience, field work, or both within the last five years;
  10. Employer's name, address, and telephone number;
  11. Current or previous athletic training or other professional license or certification numbers from other states and foreign countries and the status of each license or certification;
  12. Current and previous arrest, criminal conviction, and disciplinary actions from any licensing agency or court;
  13. E-mail address, if available;
  14. Alternate email address if the personal email address is to remain confidential;
  - ~~14-15.~~ Statement of citizenship or alien status and submittal of documents showing the individual's presence in the United States is authorized under federal law;
  - ~~15-16.~~ Signature and date with an attestation regarding the truthfulness of the information provided.
- B. An applicant shall submit or cause to be submitted on the applicant's behalf the following:
1. Application fee,
  2. Written verification from the BOC of athletic training certification or a passing score on the national examination as required by R4-49-201,
  - ~~3. Official academic transcripts from institutions listed on the application,~~
  - ~~4. Two letters attesting to the applicant's good moral character from health care providers licensed pursuant to A.R.S. § 32-4101 et seq. and~~
  - ~~5-3.~~ A readable fingerprint card and associated fee for submission to the Department of Public Safety or current fingerprint clearance card issued by the Department of Public Safety.
  4. Verification of passing an exam on the athletic training statutes and this chapter as evidenced by an original notice of examination results.
- C. An original license shall expire one year from the date of issuance.

**R4-49-203. Renewal of License**

- A. To renew a license, a licensee shall submit a renewal application and a renewal fee.
- B. A licensee shall sign the renewal application and include the following:
  1. Applicant's full name;
  2. Applicant's name as it will appear on the renewal license;

3. Residence address and telephone number;
  4. Current Arizona Board of Athletic Training license number;
  5. Arrest, criminal conviction, and disciplinary actions from any licensing agency or court since last license renewal;
  6. Social Security number;
  7. Employer's name, address, and telephone number;
  8. Attestation of compliance with the continuing education requirements listed in R4-49-208;
  9. Attestation that applicant agrees to practice under the direction of a licensed physician as required by R4-49-405, including maintaining physician-approved written protocols for common athletic training activities and post-injury guidelines that comply with A.R.S. § 32-4103(B);
  - ~~9-10.~~ A readable fingerprint card and associated fee for submission to the Department of Public Safety or a current fingerprint clearance card issued by the Department of Public Safety if the previous submission is at least five years old or the Department of Public Safety clearance card will expire within the term of the renewed license;
  - ~~10-11.~~ Statement of lawful presence in the United States or submittal of required documents showing lawful presence; ~~and~~
  12. If a licensee, a statement of whether the licensee has completed the dry needling course content requirements in R4-49-406; and
  - ~~11-13.~~ Signature and date with an attestation regarding the truthfulness of the information provided.
- C. A licensee shall submit the renewal application and fees to the Board office at least 14 days prior to the expiration date of the current license.

**R4-49-208. Continuing Education**

- A. As a prerequisite to renewal, a licensee shall complete at least 15 CEUs in the area of athletic training since the issuance of the previous license.
- B. A licensee shall:
  1. Maintain continuing education records that:
    - a. Verify the continuing education activities the licensee completed during the preceding two years, and
    - b. Consists of each statement of credit or certificate issued by an approved provider at the conclusion of a continuing education activity;
  2. At the time of licensure renewal, attest to the number of CEUs the licensee completed since the issuance of the previous license ~~during the renewal~~ on the renewal form; and
  3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- C. Licensees may provide proof of continued BOC certification to meet the CEU requirements of this Section.
- ~~D. All licensees shall complete a course approved by the Board on the athletic training statutes and this Chapter within one year of obtaining an original license or license renewal. This course need only be taken one time.~~

- ~~E.D.~~** In addition to the CEU requirements ~~above~~ in subsection (A) of this Section, all licensees shall maintain current certification in cardiopulmonary resuscitation from a provider that is approved by the Board.
- ~~F.E.~~** Upon written request to the Board 30 days prior to the license renewal date, the Board may waive a licensee’s continuing education requirement in the case of extreme hardship including, but not limited to, mental or physical illness, disability, absence from the United States, service in the United States Armed Forces or other extraordinary circumstances as determined by the Board.
- ~~G.F.~~** The Board may audit a licensee’s continuing education records and suspend or revoke, according to A.R.S. §§ 32-4155 and 32-4156, the license of a licensee who fails to comply with continuing education completion, recording, or reporting requirements of this Section.
- ~~H.G.~~** A licensee who is aggrieved by a decision of the Board concerning continuing education units may request an administrative hearing before the Board.

**ARTICLE 4. ATHLETIC  
TRAINING PRACTICE**

**R4-49-401. Scope of Practice**

A licensee shall work within the scope of practice for athletic trainers stated in the definition of “athletic training” at A.R.S. § 32-4101(4) and the competencies contained in the Athletic Training Educational Competencies (5th Edition), published in 2011 by the National Athletic Trainers’ Association, Inc., 1620 Valwood Parkway, Suite 115, Carrollton, TX 75006 ~~2952 Stemmons Freeway #200, Dallas, TX 75247~~, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

**R4-49-403. Standards of Practice**

A licensee shall comply with the standards of professional practice contained in Board of Certification Standards of Professional Practice, ~~dated January 1, 2006 and~~ published November 2020 by the Board of Certification, Inc., 1415 Harney Street, Suite 200, Omaha, Nebraska 68102, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

**R4-49-404. Code of Ethics**

A licensee shall work within the code of ethics for athletic trainers as stated in A.R.S. § 32-4153(10) and the NATA Code of Ethics, ~~dated published September 28, 2005 and updated March 2018, and published by~~ the National Athletic Trainers’ Association, ~~2952 Stemmons Freeway #200, Dallas, TX 75247~~ 1620 Valwood Parkway, Suite 115, Carrollton, TX 75006, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

**R4-49-406. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality**

- A. Effective July 1, 2021, before providing the therapeutic modality “dry needling” in accordance with A.R.S. § 32-4101(4)(D) and as defined in R4-49-101(13), an athletic trainer shall:**
- 1. Meet the qualifications established in subsection (B) and**

2. Provide the Board with documented proof of compliance with the qualifications listed in subsection (C) in a format as prescribed by the Board.
- B. Course content that meets the training and education qualifications for “dry needling” shall contain all of the following:
1. The course content shall be approved by one or more of the following entities prior to the course(s) being completed by the athletic trainer:
    - a. Commission on Accreditation of Athletic Training Education,
    - b. National Athletic Trainers’ Association,
    - c. Board of Certification, Inc.,
    - d. State or district associations of the National Athletic Trainers’ Association, or
    - e. Specialty groups or societies of the National Athletic Trainers’ Association
  2. The course content shall include all of the following components of education and training:
    - a. Clean needle techniques to include one of the following standards:
      - i. The U.S. Centers for Disease Control and Prevention, or
      - ii. The U.S. Occupational Safety and Health Administration
    - b. Anatomical review,
    - c. Blood borne pathogens, and
    - d. Contraindications and indications for “dry needling”.
  3. The course content required in subsection (B) of this Section shall include passing both a written examination and practical examination before completion of the course content. Practice application course content must be completed in a synchronous environment and examinations shall be done in-person to meet the qualifications of subsection (B).
  4. The course content required in subsection (B) of this section shall total a minimum of 24 contact hours of education.
- C. The standard of care for “dry needling” includes:
1. Dry needling cannot be delegated to any assistive personnel.
  2. Referral to one or more appropriate health care practitioners when required by A.R.S. 32-4151(A).
  3. Documentation of the “dry needling” as required by A.R.S. 32-4153(18).
  4. If the patient is a minor, parent or guardian consent for treatment is obtained and documented in the patient record.
  5. Dry needling must be addressed in the written protocols approved by the physician providing direction.

**ARIZONA STATE BOARD OF ATHLETIC TRAINING  
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

**TITLE 32. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 49. ATHLETIC TRAINING**

**1. An identification of the proposed rulemaking**

The Board is proposing to add rule R4-49-406 to clarify the scope of practice for athletic trainers. This includes adding a definition of dry needling in R4-49-101.13 and providing a mechanism in R4-49-203.B.11-12. (renumbered) for licensees to report successful completion of the dry needling course content requirement in R4-49-406.

The Board also seeks to repeal R4-49-101.1, R4-49-101.4, R4-49-101.5, R4-49-101.7, R4-49-101.11, R4-49-101.20 to remove unnecessary definitions for terms that do not appear elsewhere in rules.

R4-49-101.1. is being reworded for clarification.

R4-49-101.13 is being amended to remove duplicate information and burdensome requirements.

R4-49-102.A. is being amended to reduce license reinstatement and duplicate license fees.

R4-49-101.12 and R4-49-202.A.13 are being amended to include the applicant's email address as an application requirement.

R4-49-202.A.14. is being added to allow applicants to provide an alternate email address if they do not wish to keep their personal email address confidential.

The addition of R4-49-102.B. adds fee waivers and expedited processing for military service members, veterans, and their spouses. (Passage of SB 2128 will eliminate the need for this section.)

R4-49-202.B.3. and R4-49-202.B.4. are being repealed to remove burdensome and unnecessary application requirements.

R4-49-203.B.9. is being added in response to a recommendation from the Auditor General's Office during the 2019 performance audit.

R4-49-208.B.2. is being amended for clarification.

R4-49-208.D. is being moved to R4-49-202.B.6.

R4-49-401, R4-49-403, and R4-49-404 are being amended to reference the current versions of the BOC and NATA documents regarding educational competencies and to update the address for NATA.

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

**Persons affected:**

The rulemaking impacts applicants, licensed athletic trainers, patients of licensed athletic trainers, and the Board. Most of the rulemaking clarifies the current rules and thus, amends existing requirements already established in rule. The proposed rules seek to eliminate some fees, reduce burdens and streamline application requirements. Some changes are also necessary to modernize and update the rules to reflect current educational competencies and standards for athletic trainers.

**Cost Bearer:**

The costs of these rule changes will be borne by the Arizona Board of Athletic Training.

**Beneficiaries:**

Consumers, patients, licensees, and the Board.

3. **A cost benefit analysis of the following:**

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

The overall economic impact of the rulemaking is expected to be positive by reducing costs, streamlining application procedures and enhancing access to care. No new FTEs are required to implement the proposed rules changes.

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

None apparent.

- (c) **The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed**

**rulemaking.**

None apparent.

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

Expanded access to the therapeutic modality of dry needling and reduced costs for licensees should have a positive economic impact, if any, on private or public business/employment.

- 5. A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:**

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

The potential impact on small businesses, if any, is expected to be positive.

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

The Arizona State Board of Athletic Training is the only state agency affected by this rule making. The rule making is not expected to create cost to the Agency or the State and will further streamline the application process as well as improve public protection.

- (c) A description of the methods that the agency may use to reduce the impact on small businesses. These methods may include:**

**(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.**

**(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.**

**(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.**

**For items (c)(i)(ii)(iii):**

The Arizona State Board of Athletic Training is a health regulatory board charged with overseeing the licensure of practitioners and protecting public health. Some athletic trainers practice in a small business setting, and the proposed rule amendments positively impact athletic trainers. The expected economic impact on small businesses, if any, is positive and therefore does not

require reduction.

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

Expanded access to the therapeutic modality of dry needling, with protection of the public through efficient and effective rules regarding practice and education of practitioners, will benefit consumers by increasing access to care and providing greater continuity of care.

**6. A statement of the probable effect on state revenues.**

The Arizona State Board of Athletic Training is a 90/10 agency which means that 90% of revenues are retained by the Board and 10% of the revenue is transferred to the State General Fund. While it is anticipated that the addition of dry needling to the Board's rules will attract additional licensees from other states, however, the Board does not expect a significant increase in the amount transferred to the General Fund when combined with the proposed fee waiver. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

There is no identified alternative or less costly alternative of which the Agency is aware.

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/16/2021	jesseg@ladodgers.com	Please allow athletic trainers that are trained and qualified to practice Dry Needling to use the practice in Arizona as they can freely in other states that we may work and hold licenses. It is of great benefit to the athletes we serve and allows for a higher quality of care to be administered.	Yes
7/16/2021	tmcleod@atsu.edu	Thank you for including the professional standards of care for education qualifications for dry needling. I think including this modality is important for ATs.	Yes
7/18/2021	mittchell.barnhart@pcds.org	Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona.	Yes
7/21/2021	Colin.Glenny@asu.edu	Dry Needling is a practice that is safely and effectively implemented by trained athletic trainers in many other states. Athletic trainers who have been trained in this therapeutic modality should be able to practice their trained skill in order to benefit the patients they serve.	Yes
7/21/2021	andrew.mckay@asu.edu	Athletic trainers in other state are safely and effectively performing dry needling in order to support patient care. Athletic trainers who have taken a course on dry needling should be able to practice dry needling in Arizona in order to treat acute and chronic athletic injuries.	Yes
7/21/2021	taylor.berman@asu.edu	I am supporting the dry needling rule in light of the value this practice can bring to our patients and their health outcomes. The current education competencies of athletic trainers are not reflected by the streamlining and modernization of the existing rules. Dry needling can and will benefit our patients.	Yes
7/26/2021	johnny.marcinkowski@asu.edu	Being able to dry needle in the stated of Arizona as an Athletic Trainer will add great value to providing high quality health care to the patients. With many other stated already allowing athletic trainers to provide this service, it will allow Arizona Athletic Trainers with appropriate training to excel in the profession. As an advocate of the athletic training profession, this will catch up the stated of Arizona with other states regulations and hopefully lead to further progression of the profession.	Yes
7/26/2021	kbliven@atsu.edu	I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. The addition of the dry needling definition as proposed will allow athletic trainers who are educated and trained in dry needling within Arizona and who relocate to Arizona to practice the technique.	Yes
7/29/2021	whebrink@reds.com	I believe that Athletic Trainers (ATC, LAT) are highly qualified medical professionals who should be able to apply to practice Dry Needling as a therapeutic modality if they have the appropriate education and certifications. If you have the appropriate education and are qualified to be certified in Dry Needling, then there is no reason why ATCs shouldn't be able to use it in their professional setting. It will only benefit our patients and/or athletes.	Yes
8/2/2021	lwhite@xcp.org	ATs have the foundational knowledge to support healthcare treatment that includes dry needling as a modality by definition. This educational foundation provides ATs the preparation to pursue the further advanced training if desired. This is a great move by ABAT to include this modality by rule as a clarification for those pursuing the advanced training or moving in from another state not currently allows this modality and also has the requisite education and training.	Yes
8/2/2021	hmduszynski@gmail.com	Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This substantial educational foundation provides athletic trainers with the same amount of preparation as physical therapists to pursue further education and training in dry needling. A significant number of Arizona athletic trainers are interested in adding dry needling to their clinical practice. Currently, athletic trainers in Arizona may be educated and trained in dry needling, but are unable to practice the technique under current statutory interpretation.	Yes
8/2/2021	barton@sports-injury-info.com	The proposed rules incorporate all of the necessary requirements to ensure that only qualified athletic trainers perform dry needling, and follow the same format as the current rules in place for dry needling within physical therapy. Physical therapy added the definition and scope of practice rules for dry needling in 2015, and there has been no significant negative effects on patient safety, or safety related complaints against PTs using dry needling since its inception. Athletic trainers and physical therapists have similar education and foundational training in anatomy, physiology, examination and diagnosis, and clinical decision making, arising from their professional preparation programs. Dry needling is considered an advanced practice skill and is taught as a supplemental professional workshop training. The course requirements outlined in the proposed rules are appropriate and ensure that all necessary information for safe and effective use of this modality is delivered. The 24 hour training requirement is consistent with physical therapy requirements and aligns with the vast majority of available dry needling courses. The ABAT should be commended for their attention to detail to ensure these rules reflect appropriate education and training and to ensure public safety. The dry needling modality provides the opportunity for improved patient outcomes, improved patient access to this beneficial modality, and poses minimal risk to patient safety when performed by a qualified clinician. As an athletic trainer who has been trained in dry needling since 2017, yet unable to practice this skill in Arizona, these proposed rule changes will provide a significant, positive change to my clinical practice, improving not only my patient outcomes, but also my financial and economic outlook.	Yes
8/2/2021	cwhite@brophyprep.org	R4-49-406 allows athletic trainers to practice to the full extent of their education and training. Athletic trainers have substantial competence in use of modalities, and patterning this after the existing physical therapy rules (2015) that has had no negative outcomes, will surely benefit the patients we athletic trainers treat.	Yes
8/2/2021	rdipanfilo@dbacks.com	I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.	Yes
8/2/2021	dreel@dbacks.com	I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.	Yes



Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
8/3/2021	alison.valier@gmail.com	<p>I am in full support of the rule proposed for dry needling. Athletic trainers across the country have significant foundational knowledge related to the practice of dry needling. In fact, a study performed by Hartz et al (2019) demonstrated that athletic trainers have equivalent foundational knowledge related to dry needling as physical therapists. The proposed rule is modeled after the physical therapist rule and physical therapists in Arizona have been able to perform dry needling on patients since 2015 with success. Some may argue that the hours are not equivalent to training of an acupuncturist. That is true - they are not. Training to become an acupuncturist is to earn a professional, medical degree. This medical degree consists of foundational knowledge, training in different skills/techniques, learning the philosophies of Chinese medicine, and more - and is more than one skill, such as needling of the musculoskeletal system. All healthcare providers should be able to practice to the full extent of their education and training and this rule allows athletic trainers to do just that and to use dry needling when educated and trained in the technique.</p> <p>It is important to note that regardless of practice setting (eg, high school, hospital, professional, industrial), athletic trainers are held to ethical standards of practice and must adhere to common standards of care, such as practicing under the direction of a physician and parental consent to treat minors. Further, athletic trainers are required to abide by a code of professional responsibility when performing athletic training activities and services. Ensuring treatments and services are delivered in a manner that keeps patients safe is a responsibility of being a healthcare professional.</p>	Yes
8/3/2021	lindseyatc@gmail.com	<p>We support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</p> <p>Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</p> <p>Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona.</p>	Yes
8/3/2021	pserbus@reds.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
8/3/2021	gilbertatc@msn.com	<p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p> <ul style="list-style-type: none"> <li>• Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</li> <li>• Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</li> <li>• Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona.</li> </ul>	Yes
8/3/2021	janele.roche@bannerhealth.com	<p>I am in full support in the addition of dry needling as a form of therapeutic modality for the licensed Athletic Trainer in Arizona. As health care professionals, ATs continue their education in many ways to help take stock in patient treatment and care. By adding Dry Needling, it allows for patients in Arizona receive the therapeutic treatment that may be their best option for ailment.</p>	Yes
8/3/2021	eabbott@salpointe.org	<p>Athletic Trainers practice their five domains on a daily basis no matter what setting they may be practicing in. The domain of therapeutic intervention is ever changing and just as keeping up with continuing education, the use of dry needling is something that we are more than educated and capable of administering to our athletes. We see our athletes regularly and honestly spend the most time with them especially during rehabilitation. Dry needling is essentially a tool that we can use to help better an outcome for our athletes just as any other type of modality commonly used in our facilities.</p>	Yes
8/3/2021	jjazawa@dbacks.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
8/3/2021	csimkins@brophyprep.org	<p>Establishing rules similar to what the physical therapists have done, with no negative outcomes, will enhance patient care</p>	Yes
8/4/2021	jrosauer@dbacks.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
8/5/2021	mpowell@dbacks.com	<p>I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.</p>	Yes
7/1/2021	mobileatc@hotmail.com	<p>The addition of dry needling to our profession I think would be a tremendous addition to our scope of practice. As a Healthcare Provider we need to be cutting edge and being able to provide the best care to our athletes and patients should be a priority.</p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/21/2021	mjhlavaty@gmail.com	I wanted to reach out in support of the proposed changes that the Arizona Board of Athletic Training is seeking to make. The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. Currently, there are athletic trainers in Arizona, myself included, who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.	Yes
7/18/2021	mitchellbarnhart@pcds.org	I support these changes to update the rules to reflect changes.	N/A
7/18/2021	mitchell.barnhart@pcds.org	I support this change which reduces the potential financial barriers encountered by some athletic trainers.	N/A
7/1/2021	mobileatc@hotmail.com	The cost I think is high for our profession. I know other professions are less expensive than ours. I would also like to recommend that if an is going to take a year off, or is working in a sector that an AT is not used, that AT can have their license moved to be temporarily inactive and can be reactivated when they want to reinstate it	N/A
7/15/2021	pserbus@reds.com	To Whom It May Concern- I am writing today in support of the rule changes proposed to R4-49-101, specifically in tremendous support of the inclusion of dry needling as a part of the Athletic Trainer's scope of practice in the State of Arizona. I work in professional baseball for the past 21 years now and can honestly say that Dry Needling is one manual modality that can impact immediate improvements in symptom set, muscle tone, myofascial tension and neurological feedback. It is singularly at the top of a very short list of physical and manual modalities that is critical to working with athletes in a chronic overuse sport such as baseball.  Our goal is to provide therapies to our athletes at the cutting edge of what is available to assist them in maintaining their availability to compete on a daily basis. Dry needling is a critical tool for Athletic Trainers that have completed the necessary continuing education coursework to effectively and safely utilize this skill/tool in clinical practice.  The education courses that Athletic Trainers complete to learn these skills are the same courses and requirements that other medical professionals that currently practice dry needling in Arizona complete as their own pre-requisite to practice clinically.  Please continue to push for the inclusion of dry needling into the scope of practice for all licensed Athletic Trainers in Arizona. It's a clinical outcomes practice changer!!  Thank you for your time and support,  Patrick Serbus Cincinnati Reds Director of Athletic Training	Yes
7/16/2021	tmcleod@atsu.edu	In support of the rule change to add dry needling.	Yes
7/19/2021	gerry.garcia@asu.edu	The addition of dry needling will allow athletic trainers to practice to their full extent of their education and training. Athletic trainers complete a substantial amount of education related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.	Yes
7/26/2021	kbliven@atsu.edu	I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers. Specifically, I support changes to eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers so they can practice to the full extent of their education and training.  I also support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. The addition of the dry needling definition as proposed will allow athletic trainers who are educated and trained in dry needling within Arizona and who relocate to Arizona to practice the technique.	Yes
7/30/2021	bepstein@reds.com	It is imperative that a dry needling practitioner definition includes Athletic Trainers that have completed specific training and shown proper competence with the skill. With an innate understanding of the human body and proper training, the addition of dry needling to the skillset of an Athletic Trainer is an invaluable tool that can be utilized when putting our athletes health first.	Yes
8/2/2021	hmduszynski@gmail.com	A significant number of Arizona athletic trainers are interested in adding dry needling to their clinical practice. Currently, athletic trainers in Arizona may be educated and trained in dry needling, but are unable to practice the technique under current statutory interpretation. Athletic trainers are well educated individually who have the skills and education to pursue appropriate further training required for dry needling. However, we lack the ability to pursue the practice of it daily.	Yes
8/2/2021	barton@sports-injury-info.com	As a licensed athletic trainer in Arizona, I fully support the changes to R4-49-101 to clarify existing rules and to add the definition of Dry Needling; the definition of dry needling is consistent with definitions contained in other professions scope of practice, specifically physical therapy. This modality should be incorporated into AT scope of practice, as the foundational knowledge and training required to safely and effectively administer this modality is readily available to practicing athletic trainers.	Yes
8/2/2021	cwhite@brophyprep.org	Thank you for including dry needling as a modality. Removing definitions certainly will streamline the rules governing the practice of athletic training in Arizona.	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
8/2/2021	soazatc@gmail.com	Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This substantial educational foundation provides athletic trainers with the same amount of preparation as physical therapists to pursue further education and training in dry needling. While I may not choose to do dry needling in the secondary school setting, I do want the ability if I change employment positions to utilize my dry needling skills with other active populations. My other concern is Major League Baseball holds spring training here in state. Those ATs may dry needle in their own states, but cannot here based upon our laws. That may affect the desire for teams to remain in Arizona's Cactus League if the statutes do not resemble their own.	Yes
8/2/2021	l.h.oliver@maranausd.org	Dry needling is a therapeutic modality that man certified Athletic trainers are already trained in and r unable to perform in Az. We need to advance our profession . The future of athletic Training as a healthcare profession is counting on this .	Yes
8/2/2021	rpcohenatc@gmail.com	I support athletic trainers being able to use functional dry needling as part of their practice. As a physical therapist and athletic trainer who uses dry needling i know that athletic trainers have the knowledge and background to be able learn and use this skill.	Yes
8/3/2021	lindseyatc@gmail.com	We support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers	Yes
8/3/2021	rpcohenatc@gmail.com	I support athletic trainers being able to use functional dry needling as part of their practice. As a physical therapist and athletic trainer who uses dry needling i know that athletic trainers have the knowledge and background to be able learn and use this skill.	Yes
8/3/2021	csigwart@reds.com	Dry needling is a very effective treatment that we could use on our players to improve their outcomes and maintain their health so that they stay on the field. All of our athletic trainers have been trained and certified by Structure and Function. Our athletes are investments for us and we want the best for them. With this being said, we will always treat in the appropriate manner within our abilities and correct moral obligations to them. As a group, we have a high standard for continuing education and dry needling has been one of these for close to a decade for those that it was legal to use in their state of practice. We look forward to being able to use this excellent and effective treatment in the future. Please make it happen for us that will use it in a safe and competent manner.	Yes
8/3/2021	rpcohenatc@gmail.com	I support athletic trainers being able to use functional dry needling as part of their practice. As a physical therapist and athletic trainer who uses dry needling i know that athletic trainers have the knowledge and background to be able learn and use this skill.	Yes
8/3/2021	sfalsone@atsu.edu	I am writing as a follow up to my original email regarding my full support of the rule proposed for dry needling. Athletic trainers across the country have more than adequate foundational knowledge related to the practice of dry needling. In fact, a study performed by Hartz et al (2019) demonstrated that athletic trainers have equivalent foundational knowledge related to dry needling as physical therapists. Also, in an article by Jan Dommerholt (2019), he notes "DN is a safe anatomy-driven procedure". To this point, athletic trainers are fully trained in anatomy.  The proposed rule is modeled after the physical therapist rule in Arizona, where PTs have been able to perform dry needling on patients since 2015. Some may argue that the hours are not equivalent to training of an acupuncturist. That is true - they are not. Training to become an acupuncturist is to earn a totally different professional, medical degree. This professional degree is rooted in Traditional Chinese Medicine (TCM), which takes years of immersion and study to understand. Multiple TCM philosophies and modalities are taught in acupuncture school, including the use of needles to treat a variety of internal medicine disorders, moxibustion, how to read pulses and tongues for diagnosis, tunia (therapeutic massage), and herbology. My point here is that their years of study are not solely focused on the safe act of needle insertion for neuromusculoskeletal conditions.  All healthcare providers should be able to practice to the full extent of their education. These educational standards have been established within our state by the PT board, and the study by Hartz referenced above shows ATs are similarly trained as PTs in the foundational areas needed for dry needling. This rule allows athletic trainers to do just that and to use dry needling when properly educated and trained in proper technique.  It is important to note that regardless of practice setting (eg, high school, hospital, professional, industrial), athletic trainers are held to ethical standards of practice and must adhere to common standards of care, such as practicing under the direction of a physician and parental consent to treat minors. Further, athletic trainers are required to abide by a code of professional responsibility when performing athletic training activities and services. Ensuring treatments and services are delivered in a manner that keeps patients safe is a responsibility of being a healthcare professional. This includes a clean area and clean field in which to work.  Again, my full support goes towards this rule change for athletic trainers within the state of Arizona.	Yes
8/3/2021	mwalker@dbacks.com	I am in support of the rule related to athletic training and dry needling. Athletic trainers are healthcare providers who should be able to practice to the full extent of their education and training. Many athletic trainers have advanced their practice and built upon their foundational knowledge and skills by becoming educated and trained in the modality of dry needling. The proposed rule acknowledges this and allows those athletic trainers who have chosen to advance their training to include this treatment in their practice. The proposed rule follows the same education and training requirements for dry needling that other health professionals in the state are required to meet. Thank you for supporting athletic training practice in the state.	Yes
8/3/2021	csimkins@brophyprep.gcu	Defining dry needling is beneficial and will allow athletic trainers to better serve patients	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/6/2021	jodymurr13@gmail.com	<p>These comments come from perhaps the only Athletic Trainer in the state of AZ who is also a licensed Acupuncturist. I also have had a lot of exposure to the types of training currently offering dry needling education to ATs. I wish that BOTH PTs and ATs would have a more intensive requirement (more hours of training) before being allowed to practice dry needling, but I recognize that ship has sailed. For instance, my education was 2700 hours on top of already being an AT. The argument that DN is not acupuncture is simply not true. It is 100% a style of acupuncture that has been practice for thousands of years.</p> <p>However, I recognize that this increase in the SOP for ATs is going to happen. I feel very strongly that when working with minors A PARENT SHOULD BE PRESENT, not just their consent to treat. My absolute biggest concern is of DN being performed in a high school AT room. This is a terrifying prospect. I have spent many years in high school ATRs, they are chaotic, overcrowded and not a clean sterile environment. DN demands 100% focus and of course, a clean environment. Requiring a parent present would slow down the amount of treatments occurring in this environment and increase the safety of minor athletes.</p> <p>I also feel that anyone who wants to perform DN should be required to take a Clean Needle Technique class and exam in the same way that all Acupuncturists are required.</p> <p>I am available for any questions you might have from someone uniquely on both sides of this debate.</p>	No
7/7/2021	mobileatc@hotmail.com	<p>I am writing in regarding to the email I received about proposed rulemaking changes for Athletic Training.</p> <p>Some of the recommendations I would like to see happen.</p> <ol style="list-style-type: none"> <li>1. Fees: The cost I think is high for our profession. I know other professions are less expensive than ours. I would also like to recommend that if an is going to take a year off, or is working in a sector that an AT is not used, that AT can have their license moved to be temporarily inactive and can be reactivated when they want to reinstate it.</li> <li>2. As far as licensing. I think this area is good. I still feel we need to show proof of identity when applying for a license, as well as maintaining a fingerprint card.</li> <li>3. The addition of dry needling to our profession I think would be a tremendous addition to our scope of practice. As a Healthcare Provider we need to be cutting edge and being able to provide the best care to our athletes and patients should be a priority.</li> </ol>	Yes
7/10/2021	rpurcell@texasrangers.com	<p>My name is Rachel Purcell, and I am an athletic trainer with the Texas Rangers working full time out of our Arizona Complex here in Surprise, Arizona. I read through the new rule change document, and I was excited to see the new changes proposed for dry needling! I'm currently certified in Dr. Ma's Integrative Dry Needling Course.</p> <p>I was hoping you could clarify a few questions I had regarding athletic trainers being able to dry needle in Arizona. Will I need to send my dry needling certification directly to you or would it be better for me to mail it to the state board to be able to practice? I might have also read this wrong, but is this currently in effect (since July 1st?) or do we need to wait for the rule changes to be formally approved?</p> <p>Thank you so much for your time, and I appreciate all you do.</p>	Yes
7/14/2021	sfalsone@atsu.edu	<p>This email is in response to the open comment period for the modernization of rules for athletic trainers in Arizona.</p> <p>As an athletic trainer in good standing within the state of Arizona, and as a professor teaching within the athletic training profession, I support the streamlining and modernization of the existing rules, which are outdated and do not reflect the current education competencies of athletic trainers.</p> <p>The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</p> <p>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</p> <p>I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.</p>	Yes
7/15/2021	EHalbur@cubs.com	<p>We support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers.</p> <p>The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</p> <p>We support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</p> <ul style="list-style-type: none"> <li>· Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</li> <li>· Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</li> </ul> <p>Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona.</p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/15/2021	kpicha@atsu.edu	<p>I am writing today in support of the proposed modernized rules for athletic trainers. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers have a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona. Thank you for the opportunity to provide my support for the modernized rules that will make a difference in our profession.</p>	Yes
7/15/2021	alison.valier@gmail.com	<p>Please accept this email as my support for the proposed rules related to athletic training practice in Arizona. I've been a licensed Athletic Trainer in the state for many years and appreciate the recent efforts by ABAT to streamline and modernize the rules. The previous rules had inconsistencies, redundancies, and outdated content. The proposed rules make the licensing process easier and more clear for athletic trainers and align the rule with the most recent educational competencies and standards. With the modernized rules, athletic trainers are able to practice and care for patients using techniques and treatment strategies that align with their education and training.</p> <p>Defining dry needling clarifies the use of this treatment for athletic trainers who are educated and trained in the technique and wish to use it to the benefit of their patients. Currently, there are athletic trainers in the state who currently can not perform this treatment even though they are educated and trained to do so which limits opportunity for them and their patients. I strongly support the inclusion of this definition in the rule.</p> <p>The proposed rules by ABAT are a much needed and long overdue update. Not only will the rules have a positive impact on licensees, but the updates to the rules will continue to promote delivery of athletic healthcare that maintains patient health and safety.</p> <p>As a licensed athletic trainer in Arizona, I fully support the proposed rules. I appreciate the efforts of ABAT and thank them for the work done to ensure that athletic training rules are modernized and that athletic trainers are able to treat patients to the full extent of their education and training.</p>	Yes
7/21/2021	mjhlavaty@gmail.com	<p>I wanted to reach out in support of the proposed changes that the Arizona Board of Athletic Training is seeking to make. The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients. Currently, there are athletic trainers in Arizona, myself included, who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today. Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.</p>	Yes
7/26/2021	khuxel02@gmail.com	<p>Please accept this email as my support for the proposed rules related to athletic training practice in Arizona. I've been a licensed Athletic Trainer in the state for many years and appreciate the recent efforts by ABAT to streamline and modernize the rules with the goal of making the licensing process easier and more clear for athletic trainers, and aligning the rule with current educational competencies and standards. The previous rules had inconsistencies, redundancies, and outdated content. The proposed modernized rules will ensure athletic trainers are able to practice and care for patients using techniques and treatment strategies that align with their education and training.</p> <p>Defining dry needling clarifies the use of this treatment delivered by athletic trainers who are educated and trained in the technique and use it to the benefit of their patients. Currently, there are athletic trainers in the state who are unable to perform dry needling treatments even though they are educated and trained to do so, which limits their practice and options for patient care. I am a strong supporter of the inclusion of this dry needling definition in the rule.</p> <p>I support the much needed proposed rules by ABAT and believe they will have a positive impact on athletic trainers licensed to practice in Arizona while at the same time ensuring safe delivery of athletic healthcare to patients in the community.</p> <p>As a licensed athletic trainer in Arizona, I fully support the proposed rules. Thanks to the efforts of ABAT for spearheading the proposed rule changes that will ensure athletic trainers are able to treat patients to the full extent of their education and training.</p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
7/30/2021	smphillips@arizona.edu	<p>I am Samantha Carhart, assistant athletic trainer for the University of Arizona. I am writing in support of the proposed changes for the Board in regards to streamlining licensure, modernization of practice, and more while maintaining our priority of patient safety. The current standards are now not consistent with ongoing research and education and competencies that athletic trainer consistently engage in. With the proposed changes, athletic trainers can then practice to the full extent of our training and truly provide the best healthcare possible with this proposal.</p> <p>As it stands right now, athletic trainers across the state of Arizona have been properly educated on and trained in dry needling but cannot perform this therapeutic technique without the modernization and clarification of the proposed practice act. We are allied healthcare professionals that are extensively trained in the recognition, prevention, management, rehabilitation, examination, and evaluation of injuries and illnesses, chronic and acute, as well as medical emergencies. With our background, we are perfect candidates for applying and implementing dry needling techniques into our practice, just as our colleagues in physical therapy do. Currently, our patients are not able to experience the therapeutic effects of dry needling, although they would be able to receive this treatment in other states, effectively hurting the ability of patients to receive the best care possible and losing highly qualified healthcare professionals due to our current standards.</p> <p>I am in full support of the expanded access to this therapeutic modality in order to benefit patients all across the state of Arizona. I am I full support of the proposed changes to our application procedure to decrease the burden of applying. I am asking that you take each of these comments into full consideration and enter into decision on these critical rules and regulations.</p>	Yes
8/1/2021	Geordie.Hackett@gcu.edu	<p><b>I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers.</b></p> <ul style="list-style-type: none"> <li>· The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</li> </ul> <p><b>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</b></p> <ul style="list-style-type: none"> <li>· Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</li> <li>· Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</li> <li>· Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona</li> </ul> <p><b>Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</b></p> <p><b>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</b></p>	Yes
8/1/2021	J.J.Sayson@gcu.edu	<p><b>I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers.</b></p> <ul style="list-style-type: none"> <li>· The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</li> </ul> <p><b>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</b></p> <ul style="list-style-type: none"> <li>· Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</li> <li>· Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</li> <li>· Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona</li> </ul> <p><b>Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</b></p> <p><b>I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</b></p>	Yes

Timestamp	Email Address	Enter your comments on the addition of R4-49-406 here.	In Support of Dry Needling
8/2/2021	LPowers@reds.com	<p>My name is Lauren Powers and I am a certified athletic trainer currently licensed in the state of Arizona. I spend time working in both Arizona and the Dominican Republic as a minor league athletic trainer in professional baseball. I would like to voice my support for the dry needling rule changes in the state of Arizona. I, and many of my colleagues, have completed training in the area of dry needling and would like to be able to practice to the full extent of our abilities. Below are multiple points that support the proposed dry needling changes.</p> <ol style="list-style-type: none"> <li>1. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</li> <li>2. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</li> <li>3. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</li> <li>4. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules</li> </ol>	Yes
8/2/2021	Benjamin.Kmetz@gcu.edu	<p>I support the use of dry needling for athletic trainers with the supported points below.</p> <ol style="list-style-type: none"> <li>1. I support streamlining and modernizing the existing rules which are outdated and do not reflect the current education competencies of athletic trainers. <ul style="list-style-type: none"> <li>· The proposed changes eliminate unnecessary definitions, streamline application requirements, reduce fees and refer to the appropriate and current educational competencies for athletic trainers. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as members of the regulated profession, we support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</li> </ul> </li> <li>2. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients. <ul style="list-style-type: none"> <li>· Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules.</li> <li>· Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</li> <li>· Athletic trainers in many other states are safely and effectively performing dry needling to support patient care. Without ABAT's proposed rules on dry needling, athletic trainers from other states who use the modality in their clinical practice will be unable to continue to use this skill upon relocation to Arizona</li> </ul> </li> <li>3. Athletic trainers should be able to practice to the full extent of their education and training. Moreover, as a member of the regulated profession, I support efforts to streamline application procedures, minimize burdens and reduce costs, while maintaining the health and safety of our patients.</li> <li>4. I support expanded access to the therapeutic modality of dry needling for the benefit of athletic training patients.</li> <li>5. Currently, there are athletic trainers in Arizona who are educated and trained in dry needling, but unable to practice the technique without the clarification provided by these proposed rules. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.</li> </ol>	Yes
8/3/2021	apatrickdevies@park.edu	<p>As an athletic trainer in good standing in the state of Arizona, and as a healthcare provider currently providing services to the university athletic population, I am writing to express my support for the ABAT's proposed rule to modernize the practice of athletic training by including a definition of "dry needling" as a therapeutic modality.</p> <p>I am one of many athletic trainers in the state of Arizona who are educated and trained in dry needling but are unable to utilize the technique for the betterment of our patients. I look forward to the clarification this rule change would provide, allowing athletic trainers to raise the level of care they provide by practicing to the full extent of their education and training. Athletic trainers complete a substantial educational foundation related to the prevention, recognition, examination, evaluation, rehabilitation and management of acute and chronic athletic injuries and illnesses. This provides athletic trainers with the appropriate educational background to pursue further education and training in dry needling, just as other similarly trained professionals are doing in Arizona today.</p> <p>In addition to including dry needling in the athletic training practice, the proposed rule change will also eliminate unnecessary definitions, streamline application requirements, and reduce fees. I fully support the proposed rule changes by the Arizona Board of Athletic Trainers, which would minimize burdens and reduce cost for athletic trainers while allowing them to practice to the full extent of their education and training for the benefit of their patients. I am personally confident in my ability to safely and effectively utilize the technique of dry needling to help my patients reach their goals and heal from injury, and I look forward to the day that I can offer this modality as an option to patients who would benefit from its use. I ask you to consider the above and enter my comments for consideration to the ABAT as they make decisions on these important rules.</p>	Yes

## **MATERIAL INCORPORATED BY REFERENCE**

R4-49-401 - Athletic Training Educational Competencies (5th Edition)

[https://www.nata.org/sites/default/files/competencies\\_5th\\_edition.pdf](https://www.nata.org/sites/default/files/competencies_5th_edition.pdf)

R4-49-403 – Board of Certification Standards of Professional Practice

<https://7f6907b2.flowpaper.com/SOPP012021/#page=1>

## GENERAL STATUTE AUTHORIZING THE RULE

### **32-4103. Board; powers and duties; direction of athletic trainers; continuing education requirements; civil immunity**

A. The board shall administer and enforce this chapter and shall:

7. Adopt and revise rules to enforce this chapter.

## SPECIFIC STATUTES AUTHORIZING THE RULE

### **32-4101. Definitions**

In this chapter, unless the context otherwise requires:

6. "Board" means the board of athletic training.

### **32-4103. Board; powers and duties; direction of athletic trainers; continuing education requirements; civil immunity**

A. The board shall administer and enforce this chapter and shall:

6. Establish requirements for assessing the continuing competence of licensees.

### **32-4123. Application; statement of deficiencies; hearing**

A. An applicant for licensure shall file a completed application as required by the board. The applicant shall include application and examination fees as prescribed in section 32-4126.

B. The board may return an application with a statement of deficiencies. On request of an applicant who disagrees with the statement, the board shall hold a hearing pursuant to title 41, chapter 6.

### **32-4151. Lawful practice**

B. An athletic trainer shall adhere to the recognized standards and ethics of the athletic training profession and as further established by rule.



KRISHNA JHAVERI &lt;krishna.jhaveri@azdoa.gov&gt;

## Concerns with the Board of Athletic Training Dry Needling Proposed Rule - feel free to forward

1 message

**Coady, Monique** <Monique.Coady@azag.gov>

Mon, Dec 27, 2021 at 1:14 PM

To: "Simon Larscheidt (simon.larscheidt@azdoa.gov)" &lt;simon.larscheidt@azdoa.gov&gt;, "KRISHNA JHAVERI (krishna.jhaveri@azdoa.gov)" &lt;krishna.jhaveri@azdoa.gov&gt;

Hi Simon, Hi Krishna,

I have concerns regarding whether the Legislature has provided authority to the Board of Athletic Training to promulgate rules authorizing athletic trainers to conduct the invasive process of dry needling. Based on prior legislation, it appears that dry needling may be limited to licensed physical therapists at this time. In 2014, the State Legislature passed SB 1154 (attached), which defines "dry needling" as "a skilled intervention **performed by a physical therapist** ..." A.R.S. § 32-2001(4). That bill also authorized **the Board of Physical Therapy** to promulgate dry needling rules and provided an additional ground for disciplinary action for a physical therapist: "[f]ailing to demonstrate professional standards of care and training and education qualifications, as established by the board by rule, in the performance of dry needling when provided as a therapeutic modality." A.R.S. § 32-2044(25).

The Physical Therapy Board's rules for the "Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention" are found at A.A.C. R4-24-313.

One other thing – the Board of Athletic Training has the following "Dry Needling Statement" posted on its website: "As a reminder, it is the responsibility of all practitioners to engage in activities that are within the scope of practice of athletic training. That scope is set forth in statute at A.R.S. § 32-4101(4). The practice of dry needling does not fall within the statutory definition of athletic training."

Feel free to pass along this email to Councilmembers for their consideration. Let me know if you need anything else from me.

**Monique Coady****Assistant Attorney General, Public Law Section**

Office of the Attorney General

State Government Division

**Mailing address:** 2005 N. Central Ave.

Phoenix, AZ 85004

**Office location:** 15 S. 15<sup>th</sup> Ave.

Phoenix, AZ 85007

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[Monique.Coady@azag.gov](mailto:Monique.Coady@azag.gov)

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 **SB 1154.pdf**  
32K

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

**CHAPTER 220**  
**SENATE BILL 1154**

AN ACT

AMENDING SECTIONS 32-2001 AND 32-2044, ARIZONA REVISED STATUTES; RELATING TO  
THE REGULATION OF PHYSICAL THERAPY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2001, Arizona Revised Statutes, is amended to  
3 read:

4 32-2001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Assistive personnel" includes physical therapist assistants and  
7 physical therapy aides and other assistive personnel who are trained or  
8 educated health care providers and who are not physical therapist assistants  
9 or physical therapy aides but who perform specific designated tasks related  
10 to physical therapy under the supervision of a physical therapist. At the  
11 discretion of the supervising physical therapist, and if properly  
12 credentialed and not prohibited by any other law, other assistive personnel  
13 may be identified by the title specific to their training or education. This  
14 paragraph does not apply to personnel assisting other health care  
15 professionals licensed pursuant to this title in the performance of delegable  
16 treatment responsibilities within their scope of practice.

17 2. "Board" means the board of physical therapy.

18 3. "Business entity" means a business organization that has an  
19 ownership that includes any persons who are not licensed or certified to  
20 provide physical therapy services in this state, that offers to the public  
21 professional services regulated by the board and that is established pursuant  
22 to the laws of any state or foreign country.

23 4. "DRY NEEDLING" MEANS A SKILLED INTERVENTION PERFORMED BY A PHYSICAL  
24 THERAPIST THAT USES A THIN FILIFORM NEEDLE TO PENETRATE THE SKIN AND  
25 STIMULATE UNDERLYING NEURAL, MUSCULAR AND CONNECTIVE TISSUES FOR THE  
26 EVALUATION AND MANAGEMENT OF NEUROMUSCULOSKELETAL CONDITIONS, PAIN AND  
27 MOVEMENT IMPAIRMENTS.

28 ~~4.~~ 5. "General supervision" means that the supervising physical  
29 therapist is on call and is readily available via telecommunications when the  
30 physical therapist assistant is providing treatment interventions.

31 ~~5.~~ 6. "Interim permit" means a permit issued by the board that allows  
32 a person to practice as a physical therapist in this state or to work as a  
33 physical therapist assistant for a specific period of time and under  
34 conditions prescribed by the board before that person is issued a license or  
35 certificate.

36 ~~6.~~ 7. "Manual therapy techniques" means a broad group of passive  
37 interventions in which physical therapists use their hands to administer  
38 skilled movements designed to modulate pain, increase joint range of motion,  
39 reduce or eliminate soft tissue swelling, inflammation, or restriction,  
40 induce relaxation, improve contractile and noncontractile tissue  
41 extensibility, and improve pulmonary function. These interventions involve a  
42 variety of techniques, such as the application of graded forces.

43 ~~7.~~ 8. "On-site supervision" means that the supervising physical  
44 therapist is on site and is present in the facility or on the campus where  
45 assistive personnel or a holder of an interim permit is performing services,

1 is immediately available to assist the person being supervised in the  
2 services being performed and maintains continued involvement in appropriate  
3 aspects of each treatment session in which a component of treatment is  
4 delegated.

5 ~~8-~~ 9. "Physical therapist" means a person who is licensed pursuant to  
6 this chapter.

7 ~~9-~~ 10. "Physical therapist assistant" means a person who meets the  
8 requirements of this chapter for certification and who performs physical  
9 therapy procedures and related tasks that have been selected and delegated by  
10 the supervising physical therapist.

11 ~~10-~~ 11. "Physical therapy" means the care and services provided by or  
12 under the direction and supervision of a physical therapist who is licensed  
13 pursuant to this chapter.

14 ~~11-~~ 12. "Physical therapy aide" means a person who is trained under  
15 the direction of a physical therapist and who performs designated and  
16 supervised routine physical therapy tasks.

17 ~~12-~~ 13. "Practice of physical therapy" means:

18 (a) Examining, evaluating and testing persons who have mechanical,  
19 physiological and developmental impairments, functional limitations and  
20 disabilities or other health and movement related conditions in order to  
21 determine a diagnosis, a prognosis and a plan of therapeutic intervention and  
22 to assess the ongoing effects of intervention.

23 (b) Alleviating impairments and functional limitations by managing,  
24 designing, implementing and modifying therapeutic interventions including:

25 (i) Therapeutic exercise.

26 (ii) Functional training in self-care and in home, community or work  
27 reintegration.

28 (iii) Manual therapy techniques.

29 (iv) Therapeutic massage.

30 (v) Assistive and adaptive orthotic, prosthetic, protective and  
31 supportive devices and equipment.

32 (vi) Pulmonary hygiene.

33 (vii) Debridement and wound care.

34 (viii) Physical agents or modalities.

35 (ix) Mechanical and electrotherapeutic modalities.

36 (x) Patient related instruction.

37 (c) Reducing the risk of injury, impairments, functional limitations  
38 and disability by means that include promoting and maintaining a person's  
39 fitness, health and quality of life.

40 (d) Engaging in administration, consultation, education and research.

41 ~~13-~~ 14. "Restricted certificate" means a certificate on which the  
42 board has placed any restrictions as the result of a disciplinary action.

43 ~~14-~~ 15. "Restricted license" means a license on which the board places  
44 restrictions or conditions, or both, as to the scope of practice, place of

1 practice, supervision of practice, duration of licensed status or type or  
2 condition of a patient to whom the licensee may provide services.

3 ~~15-~~ 16. "Restricted registration" means a registration the board has  
4 placed any restrictions on as the result of disciplinary action.

5 Sec. 2. Section 32-2044, Arizona Revised Statutes, is amended to read:

6 32-2044. Grounds for disciplinary action

7 The following are grounds for disciplinary action:

8 1. Violating this chapter, board rules or a written board order.

9 2. Practicing or offering to practice beyond the scope of the practice  
10 of physical therapy.

11 3. Obtaining or attempting to obtain a license or certificate by fraud  
12 or misrepresentation.

13 4. Engaging in the performance of substandard care by a physical  
14 therapist due to a deliberate or negligent act or failure to act regardless  
15 of whether actual injury to the patient is established.

16 5. Engaging in the performance of substandard care by a physical  
17 therapist assistant, including exceeding the authority to perform tasks  
18 selected and delegated by the supervising licensee regardless of whether  
19 actual injury to the patient is established.

20 6. Failing to supervise assistive personnel, physical therapy students  
21 or interim permit holders in accordance with this chapter and rules adopted  
22 pursuant to this chapter.

23 7. Conviction of a felony, whether or not involving moral turpitude,  
24 or a misdemeanor involving moral turpitude. In either case conviction by a  
25 court of competent jurisdiction is conclusive evidence of the commission and  
26 the board may take disciplinary action when the time for appeal has lapsed,  
27 when the judgment of conviction has been affirmed on appeal or when an order  
28 granting probation is made suspending the imposition of sentence,  
29 irrespective of a subsequent order. For the purposes of this paragraph,  
30 "conviction" means a plea or verdict of guilty or a conviction following a  
31 plea of nolo contendere.

32 8. Practicing as a physical therapist or working as a physical  
33 therapist assistant when physical or mental abilities are impaired by disease  
34 or trauma, by the use of controlled substances or other habit-forming drugs,  
35 chemicals or alcohol or by other causes.

36 9. Having had a license or certificate revoked or suspended or other  
37 disciplinary action taken or an application for licensure or certification  
38 refused, revoked or suspended by the proper authorities of another state,  
39 territory or country.

40 10. Engaging in sexual misconduct. For the purposes of this paragraph,  
41 "sexual misconduct" includes:

42 (a) Engaging in or soliciting sexual relationships, whether consensual  
43 or nonconsensual, while a provider-patient relationship exists.

44 (b) Making sexual advances, requesting sexual favors or engaging in  
45 other verbal conduct or physical contact of a sexual nature with patients.

1 (c) Intentionally viewing a completely or partially disrobed patient  
2 in the course of treatment if the viewing is not related to patient diagnosis  
3 or treatment under current practice standards.

4 11. Directly or indirectly requesting, receiving or participating in  
5 the dividing, transferring, assigning, rebating or refunding of an unearned  
6 fee or profiting by means of any credit or other valuable consideration such  
7 as an unearned commission, discount or gratuity in connection with the  
8 furnishing of physical therapy services. This paragraph does not prohibit  
9 the members of any regularly and properly organized business entity  
10 recognized by law and composed of physical therapists from dividing fees  
11 received for professional services among themselves as they determine  
12 necessary to defray their joint operating expense.

13 12. Failing to adhere to the recognized standards of ethics of the  
14 physical therapy profession.

15 13. Charging unreasonable or fraudulent fees for services performed or  
16 not performed.

17 14. Making misleading, deceptive, untrue or fraudulent representations  
18 in violation of this chapter or in the practice of the profession.

19 15. Having been adjudged mentally incompetent by a court of competent  
20 jurisdiction.

21 16. Aiding or abetting a person who is not licensed or certified in  
22 this state and who directly or indirectly performs activities requiring a  
23 license or certificate.

24 17. Failing to report to the board any direct knowledge of an  
25 unprofessional, incompetent or illegal act that appears to be in violation of  
26 this chapter or board rules.

27 18. Interfering with an investigation or disciplinary proceeding by  
28 failing to cooperate, by wilful misrepresentation of facts or by the use of  
29 threats or harassment against any patient or witness to prevent the patient  
30 or witness from providing evidence in a disciplinary proceeding or any legal  
31 action.

32 19. Failing to maintain patient confidentiality without prior written  
33 consent of the patient or unless otherwise required by law.

34 20. Failing to maintain adequate patient records. For the purposes of  
35 this paragraph, "adequate patient records" means legible records that comply  
36 with board rules and that contain at a minimum an evaluation of objective  
37 findings, a diagnosis, the plan of care, the treatment record, a discharge  
38 summary and sufficient information to identify the patient.

39 21. Promoting an unnecessary device, treatment intervention or service  
40 for the financial gain of the practitioner or of a third party.

41 22. Providing treatment intervention unwarranted by the condition of  
42 the patient or treatment beyond the point of reasonable benefit.

43 23. Failing to report to the board a name change or a change in  
44 business or home address within thirty days after that change.

1           24. Failing to complete continuing competence requirements as  
2 established by the board by rule.

3           25. FAILING TO DEMONSTRATE PROFESSIONAL STANDARDS OF CARE AND TRAINING  
4 AND EDUCATION QUALIFICATIONS, AS ESTABLISHED BY THE BOARD BY RULE, IN THE  
5 PERFORMANCE OF DRY NEEDLING WHEN PROVIDED AS A THERAPEUTIC MODALITY.

6           Sec. 3. Board of physical therapy; dry needling standards;  
7 rules; exemption

8           A. On or before July 1, 2015, the board of physical therapy shall  
9 establish by rule professional standards of care and training and education  
10 qualifications for the performance of dry needling for therapeutic purposes.  
11 A physical therapist who was performing dry needling as a therapeutic  
12 modality before January 1, 2014 may continue to perform dry needling until  
13 the board adopts standards of care and training and education qualifications  
14 pursuant to this section and then is required to meet the standards and  
15 qualifications adopted by the board.

16           B. For the purposes of this section, the board of physical therapy is  
17 exempt from the rulemaking requirements of title 41, chapter 6, Arizona  
18 Revised Statutes, for one year after the effective date of this act.

19           Sec. 4. Effective date

20           Section 32-2044, Arizona Revised Statutes, as amended by this act, is  
21 effective from and after June 30, 2015.

APPROVED BY THE GOVERNOR APRIL 24, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2014.



KRISHNA JHAVERI &lt;krishna.jhaveri@azdoa.gov&gt;

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## Athletic Training Board Response

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Karen Whiteford &lt;karen.whiteford@otboard.az.gov&gt;

Tue, Dec 28, 2021 at 9:32 AM

To: KRISHNA JHAVERI &lt;krishna.jhaveri@azdoa.gov&gt;, SIMON LARSCHIEDT &lt;simon.larscheidt@azdoa.gov&gt;

Members,

Yesterday afternoon, I received an email outlining concerns regarding the Arizona Board of Athletic Training's statutory authority to promulgate rules authorizing athletic trainers to practice dry needling. Due to open meeting law constraints, I was unable to meet with the Board to draft an official response. In lieu of this, please accept the response I have drafted below:

The following facts were considered when determining whether the Board could promulgate rules regarding the use of dry needling by athletic trainers:

- A.R.S. 32-4101(4) states, "Athletic training" includes the following performed under the direction of a licensed physician and **for which the athletic trainer has received appropriate education and training as prescribed by the board.**
- The statute further defines athletic training in section (d) as the use of heat, cold, water, light, sound, electricity, passive or active exercise, massage, mechanical devices or **any other therapeutic modality** to prevent, treat, rehabilitate or recondition athletic injuries.
- This statute gives the Board the statutory authority to promulgate rules to prescribe the appropriate education and training for a modality that falls under "any other therapeutic modality".
- SB 1127 was introduced in the 2020 regular legislative session. This bill directed the Board to adopt rules establishing professional standards of care and training and education qualifications for performing dry needling for therapeutic purposes. This bill was near the final stages of passage, when the Legislature adjourned early due to COVID-19.
- The Board received a letter from then Senator Brophy McGee on July 14, 2020, requesting the Board to reduce regulatory barriers to practice by pursuing a regulatory approach to the dry needling issue, rather than waiting for legislative direction to do so.
- The Board consulted with legal counsel from the Attorney General's office during multiple confidential executive sessions.

In response to the concern about the "Dry Needling Statement" posted on the Board's website, which includes the language, "The practice of dry needling does not fall within the statutory definition of athletic training.", the definition of Athletic Training states, "Athletic training includes the following performed under the direction of a licensed physician and for which the athletic trainer has received appropriate education and training as prescribed by the board." Once the appropriate education and training is prescribed by the Board (through rule), dry needling should fall under that definition.

Thank you for your time. I look forward to discussing this with you further in today's study session.

Regards,

Karen Whiteford  
Executive Director  
Arizona Board of Athletic Training  
Arizona Board of Occupational Therapy Examiners  
(602)589-8353

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EDUCATION

DISTRICT 28

July 14, 2020

State of Arizona Board of Athletic Training  
1740 West Adams Street, Ste. 3407  
Phoenix, AZ 85007

Re SB 1127 (athletic trainers; dry needling)

Dear Arizona Board of Athletic Training:

As Chair of the Senate Health Committee, I sponsored SB 1127 during the 2020 regular legislative session. The bill directed the Arizona Board of Athletic Training to adopt rules establishing professional standards of care and training and education qualifications for performing dry needling for therapeutic purposes. I introduced the measure because I was convinced that Athletic Trainers (ATs) in Arizona with training and education in dry needling were unable to use the treatment modality for the benefit of their patients. This includes ATs who had been successfully practicing dry needling in other states but were restricted from doing so when they moved to Arizona. Senate Bill 1127 unanimously passed the Senate and two House Committees before the legislative session was suspended and ultimately ended because of the pandemic.

I am writing now to ask that you voluntarily pursue a regulatory approach to this issue rather than waiting for legislative direction to do so. It is my understanding that several states allow ATs to utilize dry needling as an important and effective patient treatment modality without specific statutory direction. There is also precedent for this approach in that the Arizona Board of Physical Therapy has adopted a rule to facilitate the use of the modality by physical therapists. A study in the Journal of Sports Medicine and Allied Health Sciences established that athletic training education was virtually identical to physical therapy education as it relates to this specific therapeutic modality. In fact, SB 1127 was supported by the Arizona Association of Physical Therapists.

Allowing professionals to practice to the full extent of their education and training and reducing regulatory barriers to practice have been priorities for the Legislature over the last several years. These goals are even more important in this COVID era. I am therefore asking that you explore every possible opportunity to further the purpose and intent of SB 1127 by regulation. My hope is that this will expedite an important opportunity for ATs and their patients.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Brophy McGee".

Kate Brophy McGee  
Arizona State Senator  
Legislative District 28

Cc: Karen Whiteford, Executive Director

# PETERS, CANNATA & MOODY PLC

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Tel 602 248 2900  
Fax 602 248 2999  
3030 North Third Street, Suite 905  
Phoenix, Arizona 85012

SUSAN A. CANNATA  
scannata@pcmlawaz.com

January 3, 2022

Members of the Governor's Regulatory  
Review Council  
100 N. 15<sup>th</sup> Avenue, #305  
Phoenix, AZ 85007

Re: Comments in Support of Agenda Item D.1 (Arizona Board of Athletic Training)

Dear Members of the Governor's Regulatory Review Council:

I am writing on behalf of the Arizona Association of Athletic Trainers (AzATA), an organization representing more than 800 athletic trainers in the State of Arizona, to request your approval of the rules package as proposed by the Arizona Board of Athletic Training (ABAT). Athletic Trainers are licensed health care professionals engaged in the prevention, care and treatment of athletic injuries and illnesses. Athletic trainers are nationally credentialed after obtaining a master's degree from an accredited athletic training education program and passing a rigorous certification exam. AzATA has worked extensively with ABAT and other stakeholders, including legislators and the executive branch, to ensure a rules package that reduces burdens on the regulated profession and allows athletic trainers to practice to the full extent of their education and training. We ask for your support.

One component of the rules package before you is a new rule detailing the education and training required of athletic trainers when using "dry needling" in their practice. There has been no dispute that dry needling is a therapeutic modality effective for the care and treatment of athletic injuries or that athletic trainers are being adequately educated and trained in the use of this modality. Because the existing scope of practice of athletic training includes the use of any "therapeutic modality" for which athletic trainers are educated and trained, ABAT determined that it had the authority to act on the issue by adopting a rule substantially similar to the dry

needling rule adopted by the Board of Physical Therapy. ABAT proposed this dry needling rule after consultation with its own counsel from the Attorney General's Office, the regulated community and the public. Importantly, ABAT received supportive public comments regarding this rule from more than 70 individuals.

At your December 28, 2021 study session, there was some question about whether ABAT has the authority to promulgate a dry needling rule without legislative direction to do so. In response, we provided brief testimony on the background of this issue during the meeting and it was requested that we provide written comments as well. As a result, we ask that you consider this additional background and other information as you deliberate on the issue.

### *ABAT's Authority*

In order to determine whether ABAT has authority to enact the dry needling rule, one must look at the statutes relating to athletic training and the powers granted to ABAT. *See* A.R.S. § 41-4101, *et. seq.* It is well-settled that an agency or board can make rules when the legislature gives it the power to do so. Moreover, that power can be granted in specific or general terms. *Haggard v. Indust. Comm'n*, 71 Ariz. 91, 101, 223 P.2d 915, 922 (1950) (legislative standards within which an agency may act may be stated in broad and general terms); *State v. Arizona Mines Supply Co.*, 107 Ariz. 199, 206, 484 P.2d 619, 626 (1971). As set forth below, the legislature defined the practice of athletic training and also granted ABAT the general authority to enact rules to regulate the athletic training profession.

The legislature established the parameters of the scope of practice for athletic trainers:

“Athletic training” includes the following performed under the direction of a licensed physician and for which the athletic trainer has received appropriate education and training as prescribed by the board:

...

The use of heat, cold, water, light, sound, electricity, passive or active exercise, massage, mechanical devices or any other therapeutic modality to prevent, treat, rehabilitate or recondition athletic injuries.

A.R.S. § 32-4101(4)(d). The legislature also gave ABAT rulemaking authority as it relates to an athletic trainer's use of therapeutic modalities. A.R.S. § 32-4101(4) suggests that ABAT may prescribe the appropriate education and training for the practice of athletic training. In addition, ARS § 32-4103(C) requires ABAT to prescribe the appropriate education and training for services that are proper to be performed by an athletic trainer. We believe these statutes provide the necessary authority to uphold this ABAT rule.

### *Legislative History*

In expressing concerns about ABAT's authority, your counsel relies heavily on the prior legislative activity on the topic of dry needling. We do not dispute that the legislature has authority to instruct the regulatory boards to act on this topic, just as it did in 2014 for the Board of Physical Therapy and attempted to do in 2020 legislation for ABAT. However, the fact that the legislature can enact a specific mandate for board action does not remove any other general authority that a board may have already been granted to act on its own.

### *The 2014 Legislation*

Prior to 2014, dry needling was being employed by certain health care professionals, including physical therapists. The statutory scope of physical therapy broadly includes therapeutic interventions for which physical therapists are education and trained. *See* A.R.S. § 32-2001(13). Those physical therapists who were educated and trained in dry needling were using the intervention in their practice, even though "dry needling" was not specifically mentioned in their scope. When the acupuncture community questioned the adequacy of these physical therapists' education and training, the legislature chose to act by requiring the Board of Physical Therapy to adopt a rule to define the education and training that would be required for a physical therapist to use dry needling as a skilled intervention. Importantly, the legislature did not expand or otherwise alter the definition of the practice of physical therapy found in A.R.S. § 32-2001(13).

Reference was made in your study session meeting to various statutes in the physical therapy act. We submit that the issue at hand is whether the definition of athletic training is broad enough to encompass dry needling as a therapeutic modality and whether ABAT therefore may prescribe the education and training required for its use. Nothing in the physical therapy statutes affect that analysis. To the contrary, we believe that ABAT is responsibly following the precedent set by the 2014 legislation and the resulting rulemaking by the Board of Physical Therapy. The only difference is that ABAT is using its general authority to act, whereas the Board of Physical Therapy was given a specific mandate to do so.

It has also been suggested to you that the fact that a definition of “dry needling” was added in the physical therapy practice act is controlling or means the modality is reserved only for physical therapists. *See* A.R.S. § 32-2001(4). We disagree. It is often the case that different health care professions share a particular treatment, modality or intervention within their scopes of practice. We know, for example, that there are health care professionals other than physical therapists, including physicians and chiropractors, who are using dry needling in their practice even though it is not specifically mentioned or defined within their practice acts. In short, the definitions found in A.R.S. § 32-2001 apply only to the chapter on physical therapy and do not control other practice acts.

### *The 2019/2020 Legislative Effort*

Sometime after the Board of Physical Therapy enacted its rule on dry needling, ABAT considered the issue of whether athletic trainers could use dry needling in their practice. Having no similar dry needling rule, on its website, ABAT instructed athletic trainers that dry needling was not in their scope of practice. We do not know whether this instruction was based upon any legal advice or interpretation, however, the athletic training community understood that the then-ABAT board members were not likely to act to further athletic trainers’ ability to use dry needling.

In 2019, AzATA determined that the most expeditious way to access dry needling was to ask the legislature to mandate board action, similar to the 2014 legislation for physical therapists. Prior to the 2020 legislative session, AzATA filed a sunrise report out of an abundance of caution. The resulting 2020 legislation (SB 1127), however, just like the 2014 bill, was not a scope of practice expansion. It simply instructed ABAT to enact a rule detailing the education and training required when using dry needling as a therapeutic modality. As has been mentioned, that legislation was widely supported before the session was adjourned due to COVID. Importantly, even the physical therapy association supported the legislation.

After the 2020 session adjourned and at the urging of SB 1127’s sponsor, Senator Brophy McGee, AzATA decided to revisit this issue with ABAT. This work began in the summer of 2020, and it is our understanding that ABAT consulted with its own counsel in determining its authority to enact this rule. In 2021, Senator Pace introduced SB 1169, which was identical to SB 1127 from the 2020 legislative session. However, because the matter was being voluntarily handled by ABAT through rulemaking, the bill was deemed unnecessary.

### *Other States*

Finally, we think it is worth mentioning that other states have handled this matter in a regulatory fashion. Athletic trainers in numerous states, including Colorado, District of Columbia, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, Nevada, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia, Wisconsin, and Wyoming, are currently utilizing dry needling for the benefit of their patients. In most of these states, the practice of athletic training is broadly defined in a manner similar to Arizona's definition, i.e. *"for which the athletic trainer has received appropriate education and training as prescribed by the board"* and *"any other therapeutic modality to prevent, treat, rehabilitate or recondition athletic injuries."* In many cases, regulatory boards have interpreted that language to allow dry needling without any statutory reference.

In October 2019, for example, the North Carolina Board of Athletic Training issued a directive which states, in pertinent part:

Many sports medicine and athletic training staff are beginning to utilize dry needling as a treatment technique. There has been a significant increase in dry needling certification programs and continuing education courses. Athletic trainers are typically in a good position to administer dry needling as a treatment technique in the performance of their duties. The Board has received a number of questions from licensed athletic trainers about the use of dry needling in the performance of their duties. The North Carolina Athletic Trainers Licensing Act ("Act") does not exclude dry needling from the athletic training plan of care. North Carolina law allows athletic trainers to carry out the prevention and rehabilitation of injuries through physical modalities, including heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment. North Carolina law does not allow an athletic trainer to undertake medical diagnosis. But again, based on currently available resource information, nothing in the Act prohibits or excludes dry needling from the athletic training plan of care. The athletic trainer must satisfy certain educational and training requirements prior to providing dry needling for the treatment of musculoskeletal pain and soft tissue. Dry needling is an advanced skill that requires additional training beyond entry-level education and should only be performed by athletic trainers who have demonstrated knowledge, skill, ability, and competence.

North Carolina Board of Athletic Trainer Examiners: Directive, 2019.

Similarly, in Ohio, the athletic training regulatory board included the following information on its website in response to a question about whether athletic trainers can perform dry needling:

Answer: The Ohio Athletic Training Practice Act does not specifically prohibit dry needling . . .

Therefore, the following questions should be asked to determine whether this skill is within the athletic training scope of practice:

- A. Is the task represented in entry level education and practice?
- B. Has the practitioner had continuing education to adequately prepare them to perform the task?
- C. Does this task provide for safety and welfare of the client?

This foundation should provide the framework for analyzing and determining if a task is within one's "personal" scope of practice. If the professional can provide supporting evidence that adequately addresses these areas, then the task is considered within that athletic trainer's scope of athletic training practice.

Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, FAQ on Dry Needling.

### *Conclusion*

AzATA thanks you for considering this additional information. Our goal is and has always been to allow athletic trainers to practice to the full extent of their education and training for the benefit of their patients. AzATA has worked transparently on this issue for several years and hopes you will support the rules package in its entirety. At a minimum, we respectfully ask that you table the dry needling portion of the rules package for further research and consideration at a later date.

Sincerely,



Susan A. Cannata

January 3, 2022  
Page 7

cc: Monique Coady, Assistant Attorney General  
Senator Nancy Barto, Chairman – Senate Health & Human Services  
Senator Tyler Pace, Vice-Chairman – Senate Health & Human Services  
Representative Joanne Osborne, Chairman – House Health & Human Services  
David Mesman, President, AZ Athletic Trainers' Association  
Karen Whiteford, Executive Director, AZ Board of Athletic Training

**C-4**

**DEPARTMENT OF WATER RESOURCES (Expedited Rulemaking)**  
Title 12, Chapter 15, Department of Water Resources, Articles 4, 8, and 12

**Amend:** R12-15-401, R12-15-811, R12-15-814, R12-15-1224



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** January 4, 2022

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

**FROM:** Council Staff

**DATE:** December 13, 2021

**SUBJECT: DEPARTMENT OF WATER RESOURCES (Expedited Rulemaking)**  
Title 12, Chapter 15, Department of Water Resources, Articles 4, 8, and 12

**Amend:** R12-15-401, R12-15-811, R12-15-814, R12-15-1224

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### **Summary:**

This expedited rulemaking from the Department of Water Resources (Department) relates to four (4) rules in Title 12, Chapter 15, Article 4 (Licensing Time-Frames), Article 8 (Well Construction and Licensing of Well Drillers), and Article 12 (Dam Safety Procedures).

### **Article 4**

For Article 4, setting forth licensing time-frames, the Department has determined that it has not included licensing time-frames for fifteen (15) applications for which the Department issues a license. These applications are listed in Section 6 of the Department's Notice of Final Expedited Rulemaking Preamble. The Department proposes to amend Table A in R12-15-401 to include licensing time-frames for these applications.

Further, the Department seeks to amend R12-15-401, Table A to increase the administrative review time-frames and reduce the substantive review time frames for the following two applications: (1) application for a Water Report (Table A, No. 73); and (2) application for an Analysis of Adequate Water Supply (Table A, No. 75). The Department states

these adjustments were made because the administrative review and substantive review time-frames are currently out of balance. However, the Department states the overall time-frames for the applications will not be changed.

Lastly, the Department is seeking to amend R12-15-401, Table A to correct the statutory authorities cited for the following two licenses: (1) permit to appropriate water for an instream flow (Table A, No. 5); and (2) reversal of substitution of acres irrigated with Central Arizona Project Water (Table A, No. 20).

### **Article 8**

The Department seeks to amend R12-15-811(A)(3) and (4) to update the references to the American Society for Testing and Materials standard specifications. Additionally, the Department seeks to amend R12-15-811(A)(5) and R12-814 to update the Department's address.

### **Article 12**

The Department seeks to amend R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety's emergency phone numbers because the Department has determined that it is no longer necessary to include the phone numbers in the rule.

#### **1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

The Department indicates all proposed amendments are justified under A.R.S. § 41-1027(A)(7) because they will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and they implement, without material change, courses of action proposed in the Department's Five-Year Rule Review Report approved by the Council on June 1, 2021.

Additionally, the Department indicates the proposed amendments to R12-15-811(A)(5) and R12-15-814 are justified under A.R.S. § 41-1027(A)(3) because they make address changes, and the proposed amendments to R12-15-811(A)(3) and (4) are justified under A.R.S. § 41-1027(A)(6) because they amend rules that are outdated.

Council staff believes the Department has provided adequate bases to qualify for expedited rulemaking under A.R.S. § 41-1027.

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

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

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

The rules do not establish a new fee or contain a fee increase.

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

The Department indicates it did not receive any public or stakeholder comments regarding this rulemaking.

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

The Department indicates no changes were made to the rules in the Notice of Final Expedited Rulemaking from the Notice of Proposed Expedited Rulemaking.

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

Not applicable. The Department indicates there is no corresponding federal law.

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

Not applicable. The rules being amended do not require the issuance of a regulatory permit, license, or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to R12-15-401, R12-15-811(A), R12-15-814 or R12-15-1212.

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

Not applicable. The Department indicates it did not rely on any study for this rulemaking.

9. **Conclusion**

The Department proposes to amend four (4) rules in Title 12, Chapter 15, Articles, 4, 8, and 12. For Article 4, the Department proposes to add licensing time-frames for fifteen (15) applications for which it issues licenses, to increase the administrative review time-frames and reduce the substantive review time frames for applications for a Water Report and an Analysis of Adequate Water Supply, and correct the statutory authorities cited for permits to appropriate water for an instream flow and reversal of substitution of acres irrigated with Central Arizona Project Water.

The Department seeks to amend R12-15-811(A)(3) and (4) to update the references to the American Society for Testing and Materials standard specifications. Additionally, the Department seeks to amend R12-15-811(A)(5) and R12-814 to update the Department's address.

The Department seeks to amend R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety's emergency phone numbers because the Department has determined that it is no longer necessary to include the phone numbers in the rule.

The Department has provided adequate bases to qualify for expedited rulemaking under A.R.S. § 41-1027. If approved, this rulemaking will become immediately effective upon filing with the Secretary of State.

Council staff recommends approval of this rulemaking.



DOUGLAS A. DUCEY  
Governor

THOMAS BUSCHATZKE  
Director

**ARIZONA DEPARTMENT of WATER RESOURCES**

1110 W. Washington, Suite 310  
Phoenix, Arizona 85007  
602.771.8500  
azwater.gov

November 18, 2021

*Sent via email to [grrc@azdoa.gov](mailto:grrc@azdoa.gov)*

Governor's Regulatory Review Council  
100 N. 15th Ave., Suite 402  
Phoenix, AZ 85007

**Re: Arizona Department of Water Resources Expedited Rule Package**

Dear Governor's Regulatory Review Council:

Pursuant to A.A.C. R1-6-202(A), the Arizona Department of Water Resources ("ADWR") submits this final expedited rule package to the Council for placement on the Council Agenda. This rule package amends R12-15-401, R12-15-811, R12-15-814 and R12-15-1224. This rulemaking makes technical changes described in ADWR's five-year rule review report. ADWR requests that these rules be placed on the agenda for the Council's January 4, 2022 meeting and if approved by the Council, to become effective on January 14, 2022 pursuant to A.R.S. § 41-1027(G).

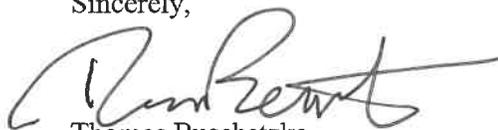
ADWR provides the following information regarding the rule package, as required by A.A.C. R1-6-202(A):

- a) The record for this rulemaking closed on October 18, 2021 at 5:00 p.m.
- b) All the amendments are justified under A.R.S. § 41-1027(A)(7) because they will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and they implement, without material change, courses of action proposed in the Department's Five-Year Rule Review Report approved by the Governor's Regulatory Review Council on June 1, 2021. Additionally, the amendments to R12-15-811(A)(5) and R12-15-814 are justified under A.R.S. § 41-1027(A)(3) because they make address changes, and the proposed amendments to R12-15-811(A)(3) and (4) are justified under A.R.S. § 41-1027(A)(6) because they amend rules that are outdated.
- c) The rulemaking activity relates to ADWR's five-year rule review report, which was approved by the Council on June 1, 2021
- d) ADWR certifies that no study was relied on in ADWR's evaluation of or justification for the rule modification.
- e) Materials incorporated by reference:

1. American Society for Testing and Materials (ASTM) International Standard Specification F480-14 (2014), incorporated by reference in R12-15-811(A)(3).
  2. ASTM International Standard Specifications A53/53M-20 (2020), A139/139M-16 (2016) and A312/312M-20 (2021), incorporated by reference in R12-15-811(A)(4).
- f) Additionally, the following documents are included in this rule package as required by A.A.C. R1-6-202(A)(1)(e) in the following order:
1. This cover letter.
  2. The Notice of Final Rulemaking required by A.A.C. R1-6-202, including the preamble, table of contents for the rulemaking, and text of each rule (**attachment A1**).
  3. A copy of the general and specific statutes authorizing the rule, including relevant statutory definitions (**attachment A2**).
  4. A copy of the definitions of terms, used in the rules, that are defined in statute or other rules (**attachment A3**).
  5. A copy of the existing rules R12-15-401, R12-15-811, R12-15-814, and R12-15-1224 (**attachment A4**).
  6. A copy of the materials incorporated by references listed above (**attachment A5**).
  7. Approval for an exemption to the rulemaking moratorium from Chuck Podolak, Natural Resources Policy Advisor for Governor Ducey dated May 20, 2021(**attachment A6**).
  8. Approval for an exemption to the rulemaking moratorium from Buchanan Davis, Natural Resources Policy Advisor for Governor Ducey dated October 25, 2021 (**attachment A7**).

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact Kelly Brown, ADWR Deputy Counsel, at (602) 771-8472.

Sincerely,



Thomas Buschatzke  
Director

Enclosures: as listed

**NOTICE OF FINAL EXPEDITED RULEMAKING**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**PREAMBLE**

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

R12-15-401	Amend
R12-15-811	Amend
R12-15-814	Amend
R12-15-1224	Amend

**2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 45-105(B)(1), 45-594(A), 45-1202(C)

Implementing statutes: A.R.S. § 41-1073

**3. The effective date of the rule:**

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

Notice of Rulemaking Docket Opening: 27 A.A.R., Issue 36 dated September 3, 2021.

Notice of Proposed Expedited Rulemaking: 27 A.A.R., Issue 41 dated October 8, 2021.

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

Name: Kelly Brown, Deputy Counsel  
Address: Arizona Department of Water Resources  
1110 West Washington Street, Suite 310  
Phoenix, AZ 85007  
Telephone: (602) 771-8472  
Fax: (602) 771-8686  
Email: kbrow@azwater.gov  
Website: [www.new.azwater.gov](http://www.new.azwater.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:**

All the amendments are justified under A.R.S. § 41-1027(A)(7) because they will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and they implement, without material change, courses of action proposed in the Department's Five-Year Rule Review Report approved by the Governor's Regulatory Review Council on June 1, 2021. Additionally, the amendments to R12-15-811(A)(5) and R12-15-814 are justified under A.R.S. § 41-1027(A)(3) because they make address changes, and the proposed amendments to R12-15-811(A)(3) and (4) are justified under A.R.S. § 41-1027(A)(6) because they amend rules that are outdated.

The following is an explanation of each rule amendment:

R12-15-401 (Article 4, Licensing Time-frames)

R12-15-401, Table A sets forth licensing time-frames for applications for licenses issued by the Department. The Department has determined that Table A does not include licensing time frames for 15 applications for which the Department issues a license. A list of the applications are as follows:

1. Final petition to establish new service area right by a city, town or private water company.
2. Application for permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547.
3. Application for substitution of acres to allow irrigation with Central Arizona Project water in an active management area.
4. Application for approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right.
5. Application for assignment of Type A certificate of assured water supply.
6. Application for assignment of Type B certificate of assured water supply.
7. Application for classification of Type A certificate of assured water supply.
8. Application for new certificate of assured water supply pursuant to R12-15-704(G).
9. Application for letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M).
10. Application for extinguishment of grandfathered right for extinguishment credits.
11. Application for conveyance of extinguishment credits.
12. Application for exemption from adequate water supply requirements pursuant to A.R.S. § 45-108.02 based on substantial capital investment.
13. Application for exemption from adequate water supply requirements pursuant to A.R.S. § 45-108.03 based on an adequate water supply within twenty years.
14. Application for re-issuance of drill card.
15. Application for equipment license for weather control or cloud modification.

R12-15-401, Table A is amended to add licensing time-frames for these applications.

Further, R12-15-401, Table A is amended to increase the administrative review time-frames and reduce the substantive review time frames for the following two applications: (1) application for a Water Report (Table A, No. 73); and (2) application for an Analysis of Adequate Water Supply (Table A, No. 75). These adjustments were made because the administrative review and substantive review time-frames are currently out of balance. The overall time-frames for the applications will not be changed.

Lastly, R12-15-401, Table A is amended to correct the statutory authorities cited for the following two licenses: (1) permit to appropriate water for an instream flow (Table A, No. 5); and (2) reversal of substitution of acres irrigated with Central Arizona Project Water (Table A, No. 20).

R12-15-811 and R12-15-814 (Article 8, Well Construction and Licensing of Well Drillers)

R12-15-811(A)(3) and (4) are amended to update the references to the American Society for Testing and Materials standard specifications. R12-15-811(A)(5) and R12-814 are amended to update the Department's address.

R12-15-1224 (Article 12, Dam Safety Procedures)

R12-15-1224(A)(2) is amended to remove specific references to the Arizona Department of Public Safety's emergency phone numbers because the Department has determined that it is no longer necessary to include the phone numbers in the rule.

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

None.

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

Not applicable.

**9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2):**

This rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement pursuant to A.R.S. § 41-1055(D)(3).

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

None.

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

The Department did not receive any public or stakeholder comments regarding this rulemaking.

**12. 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:**

**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 the issuance of a regulatory permit, license or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to R12-15-401, R12-15-811(A), R12-15-814 or R12-15-1212.

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

There is no corresponding federal law.

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

No analysis was submitted.

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

The amendments to R12-15-811 incorporate the following materials by reference:

ASTM International Standard Specification F480-14 (2014), incorporated by reference in R12-15-811(A)(3).

ASTM International Standard Specifications A53/53M-20 (2020), A139/139M-16 (2016) and A312/312M-20 (2021), incorporated by reference in R12-15-811(A)(4).

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

The rules were not previously made as an emergency rule.

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

On next page.

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**ARTICLE 4. LICENSING TIME-FRAMES**

**R12-15-401. Licensing Time-frames**

The following time-frames apply to licenses issued by the Department. In this Article, “license” has the meaning prescribed in A.R.S. § 41-1001. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame.

1. No change.
2. No change.
3. No change.
4. No change
5. No change.
6. No change.
7. No change.

**Table A. Licensing Time-frames**

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
1	Filling a body of water with poor quality water	A.R.S. § 45-132(C)	30	60	90
2	Interim water use in body of water	A.R.S. § 45-133	30	60	90
3	Temporary emergency permit for use of surface water or groundwater in body of water	A.R.S. § 45-134	10	20	30
4	Permit to appropriate water (non-instream flow)	A.R.S. §§ 45-151, 45-152 and 45-153	30	420	450
5	Permit to appropriate water (instream flow)	A.R.S. §§ 45-151, <del>45-151.01</del> 45-152.01 and 45-153	50	530	580
6	Change in use of water	A.R.S. § 45-156(B)	30	375	405

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
7	Exception to limitation on time of completion of construction	A.R.S. § 45-160	5	15	20
8	Primary reservoir permit	A.R.S. § 45-161	30	420	450
9	Secondary reservoir permit	A.R.S. § 45-161	30	420	450
10	Certificate of water right (non-instream flow)	A.R.S. § 45-162	20	100	120
11	Certificate of water right (instream flow)	A.R.S. § 45-162	20	190	210
12	Reissuance of permit or certificate held by the United States or State of Arizona	A.R.S. § 45-164(C)	10	80	90
13	Severance and transfer	A.R.S. § 45-172 (excluding § 172(A)(6))	30	390	420
14	Stockpond certificate	A.R.S. § 45-273	30	190	220
15	Transporting water from this state **	A.R.S. § 45-292	120	300	420
16	Waiver of water conserving plumbing fixture requirement	A.R.S. § 45-315	10	3	13
17	Irrigated acreage in an irrigation non-expansion area	A.R.S. § 45-437	30	90	120
18	Substitution of acres in an irrigation non-expansion area/ flood damage	A.R.S. § 45-437.02	30	90	120
19	Substitution of acres in an irrigation non-expansion area/ impediments to efficient irrigation	A.R.S. § 45-437.03	30	90	120
20	Reversal of substitution of acres irrigated with Central Arizona Project water	A.R.S. § 45-452(G) and (F)	30	90	120
21	Type 1 non-irrigation grand- fathered right associated with irrigation land retired 1965- 1980	A.R.S. §§ 45-463, 45-476.01, and 45- 476	30	60	90
22	Type 2 non-irrigation grand- fathered right	A.R.S. §§ 45-464, 45-476.01, and 45- 476	30	60	90
23	Irrigation grandfathered right	A.R.S. §§ 45-465, 45-476.01, and 45- 476	30	60	90
24	Substitution of acres in an active management area/flood damaged acres	A.R.S. § 45-465.01	30	90	120

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
25	Substitution of acres in an active management area/impediment to efficient irrigation	A.R.S. § 45-465.02	30	90	120
26	Type 1 non-irrigation right retired after 6/12/80	A.R.S. § 45-469	30	90	120
27	Restoration of retired irrigation grandfathered right	A.R.S. § 45-469(O)	30	90	120
28	Revised certificate for new or additional points of withdrawal for a Type 2 right	A.R.S. § 45-471(C)	45	45	90
29	Conveyance of irrigation grandfathered right for electrical energy generation	A.R.S. § 45-472(B)(2)	30	90	120
30	Conveyance of irrigation grandfathered right for non-irrigation use within service area	A.R.S. § 45-472(C)	30	90	120
31	Contract to supply groundwater	A.R.S. § 45-492(C)	15	90	105
32	Extension of service area to provide disproportionately large amount of water to large user	A.R.S. § 45-493(A)(2)	15	90	105
33	Addition/exclusion of acres by irrigation district	A.R.S. § 45-494.01(A)	30	90	120
34	Delivery of groundwater from an irrigation district to a general industrial use permit holder	A.R.S. § 45-497(B)	15	60	75
35	Issuance/renewal/modification of dewatering permit	A.R.S. §§ 45-513 and 45-527	30	70	100
36	Issuance/renewal/modification of mineral extraction and metallurgical processing permit	A.R.S. §§ 45-514 and 45-527	30	70	100
37	Issuance/renewal/modification of general industrial use permit	A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527	30	70	100
38	Issuance/renewal/modification of poor quality groundwater withdrawal permit	A.R.S. §§ 45-516 and 45-527	30	70	100
39	Issuance/renewal/modification of temporary permit for electrical energy generation	A.R.S. §§ 45-517 and 45-527	30	70	100

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
40	Issuance/extension/ modification of temporary dewatering permit	A.R.S. §§ 45-518 and 45-527	30	70	100
41	Emergency temporary dewatering permit	A.R.S. § 45-518(D)	3	7	10
42	Issuance/renewal/modification of drainage water with- drawal permit	A.R.S. §§ 45-519 and 45-527	30	70	100
43	Issuance/renewal/modification of hydrologic testing permit	A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527	30	15	45
44	Change of location of use	A.R.S. §§ 45- 520(A), 45-521, and 45-527	30	30	60
45	Conveyance of a groundwater withdrawal permit	A.R.S. § 45-520(B)	30	30	60
46	Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area	A.R.S. § 45-552(B)	45	105	150
47	Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area	A.R.S. § 45-554(B)	45	105	150
48	Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area	A.R.S. § 45-555(B)	45	105	150
49	Well spacing requirements for withdrawing groundwater for transportation to an active management area	A.R.S. § 45-559	45	105	150
50	Groundwater replenishment district's preliminary or long- term replenishment plan **	A.R.S. § 45-576.03	As prescribed by A.R.S. § 45-576.03(A)	As prescribed by A.R.S. § 45-576.03 (B), (C), (D), and (E)	As prescribed by A.R.S. § 45-576.03
51	Conservation district or water district long-term replenishment plan **	A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)	As prescribed by A.R.S. § 45-576.03(I)	As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)	As prescribed by A.R.S. § 45-576.03

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
52	Notice of intent to abandon a well	A.R.S. § 45-594 and A.A.C. R12-15-816	15	15	30
53	Well construction request for variance	A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820	15	30	45
54	Well driller license	A.R.S. § 45-595(C)	25	65	90
55	Single well license	A.R.S. § 45-595(D)	25	65	90
56	Renewal or reactivation of well drilling license	A.R.S. § 45-595(C) A.A.C. R12-15-806	25	15	40
57	Notice of intent to drill	A.R.S. § 45-596, and A.A.C. R12-15-810	15	0	15
58	Well construction permit	A.R.S. § 45-599	30	60	90
59	Alternative water measuring devices	A.R.S. § 45-604 and A.A.C. R12-15-909	15	60	75
60	Underground storage facility permit	A.R.S. §§ 45-811.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
61	Groundwater savings facility permit	A.R.S. §§ 45-812.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
62	Storage facility permit renewal/conveyance/modification	A.R.S. §§ 45-814.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
63	Water storage permit modification/conveyance	A.R.S. §§ 45-831.01 and 45-871.01	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01
64	Recovery well permit	A.R.S. §§ 45-834.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(F), (G), and (H)	As prescribed by A.R.S. § 45-871.01
65	Emergency temporary recovery well permit	A.R.S. § 45-834.01(D)	5	10	15

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45- 1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45- 1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply (CAWS)	A.A.C. R12-15-704, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply (DAWS)	A.A.C. R12-15-710 and R12-15-714; A.R.S. §45-576	150	60	210
72	Analysis of Assured Water Supply	A.A.C. R12-15-703, A.R.S. § 45-576(H)	150	30	180
73	Water Report	A.A.C. R12-15-713, A.R.S. § 45-108	<del>60</del> <u>75</u>	<del>60</del> <u>45</u>	120
74	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15-714, A.A.C. R12-15-715 A.R.S. § 45-108	150	60	210
75	Analysis of Adequate Water Supply	A.R.S. § 45-108 A.A.C. R12-15-712	<del>60</del> <u>90</u>	<del>60</del> <u>30</u>	120
<u>76</u>	<u>Final petition to establish new service area right by city, town or private water company</u>	<u>A.R.S. § 45-492(A)</u>	<u>30</u>	<u>60</u>	<u>90</u>
77	<u>Application for permit to transport groundwater away from the Yuma groundwater basin</u>	<u>A.R.S. § 45-547</u>	<u>120</u>	<u>300</u>	<u>420</u>
78	<u>Application for substitution of acres to allow irrigation with Central Arizona Project in an active management area</u>	<u>A.R.S. § 45-452(B)</u>	<u>30</u>	<u>60</u>	<u>90</u>
79	<u>Application for approval of development plan to retire irrigation grandfathered right for Type I non-irrigation grandfathered right</u>	<u>A.R.S. § 45-469(A)(2) and (B)</u>	<u>30</u>	<u>60</u>	<u>90</u>

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
80	<u>Application for assignment of Type A certificate of assured water supply</u>	<u>A.R.S. § 45-579;</u> <u>A.C.C. R12-15-705</u>	<u>90</u>	<u>30</u>	<u>120</u>
81	<u>Application for assignment of Type B certificate of assured water supply</u>	<u>A.R.S. § 45-579;</u> <u>A.C.C. R12-15-706</u>	<u>90</u>	<u>30</u>	<u>120</u>
82	<u>Application for classification of Type A certificate of assured water supply</u>	<u>A.C.C. R12-15-707</u>	<u>30</u>	<u>15</u>	<u>45</u>
83	<u>Application for new certificate of assured water supply pursuant to A.A.C. R12-15-704(G)</u>	<u>A.C.C. R12-15-704(G)</u>	<u>150</u>	<u>60</u>	<u>210</u>
84	<u>Application for letter stating that owner is not required to obtain a certificate of assured water supply</u>	<u>A.C.C. R12-15-704(M)</u>	<u>60</u>	<u>30</u>	<u>90</u>
85	<u>Application for extinguishment of grandfathered right for extinguishment credits</u>	<u>A.C.C. R12-15-723(A)</u>	<u>60</u>	<u>30</u>	<u>90</u>
86	<u>Application for conveyance of extinguishment credits</u>	<u>A.C.C. R12-15-723(G)</u>	<u>60</u>	<u>30</u>	<u>90</u>
87	<u>Application for exemption from adequate water supply requirements based on substantial capital investment</u>	<u>A.R.S. § 45-108.02</u>	<u>90</u>	<u>30</u>	<u>120</u>
88	<u>Application for exemption from adequate water supply requirements based on an adequate water supply within twenty years</u>	<u>A.R.S. § 45-108.03</u>	<u>90</u>	<u>30</u>	<u>120</u>
89	<u>Application for re-issuance of drill card to new driller</u>	<u>A.R.S. § 45-596</u>	<u>10</u>	<u>0</u>	<u>10</u>
90	<u>Application for equipment license for weather control or cloud modification</u>	<u>A.R.S. § 45-1605</u>	<u>15</u>	<u>60</u>	<u>75</u>

## ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

### R12-15-811. Minimum Well Construction Requirements

- A. Well casing
1. No change
  2. No change

3. Thermoplastic casing shall be installed in an oversized drillhole without driving. Thermoplastic casing shall conform with ~~American Society for Testing and Materials~~ ATSM International Standard Specification ~~F480-89 (1989)~~ F480-14(2014), which is incorporated herein by reference and is on file with the Office of the Secretary of State. Rivets or screws used in the casing joints shall not penetrate the inside of the casing.
4. Steel casing shall be new or in like-new condition, free from pits or breaks, and shall conform with ~~American Society for Testing and Materials~~ ASTM International Standard Specification ~~A53-89a (1989)~~ A53/53M-20 (2020), ~~A139-89b (1989)~~ A139/139M-16 (2016) or ~~A312/A312M-89a (1989)~~ A312/312M-20 (2021), whichever is applicable, all of which are incorporated herein by reference and are on file with the Office of the Secretary of State.
5. Copies of the ~~American Society for Testing and Materials~~ ASTM International standard specifications references to in subsections (3) and (4) above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007; from the Department of Water Resources, ~~3550 N. Central Ave., Phoenix, AZ 85012~~ 1110 W. Washington Street, Suite 300, Phoenix, AZ 85007; and from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. This rule does not include any later amendments or editions of those standard specifications.

**B. No change**

1. No change
2. No change
3. No change
4. No change

**C. No change**

**D. No change**

1. No change

**E. No change**

**F. No change**

1. No change
2. No change
3. No change

**G. No change**

1. No change

2. No change

**H.** No change

1. No change
2. No change

**I.** No change

**R12-15-814. Disinfection of Wells**

A well drilling contractor shall disinfect any well from which the water to be withdrawn is intended to be utilized for human consumption or culinary purposes without prior treatment before removing the drill rig from the well site in accordance with the requirements contained in Engineering Bulletin No. 8, "Disinfection of Water Systems", issued by the Arizona Department of Health Services in August 1978, and Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems", issued by the Arizona Department of Health Services in May 1978, both of which are incorporated by reference and are on file with the Office of the Secretary of State. Copies of the Engineering Bulletins referred to above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007, and from the Department of Water Resources, ~~3550 N. Central Avenue, Phoenix, AZ 85012~~ 1110 W. Washington Street, Suite 300, Phoenix, AZ 85007. This rule does not include any later amendments or editions of those Bulletins.

**ARTICLE 12. DAM SAFETY PROCEDURES**

**R12-15-1224. Emergency Procedures**

**A.** No change.

1. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. No change
  - j. No change
  - k. No change
  - l. No change
  - m. No change

- ~~2.~~ In case of an emergency, the owner shall telephone the Arizona Department of Public

Safety's emergency numbers at ~~(800) 411-2336 or (602) 223-2000.~~

- B.** No change
- 1. No change
- 2. No change
- 3. No change
- 4. No change

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- B.** During the course of a contested case or appealable agency action, the Department personnel listed in subsection (A) shall not make an ex parte communication or knowingly cause an ex parte communication to be made to a party or a person who will be materially and directly affected by the outcome of the contested case or appealable agency action.
- C.** Any of the Department personnel listed in subsection (A) of this Section who receives a written communication prohibited by this Section shall file a copy of the communication in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action. Any of the Department personnel listed in subsection (A) of this Section who receives an oral communication prohibited by this Section shall file a summary, stating the substance of the communication, in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action.
- D.** Upon receipt of an ex parte communication or a copy or summary of an ex parte communication made or knowingly caused to be made by a party in violation of this Section, the Director, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why the party's claim or interest in the contested case or appealable agency action should not be dismissed, denied or disregarded because of the violation.
- E.** For purposes of this Section, "ex parte communication" means any written or oral communication relating to the merits of a contested case or appealable agency action, except:
1. Communications made in the course of official proceedings in the contested case or appealable agency action;
  2. Communications made in writing, if a copy of the communication is promptly served on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action;
  3. Oral communications made after adequate notice, stating the substance of each communication, to all parties and the Chief Counsel;
  4. Communications relating solely to procedural matters; and
  5. As otherwise authorized by law.

**Historical Note**

Adopted effective June, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES****R12-15-301. Expired****Historical Note**

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective April 3, 1987 (Supp. 87-2). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

**R12-15-302. Expired****Historical Note**

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

**R12-15-303. Multiple Applications for Water Rights**

- A.** If two or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water, the Director

shall consolidate the applications. If the applicant is otherwise entitled to both a permit to appropriate and a certificate of stockpond water right, the Director shall issue to the applicant either the permit to appropriate or the certificate of stockpond water right, whichever would give the applicant the higher priority.

- B.** If one or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water for which the applicant holds a permit to appropriate, a certificate of water right or a certificate of stockpond water right, the Director shall deny the application or applications unless the applicant relinquishes every permit to appropriate, certificate of water right and certificate of stockpond water right which the applicant holds for that same water. The applicant may relinquish every permit to appropriate, certificate of water right and certificate of stockpond water right on the condition that the Director issues a permit to appropriate or certificate of stockpond water right to the applicant for the same water. In that case, the relinquishment shall be effective when the Director issues the permit to appropriate or certificate of stockpond water right.
- C.** For purposes of this rule, "same water" means the same quantity of water from the same source for use at the same place for the same purpose. Water for which a right is applied or held pursuant to an application or permit to appropriate, certificate of water right or certificate of stockpond water right may be the same water in whole or in part as water for which a right is applied or held pursuant to a separate application or permit to appropriate, certificate of water right or certificate of stockpond water right.

**Historical Note**

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 and amended effective May 7, 1990 (Supp. 90-2).

**R12-15-304. Reserved****R12-15-305. Reserved****R12-15-306. Reserved****R12-15-307. Reserved****R12-15-308. Reserved****R12-15-309. Reserved****R12-15-310. Renumbered****Historical Note**

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 effective May 7, 1990 (Supp. 90-2)

**ARTICLE 4. LICENSING TIME-FRAMES****R12-15-401. Licensing Time-frames**

The following time-frames apply to licenses issued by the Department. In this Article, "license" has the meaning prescribed in A.R.S. § 41-1001. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame.

1. Within the administrative completeness review time-frames set forth in subsection (7), the Department shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the notice shall specify what information or component is required to make the application complete.
2. An applicant with an incomplete application shall supply the missing information within 60 days from the date of

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the notice, or within such further time as the Director may specify, unless another time limit is specified by statute or applicable rule. If the applicant fails to complete the application within the specified time period, the Director may deny the application. Denial of an application under this provision does not preclude the applicant from filing a new application.

3. Within the overall time-frames set forth in subsection (7), unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.
4. In computing any period of time prescribed by this rule, the day of the filing, notice or event from which the designated period of time begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When

the prescribed administrative completeness review time-frame or substantive review time-frame is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. The overall time-frame is the sum of the administrative completeness review time-frame and the substantive review time-frame calculated as prescribed by this Section.

5. Except as otherwise noted, the licensing time-frames do not include time for hearings. Time-frames in cases where a hearing is held are increased by 120 days.
6. The licensing time-frame rules are effective after December 31, 1998, as prescribed by A.R.S. § 41-1073(A), and apply to all applications filed after that date.
7. The licensing time-frames are set forth in Table A.

**Historical Note**

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**Table A. Licensing Time-frames**

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
1	Filling a body of water with poor quality water	A.R.S. § 45-132(C)	30	60	90
2	Interim water use in body of water	A.R.S. § 45-133	30	60	90
3	Temporary emergency permit for use of surface water or groundwater in body of water	A.R.S. § 45-134	10	20	30
4	Permit to appropriate water (non-instream flow)	A.R.S. §§ 45-151, 45-152 and 45-153	30	420	450
5	Permit to appropriate water (instream flow)	A.R.S. §§ 45-151, 45-151.01 and 45-153	50	530	580
6	Change in use of water	A.R.S. § 45-156(B)	30	375	405
7	Exception to limitation on time of completion of construction	A.R.S. § 45-160	5	15	20
8	Primary reservoir permit	A.R.S. § 45-161	30	420	450
9	Secondary reservoir permit	A.R.S. § 45-161	30	420	450
10	Certificate of water right (non-instream flow)	A.R.S. § 45-162	20	100	120
11	Certificate of water right (instream flow)	A.R.S. § 45-162	20	190	210
12	Reissuance of permit or certificate held by the United States or State of Arizona	A.R.S. § 45-164(C)	10	80	90
13	Severance and transfer	A.R.S. § 45-172 (excluding § 172(A)(6))	30	390	420
14	Stockpond certificate	A.R.S. § 45-273	30	190	220

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
15	Transporting water from this state **	A.R.S. § 45-292	120	300	420
16	Waiver of water conserving plumbing fixture requirement	A.R.S. § 45-315	10	3	13
17	Irrigated acreage in an irrigation non-expansion area	A.R.S. § 45-437	30	90	120
18	Substitution of acres in an irrigation non-expansion area/ flood damage	A.R.S. § 45-437.02	30	90	120
19	Substitution of acres in an irrigation non-expansion area/ impediments to efficient irrigation	A.R.S. § 45-437.03	30	90	120
20	Reversal of substitution of acres irrigated with Central Arizona Project water	A.R.S. § 45-452(G) and (F)	30	90	120
21	Type 1 non-irrigation grandfathered right associated with irrigation land retired 1965-1980	A.R.S. §§ 45-463, 45-476.01, and 45- 476	30	60	90
22	Type 2 non-irrigation grandfathered right	A.R.S. §§ 45-464, 45-476.01, and 45- 476	30	60	90
23	Irrigation grandfathered right	A.R.S. §§ 45-465, 45-476.01, and 45- 476	30	60	90
24	Substitution of acres in an active management area/flood damaged acres	A.R.S. § 45-465.01	30	90	120
25	Substitution of acres in an active management area/ impediments to efficient irrigation	A.R.S. § 45-465.02	30	90	120
26	Type 1 non-irrigation right retired after 6/12/80	A.R.S. § 45-469	30	90	120
27	Restoration of retired irrigation grandfathered right	A.R.S. § 45-469(O)	30	90	120
28	Revised certificate for new or additional points of withdrawal for a Type 2 right	A.R.S. § 45-471(C)	45	45	90
29	Conveyance of irrigation grandfathered right for electrical energy generation	A.R.S. § 45-472(B)(2)	30	90	120
30	Conveyance of irrigation grandfathered right for non-irrigation use within service area	A.R.S. § 45-472(C)	30	90	120
31	Contract to supply groundwater	A.R.S. § 45-492(C)	15	90	105

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
32	Extension of service area to provide disproportionately large amount of water to large user	A.R.S. § 45-493(A)(2)	15	90	105
33	Addition/exclusion of acres by irrigation district	A.R.S. § 45-494.01(A)	30	90	120
34	Delivery of groundwater from an irrigation district to a general industrial use permit holder	A.R.S. § 45-497(B)	15	60	75
35	Issuance/renewal/modification of dewatering permit	A.R.S. §§ 45-513 and 45-527	30	70	100
36	Issuance/renewal/modification of mineral extraction and metallurgical processing permit	A.R.S. §§ 45-514 and 45-527	30	70	100
37	Issuance/renewal/modification of general industrial use permit	A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527	30	70	100
38	Issuance/renewal/modification of poor quality groundwater withdrawal permit	A.R.S. §§ 45-516 and 45-527	30	70	100
39	Issuance/renewal/modification of temporary permit for electrical energy generation	A.R.S. §§ 45-517 and 45-527	30	70	100
40	Issuance/extension/ modification of temporary dewatering permit	A.R.S. §§ 45-518 and 45-527	30	70	100
41	Emergency temporary dewatering permit	A.R.S. § 45-518(D)	3	7	10
42	Issuance/renewal/modification of drainage water withdrawal permit	A.R.S. §§ 45-519 and 45-527	30	70	100
43	Issuance/renewal/modification of hydrologic testing permit	A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527	30	15	45
44	Change of location of use	A.R.S. §§ 45-520(A), 45-521, and 45-527	30	30	60
45	Conveyance of a groundwater withdrawal permit	A.R.S. § 45-520(B)	30	30	60
46	Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area	A.R.S. § 45-552(B)	45	105	150
47	Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area	A.R.S. § 45-554(B)	45	105	150

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
48	Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area	A.R.S. § 45-555(B)	45	105	150
49	Well spacing requirements for withdrawing groundwater for transportation to an active management area	A.R.S. § 45-559	45	105	150
50	Groundwater replenishment district's preliminary or long-term replenishment plan **	A.R.S. § 45-576.03	As prescribed by A.R.S. § 45-576.03(A)	As prescribed by A.R.S. § 45-576.03 (B), (C), (D), and (E)	As prescribed by A.R.S. § 45-576.03
51	Conservation district or water district long-term replenishment plan **	A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)	As prescribed by A.R.S. § 45-576.03(I)	As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)	As prescribed by A.R.S. § 45-576.03
52	Notice of intent to abandon a well	A.R.S. § 45-594 and A.A.C. R12-15-816	15	15	30
53	Well construction request for variance	A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820	15	30	45
54	Well driller license	A.R.S. § 45-595(C)	25	65	90
55	Single well license	A.R.S. § 45-595(D)	25	65	90
56	Renewal or reactivation of well drilling license	A.R.S. § 45-595(C) A.A.C. R12-15-806	25	15	40
57	Notice of intent to drill	A.R.S. § 45-596, and A.A.C. R12-15-810	15	0	15
58	Well construction permit	A.R.S. § 45-599	30	60	90
59	Alternative water measuring devices	A.R.S. § 45-604 and A.A.C. R12-15-909	15	60	75
60	Underground storage facility permit	A.R.S. §§ 45-811.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
61	Groundwater savings facility permit	A.R.S. §§ 45-812.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
62	Storage facility permit renewal/conveyance/ modification	A.R.S. §§ 45-814.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
63	Water storage permit modification/conveyance	A.R.S. §§ 45-831.01 and 45-871.01	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01
64	Recovery well permit	A.R.S. §§ 45-834.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(F), (G), and (H)	As prescribed by A.R.S. § 45-871.01
65	Emergency temporary recovery well permit	A.R.S. § 45-834.01(D)	5	10	15

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45-1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45-1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply (CAWS)	A.A.C. R12-15-704, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply (DAWS)	A.A.C. R12-15-710 and R12-15-714; A.R.S. § 45-576	150	60	210
72	Analysis of Assured Water Supply	A.A.C. R12-15-703, A.R.S. § 45-576(H)	150	30	180
73	Water Report	A.A.C. R12-15-713, A.R.S. § 45-108	60	60	120
74	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15-714, A.A.C. R12-15-715 A.R.S. § 45-108	150	60	210
75	Analysis of Adequate Water Supply	A.R.S. § 45-108 A.A.C. R12-15-712	60	60	120

\* The computation of days is prescribed by subsection (4).

\*\* Hearing is required.

#### Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Table A amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2107 (Supp. 17-3).

#### ARTICLE 5. RESERVED

#### ARTICLE 6. RESERVED

#### ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

##### R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
  - a. The land has been developed for another use; or
  - b. Legal restrictions will preclude approval of the plat.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Adequate delivery, storage, and treatment works" means:

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sent decree or other document approved by ADEQ or the EPA; or

- b. An increase is necessary to further the purpose of the approved remedial action project, and the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project.
5. If the Director approves the application, the Director shall determine the additional annual amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal of the active management area, using the criteria in subsections (F) and (G) of this Section. The Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal under this subsection in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
- J.** Until January 1, 2025, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
  2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
    - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
    - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
    - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
    - d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
    - e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
    - f. The name and telephone number of a person the Department may contact regarding the exemption.
- K.** A municipal provider withdrawing remedial groundwater that has been determined to be consistent with the management goal under subsection (F) or (H) of this Section or that is consistent with the management goal under subsection (J) of this Section shall meter the remedial groundwater withdrawals separately from groundwater withdrawn pursuant to another groundwater withdrawal authority. The municipal provider

shall include in its annual reports, filed under A.R.S. § 45-632, the amount of remedial groundwater withdrawn during the reporting year that is consistent with the management goal under this Section and the purposes for which the remedial groundwater was used.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-730. Repealed****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS****R12-15-801. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101, 45-402, and 45-591 and in R12-15-202, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Annular space" means the space between the outer well casing and the borehole wall. An annular space also means the space between an inner well casing and outer well casing.
2. "Aquifer" means an underground formation capable of yielding or transmitting usable quantities of water.
3. "Artesian aquifer" means an aquifer which is overlain by a confining formation and which contains groundwater under sufficient pressure for the water to rise above the top of the aquifer.
4. "Artesian well" means a well that penetrates an artesian aquifer.
5. "Bentonite" means a colloidal clay composed mainly of sodium montmorillonite, a hydrated aluminum silicate.
6. "Cap" means a tamper-resistant, watertight steel plate of at least one-quarter inch thickness on the top of all inside and outside casings of a well.
7. "Casing" means the tubing or pipe installed in the borehole during or after drilling to support the sides of the well and prevent caving.
8. "Confining formation" means the relatively impermeable geologic unit immediately overlying an artesian aquifer.
9. "Consolidated formation" means a naturally occurring geologic unit through or into which a well is drilled, having a composition, density, and thickness which will provide a natural hydrologic barrier.
10. "Department" means the Arizona Department of Water Resources.
11. "Director" means the Director of the Arizona Department of Water Resources.
12. "Drilling card" means a card which is issued by the Director to the well drilling contractor or single well licensee designated in the notice of intent or permit, authorizing the well drilling contractor or licensee to drill the specific well or wells in the specific location as noticed or permitted.
13. "Exploration well" means a well drilled in search of geophysical, mineralogical or geotechnical data.

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14. "Flowing artesian well" means an artesian well in which the pressure is sufficient to cause the water to rise above the land surface.
15. "Grout" or "cement grout" means cement mixed with no more than 50% sand by volume, and containing no more than six gallons of water per 94 pound sack of cement.
16. "Mineralized water" means any groundwater containing over 3000 milligrams per liter (mg/l) of total dissolved solids or containing any of the following chemical constituents above the indicated concentrations:
- | Constituent      | Concentration (mg/l) |
|------------------|----------------------|
| Arsenic          | 0.05                 |
| Barium           | 1.0                  |
| Cadmium          | 0.01                 |
| Chromium (total) | 0.05                 |
| Fluoride         | 4.0                  |
| Lead             | 0.05                 |
| Mercury          | 0.002                |
| Nitrate (as N)   | 10.0                 |
| Selenium         | 0.01                 |
| Silver           | 0.05                 |
17. "Monitor well" means a well designed and drilled for the purpose of monitoring water quality within a specific depth interval.
18. "Open well" means a well which is not equipped with either a cap or a pump.
19. "Perforations" means a series of openings in a casing, made either before or after installation of the casing, to permit the entrance of water into the well.
20. "Piezometer well" means a well that is designed and drilled for the purpose of monitoring water levels within a specific depth interval.
21. "Pitless adaptor" means a commercially manufactured watertight unit or device designed for attachment to a steel well casing which permits discharge from the well below the land surface and allows access into the well casing while preventing contaminants from entering the well.
22. "Polluted water" means water whose chemical, physical, biological, or radiological integrity has been degraded through the artificial or natural infusion of chemicals, radionuclides, heat, biological organisms, or mineralogical or other extraneous matter.
23. "Pressure grouting" means a process by which a grout is confined within the borehole or casing of a well by the use of retaining plugs, packers, or a displacing fluid by which sufficient pressure is applied to drive the grout into and within the annular space or interval to be grouted.
24. "Qualifying party" means a partner, officer, or employee of a well drilling contractor, who has significant supervisory responsibilities and who has been designated to take the licensing examination for that well drilling contractor.
25. "Single well license" means a license issued to a person which allows the drilling or modification of a single exempt well on land owned by that person.
26. "Vadose zone well" means a well constructed in the interval between the land surface and the top of the static water level.
27. "Vault" means a tamper-resistant watertight structure used to complete a well below the land surface.
28. "Well abandonment" means the modification of the structure of a well by filling or sealing the borehole so that water may not be withdrawn or obtained from the well.
29. "Well drilling" means the construction or repair of a well, or the modification, except for abandonment, of a well, regardless of whether compensation is involved, includ-

ing any deepening or additional perforating, any addition of casing or change to existing casing construction, and any other change in well construction not normally associated with well maintenance, pump replacement, or pump repair.

30. "Well drilling contractor" means an individual, public or private corporation, partnership, firm, association, or any other public or private organization or enterprise that holds a well driller's license pursuant to A.R.S. § 45-595(B).

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-802. Scope of Article**

This Article shall apply to man-made openings in the earth through which water may be withdrawn or obtained from beneath the surface of the earth, including all water wells, monitor wells and piezometer wells. It shall also apply to geothermal wells to the extent provided by A.R.S. § 45-591.01, and all exploration wells and grounding or cathodic protection holes greater than 100 feet in depth. However, this Article shall not apply to the following:

1. Man-made openings in the earth not commonly considered to be wells, such as construction and mining blast holes, underground mines and mine shafts, open pit mines, tunnels, septic tank systems, caissons, basements, and natural gas storage cavities.
2. Injection wells and vadose zone wells which are subject to regulation by the Arizona Department of Environmental Quality.
3. Oil, gas, and helium wells drilled pursuant to the provisions of A.R.S. Title 27.
4. Drilled boreholes in the earth less than 100 feet in depth which are made for purposes other than withdrawing or encountering groundwater, such as exploration wells and grounding or cathodic protection holes; except that in the event that groundwater is encountered in the drilling of a borehole, this Article shall apply.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-803. Well Drilling and Abandonment Requirements; Licensing and Supervision Requirements**

- A. A person shall not drill or abandon a well, or cause a well to be drilled or abandoned, in a manner which is not in compliance with A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder.
- B. A person, other than a single well licensee or a bona fide employee of a well drilling contractor, shall not engage in well drilling or abandonment without first securing a well drilling license in accordance with R12-15-804, R12-15-805 and R12-15-806.
- C. A qualifying party of a well drilling contractor shall provide direct and personal supervision of the contractor's employees to ensure that all wells are constructed and abandoned in accordance with this Article.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Section 12-15-803 amended and the text of former Section R12-15-804 renumbered to subsections (B) and (C) and amended effective June 18, 1990 (Supp. 90-2).

**R12-15-804. Application for well drilling license**

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- A. An applicant for a well drilling license shall submit a verified application of a form prescribed and furnished by the Director which contains the following information:
1. A designation of the classification of license sought by the applicant.
  2. If the applicant is an individual, the individual's name, address and telephone number.
  3. If the applicant is a partnership, the names, addresses, and telephone numbers of all partners, with a designation of any limited partners.
  4. If the applicant is a corporation, association or other organization, the names, addresses and telephone numbers of the directors and of the president, vice president, secretary and treasurer, or the names, addresses and telephone numbers of the functional equivalent of such officers.
  5. The address or location of the applicant's place of business, the mailing address if it is different from the applicant's place of business, and if applicant is a corporation, the state in which it is incorporated.
  6. The name, address and telephone number of each qualifying party, the qualifying party's relationship to the applicant, and a detailed history of each qualifying party's supervisory responsibilities and well drilling experience, including previous employers, job descriptions, duties and types of equipment utilized.
  7. The names, addresses and telephone numbers of three persons not members of each qualifying party's immediate family, who can attest to each qualifying party's good character and reputation, experience in well drilling, and qualifications for licensing.
  8. Such additional information relevant to the applicant's or qualifying party's experience and qualifications in well drilling as the Director may require.
- B. An applicant shall notify the Director in writing of any change in the information contained in the application within 30 days after such change.
- C. The Director shall not issue a license under this Article if the applicant or a qualifying party lacks good character and reputation.
- D. Prior to the issuance of a license, a qualifying party shall demonstrate three years of experience, dealing specifically with the type of drilling for which the applicant is applying for a license. This experience requirement may be reduced if the Director finds that the qualifying party has clearly and convincingly demonstrated a high degree of understanding and knowledge of well drilling techniques for the type of drilling for which the applicant is applying for a license. In no case, however, shall the practical experience requirement be less than two years.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Former Section R12-15-804 renumbered to R12-15-803(B) and (C), new Section R12-15-804 adopted effective June 18, 1990 (Supp. 90-2).

**R12-15-805. Examination for Well Drilling License**

- A. The Director shall offer an examination for a well drilling license no less than six times yearly. The examination shall be administered to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination. The examination shall consist of a section on legal requirements, a section on general knowledge and one or more of six specialized sections. The section on legal requirements shall test the qualifying party's knowledge of A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder. The section on general knowledge shall test the qualifying party's knowledge of general hydrologic concepts, principles, and practices in the well construction industry, and shall test knowledge of groundwater protection, pollution, water quality and public health effects. The specialized sections shall test the qualifying party's knowledge in the following classifications:
1. Cable tool drilling in rock and unconsolidated material.
  2. Air rotary drilling in rock and unconsolidated material.
  3. Mud rotary drilling in rock and unconsolidated material.
  4. Reverse rotary drilling in rock and unconsolidated material.
  5. Jetting and driving wells in unconsolidated material.
  6. Boring and augering in unconsolidated material.
- B. Only the qualifying party, department personnel, and persons having the express permission of the Director shall be permitted in the examination room while the examination is in progress. The qualifying party shall not bring books or notes into the examination room, or communicate by any means whatsoever while the examination is in progress without the express permission of the presiding examiner. The qualifying party shall not leave the examination room while the examination is in progress without first obtaining the permission of the presiding examiner. The Director may disqualify an applicant for violation of this subsection.
- C. To obtain a well drilling license, a qualifying party of the applicant shall pass the section on legal requirements, the section on general knowledge, and one or more specialized sections. Each section of the examination shall be graded separately. The passing grade on each section shall be 70 percent.
- D. No person may take the examination more than twice during any 12 months.
- E. The Director may exempt a qualifying party from taking the section on general knowledge, and one or more of the specialized sections, if the qualifying party provides proof of passing an equivalent examination given by the National Ground Water Association.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Section repealed, new Section adopted effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License**

- A. The fee for a well driller's license shall be \$50.00.
- B. Upon submittal of the license fee and satisfactory completion of an examination, the Director shall issue the applicant a well drilling license. The license shall be numbered and shall state the specialized classifications of drilling activities for which the applicant is qualified and licensed. The applicant shall be licensed in only those classifications for which the qualifying party has passed the specialized sections of the examination. If the qualifying party subsequently passes other specialized sections, the applicant's license shall be amended. The applicant shall pay a fee of \$50.00 for the amendment of a well driller's license.
- C. A well drilling contractor shall notify the Director in writing within 30 days of the date on which the well drilling contractor no longer has a qualifying party for one or more of its specialized drilling classifications. Upon such notification, the Director may revoke or suspend part or all of the well drilling license of the well drilling contractor and require a new qualifying party to take and pass the examination.
- D. A well drilling license shall expire each year on June 30th, unless renewed pursuant to subsection (E).

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- E. A person may renew a well drilling license by submitting an application for renewal on forms prescribed and furnished by the Director and a fee of \$50.00. If the application and renewal fee are postmarked on or before June 30, the well drilling contractor may operate as a licensee until actual issuance of the renewal license. A license which has expired may be reactivated and renewed within one year of its expiration by filing the required application and a reactivation fee of \$50.00. If a license has been expired for one or more years for failure to renew, the well drilling contractor shall apply for a new license and repeat the examination.
- F. A well drilling contractor shall prominently display the well drilling license number on all well drilling rigs owned or operated by the contractor in this state. Good quality paint or commercial decal numbers shall be used in placing each identification number on the drilling rig. The license number shall not be inscribed in crayon, chalk, pencil, or other temporary markings.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-807. Single Well License**

- A. An applicant for a single well license pursuant to A.R.S. § 45-595(D) shall submit a verified application on forms prescribed and furnished by the Director, which shall include:
1. The name and address of the applicant.
  2. The location of the well and whether the applicant owns the land.
  3. The type of drill rig to be used and the owner of the rig.
  4. The proposed design of the well or method of abandonment.
  5. The names of any people who will be assisting the applicant in the drilling or abandonment of the well, and whether the applicant will compensate them for their efforts.
  6. The applicant's experience, if any, in well drilling or abandonment.
  7. Such other information as the Director may require relevant to the applicant's experience and qualifications in well drilling or abandonment.
- B. The Director shall offer the single well examination no less than six times yearly and shall administer the examination to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination.
- C. The single well examination shall be of a form prescribed and furnished by the Director and shall test the applicant's knowledge of abandonment techniques, or those minimum well construction requirements and drilling techniques applicable to the proposed design of the well. The passing grade on the sections of the examination dealing with construction requirements and drilling techniques, respectively, shall be 70 percent.
- D. Rule R12-15-805 relating to testing procedures shall be fully applicable.
- E. Applicants who twice fail the examination shall wait a minimum of 90 days before re-testing.
- F. Upon passing the examination, the applicant shall be issued a single well license, authorizing the applicant to drill or abandon one exempt well at the location specified in the applica-

tion. The license shall be valid for a period of one year from issuance.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-808. Revocation of License**

The Director may revoke, suspend, or place on probationary status a well drilling license issued pursuant to R12-15-806, or a single well license, for good cause, including:

1. Intentionally making a misstatement of fact on any filing with the Department.
2. Violating any provision of A.R.S. Title 45, Chapter 2, Article 10, and the rules promulgated thereunder, or aiding and abetting in such a violation.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Section number corrected (Supp. 93-1).

**R12-15-809. Notice of Intention to Drill**

A notice of intention to drill required to be filed pursuant to A.R.S. § 45-596 shall be signed by the owner or lessee of the property upon which the well is to be drilled.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2).

**R12-15-810. Authorization to Drill**

- A. A well drilling contractor or single well licensee may commence drilling a well only if the well drilling contractor or licensee has possession of a drilling card at the well site issued by the Director in the name of the well drilling contractor or licensee, authorizing the drilling of the specific well in the specific location.
- B. In extraordinary situations not requiring a permit but only a notice of intention to drill, the Director may grant a request by telephone for emergency authorization of commencement of drilling prior to the actual receipt by the well driller of the drilling card. Within seventy-two hours after such a request is granted, the well driller shall file a written statement indicating the nature and reasons for the request, and the date, time and Department employee granting the request, and the well owner shall file a notice of intent to drill if such a notice has not previously been filed.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-811. Minimum Well Construction Requirements**

- A. Well casing
1. Casing shall be of a sufficient strength and wall thickness to hold the borehole open and survive any necessary grouting. A person shall use only steel or thermoplastic casing in the construction of a well, unless the person has received a variance from the Director pursuant to R12-15-820. The well casing or an extension of the casing shall extend a minimum of one foot above ground level. When installing a pitless adaptor, the casing may be terminated below ground level for aesthetic reasons or freeze protection purposes. Casing made of, or which has been exposed to, hazardous or potentially harmful materials, such as asbestos, shall not be used.

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2. All well casing joints or overlaps shall be made watertight to prevent the degradation of the water supply by the migration of inferior quality water. Except as provided in subsection (H) of this rule, any openings in the casing that will be above the water level in the well, such as bar holes, cracks or perforations, shall be completely plugged or sealed.
  3. Thermoplastic casing shall be installed only in an over sized drillhole without driving. Thermoplastic casing shall conform with American Society for Testing and Materials Standard Specification F480-89 (1989), which is incorporated herein by reference and is on file with the Office of the Secretary of State. Rivets or screws used in the casing joints shall not penetrate the inside of the casing.
  4. Steel casing shall be new or in like-new condition, free from pits or breaks, and shall conform with American Society for Testing and Materials Standard Specification A53-89a (1989), A139-89b (1989) or A312/A312M-89a (1989), whichever is applicable, all of which are incorporated herein by reference and are on file with the Office of the Secretary of State.
  5. Copies of The American Society for Testing and Materials standard specifications referred to in subsections (3) and (4) above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007; from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012; and from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. This rule does not include any later amendments or editions of those standard specifications.
- B. Surface seal**
1. Except as provided in subsections (2) and (4) of this subsection, and R12-15-817(B)(1), all wells shall be constructed with a surface seal as herein provided. The seal shall consist of steel casing, one foot of which shall extend above ground level, and cement grout placed in one continuous application from the bottom of the zone to be grouted to the land surface. If a pitless adaptor is utilized, the cement grout may terminate at the bottom of the pitless adaptor. The minimum length of the steel casing shall be 20 feet. The minimum annular space between the casing and the borehole for placement of grout shall be one and one-half inches. Curing additives, such as calcium chloride, shall not exceed ten percent of the total volume of grout. Bentonite as an additive shall not exceed five percent of the total volume. The minimum length of the surface seal shall be 20 feet. Any annular space between the outer casing and an inner casing shall be completely sealed to prevent contamination of the well.
  2. All hand-dug wells shall be constructed with a watertight curbing extending, at a minimum, from one foot above the natural ground level to the static water level, or into the confining formation if the aquifer is artesian. The curbing shall consist of poured cement grout or casing surrounded by cement grout. Concrete block with cement grout and rock with cement grout may also be used. The poured cement grout shall not be less than six inches thick. If casing is to be used, the minimum annular space between the casing and the borehole shall be three inches. Hand-dug wells shall be sealed at the surface with a watertight, tamper-resistant cover to prevent contaminants from entering the well.
  3. All wells constructed by jetting or driving shall have cement grout placed in the annular space to a minimum depth of six feet. The minimum annular space between the casing and the borehole for placement of the grout shall be one and one-half inches.
  4. All horizontal wells, to prevent leakage, shall be constructed with a surface seal consisting of steel casing and cement grout extending a minimum of ten feet into the land surface.
- C. Access port.** Every well with casing four inches in diameter or larger shall be equipped with a functional watertight access port with a minimum diameter of one-half inch so that the water level or pressure head in the well can be monitored at all times.
- D. Gravel packed wells**
1. If a gravel pack has been installed, the annular space between the outer casing and the inner casing shall be sealed, either by welding a cap at the top or by filling with cement grout from the bottom of the outer casing to the surface.
  2. If a gravel tube is installed, it shall be sealed with a cap.
- E. Vents.** All vents installed in the well casing shall open downward and be screened to prevent the entrance of foreign material.
- F. Removal of drilling materials**
1. In constructing a water well, the well driller shall take all reasonable precautions to protect the producing aquifer from contamination by drilling materials. Upon completion of the well, the well driller shall remove all foreign substances and materials introduced into the aquifer or aquifers during well construction. For purposes of this subsection, "substances and materials" means all drilling fluids, filter cake, lost circulation materials, and any other organic or inorganic substances.
  2. Materials known to present a health hazard, such as chrome-based mud thinners, asbestos products, and petroleum-based fluids, shall not be used as construction, seal or fill materials or drilling fluids.
  3. Drilling fluids and cuttings shall be contained in a manner which prevents discharge into any surface water.
- G. Repair of existing wells**
1. If, in the repair of a well, the old casing is withdrawn, the well shall be recased in conformance with these rules.
  2. If an inner casing is installed to prevent leakage of undesirable water into a well, the annular space between the casings shall be completely sealed by packers, casing swedging, pressure grouting or other methods which will prevent the movement of water between the casings.
- H. Monitor wells**
1. A monitor well may be screened up to ten feet above the highest seasonal static water level of record for the purpose of monitoring contaminants.
  2. A monitor well shall be identified as such on the vault cover or at the top of the steel casing. Identification information shall include the well registration number.
- I. Completion at the surface.** In areas of traffic or public rights-of-way, wells may be constructed below the land surface in a vault. All other requirements in this Article shall apply.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). The reference to R12-14-817(B)(1) in subsection (B)(1) corrected to read R12-15-817(B)(1) (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006

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(Supp. 05-4).

**R12-15-812. Special Aquifer Conditions****A. Artesian wells**

1. The well casing shall extend into the confining formation immediately overlying the artesian aquifer and shall be grouted from a minimum of ten feet into the confining formation to the land surface to prevent surface leakage into and subsurface leakage from the artesian aquifer.
2. If leaks occur adjacent to the well or around the well casing, within 30 days the well shall be completed with the seals, packers, or casing and grouting necessary to eliminate such leakage or the well shall be abandoned according to R12-15-816.
3. If the well flows at land surface, the well shall be equipped with a control valve, or suitable alternative means of completely controlling the flow, which must be available for inspection at the well site at all times.

- B. Mineralized or polluted water.** In all water-bearing geologic units containing mineralized or polluted water as indicated by available data, the borehole shall be cased and grouted so that contamination of the overlying or underlying groundwater zones will not occur.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-813. Unattended Wells**

All wells, when unattended during well drilling, shall be securely covered for safety purposes and to prevent the introduction of foreign substances into the well.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Section number corrected (Supp. 93-1).

**R12-15-814. Disinfection of Wells**

A well drilling contractor shall disinfect any well from which the water to be withdrawn is intended to be utilized for human consumption or culinary purposes without prior treatment before removing the drill rig from the well site in accordance with the requirements contained in Engineering Bulletin No. 8, "Disinfection of Water Systems", issued by the Arizona Department of Health Services in August 1978, and Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems", issued by the Arizona Department of Health Services in May 1978, both of which are incorporated by reference and are on file with the Office of the Secretary of State. Copies of the Engineering Bulletins referred to above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007, and from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012. This rule does not include any later amendments or editions of those Bulletins.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-815. Removal of Drill Rig from Well Site**

The drilling rig shall not be removed from the well site unless the well is in one of the following conditions:

1. Constructed in full conformance with R12-15-811 and R12-15-812 and either sealed with a cap or equipped with a pump.
2. Abandoned in accordance with R12-15-816.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-816. Abandonment**

- A.** Well abandonment shall be performed only by a licensed well drilling contractor or single well licensee.
- B.** Except as provided in subsection (F) of this Section, the owner of a well shall file a notice of intent to abandon the well prior to abandonment, on a form prescribed and furnished by the Director, which shall include:
1. The name and mailing address of the person filing the notice.
  2. The legal description of the land upon which the well proposed to be abandoned is located and the name and mailing address of the owner of the land.
  3. The legal description of the location of the well on the land.
  4. The depth, diameter and type of casing of the well.
  5. The well registration number.
  6. The materials and methods to be used to abandon the well.
  7. When abandonment is to begin.
  8. The name and well drilling license number of the well drilling contractor or single well licensee who is to abandon the well.
  9. The reason for the abandonment.
  10. Such other information as the Director may require.
- C.** The Director shall, upon receipt of a proper notice of intent to abandon, mail a well abandonment authorization card to the designated well drilling contractor or single well licensee.
- D.** Except as described in subsection (F) of this Section, a well drilling contractor or single well licensee may commence abandoning a well only if the driller has possession of an abandonment card at the well site, issued by the Director in the name of the driller, authorizing the abandonment of that specific well or wells in that specific location.
- E.** Within 30 days after a well is abandoned pursuant to this Section, the well drilling contractor or single well licensee shall file with the Director a Well Abandonment Completion Report on a form prescribed and furnished by the Director which shall include the date the abandonment of the well was completed and such other information as the Director may require.
- F.** In the course of drilling a new well, the well may be abandoned without first filing a notice of intent to abandon and without an abandonment card. If the well is abandoned pursuant to this subsection without first filing a notice of intent to abandon and without an abandonment card, the well drilling contractor or single well licensee shall provide the following information in the Well Abandonment Completion Report:
1. The legal description of the land upon which the well was abandoned and the name and mailing address of the owner of the land.
  2. The legal description of the location of the well on the land.
  3. The depth, diameter and type of casing of the well prior to abandonment.
  4. The well registration number.
  5. The materials and methods used to abandon the well.
  6. The name and well drilling license number of the well drilling contractor or single well licensee who abandoned the well.
  7. The date of completion of the abandonment of the well.
  8. The reason for the abandonment.
  9. Such other information as the Director may require.
- G.** The abandonment of a well shall be accomplished through filling or sealing the well so as to prevent the well, including the

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annular space outside the casing, from being a channel allowing the vertical movement of water.

- H.** A well drilling contractor or single well licensee shall construct a surface seal for a well that does not penetrate an aquifer, as follows:
1. If the casing is removed from the top 20 feet of the well, a cement grout plug shall be set extending from two feet below the land surface to a minimum of 20 feet below the land surface, and the well shall be backfilled above the top of the cement grout plug to the original land surface.
  2. If the casing is not removed from the top 20 feet of the well, a cement grout plug shall be set extending from the top of the casing to a minimum of 20 feet below the land surface and the annular space outside the casing shall be filled with cement from the land surface to a minimum of 20 feet below the land surface.
- I.** In addition to the surface seal required in subsection (H):
1. A well penetrating a single aquifer system with no vertical flow components shall be filled with cement grout, concrete, bentonite drilling muds, clean sand with bentonite, or cuttings from the well.
  2. A well penetrating a single or multiple aquifer system with vertical flow components shall be sealed with cement grout or a column of bentonite drilling mud of sufficient volume, density, and viscosity to prevent fluid communication between aquifers.
- J.** Materials containing organic or toxic matter shall not be used in the abandonment of a well.
- K.** The owner or operator of the well shall notify the Director in writing no later than 30 days after abandonment has been completed. The notification shall include the well owner's name, the location of the well, and the method of abandonment.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-817. Exploration Wells**

- A.** Notification. Prior to drilling one or more exploration wells, the well owner, lessee, or exploration firm shall file a notice of intention to drill on forms provided by the Director. If the notice of intention to drill is filed for the project as a whole, the drilling card shall be issued for the project as a whole.
- B.** Construction and abandonment.
1. If an exploration well which is to be left open for re-entry at a later date encounters groundwater, it shall be cased and capped in accordance with R12-15-811, R12-15-812, and R12-15-822. The minimal length of surface seal shall be either 20 feet, or five feet into the first encountered consolidated formation, whichever is less. If no groundwater is encountered, the well shall be cased, grouted and capped in such a manner so as to prevent contamination of the well bore from the surface.
  2. Exploration wells not left open for re-entry shall be abandoned in accordance with R12-15-816.
- C.** Completion report. Within 30 days of project completion, the well owner, lessee, or exploration firm shall submit a project completion report on forms provided by the Director. The report shall include:
1. The exact number of wells drilled.
  2. The depth to water encountered or detected, with reference to specific wells.
  3. The abandonment method utilized, or construction details if completed for re-entry.
  4. Any other information which the Director may require.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-818. Well Location**

Except for monitor wells and piezometer wells, no well shall be drilled within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, storage area of hazardous materials or petroleum storage areas and tanks, unless authorized in writing by the Director.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-819. Use of Well as Disposal Site**

No well may be used as a storage or disposal site for sewage, toxic industrial waste, or other materials that may pollute the groundwater, except as authorized by the Arizona Department of Environmental Quality.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-820. Request for Variance**

- A.** If extraordinary or unusual conditions exist, a well drilling contractor or owner may request a variance from the provisions of this Article.
- B.** The request for variance shall be in writing and shall set forth the location of the well site, the reasons for the request, and the recommended requirements to be applied. The Director may approve the request only if the well drilling contractor or owner has clearly demonstrated that the variance will not adversely affect other water users or the local aquifers.
- C.** A variance shall not be effective until the well drilling contractor or owner receives from the Director a written approval of the variance and a new drilling card stamped "variance issued."

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-821. Special Requirements**

If the Director determines that the literal application of the minimum well construction requirements contained in this Article would not adequately protect the aquifer or other water users, the Director may require that further additional measures be taken, such as increasing the length of the surface seal or increasing the well's minimum distance from a potential source of contamination.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-822. Capping of Open Wells**

- A.** The owner of an open well shall either install a cap on the well or abandon the well in accordance with R12-15-816. Within five days after capping the well, the owner of the well shall file with the Department a notice of well capping on a form approved by the Director which shall include the following information:
1. The name and address of the well owner.
  2. The name and address of the person installing the cap.
  3. The well registration number.
  4. The legal description of the location of the well.
  5. The date the well was capped.
  6. The method of capping.
  7. The type and diameter of casing.

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- B. If no casing exists in an open well, or if the integrity of the existing casing is insufficient to allow installation of a cap, the well owner shall install a surface seal in accordance with R12-15-811(B) prior to capping.
- C. The owner of a well on which a cap is installed shall make the cap tamper resistant by welding the cap to the top of the casing by the electric arc method of welding, except that the owner of a well may make the cap tamper resistant by securing the cap to the top of the casing with a lock during temporary periods of well maintenance, modification or repair, not to exceed 30 days, or at any time if the well is a monitor well or piezometer well.

**Historical Note**

Adopted as an emergency effective March 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective June 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective September 5, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Readopted without change as an emergency effective December 1, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Readopted without change as an emergency effective March 23, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Permanent rule adopted with changes effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-823. Reserved**

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**R12-15-849. Reserved****R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation**

- A. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within a groundwater basin or sub-basin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.
- B. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination, as defined in A.R.S. § 49-281(15). If the Director determines that the proposed well will be drilled in such an area, and if the Director finds that the

requirements of R12-15-811 are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

**R12-15-851. Notification of Well Drilling Commencement**

A well owner who has been issued a drilling card for a notice of intent to drill authorizing the drilling of a well located within a site listed on the registry established under A.R.S. § 49-287.01, shall provide written notice to the Director indicating the date drilling will commence. The well owner shall coordinate with the contracted well driller to ensure that the Department receives proper notification under this Section. This notification shall consist of a letter or facsimile transmission received by the Department at least 2 business days before drilling commences at the well site. The Department shall use notification letters required by R12-15-850(A) to inform well owners whether they are subject to the requirements of this Section.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

**R12-15-852. Notice of Well Inspection; Opportunity to Comment**

- A. At least 30 days before the beginning of a well inspection under A.R.S. § 45-605(A), the Director shall notify in writing all potentially affected well owners of record within a community involvement area established under A.R.S. § 49-289.02 or within other areas that the Director has selected for inspection of wells that may be contributing to vertical cross-contamination. The notices shall include a map of the community involvement area, remedial site, or a subsection of either, that the Department intends to inspect, indicating the location of affected wells of record. The notice shall indicate the approximate date the inspection will start, the approximate duration of the inspection, an access agreement defining what specific activities will occur during a well inspection, and the name, address, and telephone number of a Department contact person.
- B. Once the Director has given notice of a well inspection under A.R.S. § 45-605(A), potentially affected well owners have 30 days from the date the letter is postmarked to comment on the proposed inspection. The Director, upon receiving a written request, may extend the comment period for a maximum of 30 additional days.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

**ARTICLE 9. WATER MEASUREMENT****R12-15-901. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101 and 45-402, the following words and phrases shall have the following meanings, unless the context otherwise requires:

1. "Approved measuring device" means an instrument, approved by the Director pursuant to R12-15-903 or R12-15-909(A) which measures the volume or flow rate of water withdrawn, delivered, received, transported, recharged, stored, recovered, or used, and which measurements, when used with an approved measuring method, allow for accurate computation of a volume of water.

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- G.** The Director shall mail a copy of the report of the inspection either to the person to whom the notice of inspection was directed, or to the owner, manager or occupant of the property if no notice of inspection was given. The report shall include the date of the inspection and a short summary of the findings. If no notice was given, the report shall include an explanation of the reason for determining that notice would not be given, unless providing the explanation would frustrate enforcement of A.R.S. Title 45. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- H.** The owner, manager or occupant of the property may waive the provisions for notice contained in this rule.
- I.** The Director shall comply with the requirements of A.R.S. § 41-1009 when conducting inspections under this Section.

**Historical Note**

Adopted effective August 31, 1992 (Supp. 92-3).  
Amended effective July 22, 1994 (Supp. 94-3). Amended  
by final rulemaking at 11 A.A.R. 5395, effective  
February 4, 2006 (Supp. 05-4).

**R12-15-1102. Audits**

- A.** For the purpose of this rule, “representative” means
1. An officer or director of a corporation subject to the audit,
  2. A general partner of a partnership subject to the audit, or
  3. A person who appears at an audit and produces a signed authorization to act on behalf of the person subject to the audit.
- B.** This rule applies to audits conducted pursuant to A.R.S. §§ 45-633(C), 45-880.01, and any other Section of A.R.S. Title 45 that authorizes the Director to require a person to appear at the Director’s office and produce records and information and that also requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
- C.** No less than 20 days prior to an audit, the Director shall mail notice of the audit by first class letter to the person that is the subject of the audit. The notice shall state the date, time and place of the audit. The notice shall specify the records or information which the person must produce. The notice shall also include the statutory authorization and purpose for the audit and the name and telephone number of a Department employee who may be contacted for further information. The audit shall be held at the Department’s offices, unless the Director grants a request to have the audit conducted at a different location.
- D.** The person subject to the audit or a representative shall appear at the scheduled time and shall produce the records and information specified in the notice. The person subject to the audit or a representative may make one request to reschedule the audit, which the Department shall grant if practicable.
- E.** The Director shall mail a copy of the report of the audit to the person subject to the audit. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- F.** The person subject to the audit may waive the provisions for notice contained in this rule.

**Historical Note**

Adopted effective August 31, 1992 (Supp. 92-3).  
Amended effective July 22, 1994 (Supp. 94-3).

**ARTICLE 12. DAM SAFETY PROCEDURES****R12-15-1201. Applicability**

- A.** This Article applies to any artificial barrier meeting the specifications of A.R.S. § 45-1201(1) as interpreted by R12-15-1204. This Article applies to an application for the construction of a dam and reservoir; an application to reconstruct,

repair, alter, enlarge, breach, or remove an existing dam and reservoir, including a breached or damaged dam; operation and maintenance of an existing dam and reservoir; and enforcement. A structure identified in R12-15-1203 is exempt from this Article.

- B.** This Article is applicable to any dam regardless of hazard potential classification, with the following exceptions:
1. R12-15-1208, R12-15-1209, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226 apply only to a dam classified as a high or significant hazard potential dam.
  2. R12-15-1210 applies only to a dam classified as a low hazard potential dam. A low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1211, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226.
  3. R12-15-1211 applies only to a dam classified as a very low hazard potential dam. A very low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1210, R12-15-1212, R12-15-1213, R12-15-1215, R12-15-1216, R12-15-1221, R12-15-1225, and R12-15-1226.
  4. R12-15-1216(B) applies only to an embankment dam.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-01 renumbered without change as Section R12-15-1201 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1202. Definitions**

In addition to the definitions provided in A.R.S. § 45-1201, the following definitions are applicable to this Article:

1. “Alteration or repair of an existing dam or appurtenant structure” means to make different from the originally approved construction drawings and specifications or current condition without changing the height or storage capacity of the dam or reservoir, except for ordinary repairs and general maintenance as prescribed in R12-15-1217.
2. “Appurtenant structure” means any structure that is contiguous and essential to the safe operation of the dam including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a dam.
3. “Classification of dams” means the placement of dams into categories based upon an evaluation of the size and hazard potential, regardless of the condition of the dam.
4. “Concrete dam” means any dam constructed of concrete, including arch, gravity, arch-gravity, slab and buttress, and multiple arch dams. A dam that only has a concrete facing is not a concrete dam.
5. “Construction” means any activity performed by the owner or someone employed by the owner that is related to the construction, reconstruction, repair, enlargement, removal, or alteration of any dam, unless the context indicates otherwise. Construction is performed after approval of an application and before issuance of a license.
6. “Dam failure inundation map” means a map depicting the maximum area downstream from a dam that would be flooded in the event of the worst condition failure of the dam.
7. “Department” means the Arizona Department of Water Resources.
8. “Director” means the Director of the Arizona Department of Water Resources or the Director’s designee.

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9. "Embankment dam" means a dam that is constructed of earth or rock material.
10. "Emergency spillway" means a spillway designed to safely pass the inflow design flood routed through the reservoir. If the flow is controlled by gates, it is a controlled spillway. If the flow is not controlled by gates, it is an uncontrolled spillway.
11. "Engineer" means a Professional Engineer registered and licensed in accordance with A.R.S. Title 32, Chapter 1, with proficiency in engineering and knowledge of dam technology.
12. "Enlargement to an existing dam or appurtenant structure" means any alteration, modification, or repair that increases the vertical height of a dam or the storage capacity of the reservoir.
13. "Flashboards" mean timber, concrete, or steel sections placed on the crest of a spillway to raise the retention water level that may be quickly removed at time of flood either by a tripping device or by designed failure of the flashboards or their supports.
14. "Flood control dam" means a dam that uses all of its reservoir storage capacity for temporary impoundment of flood waters and collection of sediment or debris.
15. "Hazard potential" means the probable incremental adverse consequences that result from the release of water or stored contents due to failure or improper operation of a dam or appurtenances.
16. "Hazard potential classification" means a system that categorizes dams according to the degree of probable incremental adverse consequences of failure or improper operation of a dam or appurtenances. The hazard potential classification does not reflect the current condition of the dam with regard to safety, structural integrity, or flood routing capacity.
17. "Height" means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation. For the purpose of determining jurisdictional status, the lowest elevation of the outside limit of the barrier may be the outlet pipe invert elevation if the outlet is constructed below natural ground.
18. "Impound" means to cause water or a liquid to be confined within a reservoir and held with no discharge.
19. "Incremental adverse consequences" means under the same loading conditions, the additional adverse consequences such as economic, intangible, lifeline, or human losses, that would occur due to the failure or improper operation of the dam over those that would have occurred without failure or improper operation of the dam.
20. "Inflow design flood" or "IDF" means the reservoir flood inflow magnitude selected on the basis of size and hazard potential classification for emergency spillway design requirements of a dam.
21. "Intangible losses" means incremental adverse consequences to property that are not economic in nature, including property related to social, cultural, unique, or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat identified and evaluated by a public natural resource management or protection agency.
22. "Jurisdictional dam" means a barrier that meets the definition of a dam prescribed in A.R.S. § 45-1201 that is not exempted by R12-15-1203 over which the Department of Water Resources exercises jurisdiction.
23. "Levee" means an embankment of earth, concrete, or other material used to prevent a watercourse from spreading laterally or overflowing its banks. A levee is not used to impound water.
24. "License" means license of final approval issued by the Director upon completion or enlargement of a dam under A.R.S. § 45-1209.
25. "Lifeline losses" mean disruption of essential services such as water, power, gas, telephone, or emergency medical services.
26. "Liquid-borne material" means mine tailings or other milled ore products transported in a slurry to a storage impoundment.
27. "Maximum credible earthquake" means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.
28. "Maximum water surface" means the maximum elevation of the reservoir water level attained during routing of the inflow design flood.
29. "Natural ground surface" means the undisturbed ground surface before excavation or filling, or the undisturbed bed of the stream or river.
30. "Outlet works" means a closed conduit under or through a dam or through an abutment for the controlled discharge of the contents normally impounded by a dam and reservoir. The outlet works include the inlet and outlet structures appurtenant to the conduit. Outlet works may be controlled or uncontrolled.
31. "Probable" means likely to occur, reasonably expected, and realistic.
32. "Probable maximum flood" or "PMF" means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region, including rain and snow where applicable. 1/2 PMF is that flood represented by the flood hydrograph with ordinates equal to 1/2 the corresponding ordinates of the PMF hydrograph.
33. "Probable maximum precipitation" means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.
34. "Reservoir" means any basin that contains or is capable of containing water or other liquids impounded by a dam.
35. "Residual freeboard" means the vertical distance between the highest water surface elevation during the inflow design flood and the lowest point at the top of the dam.
36. "Restricted storage" means a condition placed on a license by the Director to reduce the storage level of a reservoir because of a safety deficiency.
37. "Saddle dike or saddle dam" means any dam constructed in a topographically low area on the perimeter of a reservoir, required to contain the reservoir at the highest water surface elevation.
38. "Safe" means that a dam has sufficient structural integrity and flood routing capacity to make failure of the dam unlikely.
39. "Safe storage level" means the maximum reservoir water surface elevation at which the Director determines it is safe to impound water or other liquids in the reservoir.
40. "Safety deficiency" means a condition at a dam that impairs or adversely affects the safe operation of the dam.
41. "Safety inspection" means an investigation by an engineer or a person under the direction of an engineer to assess the safety of a dam and determine the safe storage level for a reservoir, which includes review of design

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reports, construction documents, and previous safety inspection reports of the dam, spillways, outlet facilities, seepage control and measurement systems, and permanent monument or monitoring installations.

- 42. "Spillway crest" means the highest elevation of the floor of the spillway along a centerline profile through the spillway.
- 43. "Storage capacity" means the maximum volume of water, sediment, or debris that can be impounded in the reservoir with no discharge of water, including the situation where an uncontrolled outlet becomes plugged. The storage capacity is reached when the water level is at the crest of the emergency spillway, or at the top of permanently mounted emergency spillway gates in the closed position. Storage capacity excludes dead storage below the natural ground surface.
- 44. "Surcharge storage" means the additional water storage volume between the emergency spillway crest or closed gates, and the top of the dam.
- 45. "Total freeboard" means the vertical distance between the emergency spillway crest and the top of the dam.
- 46. "Unsafe" means that safety deficiencies in a dam or spillway could result in failure of the dam with subsequent loss of human life or significant property damage.

**Historical Note**

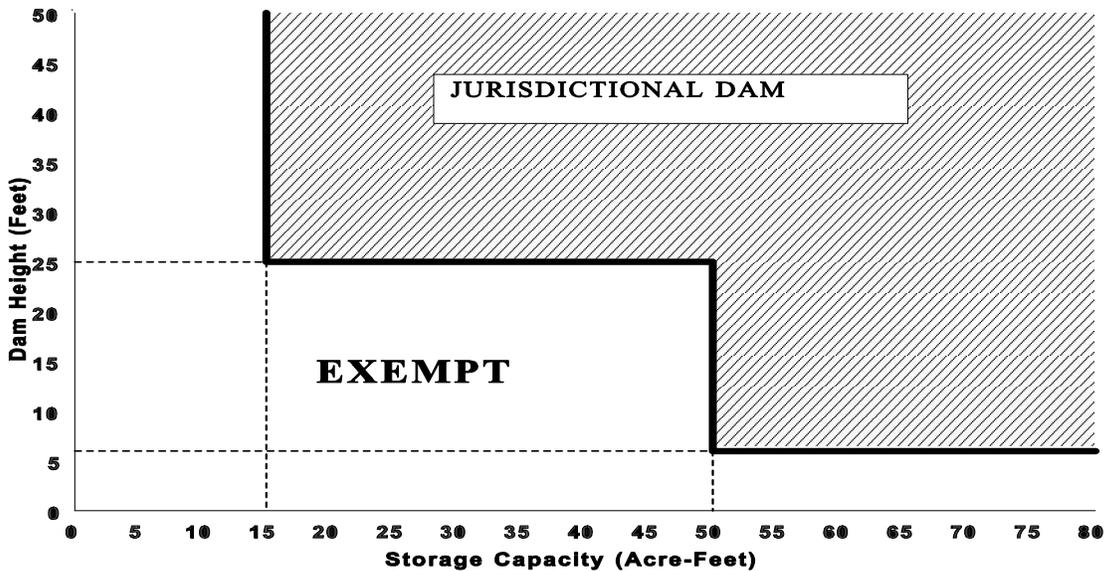
Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-02 renumbered without change as Section R12-15-1202 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

**R12-15-1203. Exempt Structures**

The following structures are exempt from regulation by the Department:

- 1. Any artificial barrier identified as exempt on Table 1 and defined as follows:

**Table 1. Exempt Structures**



**Historical Note**

- a. Less than 6 feet in height, regardless of storage capacity.
- b. Between 6 and 25 feet in height with a storage capacity of less than 50 acre-feet.
- c. Greater than 25 feet in height with 15 acre-feet or less of storage capacity.
- 2. A dam owned by the federal government. A dam designed by the federal government for any non-federal entity or person that will subsequently be owned or operated by a person or entity defined as an owner in A.R.S. § 45-1201 is subject to jurisdiction, beginning with design and construction of the dam.
- 3. A dam owned or operated by an agency or instrumentality of the federal government, if a dam safety program at least as stringent as this Article is applicable to and enforced against the agency or instrumentality.
- 4. A transportation structure such as a highway, road, or railroad fill that exists solely for transportation purposes. A transportation structure designed, constructed, or modified with the intention of impounding water on an intermittent or permanent basis and meeting the definition of dam in A.R.S. § 45-1201 is subject to jurisdiction.
- 5. A levee constructed adjacent to or along a watercourse, primarily to control floodwater.
- 6. A self-supporting concrete or steel water storage tank.
- 7. An impoundment for the purpose of storing liquid-borne material.
- 8. A release-contained barrier as defined by A.R.S. § 45-1201(5).

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-03 renumbered without change as Section R12-15-1203 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

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New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1204. Provision for Guidelines**

The Department may develop and adopt substantive policy statements that serve as dam safety guidelines to aid a dam owner or engineer in complying with this Article. The Department recommends that dam owners and engineers consult design guidelines published by agencies of the federal government, including the U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, and the Federal Energy Regulatory Commission, for the design of concrete, roller compacted concrete, stone masonry, timber, inflatable rubber, and mechanically-stabilized earth dams. The Director may require that other criteria be used or revise any of the specific criteria for the purpose of dam safety. An owner shall obtain advance approval by the Director of design criteria.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-04 renumbered without change as Section R12-15-1204 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1205. General Responsibilities**

- A. Each owner is responsible for the safe design, operation, and maintenance of a dam. The owner shall operate, maintain, and regularly inspect a dam so that it does not constitute a danger to human life or property. The owner of a high or significant hazard potential dam shall provide timely warning to the Department and all other persons listed in the emergency action plan of problems at the dam. The owner shall develop and maintain effective emergency action plans and coordinate those plans with local officials as prescribed in R12-15-1221.
- B. The owner shall conduct frequent observation of the dam, as prescribed in the emergency action plan and as follows:
  1. The owner shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.
  2. The owner shall report to the Director any condition that threatens the safety of the dam as prescribed in R12-15-1224(A). The owner shall make the report as soon as possible, but not later than 12 hours after discovery of the conditions.
  3. If dam failure appears imminent, the owner shall notify the county sheriff or other emergency official immediately.
  4. The owner is responsible for the safety of the dam and shall take action to lower the reservoir if it appears that the dam has weakened or is in danger of failing.
- C. The owner of a dam shall install, maintain, and monitor instrumentation to evaluate the performance of the dam. The Director shall require site-specific instrumentation that the Director deems necessary for monitoring the safety of the dam when failure may endanger human life and property. Conditions that may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.
- D. The owner shall perform timely maintenance and ordinary repair of a dam. The owner shall implement an annual plan to inspect the dam and accomplish the maintenance and ordinary repairs necessary to protect human life and property.
- E. If a change of ownership of a dam occurs, the new owner shall notify the Department within 15 days after the date of the transaction and provide the mailing address and telephone number where the new owner can be contacted. Within 90 days after the date of the transaction, the new owner shall pro-

vide the name and telephone number of the individual or individuals who are responsible for operating and maintaining the dam.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-05 renumbered without change as Section R12-15-1205 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1206. Classification of Dams**

- A. Size Classification. Dams are classified by size as small, intermediate, or large. Size is determined with reference to Table 2. An owner or engineer shall determine size by storage capacity or height, whichever results in the larger size.
- B. Hazard Potential Classification
  1. The Department shall base hazard potential classification on an evaluation of the probable present and future incremental adverse consequences that would result from the release of water or stored contents due to failure or improper operation of the dam or appurtenances, regardless of the condition of the dam. The evaluation shall include land use zoning and development projected for the affected area over the 10 year period following classification of the dam. The Department considers all of the following factors in hazard potential classification: probable loss of human life, economic and lifeline losses, and intangible losses identified and evaluated by a public resource management or protection agency.
    - a. The Department bases the probable incremental loss of human life determination primarily on the number of permanent structures for human habitation that would be impacted in the event of failure or improper operation of a dam. The Department considers loss of human life unlikely if:
      - i. Persons are only temporarily in the potential inundation area;
      - ii. There are no residences or overnight campsites; and
      - iii. The owner has control of access to the potential inundation area and provides an emergency action plan with a process for warning in the event of a dam failure or improper operation of a dam.
    - b. The Department bases the probable economic, lifeline, and intangible loss determinations on the property losses, interruptions of services, and intangible losses that would be likely to result from failure or improper operation of a dam.
  2. The 4 hazard potential classification levels are very low, low, significant, and high, listed in order of increasing probable adverse incremental consequences, as prescribed in Table 3. The Director shall classify intangible losses by considering the common or unique nature of features or habitats and temporary or permanent nature of changes.
    - a. Very Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life and would produce no lifeline losses and very low economic and intangible losses. Losses would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease. The Department considers

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loss of life unlikely because there are no residences or overnight camp sites.

- b. Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life, but would produce low economic and intangible losses, and result in no disruption of lifeline services that require more than cosmetic repair. Property losses would be limited to rural or agricultural property, including equipment, and isolated buildings.
  - c. Significant Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life but may cause significant or high economic loss, intangible damage requiring major mitigation, and disruption or impact on lifeline facilities. Property losses would occur in a predominantly rural or agricultural area with a transient population but significant infrastructure.
  - d. High Hazard Potential. Failure or improper operation of a dam would be likely to cause loss of human life because of residential, commercial, or industrial development. Intangible losses may be major and potentially impossible to mitigate, critical lifeline services may be significantly disrupted, and property losses may be extensive.
3. An applicant shall demonstrate the hazard potential classification of a dam before filing an application to construct. The Department shall review the applicant's demonstration early in the design process at pre-application meetings prescribed in R12-15-1207(D).
  4. The Department shall review the hazard potential classification of each dam during each subsequent dam safety inspection and revise the classification in accordance with current conditions.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-06 renumbered without change as Section R12-15-1206 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Exhibit A. Repealed**

**Historical Note**

Exhibit repealed by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000; a Historical Note for Exhibit A did not exist before this date (Supp. 00-2).

**Table 2. Size Classification**

Category	Storage Capacity (acre-feet)	Height (feet)
Small	50 to 1,000	25 to 40
Intermediate	greater than 1,000 and not exceeding 50,000	higher than 40 and not exceeding 100
Large	greater than 50,000	higher than 100

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558,

effective June 12, 2000 (Supp. 00-2).

**Table 3. Downstream Hazard Potential Classification**

Hazard Potential Classification	Probable Loss of Human Life	Probable Economic, Lifeline, and Intangible Losses
Very Low	None expected	Economic and lifeline losses limited to owner's property or 100-year floodplain. Very low intangible losses identified.
Low	None expected	Low
Significant	None expected	Low to high
High	Probable - One or more expected	Low to high (not necessary for this classification)

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1207. Application Process**

- A. An applicant shall obtain written approval from the Director before constructing, reconstructing, repairing, enlarging, removing, altering, or breaching a dam. Application requirements differ according to the hazard potential of the dam.
  1. To construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam, the applicant shall comply with R12-15-1208.
  2. To breach or remove a high or significant hazard potential dam, the applicant shall comply with R12-15-1209.
  3. To construct, reconstruct, repair, enlarge, alter, breach, or remove a low hazard potential dam, the applicant shall comply with R12-15-1210.
  4. To construct, reconstruct, repair, enlarge, alter, breach, or remove a very low hazard potential dam, the applicant shall comply with R12-15-1211.
- B. An application shall not be filed with the Director under the following circumstances:
  1. The dam is exempt under R12-15-1203;
  2. A dam owner starts repairs to an existing dam that are necessary to safeguard human life or property and the Director is notified without delay;
  3. The owner performs general maintenance or ordinary repairs as prescribed in R12-15-1217(A) or (B); or
  4. Breach, removal, or reduction of a very low hazard dam as prescribed in R12-15-1211(C).
- C. An applicant is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to a proposed dam. The Director shall state in writing the reason or reasons the applicant is not required to comply with a requirement.
- D. An applicant shall schedule pre-application conferences with the Department to discuss the requirements of this Article and to resolve issues essential to the design of a dam while the design is in preliminary stages. The Director shall view the dam site during the pre-application process. The following are examples of issues for pre-application conferences: the hazard

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potential classification, the approximate inflow design flood, the basic design concepts, and any requirements that may be found by the Director to be unduly burdensome or expensive and not necessary to protect human life or safety. In addition, the applicant may submit preliminary design calculations to the Department for review and comment. The Department shall comment as soon as practicable, depending on the size of the submittal and the current workload.

**E.** The Department shall review applications as follows:

1. Applications will be received by appointment. During this meeting the Department shall make a brief review of the application to determine that the application contains each of the items required by R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211.
2. Following receipt of an application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211, the Director shall complete an administrative review as prescribed in R12-15-401(1) and notify the applicant in writing whether the application is administratively complete. If the application is not administratively complete, the notification shall include a list of additional information that is required to complete the application.
3. After finding the application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211 administratively complete, the Director shall complete a substantive review as prescribed in R12-15-401(3) and notify the applicant in writing of the Director's approval or disapproval. If during this review period, the Director determines that there are defects in the application that would impact human life and property, a written notice of the defects shall be sent to the applicant.
4. An applicant may request in writing that the Director expedite the review of an application by employing an expert consultant on a contract basis under A.R.S. § 45-104(D). The Director shall establish on-call contracts with expert consultants to facilitate the process of expediting review. The Director may retain a consultant to review all or a portion of the application as necessary to expedite the process in response to an owner's request or to comply with time-frame rules. Before conducting the review, the consultant shall provide the Director and the applicant with a proposed time schedule and cost estimate. If the applicant agrees to the consultant's proposal for an expedited review of an application and the Director employs the consultant, the applicant shall pay to the Department the cost of the consultant's services in addition to the application fees. The Director retains the authority to review and approve, disapprove, or modify the findings and recommendations of the consultant.
5. The Director shall not approve an application in less than 10 days from the date of receipt.
6. If the Director disapproves the application, the Director shall provide the applicant with a statement of the Director's objections.
7. If the Director approves an application, the applicant shall submit in triplicate revised drawings and specifications that incorporate any required changes.
  - a. The Director shall return to the applicant 1 set of final construction drawings and specifications with the Department's approval stamp to be retained onsite during construction;
  - b. The Director shall retain for permanent state record 1 set of final construction drawings and specifications with the Department's approval stamp; and
  - c. The Director shall retain for use by the Department during construction the 3rd set of final construction

drawings and specifications with the Department's approval stamp.

8. The Director shall impose conditions and limitations that the Director deems necessary to safeguard human life and property. Examples of the conditions of approval include but are not limited to:
  - a. The applicant shall not cover the foundation or abutment with the material of the dam until the Department has been given notice and a reasonable time to inspect and approve them.
  - b. The applicant shall start construction within 1 year from the date of approval.
  - c. The applicant shall maintain a safe storage level for an existing dam being reconstructed, repaired, enlarged, altered, or breached.
- F.** An approval to construct a new dam or repair, enlarge, alter, breach, or remove an existing dam is valid for 1 year.
  1. If construction does not begin within 1 year, the approval is void.
  2. Upon written request and good cause shown by the owner, the time for commencing construction may be extended. An applicant shall not start construction before the Director reviews the application for changes and grants approval.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam**

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
  2. A design information summary or checklist of items prepared in duplicate on forms provided by the Director.
  3. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  4. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  5. Two complete sets of construction drawings as prescribed in R12-15-1215(1).
  6. Two complete sets of construction specifications as prescribed in R12-15-1215(2).
  7. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3). The engineering design report shall recommend a safe storage level for existing dams being reconstructed, repaired, enlarged, or altered.
  8. A construction quality assurance plan describing all aspects of construction supervision.
  9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
  10. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe man-

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ner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.

- B.** The following may be submitted with the application or during construction.
1. An emergency action plan as prescribed in R12-15-1221.
  2. An operation and maintenance plan to accomplish the annual maintenance.
  3. An instrumentation plan regarding instruments that evaluate the performance of the dam.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1209. Application to Breach or Remove a High or Significant Hazard Potential Dam**

- A.** An applicant shall excavate the dam down to the level of the natural ground at the maximum section. Upon approval of the Director, additional breaches may be made. This provision shall not be construed to require more than total removal of the dam regardless of the flood magnitude. The breach or breaches shall be of sufficient width to pass the greater of:
1. The 100 year flood at a depth of less than 5 feet, or
  2. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam.
- B.** The sides of each breach shall be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
- C.** Each breach shall be designed to prevent silt that has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.
- D.** Before breaching the dam, the reservoir shall be emptied in a controlled manner that will not endanger lives or damage downstream property. The applicant shall obtain approval from the Director for the method of breaching or removal.
- E.** An application package to breach or remove a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
1. The construction drawing or drawings for the breach or removal of a dam, including the location, dimensions, and lowest elevation of each breach.
  2. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to breach or remove the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to breach or remove the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
  3. A construction quality assurance plan describing all aspects of construction supervision.
- F.** Reduction of a high or significant downstream hazard potential dam to nonjurisdictional size may be approved by letter under the following circumstances:
1. The owner shall submit a completed application form and construction drawings for the reduction and the appropri-

- ate specifications, prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
2. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.
3. The plans shall comply with all requirements of this Section except that the breach is not required to be to natural ground.
4. Upon completion of an alteration to nonjurisdictional size, the engineer shall file as constructed drawings and specifications with the Department.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam**

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
  2. An initial application fee based on the total estimated project cost, computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  3. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  4. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  5. A statement by the responsible engineer that classifies the dam as low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation of the dam would be unlikely to result in:
    - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
    - b. Significant incremental adverse consequences; or
    - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management or protection agency.
  6. Two complete sets of construction drawings as prescribed by R12-15-1215(1).
  7. Two complete sets of construction specifications as prescribed by R12-15-1215(2).
  8. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3).
  9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
  10. A construction quality assurance plan clearly describing all aspects of construction supervision.
  11. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe man-

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ner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.

- B.** An application package for the breach or removal of a low hazard potential dam shall include the following:
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
    - a. The name and address of the owner of the dam or the agent of the owner.
    - b. A description of the proposed removal.
    - c. The proposed time for beginning and completing the removal.
  2. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  3. A statement by the responsible engineer demonstrating both of the following:
    - a. That the dam will be excavated to the level of natural ground at the maximum section; and
    - b. That the breach or breaches will be of sufficient width to pass the greater of:
      - i. The 100 year flood at a depth of less than 5 feet, or
      - ii. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam,
      - iii. Subsection (B)(3)(b) shall not be construed to require more than a total removal of the dam regardless of flood magnitude.
    - c. That the sides of the breach will be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
  4. A detailed estimate of project costs. Project costs are all costs associated with the removal of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of removal, and any other engineering costs.
- C.** An applicant intending to reduce a low hazard potential dam to nonjurisdictional size shall submit a written notice to the Director at least no less than 60 days before the date that construction begins.
- D.** Within 45 days after receipt of a complete application package as prescribed by subsection (A) or (B), the Director shall either:
1. Determine that the dam falls within the low hazard potential classification, or
  2. Issue a written notice that the dam does not fall within the low hazard potential classification.
- E.** The Director's determination that the proposed dam does not fall within the low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam or reservoir before issuance of a license unless the Director issues written approval.
- G.** Within 90 days after completing construction, reconstruction, repair, enlargement, or alteration of a low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
  3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall indicate:
    - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
    - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
    - c. That the as constructed drawings and the report accurately represent the construction of the dam.
  4. As constructed drawings prepared and sealed by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Upon receiving the Director's written approval, the owner may operate the dam and appurtenant works. Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as low hazard or were not built according to the submitted design. The license shall include conditions of operation, including:
1. The safe storage level of the reservoir,
  2. A requirement that the dam be operated and maintained so that it does not constitute a danger to human life and property,
  3. A requirement that the conditions resulting in the low hazard classification be maintained throughout the life of the dam, and
  4. A requirement that the owner demonstrate in writing the low hazard classification in the manner prescribed by subsection (A)(5) every five years.
- I.** Within 90 days after completing removal of a low hazard potential dam, the owner shall file the following. The Director shall remove the dam from jurisdiction upon approval of the submittal.
1. An affidavit showing the actual cost of removal of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  2. An additional fee or refund request computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7), based on the actual cost of removal.
  3. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall certify that the as removed drawings and the report accurately represent the actual removal of the dam.
  4. As-removed drawings prepared and sealed by the engineer who supervised the removal. The owner and the engineer shall maintain a record of the drawings.
- J.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of a low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.

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**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2).

Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam**

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam shall include the following prepared by an engineer or a person under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
    - a. The name and address of the owner of the dam or the agent of the owner.
    - b. The location, type, size, and height of the proposed dam and appurtenant works.
    - c. The storage capacity of the reservoir associated with the proposed dam.
    - d. The proposed time for beginning and completing construction.
    - e. A description of the use for the impounded or diverted water and proof of a right to impound that water.
  2. The means, plans, and specifications by which the stream or body of water is to be dammed, by-passed, or controlled during construction.
  3. Maps, drawings, and specifications of the proposed dam.
  4. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  5. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  6. A statement by the responsible engineer that classifies the dam as very low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation would be unlikely to result in:
    - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
    - b. Significant incremental adverse consequences; or
    - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management protection agency, because the dam has a size classification of either small or intermediate under R12-15-1206(A) and any release would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease.
  7. The seal and signature of the responsible engineer in accordance with A.R.S. Title 32, Chapter 1.
  8. The drawings required by subsection (A)(3) shall include a plan view and maximum section of the dam; the outlet works; and the spillway plan, profile, and cross section.
  9. The specifications required by subsection (A)(3) shall include the construction materials, testing criteria, and installation techniques.
- B.** The Director may make other requirements for drawings and specifications for the proposed repair or alteration of a very low hazard potential dam. In determining other requirements, the Director shall consider the size and extent of the repair or alteration, the portions of the dam that will be repaired or altered, and whether the requirements elicit a description of the proposed construction work that is adequate to allow the Director to evaluate the repair or alteration.
- C.** An owner intending to breach, remove, or reduce a very low hazard potential dam to nonjurisdictional size shall submit written notice to the Director at least 60 days before the date that construction begins.
- D.** After receipt of a complete application package as prescribed by subsection (A), the Director shall either:
1. Determine that the dam falls within the very low hazard classification and approve the application in writing; or
  2. Issue a written notice that the dam does not fall within the very low hazard classification.
- E.** The Director's determination that the proposed dam does not fall within the very low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam and reservoir before receipt of a license unless the Director issues written approval.
- G.** Within 90 days after completion of the construction, reconstruction, repair, enlargement, or alteration of a very low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
  3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction in accordance with A.R.S. Title 32, Chapter 1. The report shall include:
    - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
    - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
    - c. That the as constructed drawings and the report accurately represent the construction of the dam.
  4. As constructed drawings prepared by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as very low hazard or were not built according to the submitted design. Upon receiving the Director's written approval, the

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owner may operate the dam and appurtenant works. The license shall include conditions of operation, including:

1. The safe storage level of the reservoir,
  2. A requirement that the conditions resulting in the very low hazard classification be maintained throughout the life of the dam, and
  3. A requirement that the owner demonstrate in writing the very low hazard classification in the manner prescribed by subsection (A)(6) every five years.
- I.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure or improper operation of a very low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.
- J.** The Department may periodically inspect construction to confirm that it is proceeding according to the approved design and that proper construction quality assurance is being exercised by the owner's engineer. The owner, or the owner's engineer under the direction of the owner, shall remedy any unsatisfactory condition using the contractor.
- K.** The owner shall provide the Department access to the dam site for purposes of inspecting all phases of construction, including the foundation, embankment and concrete placement, inspection and test records, and mechanical installations.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1212. Construction of a High, Significant, or Low Hazard Potential Dam**

- A.** Before commencement of construction activities, the owner shall invite to a pre-construction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours before each key construction stage identified for inspection, the owner or the owner's engineer shall provide notice to the Department.
- B.** The owner and the owner's engineer shall oversee construction of a new dam or reconstruction, repair, enlargement, alteration, breach, or removal of an existing dam. Failure to perform the work in accordance with the construction drawings and specifications approved by the Director renders the approval revocable. The owner's engineer shall exercise professional judgment independent of the contractor.
- C.** A professional engineer with proficiency in engineering and knowledge of dam technology shall supervise or direct the supervision of construction in accordance with the construction quality assurance plan.
- D.** The owner's engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
- E.** The owner shall immediately report to the Department any condition encountered during construction that requires a deviation from the approved plans and specifications.
- F.** The owner shall promptly submit a written request for approval of any necessary change and sufficient information to justify the proposed change. The owner shall not commence construction without the written approval of the Director unless the change is a minor change. A minor change is a

change that complies with the requirements of this Article and provides equal or better safety performance.

- G.** Upon completion of construction, the owner shall notify the Department in writing. The Department shall make a final inspection. The owner shall correct any deficiencies noted during the inspection.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam**

Within 90 days after completion of the construction or removal work for a significant or high hazard potential dam and final inspection by the Department, the owner shall file the following:

1. An affidavit showing the actual cost of the construction. The owner shall submit a detailed accounting of the costs, including all engineering costs.
2. An additional fee or refund request based on the actual cost of the construction, computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7).
3. One set of full sized as constructed drawings prepared and sealed by the engineer who supervised the construction. If changes were made during construction, the owner shall file supplemental drawings showing the dam and appurtenances as actually constructed.
4. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
5. Photographs of construction from exposure of the foundation to completion of construction.
6. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved drawings and specifications that were made during the construction phase.
7. A schedule for filling the reservoir, specifying fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam. The owner shall monitor the dam monthly during the first filling.
8. An operating manual for the dam and its appurtenant structures. The operating manual shall include a process for safety inspections prescribed in R12-15-1219. The operating manual shall include schedules for surveillance activities and baseline information for any installed instrumentation as follows:
  - a. The frequency of monitoring,
  - b. The data recording format,
  - c. A graphical presentation of data, and
  - d. The person who will perform the work.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1214. Licensing**

- A.** Upon review and approval of the documents filed under R12-15-1213 and finding that the construction at the dam has been completed in accordance with the approved plans and specifications and finding that the dam is safe, the Director shall

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issue a license. The license shall specify the safe storage level for the reservoir and shall specify conditions for the safe operation of the dam. The dam and reservoir shall not be used before issuance of a license unless the Director issues written approval. Procedures for issuance of a license for low and very low hazard potential dams are prescribed in R12-15-1210(H) and R12-15-1211(H), respectively.

- B.** A new license shall be issued in the following instances:
1. Upon change of ownership of a dam.
  2. Upon change of the safe storage level.
  3. Upon expiration of time to appeal a notice issued under R12-15-1223(B).
  4. Upon expiration of time to appeal an order issued by the Director under R12-15-1223(D).
  5. Upon expiration of time to appeal an order of a court.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1215. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential Dam**

The owner and engineer are responsible for complete and adequate design of a dam and for including in the application all aspects of the design pertaining to the safety of the dam.

1. Construction Drawing Requirements. The construction drawings required by R12-15-1208(5), R12-15-1209(E)(1), and R12-15-1210(A)(6) shall include the following:
  - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  - b. One or more topographic maps of the dam, spillway, outlet works, and reservoir on a scale large enough to accurately locate the dam and appurtenances, indicate cut and fill lines, and show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the dam and its appurtenances and shall show design and construction details.
  - c. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of water and elevation in the reservoir. The construction drawings shall show the spillway invert and top of dam elevations. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner's use.
  - d. Spillway and outlet works rating curves and tables at a scale or scales that allow determination of discharge rate in cubic feet per second at both low and high flows as measured by depth of water passing over the spillway control section.
  - e. A location map showing the dam footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.
  - f. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the dam site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.
2. Construction Specification Requirements. The construction specifications required by R12-15-1208(6) and R12-15-1210(A)(7) shall include the following:
  - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  - b. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.
  - c. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.
  - d. The statement that construction shall not be considered complete until the Director has approved the construction in writing.
  - e. The statement that the owner's engineer shall control the quality of construction.
  - f. The following construction information:
    - i. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the dam and related structures.
    - ii. All concrete, grout, and shotcrete material and mix descriptions, placement and consolidation criteria, temperature controls, and construction requirements for all elements of the dam and related structures.
- g. One or more plans of the dam to delineate design and construction details.
- h. Foundation profile along the dam centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.
- i. Profile and a sufficient number of cross sections of the dam to delineate design and construction details. The drawings shall illustrate and show dimensions of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the dam may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the dam shall be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.
- j. One or more dam foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.
- k. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.
- l. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is planned. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall include both hydraulic and structural design details.
- m. Hydrologic data, drainage area and flood routing, and diversion criteria.

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- iii. Material criteria and material testing, cleaning, and treatment. If foundation or curtain grouting is required, the specifications shall describe the type of grout, grouting method, special equipment necessary, recording during grouting, and foundation monitoring to avoid disturbance from grouting.
  - iv. All materials testing that will be performed by the contractor for pre-qualification of materials, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested successfully and constructed in-place in accordance with specifications.
  - v. A plan for control or diversion of surface water during construction. The design engineer may determine frequency of storm runoff to be controlled during construction, commensurate with the risk of economic loss during construction.
  - vi. Criteria for blast monitoring and acceptable blast vibration levels, including particle velocities for the dam and other critical appurtenances. Monitoring equipment and monitoring locations shall be specified.
  - vii. Instrumentation material descriptions, placement criteria, and construction requirements and a statement that instrumentation shall be installed by experienced speciality subcontractors.
3. Engineering Design Report Requirements. The engineering design report required by R12-15-1208(7) and R12-15-1210(A)(8) shall include the following:
- a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  - b. The classification under R12-15-1206 of the proposed dam, or for the proposed enlargement of an existing dam or reservoir.
  - c. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings on both hard copy and computer diskette.
  - d. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings on both hard copy and computer diskette.
  - e. Geotechnical investigation and testing of the dam site and reservoir basin. Results and analysis of subsurface investigations, including logs of test borings and geologic cross sections.
  - f. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.
  - g. Details of the plan for control or diversion of surface water during construction.
  - h. Details of the dewatering plan for subsurface water during construction.
  - i. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.
  - j. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.
  - k. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings on both hard copy and computer diskette.
  - l. A discussion and stability analysis of the dam including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings on both hard copy and computer diskette.
  - m. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall use both deterministic and statistical methods and identify the appropriate seismic coefficient for use in analyses.
  - n. Discussion and design of the cutoff trench based on seepage and other considerations.
  - o. Permeability characteristics of foundation and dam embankment materials, including calculations for seepage quantities through the dam, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings on both hard copy and computer diskette. The design report shall include copies of any flow nets used.
  - p. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.
  - q. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.
  - r. Discussion and design of foundation treatment to compensate for geological weakness in the dam foundation and abutment areas and in the spillway foundation area.
  - s. Post-construction vertical and horizontal movement systems.
  - t. Discussion of foundation conditions including the potential for subsidence, fissures, dispersive soils, collapsible soils, and sink holes.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1216. Design of a High, Significant, or Low Hazard Potential Dam****A. General Requirements.**

- 1. Emergency Spillway Requirements. An applicant shall:
  - a. Construct each spillway in a manner that avoids flooding in excess of the flooding that would have occurred in the same location under the same conditions before construction. The owner of a dam shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of a dam would result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and flood channel.

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- b. Include a control structure to avoid head cutting and lowering of the spillway crest for spillways excavated in soils or soft rock. In the alternative, the design may provide evidence acceptable to the Director that erosion during the inflow design flood will not result in a sudden release of the reservoir.
  - c. Provide each spillway and channel with a minimum width of 10 feet and suitable armor to prevent erosion during the discharge resulting from the inflow design flood.
  - d. Ensure that downstream spillway channel flows do not encroach on the dam unless suitable erosion protection is constructed.
  - e. Ensure that each spillway, in combination with outlets, is able to safely pass the peak discharge flow rate, as calculated on the basis of the inflow design flood.
  - f. Not construct bridges or fences across a spillway unless the construction is approved in writing by the Director. The Director's approval may include conditions regarding the design and operation of the spillway and fencing, based on safety concerns.
  - g. Not use a pipe or culvert as an emergency spillway unless the Director approves the use following review of the dam design and site characteristics.
2. Inflow Design Flood Requirements
- a. Unless directed otherwise in writing by the Director, the inflow design flood requirements for determining the spillway minimum capacity are stated in Table 4.
  - b. As an alternative to the requirements prescribed in Table 4, the Director may accept an inflow design flood determined by an incremental damage assessment study, based on the relative safety of the alternatives.
  - c. The Director may accept site-specific probable maximum precipitation studies in determination of the inflow design flood.
  - d. An applicant shall ensure that the total freeboard is the largest of the following:
    - i. The sum of the inflow design flood maximum water depth above the spillway crest plus wave run up.
    - ii. The sum of the inflow design flood maximum water depth above the spillway crest plus 3 feet.
    - iii. A minimum of 5 feet.
3. Outlet Works Requirements. An applicant shall ensure that a dam has a low level outlet works that:
- a. Is capable of draining the reservoir to the sediment pool level. A low level outlet works for a high or significant hazard potential dam shall be a minimum of 36 inches in diameter. A low level outlet works for a low hazard potential dam shall be a minimum of 18 inches in diameter.
  - b. For a high or significant hazard potential dam, has the capacity to evacuate 90% of the storage capacity of the reservoir within 30 days, excluding reservoir inflows.
  - c. Has a filter diaphragm or other current practice measures to reduce the potential for piping along the conduit.
  - d. Has accessible outlet controls when the spillway is in use.
  - e. Has an emergency manual override system or can be operated manually.
  - f. Is constructed of materials appropriate for loading condition, seismic forces, thermal expansion, cavitation, corrosion, and potential abrasion. The applicant shall not use corrugated metal pipes or other thin-walled pipes except as a form for a cast-in-place concrete conduit. The applicant shall construct outlet conduits of cast-in-place reinforced concrete. The applicant shall design each outlet to maintain water tightness. The applicant shall construct each outlet to prevent the occurrence of piping adjacent to the outlet.
  - g. Has an operating or guard gate on the upstream end of any gated outlet.
  - h. Has an outlet conduit near the base of 1 of the abutments on native bedrock or other competent material. The applicant shall support the entire length of the conduit on foundation materials of uniform density and consistency to prevent adverse differential settlement.
  - i. Has an upstream valve or gate capable of controlling the discharge through all ranges of flow on any gated outlet conduit.
  - j. Has a trashrack designed for a minimum of 25% of the reservoir head to which it would be subjected if completely clogged at the upstream end of the outlet.
  - k. Has an air vent pipe just downstream of the control gate. The applicant shall include a blow-off valve at or near the downstream toe of the dam for an outlet conduit that is connected directly to a distribution system.
  - l. Has an outlet conduit designed for internal pressure equal to the full reservoir head and for superimposed embankment loads, acting separately.
4. Dam Site And Reservoir Area Requirements
- a. An applicant shall demonstrate that reservoir storage during the inflow design flood will not result in incremental adverse consequences and that the design will not result in the inundation or wave damage of properties within the reservoir, except marina-type structures, during the inflow design flood. In determining whether a discharge will result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to upstream affected property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flood easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and reservoir. Permanent habitations are not allowed within the reservoir below the spillway elevation.
  - b. The applicant shall clear the reservoir storage area of logs and debris.
  - c. The applicant shall place borrow areas a safe distance from the upstream toe and the downstream toe of the dam to prevent a piping failure of the dam.
  - d. The applicant shall keep the top of the dam and appurtenant structures accessible by equipment and vehicles for emergency operations and maintenance.
5. Geotechnical Requirements
- a. The applicant shall provide an evaluation of the static stability of the foundation, dam, and slopes of the reservoir rim and demonstrate that sufficient

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material is available to construct the dam as designed.

- b. The applicant shall not construct a dam on active faults, collapsible soils, dispersive soils, sink holes, or fissures, unless the applicant demonstrates that the dam can safely withstand the anticipated offset or other unsafe effects on the dam.

6. Seismic Requirements

- a. The applicant shall submit a review of the seismic or earthquake history of the area around the dam within a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include any known earthquakes and the epicenter locations and magnitudes of the earthquakes.
- b. The applicant shall identify the location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.
- c. For a high or significant hazard potential dam, the applicant shall design the dam to withstand the maximum credible earthquake.
- d. For a low hazard potential dam, the applicant shall use probabilistic or deterministic methods to determine the design earthquake. The magnitude of the design earthquake shall vary with the size of the dam, site condition, and specific location.

B. Embankment Dam Requirements.

1. Geotechnical Requirements. Table 5 states minimum factors of safety for embankment stability under various loading conditions. For an embankment dam an applicant shall provide a written analysis of minimum factors of safety for stability.

- a. The analysis of minimum factors of safety shall include the effects of anisotropy on the phreatic surface position by using a ratio of horizontal permeability to vertical permeability of at least 10. The Director may require ratios of up to 100 if the material types and construction techniques will cause excessive stratification.
- b. The applicant shall use tests modeling the conditions being analyzed to determine the strengths used in the stability analysis. The stability analysis shall include total and effective stress strengths appropriate for the different material zones and conditions analyzed. The stability analysis shall use undrained strengths or strength parameters for all saturated materials.
- c. The applicant shall perform an analysis of the upstream slope stability for a partial pool with steady seepage considering the reservoir level that provides the lowest factor of safety.
- d. A stability analysis is not required for low hazard potential dams if the owner or the owner's engineer demonstrates that conservative slopes and competent materials are included in the design.

2. Seismic Requirements

- a. The applicant shall determine the seismic characteristics of the site as prescribed in subsection (A)(6).
- b. The applicant shall determine the liquefaction susceptibility of the embankment, foundation, and abutments. The applicant shall use standard penetration testing, cone penetration testing, shear wave velocity measurements, or a combination of these methods to make this determination. The applicant shall compute the minimum factor of safety against liquefaction at specific points and make a determination of whether the overall site is subject to liquefaction.

- c. The applicant shall determine the safety of the dam under seismic loading using a pseudo static stability analysis, computing the minimum factor of safety if the embankment, foundation or abutment is not subject to liquefaction and has a maximum peak acceleration of 0.2g or less, or a maximum peak acceleration of 0.35g or less, and consists of clay on a clay or bedrock foundation. The applicant shall use in the pseudo static stability analysis a pseudo static coefficient that is at least 60% of the maximum peak bedrock acceleration at the site.

- d. The applicant shall compute a minimum factor of safety against overtopping due to deformation and settlement in each of the following cases. The minimum factor of safety against overtopping can be no less than 2.5, determined by dividing the total pre-earthquake freeboard by the estimated vertical settlement in feet. The applicant shall determine the total vertical settlement by adding the settlement values of the upstream and downstream slopes.

- i. The minimum factor of safety in a pseudo static analysis is less than 1.0;
- ii. An embankment, foundation, or abutment is not subject to liquefaction, has a maximum peak acceleration of more than 0.2g or a maximum peak acceleration of more than 0.35g and consists of clay on a clay or bedrock foundation; or
- iii. The embankment, foundation or abutment is subject to liquefaction.

- e. The applicant shall perform a liquefaction analysis to establish approximate boundaries of liquefiable zones and physical characteristics of the soil following liquefaction for an embankment, foundation, or abutment subject to liquefaction. The applicant shall perform an analysis of the potential for flow liquefaction.

- f. Other, more sophisticated analytical procedures may be required by the Director for sites with high seismicity or low strength embankment or foundation soils.

3. Miscellaneous Design Requirements

- a. The design of any significant or high hazard potential dam shall provide seepage collection and prevent internal erosion or piping due to embankment cracking or other causes.

- b. The Director shall review the filter and permeability design for a chimney drain, drain blanket, toe drain, or outlet conduit filter diaphragms on the basis of unique site characteristics.

- i. The minimum thickness of an internal drain is 3 feet.

- ii. The minimum width of a chimney drain is 6 feet.

- iii. The applicant shall filter match an internal drain to its adjacent material.

- iv. The applicant shall design internal drains with sufficient capacity for the expected drainage without the use of drainpipes using only natural granular materials.

- c. The use of a geosynthetic is not permitted in a design if it serves as the sole defense against dam failure. The use of geotextiles and geonets as a filter or drain material or a geomembrane liner is permitted only in a location that is easily accessible for repair or if its excavation cannot create an unsafe

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condition at the dam. A geosynthetic liner is allowed under special conditions and in specific situations if it is subject to monitoring and redundant safety controls. The Director may impose conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs, each performed every 5 years.

- d. The applicant shall use armoring on any upstream slope of an embankment dam that impounds water for more than 30 days at a time. If the applicant uses rock riprap, it shall be well-graded, durable, sized to withstand wave action, and placed on a well-graded pervious sand and gravel bedding or geotextile with filtering capacity appropriate for the site.
- e. The applicant shall protect the downstream slopes and groins of an embankment dam from erosion.
- f. The minimum width of the top of an embankment dam is equal to the structural height of the dam divided by 5 plus an additional 5 feet. The required minimum width for any embankment dam is 12 feet. The maximum width for any embankment dam is 25 feet.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 4. Inflow Design Flood**

Dam Hazard Class	Dam Size Classification	IDF Magnitude
Very Low	All Sizes	100-year
Low	All Sizes	0.25 PMF
Significant	Small Intermediate Large	0.25 PMF 0.5 PMF 0.5 PMF
High*	All Sizes	*

\* For a high hazard potential dam, the applicant shall design the dam to withstand an inflow design flood that varies from .5 PMF to the full PMF, with size increasing based on persons at risk and potential for downstream damage. The applicant shall consider foreseeable future conditions.

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 5. Minimum Factors of Safety for Stability<sup>1</sup>**

Embankment Loading Condition	Minimum Factor of Safety
End of construction case – upstream and downstream slopes	1.3
End of construction case for embankments greater than 50 feet in height on weak foundations	1.4
Steady state seepage - upstream (critical partial pool) and downstream slope (full pool)	1.5
Instantaneous drawdown - upstream slope	1.2

<sup>1</sup> Not applicable to an embankment on a clay shale foundation.

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558,

effective June 12, 2000 (Supp. 00-2).

**R12-15-1217. Maintenance and Repair; Emergency Actions**

**A.** An owner shall perform general maintenance and ordinary repairs that do not impair the safety of the dam. General maintenance and ordinary repair activities listed under this subsection do not require prior approval of the Director. These repair activities include:

1. Removing brush or tall weeds.
2. Cutting trees and removing slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.
3. Exterminating rodents by trapping or other methods. Rodent damage may be repaired provided it does not involve excavation that extends more than 2 feet into the embankment and replacement materials are compacted as they are placed.
4. Repairing erosion gullies less than 2 feet deep on the embankment or in the spillway.
5. Grading the surface on the top of the dam embankment or spillway to eliminate potholes and provide proper drainage, provided the freeboard is not reduced.
6. Placing additional riprap and bedding on the upstream slope, or in the spillway in areas that have sustained minor damage and restoring the original riprap protection where the damage has not yet resulted in erosion and weakening of the dam.
7. Painting, caulking, or lubricating metal structures.
8. Patching or caulking spalled or cracked concrete to prevent deterioration.
9. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.
10. Patching to prevent deterioration within outlet works.
11. Replacing worn or damaged parts on outlet valves or controls to restore them to original condition or its equivalent.
12. Repairing or replacing fences intended to keep traffic or livestock off the dam or spillway.

**B.** General maintenance and ordinary repair that may impair or adversely effect safety, such as excavation into or near the toe of the dam, construction of new appurtenant structures for the dam, and repair of damage that has already significantly weakened the dam shall be performed in accordance with this Article. The Director may approve maintenance performed according to a standard detail or method of repair on file with the Department upon submittal of a letter. The Director shall determine whether general maintenance and ordinary repair activities not listed in subsection (A) will impair safety.

**C.** Emergency actions not impairing the safety of the dam may be taken before guidance can be provided by an engineer and do not require prior approval of the Director. Emergency actions do not excuse an owner's responsibility to promptly undertake a permanent solution. Emergency actions include:

1. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
2. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning.
3. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or other available material.
4. Plugging leakage entrances on the upstream slope.
5. Increasing freeboard by placing sandbags or temporary earth fill on the dam.
6. Diverting flood waters to prevent them from entering the reservoir basin.
7. Constructing training berms to control flood waters.

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8. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.
  9. Removing obstructions from outlet or spillway flow areas.
- D.** Emergency actions impairing the safety of the dam require prior approval of the Director. An owner shall not lower the water level by excavating the spillway or embankment unless failure is imminent.
- E.** For all high and significant hazard potential dams, the emergency action plan shall be implemented with any emergency actions taken at the dam.
- F.** The owner shall notify the Director immediately of any emergency condition that exists and any emergency action taken.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1218. Safe Storage Level**

The Director has the authority to determine the safe storage level for the reservoir behind each dam, including the storage level of an existing dam while it is being repaired, enlarged, altered, breached, or removed. The elevation of the safe storage level is stated on the license. The owner shall not store water in excess of the level determined by the Director to be safe. The owner shall not place flashboards or other devices in the emergency spillway without approval of an alteration of the dam in accordance with this Article.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1219. Safety Inspections; Fees**

- A.** Except as provided in subsection (E), the Director shall conduct a dam safety inspection annually or more frequently for each high hazard potential dam, triennially for each significant hazard potential dam, and once every five years for each low and very low hazard potential dam. An owner of a dam shall pay the inspection fee required by R12-15-105 for each inspection of the dam pursuant to this subsection.
- B.** An engineer is considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer:
1. Meets the criteria in R12-15-1202(11),
  2. Has three years of experience in the field of dam safety, and
  3. Has actual experience in conducting dam safety inspections.
- C.** A dam safety inspection includes:
1. Review of previous inspections, reports, and drawings;
  2. Inspection of the dam, spillways, outlet facilities, seepage control, and measurement systems;
  3. Inspection of any permanent monument or monitoring installations;
  4. Assessment of all parts of the dam that are related to the dam's safety; and
  5. A recommendation regarding the safe storage level of the reservoir.
- D.** The engineer shall submit a safety inspection report that describes the findings and lists actions that will improve the safety of the dam. The report shall include the engineer's recommendation of the safe storage level. The engineer shall use a report form approved by the Director.
- E.** Inspections by the Owner
1. An owner may provide to the Director, at the owner's expense, a safety inspection report that complies with the requirements of subsections (B), (C), and (D) in place of

an inspection by the Department. The owner's engineer shall notify the Director and submit a written summary of the engineer's qualifications at least 14 days before the scheduled safety inspection.

2. The Director may refuse to accept an inspection that does not conform to this Article.
  3. A safety inspection report submitted pursuant to this subsection shall include the fee required by R12-15-105(D).
- F.** Inspections by the Department
1. The Director may enter at reasonable times upon private or public property and the owner shall permit such entry, where a dam is located, including a dam under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:
    - a. To enforce the conditions of approval of the construction drawings and specifications related to an application for construction, reconstruction, repair, enlargement, alteration, breach, or removal.
    - b. To inspect a dam that is subject to this Article.
    - c. To investigate or assemble data to aid review and study of the design and construction of dams, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety to fulfill the duties of A.R.S. § 45-1214.
    - d. To ascertain compliance with this Article and A.R.S. Title 45, Chapter 6.
  2. Upon receipt of a complaint that a dam is endangering people or property:
    - a. The Director shall inspect the dam unless there is substantial cause to believe the complaint is without merit.
    - b. If the complainant files a complaint in writing and deposits with the Director sufficient funds to cover the costs of the inspection, the Director shall make an inspection.
    - c. The Director shall provide a written report of the inspection to the complainant and the dam owner.
    - d. If an unsafe condition is found, the Director shall cause it to be corrected and return the deposit to the complainant. If the complaint was without merit the deposit shall be paid into the general fund.
  3. The Director may employ qualified on-call consultants to conduct inspections.
  4. Inspections under subsection (A) shall comply with the requirements of A.R.S. § 41-1009.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1220. Existing Dams**

- A.** The requirements of this Article apply to existing dams, except as provided in subsections (B) and (C).
- B.** If the Director has determined that an existing dam is in a safe condition, the owner is not required to comply with R12-15-1216 unless the Director determines that it is cost effective to upgrade the dam to comply with the requirements of R12-15-1216 at the time a major alteration or major repair is planned. In determining whether it is cost effective to upgrade a dam, the Director shall consider:
1. The hazard potential classification of the dam;

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2. Whether the cost of the upgrade would exceed 25% of the total cost of the major alteration or major repair; and
  3. Whether there is a more cost effective alternative that would provide an equivalent increase in safety.
- C. If the Director has determined that a dam is in an unsafe condition, the owner shall comply with the requirements in R12-15-1216. The owner is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to the dam. The Director shall state in writing the reason or reasons the owner is not required to comply with a requirement.
- D. The owner shall ensure that installation of utilities beneath or through an existing dam is accomplished by open cuts or jacking and boring methods.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1221. Emergency Action Plans**

- A. Each owner of a high or significant hazard potential dam shall prepare, maintain, and exercise a written emergency action plan for immediate defensive action to prevent failure of the dam and minimize any threat to downstream development. The emergency action plan shall contain a:
1. Notification chart showing the priority for notification in an emergency situation. The owner shall notify local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts;
  2. Description of the demand reservoir and scope of the emergency action plan;
  3. Delineation of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures, based on the urgency of the situation;
  4. Delineation of areas of responsibility of the owner and other parties. The emergency action plan shall clearly identify individuals responsible for notifications and declaring an emergency;
  5. Specific notification procedure for each emergency situation anticipated;
  6. Description of emergency supplies and resources, equipment access to the site, and alternative means of communication. The emergency action plan shall also identify specific preparedness activities required, such as annual full or partial mock exercises and updates of the emergency action plan; and
  7. Map showing the area that would be subject to flooding due to spillway flows and dam failures.
- B. The owner shall use the Director's model emergency action plan, which is available at no cost, or an equivalent model, for guidance in preparing the emergency action plan.
- C. The owner shall submit a copy of the proposed emergency action plan for review by the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan. The owner shall incorporate appropriate recommendations generated by the reviews and submit the revised emergency action plan to the Department.
- D. The owner shall review and update the emergency action plan annually or more frequently to incorporate changes such as new personnel, changing roles of emergency agencies, emergency response resources, conditions of the dam, and informa-

tion learned from mock exercises. The owner shall send updated portions of the plan to persons and agencies holding copies of the plan within 15 days after preparation of an update.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1222. Right of Review**

- A. An applicant or owner aggrieved by a decision of the Director regarding the determination of hazard classification, jurisdictional status, or the Director's application of this Article may seek review of an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.
- B. An applicant or owner aggrieved by a decision of the Director that requires the exercise of professional engineering judgment or discretion or the assessment of risk to human life or property, such as the adequacy of an applicant's project documentation, dam design, safe storage level, requirements for existing dams, or maintenance, may seek review by a board of review under A.R.S. §§ 45-1210 and 45-1211.
- C. The following actions are not subject to review:
1. Emergency measures taken under A.R.S. §§ 45-1212 or 45-1221.
  2. Agency decisions made under A.R.S. §§ 41-1009(E) or (F).
  3. Agency actions made exempt from review by law.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1223. Enforcement Authority**

- A. The Department may exercise its discretion to take action necessary to prevent danger to human life or property. The Director may take any legal action that is proper and necessary for the enforcement of this Chapter.
- B. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may issue a notice directing the owner to remedy the safety deficiency or correct the violation. The owner may appeal a notice issued under this subsection as an appealable agency action in accordance with A.R.S. Title 41, Chapter 6, Article 10. If the owner does not appeal within 30 days after the date on the notice, the notice becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- C. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may proceed under A.R.S. § 45-1221 to initiate a contested case under A.R.S. Title 41, Chapter 6, Article 10 by requesting an administrative hearing.
- D. Following a written decision by an administrative law judge, the Director shall issue a decision and order accepting, rejecting, or modifying the administrative law judge's decision. Upon expiration of time to appeal, the decision and order becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- E. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1 the Director may commence an action in a court of appropriate jurisdiction if:
1. The violation is an emergency requiring appropriate steps to be taken without delay; or
  2. The Director has cause to believe that use of the administrative procedure would be ineffective or that delay

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would ensue and a deterioration in the safety of the dam would occur.

- F. If the Director commences an action it shall be brought in a court of appropriate jurisdiction in which:
1. The cause or some part of the cause arose; or
  2. The owner or person complained of has his or her place of business; or
  3. The owner or person complained of resides.
- G. A person determined to be in violation of this Article; A.R.S. Title 45, Chapter 6; a license; or order may be assessed a civil penalty not exceeding \$1,000 per day of violation. The Director may offer evidence relating to the amount of the penalty in accordance with A.R.S. § 45-1222.
- H. A violation of A.R.S. Title 45, Chapter 6, Article 1 regarding Supervision of Dams, Reservoirs, and Projects is a class 2 misdemeanor, in accordance with A.R.S. § 45-1216.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1224. Emergency Procedures**

- A. The owner of a dam shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition that may threaten the safety of the dam. The owner shall take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under this Article.
1. A condition that may threaten the safety of a dam includes:
    - a. Sliding of upstream or downstream slopes or abutments contiguous to the dam;
    - b. Sudden subsidence of the top of the dam;
    - c. Longitudinal or transverse cracking of the top of the dam;
    - d. Unusual release of water from the downstream slope or face of the dam;
    - e. Other unusual conditions at the downstream slope of the dam;
    - f. Significant landslides in the reservoir area;
    - g. Increasing volume of seepage;
    - h. Cloudy seepage or recent deposits of soil at seepage exit points;
    - i. Sudden cracking or displacement of concrete in a concrete or masonry dam spillway or outlet works;
    - j. Loss of freeboard or dam cross section due to storm wave erosion;
    - k. Flood waters overtopping an embankment dam; or
    - l. Spillway backcutting that threatens evacuation of the reservoir.
  2. In case of an emergency, the owner shall telephone the Arizona Department of Public Safety's emergency numbers at (800) 411-2336 or (602) 223-2000.
- B. The Director shall issue an emergency approval to repair, alter, or remove an existing dam if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.
1. The emergency approval shall be provided in writing on a form developed for this purpose.
  2. The emergency approval may contain conditions the Director determines are appropriate to protect human life or property.
  3. The emergency approval is effective immediately for 30 days after notice is issued extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the

dam is located, all municipalities within 5 miles downstream of the dam, and any additional persons identified in the emergency action plan.

4. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1225. Emergency Repairs**

- A. The Director shall use monies from the dam repair fund, established under A.R.S. § 45-1212.01 to employ any remedial measure necessary to protect human life and property resulting from a condition that threatens the safety of a dam if the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order.
- B. The deputy director may authorize an expenditure not to exceed \$10,000 from the dam repair fund for remedial measures under A.R.S. § 45-1212. The expenditure of any additional funds shall be approved by the Director.
- C. The Director shall hold a lien against all property of the owner in accordance with A.R.S. § 45-1212.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1226. Non-Emergency Repairs; Loans and Grants**

- A. If the Director determines that a dam represents a threat to human life and property but is not in an emergency condition, the Director may use the dam repair fund, established under A.R.S. § 45-1212.01, as prescribed in this Article to defray the costs of repair.
- B. Monies from the dam repair fund may be used for loans and grants to owners as provided in A.R.S. §§ 45-1218 and 45-1219.
- C. To qualify for a loan or grant from the dam repair fund, a dam shall be classified as unsafe by the Director.
- D. The Director may authorize grant funds for all or part of the cost of engineering studies or construction needed to mitigate the threat to human life and property created by a dam.
  1. The Director and the grantee shall execute a financial assistance agreement that includes terms of financial assistance, the work progress, and payment schedule.
  2. The Director shall disburse grant funds in accordance with the financial assistance agreement.
  3. The Director shall establish a priority ranking for grants based on factors including the potential for failure of a dam, the number of lives at risk, and the capability of the owner to pay a portion of the costs.
- E. The Director may loan funds for engineering studies or for all or part of construction as prescribed in A.R.S. § 45-1218.
  1. The Director and the dam owner shall execute a loan repayment agreement. The loan repayment agreement shall be delivered to and held by the Department.
  2. The Director shall establish a priority ranking for loans based on factors including the potential for failure of a dam, the number of human lives at risk, and the capability of the owner to pay a portion of the costs.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.
8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3<sup>1</sup> and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.<sup>2</sup> If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

**B.** The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
  - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
  - (b) The department of environmental quality with respect to title 49, chapter 2<sup>3</sup> for its assistance in the development of state water plans.
  - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.<sup>4</sup>
  - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.<sup>5</sup>
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.<sup>6</sup>
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
  - (a) The current status of the water supply in this state and any likely changes in that status.
  - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
  - (c) The status of current water conservation programs in this state.
  - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
  - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
  - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
  - (g) The status of Indian water rights settlements and related negotiations that affect this state.
  - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

#### **Credits**

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; Laws 1990, Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch.

156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Arizona Revised Statutes Annotated  
Title 45. Waters  
Chapter 2. Groundwater Code (Refs & Annos)  
Article 10. Wells (Refs & Annos)

A.R.S. § 45-594

## § 45-594. Well construction standards; remedial measures

### Currentness

**A.** The director shall adopt rules establishing construction standards for new wells and replacement wells, the deepening and abandonment of existing wells and the capping of open wells.

**B.** All well construction, replacement, deepening and abandonment operations shall comply with the rules adopted pursuant to this section. A well owner shall cap an open well according to the rules adopted pursuant to subsection A.

**C.** If the director determines that a well is not capped in compliance with the rules adopted pursuant to subsection A, that the well is dangerous to property or public health or safety and that there is not sufficient time to issue and enforce an order relative to its capping, the director may employ remedial measures necessary to protect property or public health or safety. The remedial measures may include remaining in full charge and control of the well site until the well has been rendered safe and capping the well. This subsection does not relieve an owner or operator of a well from the legal duties, obligations and liabilities arising from such ownership or operation.

### Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1986, Ch. 154, § 11, eff. April 18, 1986.

A. R. S. § 45-594, AZ ST § 45-594

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 6. Dams and Reservoirs (Refs & Annos)

Article 1. Supervision of Dams, Reservoirs and Projects (Refs & Annos)

A.R.S. § 45-1202

§ 45-1202. Jurisdiction of director of water resources; records; rules; notice of exemption

Currentness

**A.** All dams are under the jurisdiction of the director of water resources. Dams of the state, or any political subdivisions thereof, or dams of public utilities, and all dams within the state are included within the jurisdiction conferred by this section. It is unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove or alter any dam except upon approval of the director.

**B.** The records pertaining to dam supervision are public documents.

**C.** The director shall adopt and revise rules and issue general orders to effectuate this article.

**D.** To qualify for an exemption for a release-contained barrier, the owner of an existing or proposed release-contained barrier shall submit to the director a notice of exemption. The director shall accept or reject a notice of exemption within thirty days after receipt of both of the following:

1. A statement signed by the owner that:

(a) The storage capacity of the release-contained barrier would be contained within property that the release-contained barrier owner owns, operates, controls, maintains or manages and that is not open to the public.

(b) The release-contained barrier owner will maintain downstream containment structures or sites with sufficient containment throughout the useful life of the release-contained barrier.

2. A topographic site plan that shows:

(a) The property lines and ownership status of the land.

(b) Any areas of the property that are open to the public.

(c) The locations and storage capacities of the release-contained barrier and the downstream containment structures or sites.

E. The director may conduct site inspections to verify the release-contained barrier exemption.

**Credits**

Formerly § 45-702. Amended by Laws 1970, Ch. 204, § 193; Laws 1971, Ch. 49, § 14, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 88, eff. June 12, 1980. Renumbered as § 45-1202 by Laws 1987, Ch. 2, § 4, eff. Feb. 27, 1987. Amended by Laws 1999, Ch. 187, § 12.

A. R. S. § 45-1202, AZ ST § 45-1202

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Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 6. Administrative Procedure (Refs & Annos)  
Article 1. General Provisions (Refs & Annos)

A.R.S. § 41-1001

§ 41-1001. Definitions

Effective: September 29, 2021

[Currentness](#)

In this chapter, unless the context otherwise requires:

1. “Agency” means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.
2. “Appealable agency action” has the same meaning prescribed in [§ 41-1092](#).
3. “Audit” means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.<sup>1</sup>
4. “Code” means the Arizona administrative code, which is published pursuant to [§ 41-1011](#).
5. “Committee” means the administrative rules oversight committee.
6. “Contested case” means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.
7. “Council” means the governor's regulatory review council.

8. “Delegation agreement” means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.<sup>2</sup>

9. “Emergency rule” means a rule that is made pursuant to § 41-1026.

10. “Fee” means a charge prescribed by an agency for an inspection or for obtaining a license.

11. “Final rule” means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in § 41-1005, made pursuant to § 41-1026, approved by the council pursuant to § 41-1052 or 41-1053 or approved by the attorney general pursuant to § 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to § 41-1027.

12. “General permit” means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.

13. “License” includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.

14. “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, change, reduction, modification or amendment of a license, including an existing permit, certificate, approval, registration, charter or similar form of permission, approval or authorization obtained from an agency by the holder of a license.

15. “Licensing decision” means any action by an agency to grant or deny any request for permission, approval or authorization issued in response to any request from an applicant for a license or to the holder of a license to exercise authority within the scope of the license.

16. “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.

17. “Person” means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

18. “Preamble” means:

(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

- (ii) The name and address of agency personnel with whom persons may communicate regarding the rule.
  
  - (iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.
  
  - (iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and any analysis of each study and other supporting material.
  
  - (v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.
  
  - (vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.
  
  - (vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.
- (b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.
- (c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.
- (d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:
- (i) A list of all previous notices appearing in the register addressing the final rule.
  
  - (ii) A description of the changes between the proposed rules, including supplemental notices and final rules.
  
  - (iii) A summary of the comments made regarding the rule and the agency response to them.
  
  - (iv) A summary of the council's action on the rule.
  
  - (v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

19. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

20. "Register" means the Arizona administrative register, which is:

(a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.

(b) Published pursuant to § 41-1011.

21. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

22. "Rulemaking" means the process to make a new rule or amend, repeal or renumber a rule.

23. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

24. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

#### **Credits**

Added by Laws 1986, Ch. 232, § 4, eff. Jan. 1, 1987. Amended by Laws 1994, Ch. 363, § 1, eff. Jan. 1, 1995; Laws 1995, Ch. 251, § 2; Laws 1997, Ch. 221, § 182; Laws 1998, Ch. 57, § 17; Laws 2002, Ch. 334, § 2; Laws 2004, Ch. 288, § 1; Laws 2010, Ch. 287, § 4; Laws 2012, Ch. 352, § 1; Laws 2014, Ch. 204, § 1; Laws 2018, Ch. 178, § 6; Laws 2021, Ch. 161, § 2.

[Notes of Decisions \(72\)](#)

Footnotes

1 Section 23-201 et seq. or 23-601 et seq.

2 Section 11-951 et seq.

A. R. S. § 41-1001, AZ ST § 41-1001

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-101

§ 45-101. Definitions

Currentness

In this title, unless the context otherwise requires:

1. “Appropriator” means the person or persons initiating or perfecting the right to use appropriable water based on state law, or the person's successor or successors in interest.
2. “Department” means the department of water resources.
3. “Director” means the director of water resources, who is also the director of the department.
4. “Effluent” means water that has been collected in a sanitary sewer for subsequent treatment in a facility that is regulated pursuant to title 49, chapter 2.<sup>1</sup> Such water remains effluent until it acquires the characteristics of groundwater or surface water.
5. “Groundwater” means water under the surface of the earth regardless of the geologic structure in which it is standing or moving. Groundwater does not include water flowing in underground streams with ascertainable beds and banks.
6. “Interstate stream” means any stream constituting or flowing along the exterior boundaries of this state, and any tributary originating in another state or foreign country and flowing into or through this state.
7. “Riparian area” means a geographically delineated area with distinct resource values, that is characterized by deep-rooted plant species that depend on having roots in the water table or its capillary zone and that occurs within or adjacent to a natural perennial or intermittent stream channel or within or adjacent to a lake, pond or marsh bed maintained primarily by natural water sources. Riparian area does not include areas in or adjacent to ephemeral stream channels, artificially created stockponds, man-made storage reservoirs constructed primarily for conservation or regulatory storage, municipal and industrial ponds or man-made water transportation, distribution, off-stream storage and collection systems.
8. “Sanitary sewer” means any pipe or other enclosed conduit that carries, among other substances, any water-carried wastes from the human body from residences, commercial buildings, industrial plants or institutions.

9. “Surface water” means the waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, floodwater, wastewater or surplus water, and of lakes, ponds and springs on the surface. For the purposes of administering this title, surface water is deemed to include central Arizona project water.

**Credits**

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1991, Ch. 112, § 1; Laws 1992, Ch. 94, § 3; Laws 1992, Ch. 298, § 2; Laws 1995, Ch. 9, § 1, eff. March 17, 1995; Laws 1999, Ch. 26, § 1, eff. Jan. 1, 2001.

Notes of Decisions (7)

Footnotes

1 Section 49-201 et seq.

A. R. S. § 45-101, AZ ST § 45-101

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Arizona Revised Statutes Annotated  
Title 45. Waters  
Chapter 2. Groundwater Code (Refs & Annos)  
Article 1. Administration (Refs & Annos)

A.R.S. § 45-402

§ 45-402. Definitions

Currentness

In this chapter, unless the context otherwise requires:

1. “Accounting period” means the calendar year, except such other twelve-month period as may be otherwise agreed upon by the director and the owner of a farm or a district on behalf of its landowners.
2. “Active management area” means a geographical area which has been designated pursuant to article 2 of this chapter<sup>1</sup> as requiring active management of groundwater or, in the case of the Santa Cruz active management area, active management of any water, other than stored water, withdrawn from a well.
3. “Animal industry use” means the production, growing and feeding of livestock, range livestock or poultry, as such terms are defined in § 3-1201. Animal industry use is included in the term and general treatment of industry in this chapter, unless specifically provided otherwise.
4. “City” or “town” means a city or town incorporated or chartered under the constitution and laws of this state.
5. “Conservation district” means a multi-county water conservation district established under title 48, chapter 22.<sup>2</sup>
6. “Convey” means to transfer the ownership of a grandfathered right from one person to another.
7. “Date of the designation of the active management area” means:
  - (a) With respect to an initial active management area, June 12, 1980.
  - (b) With respect to a subsequent active management area, the date on which the director's order designating the active management area becomes effective as provided in § 45-414 or the date on which the final results of an election approving the establishment of the active management area pursuant to § 45-415 are certified by the board of supervisors of the county or counties in which the active management area is located.

8. “Exempt well” means a well having a pump with a maximum capacity of not more than thirty-five gallons per minute which is used to withdraw groundwater pursuant to § 45-454.

9. “Expanded animal industry use” means increased water use by an animal industrial enterprise on the land in use by the enterprise on June 12, 1980 or on immediately adjoining land, excluding irrigation uses.

10. “Farm” means an area of irrigated land which is under the same ownership, which is served by a water distribution system common to the irrigated land and to which can be applied common conservation, water measurement and water accounting procedures.

11. “Farm unit” means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, one or more farms which are irrigated with groundwater and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

(b) With respect to the Santa Cruz active management area, one or more farms which are irrigated with water, other than stored water, withdrawn from a well and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

12. “Grandfathered right” means a right to withdraw and use groundwater pursuant to article 5 of this chapter<sup>3</sup> based on the fact of lawful withdrawals and use of groundwater prior to the date of the designation of an active management area.

13. “Groundwater basin” means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body or related bodies of groundwater, which shall be described horizontally by surface description.

14. “Groundwater replenishment district” or “replenishment district” means a district that is established pursuant to title 48, chapter 27.<sup>4</sup>

15. “Groundwater withdrawal permit” means a permit issued by the director pursuant to article 7 of this chapter.<sup>5</sup>

16. “Initial active management area” means the Phoenix, Prescott or Pinal active management area established by § 45-411, the Tucson active management area established by § 45-411 and modified by § 45-411.02 and the Santa Cruz active management area established by § 45-411.03.

17. “Integrated farming operation” means:

(a) With respect to land within an irrigation non-expansion area, more than ten acres of land that are contiguous or in close proximity, that may be irrigated pursuant to § 45-437, that are not under the same ownership and that are farmed as a single farming operation.

(b) With respect to land within an active management area, two or more farms that are contiguous or in close proximity, that collectively have more than ten irrigation acres and that are farmed as a single farming operation.

18. “Irrigate” means to apply water to two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in § 3-1201.

19. “Irrigation acre” means an acre of land, as determined in § 45-465, subsection B, to which an irrigation grandfathered right is appurtenant.

20. “Irrigation district” means a political subdivision, however designated, established pursuant to title 48, chapter 17 or 19.<sup>6</sup>

21. “Irrigation grandfathered right” means a grandfathered right determined pursuant to § 45-465.

22. “Irrigation non-expansion area” means a geographical area which has been designated pursuant to article 3 of this chapter<sup>7</sup> as having insufficient groundwater to provide a reasonably safe supply for the irrigation of the cultivated lands at the current rate of withdrawal.

23. “Irrigation use” means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, the use of groundwater on two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in § 3-1201.

(b) With respect to the Santa Cruz active management area, the use of water, other than stored water, withdrawn from a well on two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in § 3-1201.

24. “Irrigation water duty” or “water duty” means the amount of water in acre-feet per acre that is reasonable to apply to irrigated land in a farm unit during the accounting period, as determined by the director pursuant to §§ 45-564 through 45-568 or as prescribed in § 45-483.

25. “Member land” means real property that qualifies as a member land of a conservation district as provided by title 48, chapter 22.

26. “Member service area” means the service area of a city, town or private water company that qualifies as a member service area of a conservation district as provided by title 48, chapter 22.

27. “Non-irrigation grandfathered right” means a grandfathered right determined pursuant to § 45-463, 45-464, 45-469 or 45-472.

28. “Non-irrigation use” means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, a use of groundwater other than an irrigation use.

(b) With respect to the Santa Cruz active management area, a use of water, other than stored water, withdrawn from a well, other than an irrigation use.

29. “Person” means an individual, public or private corporation, company, partnership, firm, association, society, estate or trust, any other private organization or enterprise, the United States, any state, territory or country or a governmental entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this state.

30. “Private water company” means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, any entity which distributes or sells groundwater, except a political subdivision or an entity which is established pursuant to title 48<sup>8</sup> and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

(b) With respect to the Santa Cruz active management area, any entity which distributes or sells water, other than stored water, withdrawn from a well, except a political subdivision or an entity which is established pursuant to title 48 and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

31. “Service area” means:

(a) With respect to a city or town, the area of land actually being served water, for a non-irrigation use, by the city or town plus:

(i) Additions to such area which contain an operating distribution system owned by the city or town primarily for the delivery of water for a non-irrigation use.

(ii) The service area of a city, town or private water company that obtains its water from the city pursuant to a contract entered into prior to the date of the designation of the active management area.

(b) With respect to a private water company, the area of land of the private water company actually being served water, for a non-irrigation use, by the private water company plus additions to such area which contain an operating distribution system owned by the private water company primarily for the delivery of water for a non-irrigation use.

32. “Service area of an irrigation district” means:

(a) With respect to an irrigation district which was engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area, the area of land within the boundaries of the irrigation district actually being served water by the irrigation district at any time during the five years preceding the date of the designation of the active management area plus any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works owned or operated by the irrigation district. The service area may be modified pursuant to § 45-494.01.

(b) With respect to an irrigation district which was not engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area:

(i) The acres of member lands within the boundaries of the irrigation district which were legally irrigated at any time from January 1, 1975 through January 1, 1980 for initial active management areas or during the five years preceding the date of the designation of the active management area for subsequent active management areas.

(ii) Any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works for the withdrawal, delivery and distribution of water.

33. “Stored water” means water that is stored underground for the purpose of recovery pursuant to a permit issued under chapter 3.1 of this title.<sup>9</sup>

34. “Subbasin” means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body of groundwater within a groundwater basin, which shall be described horizontally by surface description.

35. “Subsequent active management area” means an active management area established after June 12, 1980 pursuant to article 2 of this chapter.

36. “Subsidence” means the settling or lowering of the surface of land which results from the withdrawal of groundwater.

37. “Transportation” means the movement of groundwater from the point of withdrawal to the point of use.

38. “Type 1 non-irrigation grandfathered right” means a non-irrigation grandfathered right associated with retired irrigated land and determined pursuant to § 45-463, 45-469 or 45-472.

39. “Type 2 non-irrigation grandfathered right” means a non-irrigation grandfathered right not associated with retired irrigated land and determined pursuant to § 45-464.

40. “Water district” means an active management area water district that is established under title 48, chapter 28<sup>10</sup> and that has adopted an ordinance or resolution to undertake water district groundwater replenishment obligations as defined and used in title 48, chapter 28, article 7.<sup>11</sup>

41. “Water district member land” means real property that qualifies as water district member land of a water district as provided by title 48, chapter 28.

42. “Water district member service area” means the service area of the city, town or private water company that qualifies as a water district member service area of a water district as provided by title 48, chapter 28.

43. “Well” means a man-made opening in the earth through which water may be withdrawn or obtained from beneath the surface of the earth except as provided in § 45-591.01.

#### Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 7, eff. April 22, 1981; Laws 1982, Ch. 191, § 9, eff. April 22, 1982; Laws 1982, Ch. 208, § 3; Laws 1983, Ch. 306, § 1, eff. April 28, 1983; Laws 1984, Ch. 148, § 1, eff. April 18, 1984; Laws 1985, Ch. 190, § 41; Laws 1988, Ch. 104, § 4, eff. May 24, 1988; Laws 1990, Ch. 374, § 431, eff. Jan. 1, 1991; Laws 1991, Ch. 19, § 2; Laws 1991, Ch. 112, § 2; Laws 1991, Ch. 211, § 2; Laws 1993, Ch. 200, § 1; Laws 1994, Ch. 249, § 1; Laws 1994, Ch. 291, § 8; Laws 1994, Ch. 296, § 3, eff. April 25, 1994; Laws 1996, Ch. 103, § 3, eff. April 9, 1996; Laws 2003, Ch. 98, § 1.

#### Notes of Decisions (5)

#### Footnotes

- 1 Section 45-411 et seq.
- 2 Section 48-3701 et seq.
- 3 Section 45-461 et seq.
- 4 Section 48-4401 et seq.
- 5 Section 45-511 et seq.
- 6 Sections 48-2301 et seq. and 48-2901 et seq.
- 7 Section 45-431 et seq.
- 8 Section 48-101 et seq.
- 9 Section 45-801.01 et seq.
- 10 Section 48-4801 et seq.
- 11 Section 48-4971 et seq.

A. R. S. § 45-402, AZ ST § 45-402

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Arizona Revised Statutes Annotated  
Title 45. Waters  
Chapter 2. Groundwater Code (Refs & Annos)  
Article 10. Wells (Refs & Annos)

A.R.S. § 45-591

§ 45-591. Definitions

Currentness

In this article, unless the context otherwise requires:

1. “Existing well” means a well which was drilled before June 12, 1980 and which is not abandoned or sealed or a well which was not completed on June 12, 1980 but for which a notice of intention to drill was on file with the Arizona water commission on such date.
2. “New well” means a well for which a notice of intention to drill or a permit is required pursuant to this article or which is drilled pursuant to a permit issued under [§ 45-834.01](#).

**Credits**

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1986, Ch. 289, § 6; [Laws 1988, Ch. 104, § 15](#), eff. May 24, 1988; [Laws 1990, Ch. 176, § 1](#); [Laws 1994, Ch. 291, § 24](#).

A. R. S. § 45-591, AZ ST § 45-591

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 6. Dams and Reservoirs (Refs & Annos)

Article 1. Supervision of Dams, Reservoirs and Projects (Refs & Annos)

A.R.S. § 45-1201

§ 45-1201. Definitions

Currentness

In this article, unless the context otherwise requires:

1. “Dam” means any artificial barrier, including appurtenant works for the impounding or diversion of water, twenty-five feet or more in height or the storage capacity of which will be more than fifty acre-feet but does not include:

(a) Any barrier that is or will be less than six feet in height, regardless of storage capacity.

(b) Any barrier that has or will have a storage capacity of fifteen acre-feet or less, regardless of height.

(c) Any barrier for the purpose of controlling liquid-borne material.

(d) Any barrier that is a release-contained barrier.

(e) Any barrier that is owned, controlled, operated, maintained or managed by the United States government or its agents or instrumentalities if a safety program that is at least as stringent as the state safety program applies and is enforced against the agent or instrumentality.

2. “Height” means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation.

3. “Owner” includes any person or entity that owns, controls, operates, maintains, manages or proposes to construct or modify a dam.

4. “Person” means any person, firm, association, organization, partnership, business trust, corporation, company or district.

5. “Release-contained barrier” means any artificial barrier and appurtenant works that comply with both of the following:

(a) Has a storage capacity that in the event of failure would be contained within property that the release-contained barrier owner owns, controls, operates, maintains or manages.

(b) The property on which the release would be contained is not open to the public.

6. “Storage capacity” means the maximum volume of water that can be impounded by the reservoir when there is no discharge of water.

**Credits**

Formerly § 45-701. Amended by Laws 1971, Ch. 49, § 13, eff. April 13, 1971; Laws 1973, Ch. 79, § 1; Laws 1977, Ch. 34, § 1; Laws 1980, 4th S.S., Ch. 1, § 87, eff. June 12, 1980. Renumbered as § 45-1201 by Laws 1987, Ch. 2, § 4, eff. Feb. 27, 1987. Amended by [Laws 1999, Ch. 187, § 11](#).

A. R. S. § 45-1201, AZ ST § 45-1201

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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**DEPARTMENT OF ECONOMIC SECURITY**

Title 6, Chapter 5, Articles 24 and 50, Department of Economic Security - Social Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 4, 2021

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

**FROM:** Council Staff

**DATE:** December 13, 2021

**SUBJECT:** Arizona Department of Economic Security  
Title 6, Chapter 5, Articles 24 and 50

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This Five-Year-Review Report (5YRR) from the Department of Economic Security relates to rules in Title 6, Chapter 5, Article 24 regarding Appeals and Hearings, and Article 50 regarding Child Care Resource and Referral System.

The Department did not propose a course of action in the last 5YRR of these rules.

### **Proposed Action**

For the reasons mentioned in the report, the Department is proposing to complete a Rulemaking that addresses the issues identified within the rules in Article 24. The Department indicates they plan to submit the Rulemaking to the Council by May 2022.

Additionally, the Department indicates they received an exception to the rule moratorium from the Governor's Office on September 14, 2018, to conduct a rulemaking that addresses issues identified in Article 50. Specifically, the rulemaking will incorporate changes resulting from the Child Care and Development Block Grant Act, as well as the associated federal regulations. The Department proposes to submit the Notice of Rulemaking to the Council by June 2022.

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:**

To the Department's knowledge, no economic impact statement was prepared at the time of the rulemaking for Articles 24 and 50. Through Article 24, the Appellate Services Administration is authorized by Arizona Revised Statutes to appeal tribunals to hear and decide appeals for adverse actions described in Article 24. In State Fiscal Year 2020, the estimated total costs in connection with the Article 24 hearings were approximately \$1,000.

Through the rules in Article 50, the Child Care Administration contracts with Child & Family Resources to provide child care related services to both customers and child care providers. In State Fiscal Year 2020, total funding Child Care Administration Services was \$1,120,257.00. The Department funds approximately 14 full-time equivalents, allowing for the contractor to provide referral, recruitment services, outreach, internet maintenance, training administration, and management operations. During the final quarter of State Fiscal Year 2020, there were 2,982 providers listed in the database. Of these, 2,271 were child care centers, and 685 were family care providers. In FY 2020, 1,205 child care centers were contracted with the Department to provide child care services to families receiving child care subsidies.

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?**

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying 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 to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, for the reasons mentioned in the report, the Department indicates the following rules are not clear, concise, and understandable:

R6-5-5001 - Definitions  
R6-5-5002 - Provider Participation Requirements  
R6-5-5006 - Monitoring; Complaint Recording and Reporting Requirements  
R6-5-5007 - Provider Listing Status  
R6-5-5009 - Administrative Review Process  
R6-5-5010 - Administrative Appeal Process

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

Yes, for the reasons mentioned in the report, the Department indicates the following rules are not consistent with other rules and statutes:

R6-5-2404 - Basis for a hearing  
R6-5-2405 - Hearing Process  
R6-5-5001 - Definitions  
R6-5-5002 - Provider Participation Requirements  
R6-5-5005 - Referral Process  
R6-5-5006 - Monitoring; Complaint Recording and Reporting Requirements  
R6-5-5008 - Provider Exclusion or Removal

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the following rules are not effective in achieving their objectives:

R6-5-2405 - Hearing Process  
R6-5-5002 - Provider Participation Requirements  
R6-5-5007 - Provider Listing Status  
R6-5-5010 - Administrative Appeal Process

**8. Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the following rules are not enforced as written:

R6-5-2405 - Hearing Process  
R6-5-5003 - Notification of Changes  
R6-5-5006 - Monitoring; Complaint Recording and Reporting Requirements  
R6-5-5007 - Provider Listing Status

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

No, the Department indicates the rules are not more stringent than the corresponding federal laws; 42 U.S.C. 9857 and 45 CFR 98.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a general permit.

**11. Conclusion**

As mentioned above, the Department is proposing to submit two separate rulemakings that address the changes in the report. The Department plans to submit a rulemaking that amends rules in Article 24 by May 2022. Additionally, the Department plans to submit a rulemaking that amends rules in Article 50 by June 2022. The proposed changes will result in rules that are more clear, concise, understandable, and consistent with other rules and statutes.

Council staff recommend approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

*Your Partner For A Stronger Arizona*

Douglas A. Ducey  
Governor

Michael Wisehart  
Director

October 26, 2021

Ms. Nicole Sornsinsin  
Council Chair  
Governor's Regulatory Review Council  
Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Dear Ms. Sornsinsin:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 8, Articles 24 and 50. Also attached are copies of the Governor's Office approval to submit this report, authorizing statutes, and current rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Melissa Henry, Deputy Administrator, Governance and Innovation Administration, at (480) 647-3110.

Sincerely,

*Nicole Davis*

Nicole Davis  
Office of General Counsel

Attachment

*-Preface-*

# **Arizona Department of Economic Security Five – Year Review Reports**

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule's effectiveness, clarity, conciseness and understandability. The reports also describe the agency's proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor's Regulatory Review Council (GRRC). A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency's website.

**Arizona Department of Economic Security  
Title 6, Chapter 5, Articles 24 and 50  
Five-Year Review Report**

**1. Authorization of the rule by existing statutes**

General Statutory Authority:

**Article 24:** A.R.S. § 41-1954(A)(3).

**Article 50:** A.R.S. §§ 41-1954(A)(3) and 46-134(10).

Specific Statutory Authority:

**Article 24:** A.R.S. §§ 46-804 and 46-809.

**Article 50:** A.R.S. §§ 41-1967, 41-1967.01, 46-802(4) through 46-802(6), and 46-809(3).

**2. The objective of each rule**

Rule	Objective
<b>Article 24</b>	
R6-5-2404	The objective of this rule is to establish the reasons for which a customer or provider of services provided by the Child Care Administration (CCA) or Achieving a Better Life Experience (ABLE) programs within the Department of Economic Security (Department) may be granted a hearing. As written, this rule also applies to child welfare licensing and foster home licensing, which are currently under the jurisdiction of the Department of Child Safety (DCS).
R6-5-2405	The objective of this rule is to describe the hearing process for a customer or provider of services of CCA or ABLE programs within the Department of Economic Security (Department), as well as child welfare licensing and foster home licensing, which are in practice currently under the jurisdiction of DCS.
<b>Article 50</b>	
R6-5-5001	The objectives of this rule are to define terms used in Article 50, which provides requirements for Child Care Resource & Referral (CCR&R) contractors and child care providers regarding the CCR&R database, describes requirements for child care customers, and requires contractors to provide educational information to customers.
R6-5-5002	The objectives of this rule are to ensure a clear understanding of the information that child care providers must submit to be considered for inclusion in the Child Care Resource & Referral (CCR&R) database and to specify procedures that the CCR&R contractor must follow prior to adding a provider to the database.

R6-5-5003	The objectives of this rule are to ensure a clear understanding of the reporting requirements for child care providers listed in the CCR&R database and to ensure that the database is maintained with current information.
R6-5-5004	The objectives of this rule are to ensure that referrals provided to a customer are based on the customer's child care needs and to make it clear that a provider who is included in the CCR&R database is not guaranteed referrals.
R6-5-5005	The objectives of this rule are to ensure that customers receive high quality referral service and educational information and provide a clear understanding of the information that customers must provide to the contractor in order to receive a referral as well as the information the contractor must provide to customers.
R6-5-5006	The objectives of this rule are to ensure a clear understanding of the monitoring and investigation procedures for each type of child care provider, to provide contractor requirements pertaining to complaints, and to specify the process followed when a complaint is filed, so that each complaint is communicated to the appropriate regulatory agencies and is handled in a precise manner within the required time period.
R6-5-5007	The objectives of this rule are to ensure a clear understanding of how changes in provider listing statuses occur in the CCR&R database, based on specified criteria, to specify the timeframes and procedures pertaining to changing provider listing statuses, and to ensure that customers do not receive referrals to a child care provider placed on an adverse action.
R6-5-5008	The objectives of this rule are to establish the grounds for exclusion or removal of participating child care providers from the CCR&R database, ensuring that the database lists only child care providers who meet the required qualifications, and explains the procedures for child care provider reinstatement.
R6-5-5009	The objectives of this rule are to ensure a clear understanding of the Department's process when it is in receipt of information indicating that a participating child care provider's listing status may change and to establish a consistent administrative review process.
R6-5-5010	The objectives of this rule are to ensure a clear understanding of the time frame during which the Department's administrative review decision can be appealed and to provide procedural requirements for both providers and the Department in order to establish a consistent administrative appeal process.

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
Article 24	

R6-5-2405	This rule is not effective because it references programs, including child welfare licensing and foster home licensing, that are no longer subject to the rule and establishes procedures that are inconsistent with controlling statutory authority, including A.R.S. §§ 41-1061 and 41-1992.
<b>Article 50</b>	
R6-5-5002	This rule is not effective because it refers to Child Protective Services (CPS) substantiating that neither a provider nor anyone providing care in the provider's home has had a child abuse or neglect investigation, which is now the responsibility of Arizona Department of Child Safety (DCS) in accordance with A.R.S. § 8-451.
R6-5-5007	This rule is not effective because a provider's listing status on the CCR&R is determined based on information provided by CPS, which is now the responsibility of DCS in accordance with A.R.S. § 8-451.
R6-5-5010	This rule is not effective because the Department's actions in reference to removal or exclusion from the CCR&R refer to failure to clear a CPS background check, which is now the responsibility of DCS in accordance with A.R.S. § 8-451.

4. **Are the rules consistent with other rules and statutes?** Yes  No

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

<b>Rule</b>	<b>Explanation</b>
<b>Article 24</b>	
R6-5-2404	This rule is not consistent with A.R.S. § 41-1061(A) because the statute provides that the appeal rights are for all parties in a "contested case" including when an applicant or recipient disagrees with the effective date of an approval or the level of an approval whereas the rule provides a narrower criteria of specific reasons for which a hearing is granted.
R6-5-2405	This rule is not consistent with A.R.S. § 41-1061(A) because the statute provides for a minimum notice of 20 days prior to a hearing, whereas this rule provides for a minimum notice of 15 days prior to a hearing.
<b>Article 50</b>	
R6-5-5001	This rule's definitions are not consistent with current statutes and does not recognize the provisions of A.R.S. § 8-451, which created DCS and transferred the responsibilities and authority of CPS to DCS.
R6-5-5002	This rule is not consistent with 45 CFR 98.43 and A.R.S. § 46-811 because the statutes require providers to receive clearance from the Department that an individual and individual's household members have cleared a criminal background check, which is not currently stated in the rule.
R6-5-5005	This rule is not consistent with customer and provider education requirements regarding the provision of information about available financial assistance, as mandated in 45 CFR 98.33 because this rule does not address educational information that must be provided to providers.

R6-5-5006	This rule is not consistent with parental complaint requirements specifying a centralized complaint reporting process, as mandated in 45 CFR 98.32 because this rule does not require the state to establish a hotline or similar mechanism for customers to submit complaints about child care providers.
R6-5-5008	This rule is not consistent with criminal background check requirements regarding adult household members, as mandated by 45 CFR 98.43 and A.R.S. § 46-811 because this rule does not address required criminal background checks.

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.*

<b>Article 24</b>	
R6-5-2405	This rule is not enforced as written because it refers to child welfare licensing and foster home licensing, which are now under the jurisdiction of the Department of Child Safety.
<b>Article 50</b>	
R6-5-5003	This rule is not enforced as written, as neither the Department nor the contractor monitor provider activities in the manner indicated in R6-5-5006(A). The issue is currently addressed via contractor outreach, in which the contractor periodically contacts providers to verify that information is current and to check for any changes to the information or statement that R6-5-5002(A) requires. The Department proposes to amend the rule by revising language that requires contractor outreach activities to include accuracy checks of current information, to align with current practice.
R6-5-5006	This rule is not enforced as written, as 45 CFR 98.32 specifies that the State shall designate a centralized complaint reporting process. Currently the contractor receives and records complaints in compliance with 45 CFR 98.32, rather than directing a complainant to another agency as the rule currently states. The Department proposes to amend the rule to align with federal requirements.
R6-5-5007	This rule is not enforced as written, as each regulatory agency informs the contractor of the suspension, rather than the Department informing the contractor as stated in the rule. The Department proposes to amend the rule to state “When a Contractor learns that a Regulatory Agency has suspended a Regulated Provider’s license, certificate, or Alternate Approval, the Contractor shall change the Provider’s Listing Status from Active Listing to Inactive Listing, using the process in R6-5-5010.”

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
<b>Article 24</b>	
R6-5-2405	This rule is not clear, concise, or understandable, as written because the rule attempts to address too many topics and often includes passive voice, difficult language, and an overly complex sentence structure. The Department proposes to amend this rule by revising language so that it is easier to understand.
<b>Article 50</b>	
R6-5-5001	This rule is not clear, concise, or understandable, as the rule's definitions include outdated terminology. The Department recommends that definitions in this rule be amended to align with current terminology.
R6-5-5002	This rule is not clear, concise, and understandable, as the rule includes references to "Child Protective Services", now under the authority of DCS. The Department proposes to amend "Child Protective Services" to "DCS" or "Department of Child Safety".
R6-5-5006	This rule is not clear, concise, and understandable, as the rule discusses an "Over-ratio Referral Form" which is no longer used, and includes references to "Child Protective Services", now under the authority of DCS. The Department proposes to amend the method by which contractors refer over-ratio complaints to the Department of Health Services, and that the term "Child Protective Services" be amended to "DCS" or "Department of Child Safety".
R6-5-5007	This rule is not clear, concise, and understandable, as the rule includes the outdated term, "Information Only Listing" and references to "Child Protective Services", now under the authority of the Department of Child Safety. The Department proposes to amend "Information Only Listing" to "No Referral Status" and "Child Protective Services" to "DCS" or "Department of Child Safety".
R6-5-5009	This rule is not clear, concise, and understandable, as components of the mailing address to which written requests are directed have changed and are no longer accurate. The Department proposes to amend language to direct written requests to the Child Care Administration at the main DES office so that the rule remains accurate regardless of any future address changes.
R6-5-5010	This rule is not clear, concise, and understandable, as components of the mailing address to which written requests are directed have changed and so are no longer accurate. The Department proposes to amend the rule to direct written requests to the Child Care Administration at the main DES office so that the rule remains accurate regardless of any future address changes.

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes  No

*If yes, please fill out the table below:*

Commenter	Comment	Agency's Response
N/A	N/A	N/A

**8. Economic, small business, and consumer impact comparison:**

**Article 24**

The rules in Article 24 were adopted in 1978. To the Department's knowledge, no economic impact statement was prepared at the time of this rulemaking.

The Appellate Services Administration is authorized by Arizona Revised Statutes to establish appeal tribunals to hear and decide appeals for adverse actions described in Article 24.

The Appellate Services Administration is funded through both federal and state appropriations.

In State Fiscal Year (SFY) 2020, the estimated total costs incurred by the Appellate Services Administration, in connection with the Article 24 hearings at the Office of Appeals and the Appeals Board, were approximately \$1,000.00.

**Article 50**

The rules in Article 50 were amended by exempt rulemaking on July 1, 2002. To the Department's knowledge, no economic impact statement was prepared at the time of this rulemaking.

The Child Care Administration contracts with Child & Family Resources, a community-based organization, to provide child care related services to both customers and child care providers through CCR&R. CCR&R provides parents and families referrals to all types of child care providers, both on the CCR&R website and via a toll-free number. Other services include the provision of information relating to child care services in general, including data on child care supply and demand; customer education materials to assist in selecting quality child care; and outreach services to local communities. CCR&R also establishes and maintains a child care home provider registry for family child care providers who are not regulated by the State, but who are lawfully operating under State law. This service includes technical assistance to existing and prospective child care providers.

In SFY 2020, total funding for CCR&R services was \$1,120,257.00.

The Department funds:

- Approximately 14 full-time equivalents (FTEs), allowing for the contractor to provide

referral, recruitment services, outreach, internet maintenance, training administration, and management operations; and

- A portion of one FTE position to oversee contract administration and reporting requirements and to provide technical assistance to contractors on all aspects of the service.

During the final quarter of SFY 2020, there were 2,982 providers listed in the CCR&R database. Of these, 2,271 were child care centers, and 685 were family care providers. Of the 2,271 child care centers, 1,205 were contracted with the Department to provide child care services to families receiving child care subsidies.

9. **Has the agency received any business competitiveness analyses of the rules?**

Yes  No

The Department did not receive a business competitive analysis from a member of the public during the process of preparing this report.

10. **Has the agency completed the course of action indicated in the agency's previous five-year review report?** Yes  No

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

**Article 24**

No course of action was indicated in the Department's previous Five-Year Review Report.

**Article 50**

No course of action was indicated in the Department's previous Five-Year Review Report, except for the Department's intention to consider statutory reference updates within the constraints of the moratorium on rulemaking declared in Executive Order 2018-02.

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

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

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)?*

**Article 24:** There are no federal statutes that govern the subject matter.

**Article 50:** The Child Care and Development Block Grant at 42 U.S.C. 9857 et seq, and the Child Care and Development Fund at 45 CFR 98.

The Department has determined that the rules in Chapter 5, Articles 24 and 50 are not more stringent than the corresponding federal authorities cited.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules, because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or Department authorization.

14. **Proposed course of action:**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

**Article 24**

The Department will submit a moratorium exception request to the Governor's Office upon approval of this report to engage in expedited rulemaking to update the criteria in R6-5-2404 for which a hearing shall be granted to a person and to remove references to child welfare licensing and foster home licensing in R6-5-2405, which are no longer subject to Article 24 in accordance with A.R.S. § 8-451. The rulemaking will also add definitions of terms used in Article 24, address inconsistencies overall, and make the rules more clear, concise, and understandable to the public. If the exception request is approved, the Department anticipates submitting a Notice of Final Expedited Rulemaking to the Council by May 2022.

**Article 50**

On September 24, 2018, the Governor's Office approved an exception to the moratorium on rulemaking declared in Executive Order 2018-02, allowing the Department to conduct rulemaking to incorporate changes resulting from the Child Care and Development Block Grant Act, as well as the associated federal regulations, address inconsistencies overall, and to make the Article more clear, concise, and understandable to the public. The Department

anticipates submitting a Notice of Final Expedited Rulemaking to the Council as soon as possible, but no later than June 2022.

# Arizona Administrative CODE

6 A.A.C. 5 Supp. 19-1

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, 2019 through March 31, 2019

## Title 6

**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

### TITLE 6. ECONOMIC SECURITY

#### CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES

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.

<a href="#">R6-5-3301.</a>	<a href="#">Definitions .....</a>	<a href="#">16</a>	<a href="#">R6-5-3305.</a>	<a href="#">Contributions .....</a>	<a href="#">17</a>
<a href="#">R6-5-3302.</a>	<a href="#">Program Manager .....</a>	<a href="#">17</a>	<a href="#">R6-5-3306.</a>	<a href="#">Statements .....</a>	<a href="#">17</a>
<a href="#">R6-5-3303.</a>	<a href="#">Fees .....</a>	<a href="#">17</a>	<a href="#">R6-5-3307.</a>	<a href="#">Program-to-Program Transfers and Rollovers ...</a>	<a href="#">17</a>
<a href="#">R6-5-3304.</a>	<a href="#">Opening an Account .....</a>	<a href="#">17</a>			

#### Questions about these rules? Contact:

Name: Christian J. Eide  
Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
or  
Department of Economic Security  
1789 W. Jefferson St., Mail Drop 1292  
Phoenix, AZ 85007  
Telephone: (602) 542-9199  
Fax: (602) 542-6000  
E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

#### The release of this Chapter in Supp. 19-1 replaces Supp. 17-1, 1-121 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

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 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](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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 6. ECONOMIC SECURITY**

**CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES**

(Authority: A.R.S. § 41-1954 et seq.)

*Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).*

*Editor's Note: Sections and Appendices of this Chapter were adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005 (A)(27). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules (Supp. 98-2).*

*Editor's Note: Sections of this Chapter were adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules. Under Laws 1997, Chapter 300, § 74(B), the Department is required to institute the formal rulemaking process on these Sections on or before December 31, 1997. Because these rules are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

**ARTICLE 1. REPEALED**

*Former Article 1 consisting of Sections R6-5-01 through R6-5-103 repealed effective August 3, 1978.*

**ARTICLE 2. REPEALED**

*Former Article 2 consisting of Sections R6-5-201 through R6-5-209 repealed effective August 8, 1978.*

**ARTICLE 3. REPEALED**

*Former Article 3 consisting of Sections R6-5-301 through R6-5-308 repealed effective July 6, 1976.*

**ARTICLE 4. REPEALED**

*Former Article 4 consisting of Sections R6-5-401 through R6-5-420 repealed effective August 3, 1978.*

**ARTICLE 5. REPEALED**

*Former Article 5 consisting of Sections R6-5-501 through R6-5-504 repealed effective July 6, 1976.*

**ARTICLE 6. REPEALED**

*Former Article 6 consisting of Sections R6-5-601 through R6-5-622 repealed effective July 6, 1977.*

**ARTICLE 7. REPEALED**

*Former Article 7 consisting of Sections R6-5-701 through R6-5-716 repealed effective August 3, 1978.*

**ARTICLE 8. REPEALED**

*Former Article 8 consisting of Sections R6-5-801 through R6-5-808 repealed effective September 16, 1976.*

**ARTICLE 9. REPEALED**

*Former Article 9 consisting of Sections R6-5-901 through R6-5-904 repealed effective August 3, 1978.*

**ARTICLE 10. REPEALED**

*Former Article 10 consisting of Sections R6-5-1001 through R6-5-1003 repealed effective August 3, 1978.*

**ARTICLE 11. REPEALED**

*Former Article 11 consisting of Sections R6-5-1101 through R6-5-1109 repealed effective August 11, 1976.*

**ARTICLE 12. REPEALED**

*Former Article 12 consisting of Sections R6-5-1201 through R6-5-1206 repealed effective May 17, 1976.*

**ARTICLE 13. REPEALED**

*Former Article 13 consisting of Sections R6-5-1301 through R6-5-1309 repealed effective November 23, 1976.*

**ARTICLE 14. REPEALED**

*Former Article 14 consisting of Sections R6-5-1401 through R6-5-1413 repealed effective May 24, 1976.*

**ARTICLE 15. REPEALED**

*Former Article 15 consisting of Sections R6-5-1501 through R6-5-1504 repealed effective August 11, 1976.*

**ARTICLE 16. RESERVED**

**ARTICLE 17. REPEALED**

*Former Article 17 consisting of Sections R6-5-1701 through R6-5-1704 repealed effective August 11, 1976.*

**ARTICLE 18. REPEALED**

*Former Article 18 consisting of Sections R6-5-1801 through R6-5-1804 repealed effective August 11, 1976.*

**ARTICLE 19. REPEALED**

*Former Article 19 consisting of Sections R6-5-1901 through R6-5-1906 repealed effective July 6, 1976.*

**ARTICLE 20. REPEALED**

*Former Article 20 consisting of Sections R6-5-2001 through R6-5-2006 repealed effective December 17, 1993.*

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R6-5-2002.	Repealed .....11
R6-5-2003.	Repealed .....11
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CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES

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**ARTICLE 21. REPEALED**

*Former Article 21 consisting of Sections R6-5-2101 through R6-5-2110 repealed effective November 8, 1982.*

**ARTICLE 22. REPEALED**

*Former Article 22 consisting of Sections R6-5-2202 through R6-5-2209 repealed effective November 8, 1982.*

**ARTICLE 23. REPEALED**

*Article 23, consisting of Sections R6-5-2301 through R6-5-2310, repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).*

Section		
R6-5-2301.	Repealed	12
R6-5-2302.	Repealed	12
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R6-5-2308.	Repealed	12
R6-5-2309.	Repealed	12
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**ARTICLE 24. APPEALS AND HEARINGS**

*Article 24 consisting of Sections R6-5-2401 through R6-5-2405 adopted effective March 1, 1978.*

*Former Article 24 consisting of Sections R6-5-2401 through R6-5-2404 repealed effective March 1, 1978.*

Section		
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**ARTICLE 25. REPEALED**

*Former Article 25, consisting of Sections R6-5-2501 through R6-5-2503, repealed effective June 5, 1997 (Supp. 97-2).*

Section		
R6-5-2501.	Repealed	15
R6-5-2502.	Repealed	15
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**ARTICLE 26. REPEALED**

*Former Article 26, consisting of Sections R6-5-2601 through R6-5-2607, repealed effective June 5, 1997 (Supp. 97-2).*

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R6-5-2606.	Repealed	15
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**ARTICLE 27. REPEALED**

*Former Article 27, consisting of Sections R6-5-2701 through R6-5-2707, repealed effective June 5, 1997 (Supp. 97-2).*

Section

R6-5-2701.	Repealed	15
R6-5-2702.	Repealed	15
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**ARTICLE 28. REPEALED**

*Former Article 28, consisting of Sections R6-5-2801 through R6-5-2804, repealed effective November 8, 1982.*

**ARTICLE 29. REPEALED**

*Article 29, consisting of Sections R6-5-2901 through R6-5-2912, repealed effective December 17, 1993 (Supp. 93-4).*

Section		
R6-5-2901.	Repealed	15
R6-5-2902.	Repealed	15
R6-5-2903.	Repealed	15
R6-5-2904.	Repealed	15
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**ARTICLE 30. REPEALED**

*Former Article 30, consisting of Sections R6-5-3001 through R6-5-3007, repealed effective August 29, 1984.*

**ARTICLE 31. REPEALED**

*Former Article 31, consisting of Sections R6-5-3101 through R6-5-3110, repealed effective November 8, 1982.*

**ARTICLE 32. REPEALED**

*Article 32, consisting of Sections R6-5-3201 through R6-5-3211, repealed effective December 17, 1993 (Supp. 93-4).*

Section		
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**ARTICLE 33. ACHIEVING A BETTER LIFE EXPERIENCE**

*Article 33, consisting of Sections R6-5-3301 through R6-5-3307, made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019.*

R6-5-3301.	Definitions	16
R6-5-3302.	Program Manager	17
R6-5-3303.	Fees	17
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R6-5-3307.	Program-to-Program Transfers and Rollovers	17

CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES

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- ARTICLE 35. RESERVED**
- ARTICLE 36. RESERVED**
- ARTICLE 37. RESERVED**
- ARTICLE 38. RESERVED**
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- ARTICLE 44. RESERVED**
- ARTICLE 45. RESERVED**
- ARTICLE 46. RESERVED**
- ARTICLE 47. RESERVED**
- ARTICLE 48. RESERVED**

**ARTICLE 49. CHILD CARE ASSISTANCE**

Article 49, consisting of Sections R6-5-4901 through R6-5-4922 and Appendix A, adopted effective July 31, 1997 (Supp. 97-3).

Section	
R6-5-4901.	Definitions ..... 18
R6-5-4902.	Repealed ..... 20
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**ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM**

New Article 50, consisting of Sections R6-5-5001 through R6-5-5010, adopted effective November 19, 1996 (Supp. 96-4).

Former Article 50, consisting of Sections R6-5-5001 through R6-5-5007, repealed effective November 8, 1982 (Supp. 82-6).

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**ARTICLE 51. EXPIRED**

Article 51, consisting of Sections R6-5-5101 through R6-5-5107, expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

Article 51, consisting of Sections R6-5-5101 through R6-5-5107, adopted effective June 17, 1985.

Former Article 51, consisting of Sections R6-5-5101 through R6-5-5104, repealed effective June 17, 1985.

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**ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS**

Article 52, consisting of Sections R6-5-5201 through R6-5-5211, repealed effective May 11, 1994 (Supp. 94-2).

Article 52, consisting of Sections R6-5-5201 through R6-5-5227, adopted effective May 11, 1994 (Supp. 94-2).

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**ARTICLE 53. REPEALED**

Former Article 53 consisting of Sections R6-5-5301 through R6-5-5305 repealed effective April 9, 1981.

**ARTICLE 54. REPEALED**

Former Article 54 consisting of Sections R6-5-5401 through R6-5-5411 repealed effective November 8, 1982.

**ARTICLE 55. EXPIRED**

Article 55, consisting of Sections R6-5-5501 through R6-5-5516 and Appendices 1 and 2, expired under A.R.S. § 41-1056(J) effective June 30, 2016 (Supp. 17-1).

Article 55, consisting of Sections R6-5-5501 through R6-5-5504, adopted effective December 8, 1983.

Former Article 55, consisting of Sections R6-5-5501 through R6-5-5526, repealed effective December 8, 1983.

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**ARTICLE 56. EXPIRED**

Article 56, consisting of Sections R6-5601 through R6-5-5610, expired at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

Article 56, consisting of new Sections R6-5601 through R6-5-5612, adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

Article 56, consisting of Sections R6-5-5601 through R6-5-5624, recodified to A.A.C. R6-8-201 through R6-8-224 effective February 13, 1996 (Supp. 96-1).

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**ARTICLE 57. REPEALED**

Article 57, consisting of Sections R6-5-5701 thru R6-5-5709, repealed effective April 9, 1998 (Supp. 98-2).

Article 57, consisting of Sections R6-5-5701 through R6-5-5709, adopted effective November 5, 1984.

Former Article 57, consisting of Sections R6-5-5701 through R6-5-5711, repealed effective November 5, 1984.

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**ARTICLE 58. EXPIRED**

Article 58, consisting of Sections R6-5-5801 through R6-5-5850, expired effective June 30, 2016 (Supp. 17-1).

Article 58, consisting of Sections R6-5-5801 through R6-5-5850, adopted effective January 10, 1997 (Supp. 97-1).

Former Article 58, consisting of Sections R6-5-5801 through R6-5-5807, repealed effective January 10, 1997 (Supp. 97-1).

Article 58, consisting of Sections R6-5-5801 through R6-5-5807, adopted effective April 1, 1981.

Former Article 58, consisting of Sections R6-5-5801 through R6-5-5811, repealed effective April 1, 1981.

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**ARTICLE 60. EXPIRED**

*Article 60, consisting of Sections R6-5-6001 through R6-5-6015, expired effective June 30, 2016 (Supp. 17-1).*

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**ARTICLE 61. REPEALED**

*Article 61, consisting of Sections R6-5-6101 through R6-5-6104, repealed effective June 5, 1997 (Supp. 97-2).*

*Article 61, consisting of Sections R6-5-6101 through R6-5-6104, adopted effective August 29, 1984.*

*Former Article 61, consisting of Sections R6-5-6101 through R6-5-6108, repealed effective August 29, 1984.*

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**ARTICLE 62. REPEALED**

*Former Article 62 consisting of Sections R6-5-6201 through R6-5-6209 repealed effective August 29, 1984.*

**ARTICLE 63. REPEALED**

*Former Article 63 consisting of Sections R6-5-6301 through R6-5-6304 repealed effective November 8, 1982.*

**ARTICLE 64. REPEALED**

*Former Article 64 consisting of Sections R6-5-6401 through R6-5-6408 repealed effective February 1, 1979.*

**ARTICLE 65. EXPIRED**

*Article 65, consisting of Sections R6-5-6501 through R6-5-6511, adopted effective January 2, 1996 (Supp. 96-1).*

*Article 65, consisting of Sections R6-5-6501 through R6-5-6509, repealed effective January 2, 1996 (Supp. 96-1).*

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**ARTICLE 66. EXPIRED**

*Article 66, consisting of Sections R6-5-6601 through R6-5-6624, adopted effective January 2, 1996 (Supp. 96-1).*

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Article 66, consisting of Sections R6-5-6601 through R6-5-6610, repealed effective January 2, 1996 (Supp. 96-1).

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ARTICLE 68. REPEALED

Former Article 68, consisting of Sections R6-5-6801 through R6-5-6808, repealed effective June 5, 1997 (Supp. 97-2).

Section
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ARTICLE 70. EXPIRED

Article 70, consisting of Sections R6-5-7001 through R6-5-7040, adopted effective January 2, 1996 (Supp. 96-1).

Article 70, consisting of Sections R6-5-7001 through R6-5-7040, repealed effective January 2, 1996 (Supp. 96-1).

Article 70 consisting of Sections R6-5-7001 through R6-5-7040 adopted as permanent rules effective January 23, 1987.

Article 70 consisting of Sections R6-5-7001 through R6-5-7040 adopted as an emergency effective October 17, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency expired.

Article 70 consisting of Sections R6-5-7001 through R6-5-7006 adopted as an emergency effective January 1, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency renewed effective April 1, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency expired.

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**ARTICLE 71. REPEALED**

Article 71, consisting of Sections R6-5-7101 through R6-5-7104, repealed effective April 9, 1998 (Supp. 98-2).

Article 71, consisting of Sections R6-5-7101 through R6-5-7104, adopted as permanent rules effective July 11, 1986.

Former Article 71, consisting of Sections R6-5-7101 through R6-5-7104, adopted as an emergency effective January 1, 1986 and renewed as an emergency effective April 1, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency effective April 1, 1986 expired.

Former Article 71, consisting of Sections R6-5-7101 through R6-5-7104, repealed effective November 8, 1982.

Section	
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R6-5-7102.	Repealed ..... 78
R6-5-7103.	Repealed ..... 78
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**ARTICLE 72. REPEALED**

Former Article 72 consisting of Sections R6-5-7201 through R6-5-7214 repealed effective July 12, 1984.

**ARTICLE 73. REPEALED**

Article 73, consisting of Sections R6-5-7301 through R6-5-7306 and R6-5-7309, repealed; Sections R6-5-7307 and R6-5-7308 renumbered to Sections in Article 74, filed with the Secretary of State's Office May 15, 1997; effective July 1, 1997 (Supp. 97-2). Effective date corrected Supp. 98-2.

Article 73 consisting of Sections R6-5-7301 through R6-5-7309 adopted effective January 21, 1985.

Former Article 73, consisting of Sections R6-5-7301 through R6-5-7320, repealed effective February 26, 1979.

Section	
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R6-5-7303.	Repealed ..... 79
R6-5-7304.	Repealed ..... 79
R6-5-7305.	Repealed ..... 79
R6-5-7306.	Repealed ..... 79
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**ARTICLE 74. LICENSING PROCESS AND LICENSING REQUIREMENTS FOR CHILD WELFARE AGENCIES OPERATING RESIDENTIAL GROUP CARE FACILITIES AND OUTDOOR EXPERIENCE PROGRAMS**

Article 74, consisting of Sections R6-5-7401 through R6-5-7469, and Appendix 1 adopted; and Sections R6-5-7470 and R6-5-7471 renumbered from Article 73 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Effective date corrected Supp. 98-2.

Former Article 74, consisting of Sections R6-5-7401 through R6-5-7413, repealed effective May 15, 1997 (Supp. 97-2).

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*New Article 75, consisting of Sections R6-5-7501 through R6-5-7508, adopted effective June 4, 1998 (98-2).*

*Former Article 75, consisting of Sections R6-5-7501 through R6-5-7508, repealed effective November 8, 1982.*

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**ARTICLE 76. REPEALED**

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**ARTICLE 77. REPEALED**

*Former Article 77 consisting of Sections R6-5-7701 through R6-5-7704 repealed effective November 8, 1982.*

**ARTICLE 78. REPEALED**

*Former Article 78 consisting of Sections R6-5-7801 through R6-5-7804 repealed effective November 8, 1982.*

**ARTICLE 79. REPEALED**

*Former Article 79 consisting of Sections R6-5-7901 through R6-5-7913 repealed effective November 8, 1982.*

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**ARTICLE 81. REPEALED**

*Former Article 81 consisting of Sections R6-5-8101 through R6-5-8104 repealed effective November 8, 1982.*

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ARTICLE 82. REPEALED

Former Article 82 consisting of Sections R6-5-8201 through R6-5-8204 repealed effective November 8, 1982.

ARTICLE 83. REPEALED

Article 83, consisting of Sections R6-5-8301 through R6-5-8308, repealed effective December 17, 1993 (Supp. 93-4).

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ARTICLE 84. REPEALED

Former Article 84 consisting of Sections R6-5-8401 through R6-5-8404 repealed effective November 8, 1982.

ARTICLE 85. REPEALED

Former Article 85 consisting of Sections R6-5-8501 through R6-5-8508 repealed effective November 8, 1982.

ARTICLE 86. REPEALED

Article 86, consisting of Sections R6-5-8601 through R6-5-8604, repealed effective December 17, 1993 (Supp. 93-4).

Article 86 consisting of Sections R6-5-8601 through R6-5-8604 adopted effective March 8, 1979.

Former Article 86 consisting of Sections R6-5-8601 through R6-5-8611 repealed effective March 8, 1979.

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ARTICLE 88. REPEALED

Former Article 88 consisting of Sections R6-5-8801 through R6-5-8804 repealed effective November 8, 1982.

ARTICLE 89. RESERVED

ARTICLE 90. RESERVED

ARTICLE 91. REPEALED

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ARTICLE 93. REPEALED

Former Article 93 consisting of Sections R6-5-9301 through R6-5-9304 repealed effective November 8, 1982.

ARTICLE 94. REPEALED

Former Article 94 consisting of Sections R6-5-9401 through R6-5-9404 repealed effective November 8, 1982.

ARTICLE 95. REPEALED

Former Article 95 consisting of Sections R6-5-9501 through R6-5-9504 repealed effective November 8, 1982.

ARTICLE 96. REPEALED

Former Article 96 consisting of Sections R6-5-9601 through R6-5-9604 repealed effective November 8, 1982.

ARTICLE 97. REPEALED

Former Article 97 consisting of Sections R6-5-9701 through R6-5-9704 repealed effective November 8, 1982.

ARTICLE 98. REPEALED

Former Article 98 consisting of Sections R6-5-9801 through R6-5-9804 repealed effective November 8, 1982.

ARTICLE 99. REPEALED

Former Article 99 consisting of Sections R6-5-9901 through R6-5-9904 repealed effective November 8, 1982.

ARTICLE 100. REPEALED

Former Article 100 consisting of Sections R6-5-10001 through R6-5-10004 repealed effective November 8, 1982.

ARTICLE 101. REPEALED

Former Article 101 consisting of Sections R6-5-10101 through R6-5-10104 repealed effective November 8, 1982.

ARTICLE 102. REPEALED

Former Article 102 consisting of Sections R6-5-10201 through R6-5-10204 repealed effective November 8, 1982.

ARTICLE 103. REPEALED

Former Article 103 consisting of Sections R6-5-10301 through R6-5-10304 repealed effective November 8, 1982.

ARTICLE 104. REPEALED

Article 104, consisting of Sections R6-5-10401 through R6-5-10404, repealed effective December 17, 1993 (Supp. 93-4).

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ARTICLE 105. REPEALED

Article 105, consisting of Sections R6-5-10501 through R6-5-10504, repealed effective December 17, 1993 (Supp. 93-4).

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**ARTICLE 106. REPEALED**

*Former Article 106 consisting of Sections R6-5-10601 through R6-5-10604 repealed effective November 8, 1982.*

**ARTICLE 107. REPEALED**

*Former Article 107 consisting of Sections R6-5-10701 through R6-5-10704 repealed effective November 8, 1982.*

**ARTICLE 108. REPEALED**

*Former Article 108 consisting of Sections R6-5-10801 through R6-5-10804 repealed effective November 8, 1982.*

**ARTICLE 109. REPEALED**

*Former Article 109 consisting of Sections R6-5-10901 through R6-5-10904 repealed effective November 8, 1982.*

**ARTICLE 110. REPEALED**

*Former Article 110 consisting of Sections R6-5-11001 through R6-5-11004 repealed effective November 8, 1982.*

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**ARTICLE 1. REPEALED**

Former Article 1 consisting of Sections R6-5-101 through R6-5-103 repealed effective August 3, 1978.

**ARTICLE 2. REPEALED**

Former Article 2 consisting of Sections R6-5-201 through R6-5-209 repealed effective August 8, 1978.

**ARTICLE 3. REPEALED**

Former Article 3 consisting of Sections R6-5-301 through R6-5-308 repealed effective July 6, 1976.

**ARTICLE 4. REPEALED**

Former Article 4 consisting of Sections R6-5-401 through R6-5-420 repealed effective August 3, 1978.

**ARTICLE 5. REPEALED**

Former Article 5 consisting of Sections R6-5-501 through R6-5-504 repealed effective July 6, 1976.

**ARTICLE 6. REPEALED**

Former Article 6 consisting of Sections R6-5-601 through R6-5-622 repealed effective July 6, 1977.

**ARTICLE 7. REPEALED**

Former Article 7 consisting of Sections R6-5-701 through R6-5-716 repealed effective August 3, 1978.

**ARTICLE 8. REPEALED**

Former Article 8 consisting of Sections R6-5-801 through R6-5-808 repealed effective September 16, 1976.

**ARTICLE 9. REPEALED**

Former Article 9 consisting of Sections R6-5-901 through R6-5-904 repealed effective August 3, 1978.

**ARTICLE 10. REPEALED**

Former Article 10 consisting of Sections R6-5-1001 through R6-5-1003 repealed effective August 3, 1978.

**ARTICLE 11. REPEALED**

Former Article 11 consisting of Sections R6-5-1101 through R6-5-1109 repealed effective August 11, 1976.

**ARTICLE 12. REPEALED**

Former Article 12 consisting of Sections R6-5-1201 through R6-5-1206 repealed effective May 17, 1976.

**ARTICLE 13. REPEALED**

Former Article 13 consisting of Sections R6-5-1301 through R6-5-1309 repealed effective November 23, 1976.

**ARTICLE 14. REPEALED**

Former Article 14 consisting of Sections R6-5-1401 through R6-5-1413 repealed effective May 24, 1976.

**ARTICLE 15. REPEALED**

Former Article 15 consisting of Sections R6-5-1501 through R6-5-1504 repealed effective August 11, 1976.

**ARTICLE 16. RESERVED****ARTICLE 17. REPEALED**

Former Article 17 consisting of Sections R6-5-1701 through R6-5-1704 repealed effective August 11, 1976.

**ARTICLE 18. REPEALED**

Former Article 18 consisting of Sections R6-5-1801 through R6-5-1804 repealed effective August 11, 1976.

**ARTICLE 19. REPEALED**

Former Article 19 consisting of Sections R6-5-1901 through R6-5-1906 repealed effective July 6, 1976.

**ARTICLE 20. REPEALED****R6-5-2001. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2001 repealed, new Section R6-5-2001 adopted effective May 17, 1976 (Supp. 76-3). Amended as an emergency effective August 3, 1976 (Supp. 76-4). Former Section R6-5-2001 repealed, new Section R6-5-2001 adopted effective November 8, 1982 (Supp. 82-6). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2002. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2002 repealed, new Section R6-5-2002 adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Former Section R6-5-2002 repealed, new Section R6-5-2002 adopted effective November 8, 1982 (Supp. 82-6). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2003. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2003 repealed, new Section R6-5-2003 adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Former Section R6-5-2003 repealed, new Section R6-5-2003 adopted effective November 8, 1982 (Supp. 82-6). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2004. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2004 repealed, new Section R6-5-2004 adopted effective May 17, 1976 (Supp. 76-3). Amended as an emergency effective August 3, 1976 (Supp. 76-4). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Former Section R6-5-2004 repealed, new Section R6-5-2004 adopted effective November 8, 1982 (Supp. 82-6). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 1, 1983, through June 30, 1984, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 83-3). Exhibit I, Title XX, Social Services Plan, incorporated herein by reference, amended as an emergency effective September 30, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Emergency expired. Permanent amendment adopted effective January 3, 1984 (Supp. 84-1). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 1, 1984, through June 30, 1985, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 84-3). Exhibit I, Title

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XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 1, 1985, through June 30, 1986, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 85-3). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 2, 1986, through June 30, 1987, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 86-4). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period September 24, 1987, through June 30, 1988, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 87-3). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period September 22, 1988, through June 30, 1989, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 88-3). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2), of this rule, is adopted for the program period July 1, 1989, through June 30, 1990, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 89-3). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2005. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Former Section R6-5-2005 repealed, new Section R6-5-2005 adopted effective November 8, 1982 (Supp. 82-6). A new Exhibit I, Title XX, Social Services Plan, referred to in subsection (1) of this rule, is adopted for the program period September 22, 1988 through July 30, 1989 (Supp. 88-3). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2006. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Repealed effective November 8, 1982 (Supp. 82-6).

**ARTICLE 21. REPEALED**

*Former Article 21 consisting of Sections R6-5-2101 through R6-5-2110 repealed effective November 8, 1982.*

**ARTICLE 22. REPEALED**

*Former Article 22 consisting of Sections R6-5-2202 through R6-5-2209 repealed effective November 8, 1982.*

**ARTICLE 23. REPEALED****R6-5-2301. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2301 repealed, new Section R6-5-2301 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2302. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975

(Supp. 75-1). Former Section R6-5-2302 repealed, new Section R6-5-2302 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2303. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2303 repealed, new Section R6-5-2303 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2304. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2304 repealed, new Section R6-5-2304 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2305. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2305 repealed, new Section R6-5-2305 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2306. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2306 repealed, new Section R6-5-2306 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2307. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2308. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2309. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2310. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**ARTICLE 24. APPEALS AND HEARINGS**

*Article 24 consisting of Sections R6-5-2401 through R6-5-2405 adopted effective March 1, 1978.*

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Former Article 24 consisting of Sections R6-5-2401 through R6-5-2404 repealed effective March 1, 1978.

**R6-5-2401. Expired****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2401 repealed, new Section R6-5-2401 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2401 repealed, new Section R6-5-2401 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

**R6-5-2402. Expired****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2402 repealed, new Section R6-5-2402 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2402 repealed, new Section R6-5-2402 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

**R6-5-2403. Expired****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2403 repealed, new Section R6-5-2403 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2403 repealed, new Section R6-5-2403 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

**R6-5-2404. Basis for a hearing**

- A.** A person will be granted a hearing for any of the following reasons:
1. Right to apply for social services has been denied.
  2. Application is denied in whole or in part.
  3. Action on an application has not been taken by the Department within 30 days of the date of application.
  4. Service is suspended, terminated or reduced when such action has occurred as a result of an eligibility determination.
- B.** Change in law or policy. A hearing shall not be granted when a change in federal or state law or policy requires service adjustments or discontinuance for classes of recipients.

**Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2404 repealed, new Section R6-5-2404 adopted effective March 1, 1978 (Supp. 78-2).

**R6-5-2405. Hearing process**

- A.** Filing of appeal
1. A request for a hearing shall be filed in writing with the Department or provider within 15 calendar days after the mailing date of the decision letter, except that for appeals on denying, revoking or suspending a license of a child welfare agency or foster home the request shall be filed within 20 calendar days.
  2. Except as otherwise provided by statute or by Department regulation, any appeal, application, request, notice, report, or other information or document submitted to the Department shall be considered received by and filed with the Department:

- a. If transmitted via the United States Postal Service or its successor, on the date it is mailed. The mailing date will be as follows:
    - i. As shown by the postmark.
    - ii. In the absence of a postmark the postage-meter mark of the envelope in which it is received;
    - iii. If not postmarked or postage-meter marked, or if the mark is illegible, the date entered on the document as the date of completion.
  - b. If transmitted by any means other than the United States Postal Service or its successor, on the date it is received by the Department.
  - c. The submission of any appeal, application, request, notice, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation or to delay or other action of the United States Postal Service or its successor.
  - d. Any notice, determination, decision or other data mailed by the Department shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date of the notice, determination, decision or other data unless otherwise indicated by the facts. Computation of time shall be made in accordance with Rule 6(a) of the Rules of Civil Procedure, 16 A.R.S.
3. Benefits shall not be reduced or terminated prior to a hearing decision unless due to a subsequent change in household eligibility another notice of adverse action is received and not timely appealed.
  4. The local office or provider shall advise the client of any community legal services available and, when requested, shall assist in completing the hearing request.
- B.** Notice of hearing
1. Hearings will be held at the local office or any other place mutually agreed upon by the hearing officer and appellant. They shall be scheduled not less than 20 nor more than 30 days from the date of filing of the request for hearing. The appellant shall be given no less than 15 days notice of hearing, except that the appellant may waive the notice period or request a delay. For appeals on denying, revoking or suspending a license of a child welfare agency or foster home, however, the hearing shall be held within ten days of the date of filing of the request for hearing.
  2. The notice of hearing shall inform the appellant of the date, time, and place of the hearing, the name of the hearing officer, the issues involved, and of his rights to present his case in person or through a representative; examine and copy any documents in his case file and all documents and records to be used by the agency at the hearing at a reasonable time prior to the hearing as well as at the hearing; obtain assistance from the local office in preparing his case; and of his opportunity to make inquiry at the local office about the availability of community legal resources which could provide representation at the hearing.
  3. Appellant, in lieu of a personal appearance, may submit a written statement, under oath or affirmation, setting forth the facts of the case provided that the statement is submitted to the Department prior to or at the time of the hearing. All parties shall be ready and present with all

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witnesses and documents at the time and place specified in the notice of hearing, and shall be prepared at such time to dispose of all issues and questions involved in the appeal.

4. The hearing officer may take such action for the proper disposition of an appeal as he deems necessary, and on his own motion, or at the request of any interested party upon a showing of good cause disqualify himself, or may continue the hearing to a future time or reopen a hearing before a decision is final to take additional evidence. If an interested party fails to appear at a scheduled hearing, the hearing officer may adjourn the hearing to a later date or may make his decision upon record and such evidence as may be presented at the scheduled hearing. If, within ten days of the scheduled hearing, appellant files a written application requesting reopening of the proceedings and establishes good cause for failure to appear at the scheduled hearing, the hearing shall be rescheduled. Notice of the time, place, and purpose of any continued, reopened or rescheduled hearing shall be given to all interested parties.
- C. Prehearing summary**
1. A prehearing summary of the facts and grounds for the action taken shall be prepared and forwarded to the hearing officer no less than four days prior to the hearing.
  2. The summary shall be provided to the appellant prior to the commencement of the hearing.
- D. Subpoena of witnesses.** The hearing officer may subpoena any witnesses or documents requested by the Department or claimant to be present at the hearing. The request shall be in writing and shall state the name and address of the witness and the nature of his testimony. The nature of the witnesses' testimony must be relevant to the issues of the hearing, otherwise the hearing officer may deny the request. The request for the issuance of a subpoena shall be made to give sufficient time, a minimum of three working days, prior to the hearing. A subpoena requiring the production of records and documents shall specifically describe them in detail and further set forth the name and address of the custodian thereof.
- E. Review of file.** In the presence of a Department representative, the appellant and/or his authorized representative shall be permitted to review, obtain or copy any Department record necessary for the proper presentation of the case.
- F. Conduct of the hearing**
1. Hearings shall be conducted in an orderly and dignified manner.
  2. Hearings are opened, conducted and closed by the hearing officer who shall rule on the admissibility of evidence and shall direct the order of proof. He shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses, the production of books, papers, correspondence, memoranda and other records he deems necessary as evidence in connection with a hearing.
  3. Evidence not related to the issue shall not be allowed to become a part of the record.
  4. The hearing officer may, on his own motion, or at the request of the appellant or Department representative, exclude witnesses from the hearing room.
  5. The worker, supervisor or other appropriate person may be designated Department representative for the hearing.
  6. The appellant and Department representative may testify, present evidence, cross-examine witnesses and present arguments.
  7. The appellant may appear for himself or be represented by an attorney or any other person he designates.
8. A full and complete record shall be kept of all proceedings in connection with an appeal, and such records shall be open for inspection by the claimant or his representative at a place accessible to him. A transcript of the proceedings need not, however, be made unless it is required for further proceedings. When a transcript has been made for further proceedings, a copy shall be furnished without cost to each interested party.
- G. Hearing decision**
1. The hearing decision shall be rendered exclusively on the evidence and testimony produced at the hearing, appropriate state and federal law, and Department rules governing the issues in dispute.
  2. The decision shall set forth the pertinent facts involved, the conclusions drawn from such facts, the sections of applicable law or rule, the decision and the reasons thereof. A copy of such decision, together with an explanation of the appeal rights, shall be delivered or mailed to each interested party and their attorneys of record not more than 60 days from the date of filing the request for appeal, unless the delay was caused by the appellant.
  3. In those cases where the local office must take additional action as a result of a decision, such action must be taken immediately.
  4. All decisions in favor of the appellant apply retroactively to the date of the action being appealed, or to the date the hearing officer specifically finds appropriate.
  5. When a hearing decision upholds the proposed action of reducing, suspending or terminating a grant, an overpayment is the result.
  6. All hearing decisions will be made accessible to the public, subject to meeting the provision for safeguarding confidential information relating to the client.
  7. Decision of the hearing officer will be the final decision of the Department unless a reconsideration is requested in accordance with subsection (I).
- H. Withdrawal of appeal.** An appeal may be withdrawn as follows:
1. Voluntary withdrawal. This may be accomplished by completing and signing the proper Department form or by submitting a letter properly signed.
  2. Abandonment or involuntary withdrawal. This occurs when an appellant fails to appear at a scheduled hearing and within ten days thereof fails to request a rescheduled hearing or fails to appear at a rescheduled hearing which he has requested. A hearing may not be considered abandoned if the claimant provides notification up to the time of the hearing that he is unable, due to good cause, to keep the appointment and that he still wishes a hearing.
- I. Reconsideration**
1. An appellant, within ten calendar days after the decision was mailed or otherwise delivered to him, may request the Director to review the decision. The request shall be in writing and should set forth a statement of the grounds for review, and may be filed personally or by mail.
  2. After receipt of an application for leave to appeal, the Director shall:
    - a. Deny the application, or
    - b. Remand the case for rehearing, specifying the nature of any additional evidence required and/or issues to be considered, or
    - c. Grant the application and decide the appeal on the record.
  3. The Director shall promptly adopt his decision which shall be the final decision of the Department. A copy of the decision, together with a statement specifying the

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rights for judicial review, shall be distributed to each interested party.

**Historical Note**

Adopted effective March 1, 1978 (Supp. 78-2).

**ARTICLE 25. REPEALED****R6-5-2501. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-2501 repealed, new Section R6-5-2501 adopted effective February 26, 1979 (Supp. 79-1). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2502. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-2502 repealed, new Section R6-5-2502 adopted effective February 26, 1979 (Supp. 79-1). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2503. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 26. REPEALED****R6-5-2601. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2602. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2603. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2604. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2605. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2606. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2607. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 27. REPEALED****R6-5-2701. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2702. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2703. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2704. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2705. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2706. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2707. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 28. REPEALED**

*Former Article 28 consisting of Sections R6-5-2801 through R6-5-2804 repealed effective November 8, 1982.*

**ARTICLE 29. REPEALED****R6-5-2901. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2902. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2903. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2904. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2905. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

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**R6-5-2906. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2907. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2908. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2909. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2910. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2911. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2912. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 30. REPEALED**

*Former Article 30, consisting of Sections R6-5-3001 through R6-5-3007, repealed effective August 29, 1984.*

**ARTICLE 31. REPEALED**

*Former Article 31, consisting of Sections R6-5-3101 through R6-5-3110, repealed effective November 8, 1982.*

**ARTICLE 32. REPEALED****R6-5-3201. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3202. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3203. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3204. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3205. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3206. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3207. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3208. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3209. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3210. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3211. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 33. ACHIEVING A BETTER LIFE EXPERIENCE****R6-5-3301. Definitions**

The following definitions apply to this Article:

1. "ABLE" means the Achieving a Better Life Experience Act.
2. "Account" means an individual account in the fund established as prescribed for a single designated beneficiary.
3. "Aggregate Account Balance" means the total amount in an account on a particular date.
4. "Applicant" means any individual who applies to open an Account in the Program.
5. "Cash" means personal check, cashier's check, money order, debit card, Automated Clearing House (ACH) payments, or a similar cash equivalent.
6. "Code" means the federal Internal Revenue Code of 1986, as amended (26 U.S.C. 529A).
7. "Committee" means the same as in A.R.S. § 46-901(3).
8. "Department" means the Arizona Department of Economic Security.
9. "Designated Beneficiary" means the same as in A.R.S. § 46-901(5).
10. "Designated Representative" means a person who is authorized to act on behalf of a Designated Beneficiary.
11. "Disability Certification" means the certification described in Section 529A of the Code.
12. "Eligible Individual" means the same as in A.R.S. § 46-901(6).
13. "IRS" means the federal Internal Revenue Service.
14. "Program" means the same as in A.R.S. § 46-901(9).

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15. "Program Manager" means the entity selected by the Department for the Program in accordance with A.R.S. § 46-903(C)(1)-(8).
  16. "Qualified Disability Expenses" means the same as in A.R.S. § 46-901(10).
  17. "Qualified Withdrawal" or "Qualified Distribution" means a withdrawal from an Account to pay Qualified Disability Expenses of the Designated Beneficiary.
  18. "Secretary" means the United States Secretary of the Treasury or his/her delegate.
  19. "SSA" means the Social Security Administration.
- b. The name, address and social security number of the Designated Representative, if the Designated Beneficiary is not the applicant;
  - c. Evidence that the Designated Beneficiary is an Eligible Individual;
  - d. Any additional information required by the Program Manager.
4. Completed applications shall be submitted as specified on the application form.
  5. Applications that are incomplete or fail to meet the requirements established by the Department and the Program Manager shall be rejected. Reapplication is permissible.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019 (Supp. 19-1).

**R6-5-3302. Program Manager**

Responsibilities of the Program Manager:

1. The Program Manager shall implement the Program, including the administration and management of the Program.
2. The Program Manager shall ensure adequate safeguards to prevent aggregate contributions on behalf of a Designated Beneficiary in excess of the limit established by the Department under section 529(b)(6) of the Code. For purposes of this Section, aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality of either.
3. The Program Manager shall compile or cause to be compiled the necessary information to complete any reports.
4. The Program Manager may contract with third parties to assist the Department and Program Manager in the educational and promotional activities for the Program.
5. The Program Manager may use forms provided or promulgated by the SSA, the IRS, or other federal agencies for the purposes of the ABLE Program. The Program Manager may also promulgate its own forms reasonably necessary to implement the ABLE Program.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019 (Supp. 19-1).

**R6-5-3303. Fees**

1. The Program Manager may impose administrative, maintenance, investment management and investment fees on Designated Beneficiaries.
2. The Program Manager may impose a nonrefundable application fee to review and process paper applications.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019 (Supp. 19-1).

**R6-5-3304. Opening an Account**

1. To open an Account in the Program, an individual shall submit a completed application form, pay the application fee, if any, and pay an initial minimum contribution to the Account, if any, to the Program Manager at <https://az-able.com/>.
2. The Program Manager may require a minimum initial contribution to open an Account.
3. The content of the application form shall be prescribed by the Program Manager, but shall include at a minimum, the following information:
  - a. The name, address, social security number and birth date of the Designated Beneficiary;

- b. The name, address and social security number of the Designated Representative, if the Designated Beneficiary is not the applicant;
  - c. Evidence that the Designated Beneficiary is an Eligible Individual;
  - d. Any additional information required by the Program Manager.
4. Completed applications shall be submitted as specified on the application form.
  5. Applications that are incomplete or fail to meet the requirements established by the Department and the Program Manager shall be rejected. Reapplication is permissible.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019 (Supp. 19-1).

**R6-5-3305. Contributions**

1. Any person may make contributions to an Account, subject to the limitations imposed by federal law.
2. Except in the case of program-to-program transfers, contributions may be made in cash or a similar cash equivalent.
3. Annual contributions to an Account from all sources, except contributions received in program-to-program transfers, are limited to the per-beneficiary amount excluded from the federal gift tax under federal law.
4. Excess contributions and excess aggregate contribution shall be returned to contributors.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019 (Supp. 19-1).

**R6-5-3306. Statements**

1. Account statements shall be provided to Designated Beneficiaries and Designated Representatives in accordance with the Act.
2. Account statements may be provided to other individuals authorized to receive that information under the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 96 et seq.) and the Truth in Lending Act (15 U.S.C. 1601 et seq.).
3. The Account statements may be provided using U.S. Mail or provided electronically via website access or e-mail, as selected by the Designated Beneficiary or Designated Representative.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019 (Supp. 19-1).

**R6-5-3307. Program-to-Program Transfers and Rollovers**

1. Subject to federal law, the Program shall permit a program-to-program transfer through which a Designated Beneficiary transfers the entire amount of an Account from the AZ ABLE Program to or from a different state's ABLE program, or for the transfer of an Account from a Designated Beneficiary to another Eligible Individual who is a member of the family of the former Designated Beneficiary, without any intervening distribution.
2. Subject to federal law, the Program shall permit rollovers through which a contribution to an Account of a Designated Beneficiary (or an Eligible Individual who is a member of the family of the Designated Beneficiary) of all or a portion of the amount withdrawn from the Designated Beneficiary's Account, provided the contribution is made within 60 days of the date of the withdrawal, and, in

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the case of a rollover to the Designated Beneficiary's Account, no rollover has been made to another account established under an ABLE program within the prior 12 months.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 885, effective May 20, 2019 (Supp. 19-1).

**ARTICLE 34. RESERVED****ARTICLE 35. RESERVED****ARTICLE 36. RESERVED****ARTICLE 37. RESERVED****ARTICLE 38. RESERVED****ARTICLE 39. RESERVED****ARTICLE 40. RESERVED****ARTICLE 41. RESERVED****ARTICLE 42. RESERVED****ARTICLE 43. RESERVED****ARTICLE 44. RESERVED****ARTICLE 45. RESERVED****ARTICLE 46. RESERVED****ARTICLE 47. RESERVED****ARTICLE 48. RESERVED****ARTICLE 49. CHILD CARE ASSISTANCE**

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4901. Definitions**

The following definitions apply to this Article:

1. "Adequate notice" means written notification that explains the action the Department intends to take, the reason for the action, the specific authority for the action, the client's appeal rights, and right to benefits pending appeal, and that is mailed before the effective date of the action.
2. "Appellant" means an applicant or recipient of assistance who is appealing a negative action by the Department.
3. "Availability" means the portion of time that a parent or caretaker can provide care to their own child, as determined by the Department, because the parent or caretaker is not participating in an eligible activity.
4. "Applicant" means a person who has filed an application for Child Care Assistance.
5. "Authorized" means the specific amount of Child Care Assistance approved by the Department for an eligible family for a specific period of time.
6. "CCA" means the DES Child Care Administration.
7. "Caretaker relative" means a relative who exercises the responsibility for the day-to-day physical care, guidance, and support of a child who physically resides with the relative.
8. "Cash Assistance" means the program administered by the Family Assistance Administration that provides temporary Cash Assistance to needy families.
9. "Cash Assistance participant" means a recipient of Cash Assistance.
10. "Child care" means the compensated service the Department provides to a child who is unaccompanied by a parent or guardian during a portion of a 24-hour day.
11. "Child Care Assistance" means money payments for child care services paid by the Department for the benefit of an eligible family.
12. "Child Care Provider" means a child care facility licensed under A.R.S. Title 36, Chapter 7.1, Article 4, child care home providers, in-home providers, noncertified relative providers, and regulated child care on military installations or federally recognized Indian Tribes.
13. "Client" means a person who has requested, has been referred for, or who is currently receiving Child Care Assistance.
14. "Countable income" means the gross income of individuals included in family size that the Department considers to determine eligibility and calculate an assistance amount.
15. "CPS or Child Protective Services" means the child welfare services administration within the Department's Division of Children, Youth, and Family Services.
16. "Day" means a calendar day unless otherwise specified.
17. "DDD" means the Division of Developmental Disabilities.
18. "Denial" means a formal decision of ineligibility on an application, referral, or request for Child Care Assistance.
19. "Department" means the Arizona Department of Economic Security.
20. "Dependent" child means a person less than age 18, who resides with the applicant and whom the applicant has the legal financial obligation to support.
21. "DES-certified child care provider" means a provider who is certified by the Department of Economic Security under A.R.S. § 46-807 and who provides care in either the child's or the provider's own home.
22. "DHS-certified group home" means a provider who is certified by the Department of Health Services under A.R.S. § 36-897.01.
23. "DHS-licensed child care center" means a provider who is licensed by the Department of Health Services as prescribed in A.R.S. § 36-881.
24. "EITC" means Earned Income Tax Credit and is a federal income tax credit for low-income working individuals and families.
25. "Eligibility criteria" means the requirements an individual or family must meet to receive Child Care Assistance.
26. "Eligible activity" means a specific type of activity that causes an applicant or recipient and any other parent or responsible person in the eligible family to be unavailable to provide care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.
27. "Eligible child" means a child less than 13 years of age.
28. "Eligible family" means a group of persons whose needs, income, and other circumstances are considered as a whole for the purpose of determining eligibility and amount of Child Care Assistance.
29. "Eligible need" means a specific type of need that causes an applicant or recipient, or any other parent or responsible person in the eligible family, to be unavailable or incapable to provide child care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.

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30. "E.S.O.L." means English for Speakers of Other Languages.
31. "Existing client" means an individual who is currently receiving Child Care Assistance or who has an open Child Care Assistance case with the Department.
32. "Family size" means the number of individuals considered when determining income eligibility, and includes the applicant, other parent or responsible person, and their dependent children who reside in the same household, subject to R6-5-4914 (D).
33. "Federal poverty level" (FPL) means the poverty guidelines issued by the United States Department of Health and Human Services under Section 673(2) of the Omnibus Reconciliation Act of 1981; and reported annually in the Federal Register; which are converted into monthly amounts by the Department; which shall become effective for use in determining eligibility for Child Care Assistance on the first day of the state fiscal year immediately following the publication of the annual amount in the Federal Register.
34. "Foster care" means that the Department or an Arizona Tribe placed a child in the custody of a licensed foster parent.
35. "Foster parent" means any person licensed by the Department or an Arizona Tribe to provide for the out of home care, custody, and control of a child.
36. "Gap in employment" means a period of 30 consecutive days of Child Care Assistance that begins the first day after the last day worked and ends the 30th day after the last day worked for an existing client who has lost employment.
37. "G.E.D." means General Equivalency Diploma.
38. "Homebound" means a person who is confined to their home because of physical or mental incapacity.
39. "Homeless shelter" means a public or private nonprofit program that is targeted to assist homeless families and is designed to provide temporary or transitional living accommodations and services to assist such families toward self-sufficiency.
40. "Income" means earned and unearned income combined.
41. "Jobs" means the Department program that assists Cash Assistance participants to prepare for, obtain, and retain employment. "Jobs" Program also includes the Tribal Jobs Program and any other entities that contract with the state to perform this function.
42. "Jobs participant" means a Cash Assistance participant who is participating in the Jobs program as a condition of receiving Cash Assistance.
43. "Local office" means a CCA location that is designated as the location in which Child Care Assistance applications and other documents are filed with the Department and in which eligibility and assistance amounts are determined for a particular geographic area of the state.
44. "Lump sum income" means a single payment of earned or unearned income, such as a retroactive monthly benefit, non-recurring pay adjustment or bonus, inheritance, or personal injury and workers' compensation award.
45. "Mailing date" when used in reference to a document sent first-class, postage prepaid, through the United States mail, means the date:
  - a. Shown on the postmark;
  - b. Shown on the postage meter mark of the envelope, if there is no postmark; or
  - c. Entered on the document as the date of its completion, if there is no legible postmark or postage meter mark.
46. "Minor parent" means a parent less than the age of 18 years.
47. "Negative action" means one of the Department actions described in R6-5-4918, including action to terminate assistance or increase the fee level and copayment for Child Care Assistance.
48. "Noncertified relative provider" means a person who is at least 18 years of age, who is by blood, marriage, or adoption the grandparent, great grandparent, sibling not residing in the same household, aunt, great aunt, uncle or great uncle of the eligible child, who provides child care services to an eligible child, and meets the Department's requirements to be a noncertified relative provider.
49. "Notice date" means the date that appears as the official date of issuance on a document or official written notice the Department sends or gives to an applicant or recipient.
50. "OSI" or "Office of Special Investigations" means the Department office to which CCA refers cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies and other similar functions.
51. "Other related child" means a child who is related to the applicant or recipient by blood, marriage, or adoption, and who is not the applicant's or recipient's natural, step, or adoptive child.
52. "Overpayment" means a Child Care Assistance payment received by a child care provider or for an eligible family that exceeds the amount to which the provider or family was lawfully entitled.
53. "Parent" means the biological mother or father whose name appears on the birth certificate, the person legally acknowledged as a mother or father, a father who has had an adjudication of paternity, or the adoptive mother or father of the child.
54. "Positive action" means the approval, increase, or resumption of service such as increasing the amount of assistance or decreasing the fee level and copayment.
55. "Recipient" means a person who is a member of an eligible family receiving Child Care Assistance.
56. "Relative" means a person who is by blood, adoption, or marriage a parent, grandparent, great-grandparent, sibling of the whole or half blood, stepbrother, stepsister, aunt, uncle, great-aunt, great-uncle, or first cousin.
57. "Request for Hearing" means a clear written expression by an applicant or recipient, or such person's representative, indicating a desire to appeal a Department decision to a higher authority.
58. "Responsible person" means one or more persons, residing in the same household, who have the legal responsibility to financially support:
  - a. One or more of the children for whom Child Care Assistance is being requested, or
  - b. The applicant or recipient of Child Care Assistance.
59. "Review" means the Department's review of all factors affecting an eligible family's eligibility and assistance amount.
60. "Self-Sufficiency Declaration" means a written statement signed and dated by the child care recipient that lists the specific actions the recipient has taken during the most recent six or 12-month period to maintain or increase self-sufficiency.
61. "Tax Claimant" means a relative more than age 17 who resides with a parent who has applied for or is receiving Child Care Assistance, and who states their intention to

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claim any member of the eligible family as a tax dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.

62. "Tax Dependent" means a member of an eligible family applying for or receiving Child Care Assistance who is included in family size, and who the tax claimant states an intention to claim as a dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.
63. "Time Limit" means that each child in the eligible family may receive no more than 60 cumulative months of Child Care Assistance in a lifetime, unless the parent, caretaker relative, or legal guardian of the child needing care can prove they are making efforts to improve skills and move toward self-sufficiency, under A.R.S. § 46-803(K)(1).
64. "Unit" means a part or full day measurement of Child Care Assistance authorized by the Department to meet the needs of an eligible family based on the participation of parents, caretaker relatives, or legal guardians of the children needing care in an eligible activity.
65. "Waiting List" means the prioritization of applicants by the Department to manage resources within available funding by placing applicants determined eligible for Child Care Assistance on a list, until the Department determines that sufficient funds are available to fund Child Care Assistance for families on the list.
66. "Work" means the performance of duties on a regular basis for wages or salary.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted and repealed under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4902. Repealed****Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section automatically repealed July 31, 1998 (Supp. 98-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4903. Repealed****Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4904. Access to Child Care Assistance**

- A. Application for Child Care Assistance.
  1. Any person may apply for Child Care Assistance by filing, either in person or by mail, a Department-approved application form with any CCA office.
  2. The application file date is the date any CCA office receives an identifiable application. An identifiable application contains, at a minimum, the following information:
    - a. The legible name and address of the person requesting assistance; and
    - b. The signature, under penalty of perjury, of the applicant or, if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.
  3. In addition to the identifiable information described in subsection (A)(2), a completed application shall contain:
    - a. The names of all persons living with the applicant and the relationship of those persons to the applicant, and
    - b. All other eligibility information requested on the application form.
- B. Request for Child Care Assistance.
  1. Cash Assistance participants who need Child Care Assistance for employment activities are not required to complete an application.
  2. Child Care Assistance for Cash Assistance participants may begin effective the start date of the eligible activity but not earlier than the date that the participant requests Child Care Assistance from a local CCA office after the Department has verified eligibility criteria.
- C. Referral for Child Care Assistance.
  1. Jobs Participants. Cash Assistance participants in Jobs-approved work participation activities who request child care shall be referred by the Jobs Program for Child Care Assistance.
  2. Child Protective Services Families (CPS). CPS shall refer families that CPS deems eligible for Child Care Assistance on a case-by-case basis.
  3. CPS and DDD Foster Families - CPS or DDD shall determine eligibility for and refer children in the care, custody, and control of DES who need child care services as documented in a foster care case plan.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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*review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4905. Initial Eligibility Interview**

- A. Upon receipt of an identifiable application, the Department shall schedule an initial eligibility interview for the applicant. Upon request, the Department shall conduct the interview at the residence of a person who is homebound.
- B. The applicant shall attend the interview. A person of the applicant's choosing may also attend the interview.
- C. The Department may conduct a telephone interview if the applicant has previously verified citizenship or legal residency status as prescribed in R6-5-4911(E).
- D. During the interview, a Department representative shall:
  1. Assist the applicant in completing the application form;
  2. Witness the signature of the applicant;
  3. Discuss information pertinent to the applicant's child care needs;
  4. Provide the applicant with written information explaining:
    - a. The terms, conditions, and obligations of the Child Care Assistance program;
    - b. Any additional verification information as prescribed in R6-5-4906 which the applicant must provide for the Department to conclude the eligibility evaluation;
    - c. The Department practice of exchanging eligibility and income information among Department programs;
    - d. The coverage and scope of the Child Care Assistance program;
    - e. The applicant's rights, including the right to appeal a negative action; and
    - f. The requirement to report all changes within two work days from the date the change becomes known;
  5. Review the penalties for perjury and fraud, as printed on the application;
  6. Explain to the applicant who is included in family size for the purpose of determining income eligibility, and whose availability is considered in determining the amount of Child Care Assistance authorized for each child needing care as prescribed in R6-5-4914(D);
  7. If the applicant is the parent of the children needing care, explain the tax claimant provision under R6-5-4914(D)(3);
  8. Provide the applicant with the tax claimant declaration form if there is a potential tax claimant in the household;
  9. Provide the following information to assist the family in continuing to move toward self-sufficiency:
    - a. Availability of the Earned Income Tax Credit (EITC). Provide the applicant with the current U.S. Department of Internal Revenue Service (IRS) EITC information if the applicant comes into the office for the initial interview;
    - b. Availability of child support services through the Division of Child Support Enforcement (DCSE) to assist with paternity establishment, establishment of a child support order, or enforcement of an existing child support order. Provide the applicant with written information regarding child support services if the applicant comes into the office for the initial interview; and
    - c. Availability of Department-sponsored or contracted employment services that may assist the applicant and spouse or other parent in finding a job, or pursuing a better job or career. Provide the applicant with

written information regarding employment services if the applicant comes into the office for the initial interview;

10. Explain to the applicant the 60-month per child time limit for Child Care Assistance:
  - a. Describe the child care programs to which the 60-month time limit applies;
  - b. Describe how child care utilization is measured per child to calculate the 60-month limit; and
  - c. Explain the criteria for extensions of the time limit based on continued efforts to improve job skills and move toward self-sufficiency;
11. Discuss the six-child limit for Child Care Assistance:
  - a. Explain that no more than six children in a family may receive Child Care Assistance at any point in time; and
  - b. Explain the child care programs to which the six-child limit applies;
12. Discuss the waiting list for Child Care Assistance:
  - a. Describe the programs to which it applies;
  - b. Explain prioritization for assistance based upon income for families on the waiting list;
  - c. Indicate whether the waiting list is currently in effect; and
  - d. Explain that, based on funding availability, the Department may implement a waiting list at any point in time;
13. Review any verification information already provided;
14. Explain the applicant's duties to:
  - a. Notify the Department regarding initial provider selection or changes in provider in advance of using services or changing providers;
  - b. Pay DES required copayments to the child care provider as assigned by the Department; and
  - c. Pay any additional charges to the provider for the cost of care in excess of the amount paid by the Department; and
15. Review all ongoing reporting requirements, and explain that the applicant may incur overpayments for failure to make timely reports.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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**R6-5-4906. Verification of Eligibility Information**

- A. The Department shall obtain independent verification or corroboration of information provided by the client when required by law, or when it is necessary to determine eligibility, fee level and copayment assignment, or service authorization amount.
- B. The Department may verify or corroborate information by any reasonable means including:
  1. Contacting third parties such as employers and educational institutions,

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2. Asking the client to provide written documentation such as pay stubs or school schedules, and
  3. Conducting a computer data match through other Department programs' computer systems.
- C. The client is responsible for providing all required verification. The Department shall offer to assist a client who has difficulty in obtaining the verification and requests help.
- D. A client shall provide the Department with all requested verification within 10 calendar days from the notice date of a written request for such information. When a client does not timely comply with a request for information, the Department shall deny the application as provided in R6-5-4908(B).

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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**R6-5-4907. Withdrawal of an Application**

- A. An applicant may withdraw an application at any time prior to its disposition by providing the Department with a written request for withdrawal signed by the applicant.
- B. If an applicant makes an oral request to withdraw an application:
  1. The Department shall accept the oral request, provide the applicant with a written withdrawal form, and request that the applicant complete the form and return it to the Department. The Department shall inform the applicant of the consequences of not returning the withdrawal form within 10 days of the notice date.
  2. If the applicant fails to return the completed withdrawal form, the Department shall deny the application for failure to provide information unless the applicant rescinds the oral withdrawal request within 10 days of the date the Department provides the applicant a withdrawal form.
- C. A withdrawal is effective as of the application file date unless the applicant specifies a different date on the withdrawal form.
- D. An application that has been withdrawn shall not be reinstated; an applicant who has withdrawn an application shall reapply anew.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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**R6-5-4908. Child Care Assistance Approvals and Denials**

- A. The Department shall complete the eligibility determination within 30 calendar days of the application file date or referral receipt date, unless:
  1. The application or referral is withdrawn,
  2. The application or referral is rendered moot because the applicant has died or cannot be located, or
  3. There is a delay resulting from a Department request for additional verification information as provided in R6-5-4906(D).
- B. The Department shall deny Child Care Assistance when the applicant fails to:
  1. Complete the application and an eligibility interview, as described in R6-5-4905;
  2. Submit all required verification information within 10 days of the notice date of a written request for verification, or within 30 days of the application file date whichever is later; or
  3. Cooperate during the eligibility determination process as required by R6-5-4911(A).
- C. When an applicant satisfies all eligibility criteria, the Department shall determine the service authorization amount, the fee level and copayment amount (if applicable), approve Child Care Assistance, and send the applicant an approval notice. The approval notice shall include the amount of assistance, fee level and copayment information, and an explanation of the applicant's appeal rights.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4909. 12-month Review**

- A. The Department shall complete a review of all eligibility factors for each client at least once every 12 months, beginning with the 12th month following the first month of Child Care Assistance eligibility.
- B. The Department may elect to review eligibility factors more frequently than every 12 months.
- C. At least 30 days prior to the 12-month review date, the Department shall mail the client a notice advising of the need for a review, and the requirement to submit a completed review application and verification of income and other eligibility factors for the most recent calendar month.
- D. In response to such notice, the client shall mail or deliver to the Department a completed review application and verification by the date on the notice.
- E. The Department shall verify the client's income and any eligibility factors that have changed or are subject to change.
- F. The Department shall terminate Child Care Assistance effective the review date and deny the review application if the client:
  1. Fails to submit the review application by the review date, or
  2. Fails to submit requested verification by the review date as required by the Department for a redetermination of eligibility.

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- G.** If the client submits the review application and required verification within 30 days after the review date, the Department shall not require the client to appear for an intake interview and shall approve Child Care Assistance effective the date that the application and verification were received if other eligibility criteria are met.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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**R6-5-4910. Reinstatement of Assistance**

- A.** If the Department has terminated Child Care Assistance, the Department shall not reinstate assistance unless the client files a new application.
- B.** Notwithstanding subsection (A), the Department shall reinstate assistance within 10 calendar days when:
1. Termination was due to Department error; the Department shall reinstate assistance effective the date following the date of termination;
  2. The Department receives a court order or administrative hearing decision mandating reinstatement; the Department shall reinstate assistance effective the date prescribed by the court order or hearing decision; or
  3. The recipient files a request for a fair hearing within 10 days of the notice date of the termination notice and requests that assistance be continued pending the outcome of an appeal; the Department shall reinstate assistance effective the date following the date of termination.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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**R6-5-4911. General Eligibility Criteria**

- A.** Applicant and Recipient Responsibility.
1. An applicant for or recipient of Child Care Assistance shall cooperate with the Department as a condition of initial and continuing eligibility. The client shall:
    - a. Give the Department complete and truthful information;
    - b. Within two business days from the date the change becomes known, inform the Department of all changes in:
      - i. Income;
      - ii. Eligible activities as described in R6-5-4912;
  - iii. Work or school schedules;
  - iv. Persons moving in or out of the household;
  - v. Tax claimants moving in or out of the household;
  - vi. Other circumstances affecting eligibility or the amount of assistance authorized; and
- c.** Comply with all the Department's procedural requirements.
2. The Department may deny an application for or reduce or terminate assistance, if the client fails or refuses to cooperate with the Department to determine eligibility.
- B.** Eligible Applicants.
1. In order to be considered an eligible applicant for Child Care Assistance, a client shall reside with the child needing care and shall be:
    - a. The parent of the child for whom assistance is being requested; or
    - b. The caretaker relative related by blood, adoption, or marriage to the child for whom assistance is requested, including a brother, sister, aunt, uncle, first cousin, grandmother, grandfather, and persons of preceding generations as denoted by "grand," "great," or "great-great."
    - c. A court-appointed legal guardian for the child for whom assistance is requested, or a person who can provide documentation from the court that the process of legal guardianship has been initiated.
  2. When more than one applicant resides in the home, or the child resides with two different caretakers intermittently, the Department shall determine the eligible applicant for Child Care Assistance as follows:
    - a. If both the parent and a caretaker relative are in the home, the parent is the eligible applicant;
    - b. If both a legal guardian and the parent are in the home, the legal guardian is the eligible applicant;
    - c. If a caretaker relative whose legal guardianship has been terminated and the parent are both in the home, the parent is the eligible applicant;
    - d. When the child resides with a caretaker relative or legal guardian who is acting as caretaker at least 51 percent of the time, and the parent either maintains a separate residence and visits the child intermittently, or resides outside of the child's home for an indefinite period of time, the caretaker relative or legal guardian of the child is the eligible applicant for the child.
      - i. An eligible applicant cannot be the noncertified relative provider or certified provider of the child for whom he or she is applying for assistance.
      - ii. The Department shall not consider the tax claimant status of the caretaker relative or legal guardian under R6-5-4914(D) with respect to any member of the eligible family.
    - e. When the child resides with two or more caretaker relatives, the caretaker relative who will be claiming the child as a dependent for income tax purposes is the eligible applicant for Child Care Assistance.
  3. Acceptable verification of guardianship shall include the following court documents:
    - a. Petition for Temporary Appointment of Guardian (date stamped as received by the court);
    - b. Petition for Permanent Appointment of Guardian (date stamped as received by the court);
    - c. Order of Appointment of a Temporary Guardian;
    - d. Order of Appointment of a Permanent Guardian;

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- e. Letters and Acceptance of Permanent Guardianship.
4. If the client has not been appointed as a guardian when the Department authorizes Child Care Assistance, the client shall to continue the legal process for appointment in order to retain eligibility for Child Care Assistance.
  5. The client shall verify relationship or guardianship status as requested by the Department.
- C.** Arizona Residency. The client and the child for whom assistance is requested shall be Arizona residents and shall be physically present within Arizona.
- D.** Age of the Child. An eligible child is birth through 12 years of age only; a child aged 13 or older is ineligible for Child Care Assistance.
- E.** Citizenship and Legal Residency Requirements.
1. The client shall be a United States citizen or shall be a legal resident of the United States.
  2. The client shall verify citizenship or legal residency status as requested by the Department by providing a birth certificate, naturalization documentation, or alien or immigration registration documentation from the U.S. Immigration and Naturalization Service (INS).
- F.** Eligible Activity or Need.
1. The client, and any other parent or responsible person in the household shall be engaged in an eligible activity, or have an eligible need for Child Care Assistance as prescribed in R6-5-4912 that causes each client, parent, or responsible person to be unavailable to provide care to the child for whom assistance is requested.
  2. The Department does not require a tax claimant to be engaged in an eligible activity, unless the tax claimant is the other parent of a child receiving Child Care Assistance.
- G.** Availability of the Client, Parent, and Responsible Person.
1. The Department shall consider the availability of the client, and any other parent or responsible person in the household in determining eligibility and the amount of Child Care Assistance authorized for each individual child needing care.
  2. The client, parent, and any other responsible person in the household shall be unavailable to provide care to the child for whom assistance is being requested for a portion of a 24-hour day due to an eligible activity or need.
  3. In a family with more than one parent or responsible person, the Department shall authorize Child Care Assistance for the period of time that neither the parent nor the responsible person is available due to an eligible activity or need.
  4. The Department shall not consider the availability of a tax claimant in determining eligibility or amount of Child Care Assistance authorized for the client's children, unless the tax claimant is the other parent of a child receiving Child Care Assistance.
- H.** Provider Selection and Arrangements.
1. The Department shall not authorize Child Care Assistance until the applicant has selected a child care provider. An allowable child care provider for DES Child Care Assistance:
    - a. Shall be one of the following:
      - i. A DHS-licensed child care center;
      - ii. A DHS-certified group home;
      - iii. A DES-certified family child care home;
      - iv. A DES-certified in home care provider;
      - v. A DES-noncertified relative provider;
      - vi. A regulated provider meeting requirements established by military installations or federally recognized Indian Tribes.
    - b. Shall have a registration agreement with the Department.
  2. The Department shall not authorize Child Care Assistance with a noncertified relative provider when Child Care Assistance is requested for a CPS referred family, or a CPS or DDD foster family;
  3. The Department shall not authorize Child Care Assistance with a noncertified relative or certified provider when:
    - a. The relative or certified provider is the natural, step, or adoptive parent of the child for whom assistance is requested;
    - b. Child Care Assistance is requested by a Cash Assistance participant and the relative or certified provider is included in the same Cash Assistance grant as the child care applicant; or
    - c. The relative or certified provider is included in family size as prescribed in R6-5-4914(D), is the applicant for Child Care Assistance, or is the applicant's spouse.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4912. Eligible Activity or Need**

- A.** Eligible activities and needs for Child Care Assistance are described in this subsection:
1. Employment. Full or part-time employment for monetary compensation;
  2. Self Employment. Full or part time self employment for monetary compensation.
  3. Education and Training Activities with Minimum Work Requirement. A client who is employed shall be eligible to receive Child Care Assistance for education and training activities as prescribed in subsections (A)(3)(a), (b), and (c).
    - a. Post-secondary education in a college or trade school.
      - i. The client is employed an average of at least 20 hours per week, per calendar month.
      - ii. A self-employed client meets the 20-hour work requirement if the client's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
      - iii. The education or training activity is related to the client's employment goal.
      - iv. The client's educational level is freshman or sophomore as defined by the educational institution, or the educational activities are in pursuit of an Associate Degree, or the client is in training at a vocational or trade school.
      - v. The client shall maintain satisfactory progress in the educational activity and remain in good

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- standing, as defined by the educational institution.
- vi. The client has not received more than the lifetime limit of 24 months of Child Care Assistance for education and training activities. Child Care Assistance authorized for educational activities before August 1, 1997, does not count toward the 24-month limit.
  - vii. Countable months toward the 24-month limit are those calendar months in which the Department authorized additional child care services for education and training needs; the Department shall not calculate the 24-month limit based on monthly usage.
  - viii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational or employment goals are attained.
  - ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
  - x. Correspondence courses, home study courses, and study time are not eligible educational activities for Child Care Assistance.
- b. High School, G.E.D., E.S.O.L., and Remedial Educational Activities for Adults age 20 and Older.
    - i. The client is employed an average of at least 20 hours per week, per month.
    - ii. A self-employed client meets the 20-hour work requirement if the person's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
    - iii. The educational or training activity is related to the client's employment goal.
    - iv. The client shall maintain satisfactory progress in the educational activity and remain in good standing, as defined by the educational institution.
    - v. The client has not received more than the lifetime limit of 12 months of Child Care Assistance for education and training activities described in this Section. Child Care Assistance authorized for educational activities before August 1, 1997, does not count toward the 12-month limit.
    - vi. Countable months toward the 12-month limit are those calendar months in which the Department authorized additional child care services for education and training needs. The Department shall not calculate the 12-month limit based on monthly usage.
    - vii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational and employment goals are attained.
    - viii. Allowable educational activities are attendance at high school, G.E.D. or E.S.O.L. classes, or remedial educational activities as determined allowable by the Department.
    - ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
    - x. Correspondence courses, home study courses, and study time are not allowable educational activities for DES Child Care Assistance.
  - c. Cash Assistance participants who are sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month when a Jobs sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.
4. Teen Parents in Education and Training Activities. Teen parents are eligible for Child Care Assistance for education and training activities according to the following criteria:
    - a. The teen parent is under age 20.
    - b. The teen parent is attending high school, G.E.D., or E.S.O.L. classes, or remedial educational activities in pursuit of a high school diploma.
    - c. Child Care Assistance for teen parents for the educational activities described in this Section is not time-limited. The teen parent shall continue to receive assistance for the educational activity if eligibility criteria are met and until the teen parent:
      - i. Receives a diploma or certificate; or
      - ii. Attains the age of 20 years, whichever occurs first.
    - d. If the teen parent attends post-secondary educational activities, the eligibility criteria outlined under "Post- Secondary Education" in subsection (A)(3)(a) shall apply.
    - e. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
    - f. Correspondence courses, home study courses, and study time are not allowable educational activities for Child Care Assistance.
    - g. Cash Assistance participants who have been sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month that a Jobs noncompliance sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.
  5. Participation in Jobs Approved Activities. Individuals participating in the Jobs Program and who receive Cash Assistance shall be eligible for Child Care Assistance if the following criteria are met.
    - a. The individual is referred by a Jobs Program Specialist to CCA for Child Care Assistance.
    - b. The individual is required to contact a local DES Child Care Office to notify CCA of the selection of a provider, and to cooperate with CCA to arrange child care services.
    - c. The Child Care service authorization shall be based on the days and hours of the approved Jobs activity as specified by the Jobs Program Specialist in the Jobs referral.
    - d. Jobs participants shall receive Child Care Assistance for Jobs approved educational and training activities only. Educational and training activities that are not Jobs approved are not eligible activities for Child Care Assistance for Jobs participants.
  6. Unable or Unavailable to Provide Care. Clients who are unable or unavailable to care for their own children for a

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portion of a 24-hour day are eligible for Child Care Assistance according to the following criteria.

- a. Clients who are unable to care for their own children due to a physical, mental, or emotional disability are eligible for Child Care Assistance when the diagnosis, inability to care for the children, and anticipated recovery date (or the date of the next medical evaluation) have been verified by a licensed physician, certified psychologist, or certified behavioral health specialist.
  - b. The Department shall authorize Child Care Assistance to cover:
    - i. The amount of time the client is unable to care for the child; and
    - ii. The amount of time needed for ongoing treatment for the specified condition as verified by the physician, certified psychologist, or certified behavioral health specialist.
  - c. Child Care Assistance shall not cover intermittent and routine appointments that are not part of an ongoing treatment plan.
  - d. Clients participating in a drug rehabilitation program are eligible for Child Care Assistance to participate in activities as specified by the drug rehabilitation program.
  - e. Clients participating in a court-ordered community service program are eligible for Child Care Assistance to support required community service participation as specified by the court.
  - f. Clients who are residents of a homeless or domestic violence shelter are eligible for Child Care Assistance based on shelter residency, and on verification provided by an authorized representative at the shelter. Child Care Assistance shall cover:
    - i. The days and hours that the client is unavailable to provide care to their own child due to participation in shelter-directed activities as verified by an authorized representative of the shelter; and
    - ii. The days and hours that the client is unable to provide care to the client's own child due to a physical, mental, or emotional disability as verified by a licensed physician, certified psychologist, or a certified behavioral health specialist.
- B. Gaps In Employment.** Clients receiving Child Care Assistance are eligible for continued assistance during gaps in employment.
1. The Department shall continue Child Care Assistance for each parent, legal guardian, or relative caretaker in the eligible family during no more than two gaps in employment of 30 days in each 12-month period.
  2. The Department shall authorize Child Care Assistance during a 30-day gap in employment beginning the day after the last day worked, after the client provides verification of his or her job termination date.
  3. Gaps in employment may be consecutive (if requested).
    - a. The Department shall continue Child Care Assistance for an additional 30 days upon request of the client, if the client has not already used Child Care Assistance during two gaps in employment in the most recent 12-month period immediately preceding the job termination date.
    - b. The second gap in employment shall begin the day after the last day of the first gap in employment.
  4. The Department shall continue to authorize the same number of units of Child Care Assistance as previously authorized for the employment activity.
  5. The Department shall decrease the client's fee level and copayment under Appendix A, based on the loss of earned income effective the date that terminated employment has been verified, or the day after the last day worked, whichever is the later date.
  6. The Department shall end Child Care Assistance during a gap in employment on the 30th day after the client's last day worked, or on the 60th day after the client's last day worked if two consecutive gaps were authorized, unless the client can verify participation in a new eligible activity.
  7. When a client fails to report job loss timely as described under R6-5-4911(A)(1), and continues to use Child Care Assistance, the Department shall automatically reduce the overpayment period by subtracting any unused gaps in employment in lieu of the corresponding months of overpayment.
  8. Child care utilized during a gap in employment shall count toward the 60 month per child time limit for Child Care Assistance under R6-5-4919.
  9. CPS Referred Families and CPS and DDD Foster Families.
    - a. Child Care Assistance shall be provided to families requiring assistance as documented in a CPS case plan, or to children who are in the care, custody, and control of the Department, and who need Child Care Assistance as documented in a foster care case plan.
    - b. Eligibility for Child Care Assistance under this provision shall be determined by CPS and DDD on a case by case basis.
- C. Verification of Eligible Activity or Need.** The client shall verify eligible activities and needs as requested by the Department. Acceptable verification shall include:
1. Pay stubs for the most recent 30-day period;
  2. Employer's statement verifying start date, hourly rate of pay, work schedule, and frequency of pay including:
    - a. The date of receipt of the first full paycheck if the client is newly employed; and
    - b. The last day worked, if the client's employment has terminated.
  3. Quarterly or annual tax statement for the most recent calendar quarter or year to verify self-employment activities;
  4. Self-employment log to document self-employment activities and income accompanied by receipts for gross sales and business expenses for the most recent calendar month or quarter;
  5. Written verification from an educational institution to verify days and hours of attendance, start and end dates of the activity, educational level, and satisfactory progress;
  6. Written verification from a licensed physician, certified psychologist, or certified behavioral health specialist indicating the diagnosis, inability to care for the child, days and hours that child care is needed, and the anticipated recovery date;
  7. Written verification from a homeless or domestic violence shelter indicating the days, hours, and duration that child care is needed as prescribed in subsection (A)(6)(f).

**Historical Note**

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**R6-5-4913. Applicants and Recipients as Child Care Providers**

- A.** The client for Child Care Assistance may also be the child care provider for any child for whom assistance is requested when:
1. The client works for but is not the DES contracted party for the provision of Child Care Assistance;
  2. The client receives monetary compensation for work performed as a child care provider;
  3. The client cares for other unrelated children, for whom client does not receive Child Care Assistance, as well as for the child for whom the client has applied for Child Care Assistance; and
  4. The client is unavailable to provide care to the child for whom assistance is requested. When the client is also the child care provider, this is defined as:
    - a. There is no "not for compensation" slot available for the child; and
    - b. Caring for the child as well as for the other children for whom the child care provider receives compensation, would exceed the ratio per state certification or licensing standards pursuant to A.R.S. § 36-897.01 and 6 A.A.C. 5, Article 52.
- B.** If there is no "not for compensation" slot available for the child, and other eligibility criteria described in this Article are met, the client for Child Care Assistance may also be the child care provider for the child for whom assistance is requested.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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**R6-5-4914. Income Eligibility Criteria**

- A.** Child Care Assistance Without Regard to Income. The Department shall not determine income eligibility for Child Care Assistance for the following:
1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA as prescribed in R6-5-4904(B).
  2. Cash Assistance participants who need Child Care Assistance to maintain employment.
  3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA as prescribed in R6-5-4904(B).
- B.** Child Care Assistance With Regard to Income. The Department shall determine income eligibility for Child Care Assistance for the following:
1. Former Cash Assistance participants who need Child Care Assistance to maintain employment as prescribed in R6-5-4916(A).
  2. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment.
  3. Teen parents who need Child Care Assistance for educational activities as prescribed in R6-5-4912(A)(4).
  4. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter as prescribed in R6-5-4912(A)(6).
- C.** Income Maximum for Child Care Assistance. The Department shall determine income eligibility by calculating the gross monthly income of all family members included in family size unless otherwise excluded as prescribed in subsections (D), (E), (F), and (H).
1. If the gross monthly income for the family is equal to or less than 165% FPL, the family meets the income eligibility requirements for Child Care Assistance.
  2. If the gross monthly income for the family exceeds 165% FPL, the family does not meet the income eligibility requirements for Child Care Assistance.
- D.** Family Size Determination. The Department shall include the countable income of every person included in family size for the purpose of determining income eligibility as prescribed in this subsection.
1. Family size shall consist of:
    - a. The applicant for Child Care Assistance;
    - b. The applicant's natural, adoptive, and step children;
    - c. Any other parent or responsible person living in the household who is legally and financially responsible for either the applicant, or for the children needing care;
    - d. The children of the other parent or responsible person residing in the same household; and
    - e. The tax claimant under subsection R6-5-4914(D)(3).
  2. When a parent applies for Child Care Assistance for a natural, adoptive, or step child, the Department shall:
    - a. If the applicant and other adult in the household are married, or have children in common who need child care, make one family size determination for the family.
    - b. Count the income of both parents.
  3. When a tax claimant resides in the household with a parent who is applying for or receiving Child Care Assistance, the Department shall include the tax claimant in family size if:
    - a. The tax claimant states an intention to claim any of the following members of the eligible family residing in the same household as a dependent on the tax claimant's federal or state income tax return for the current calendar year:
      - i. The parent who is the applicant;
      - ii. The parent's natural, adoptive, or step children less than 18 years of age;
      - iii. The parent's spouse;
      - iv. The other parent of the children for whom assistance is requested, or who are receiving Child Care Assistance; or
      - v. The dependent children of the other parent residing in the household, and who are included in family size.
    - b. The tax claimant signs a declaration stating the intention to claim specific members of the eligible

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- family as tax dependents for the current calendar year.
4. The Department shall include the tax claimant's dependent children under age 18 and spouse residing in the same household in family size.
  5. When the applicant and his or her spouse are legally married and do not reside in the same household, but have the intention of remaining a family, the Department shall include the spouse in family size if the absent spouse is engaged in an eligible activity under R6-5-4912.
  6. When a caretaker relative applies for Child Care Assistance for another related child only:
    - a. Family size shall consist of the other related child or children only; and
    - b. The Department shall exclude both the caretaker relative and his or her spouse from the family size determination.
  7. When the applicant applies for Child Care Assistance for natural, adoptive, or step children, and also for another related child, the Department shall make one family size determination for the family:
    - a. Family size shall consist of the applicant, the applicant's child, any other related eligible children who need care, and any other parent or responsible person in the household.
    - b. Any income received by or for an "other related" child less than 13 years of age shall be counted.
    - c. If there is another relative in the household who states an intention to claim an other related child as a dependent for income tax purposes, this tax claimant must be the applicant for the child. The Department shall determine family size separately for this child under R6-5-4914(D)(6).
  8. When an unwed minor parent applies for Child Care Assistance for his or her own child, and resides with his or her parents:
    - a. The Department shall include the following in family size, unless the minor parent or the minor parent's children are tax dependents as described under subsection (d) below:
      - i. The minor parent; and
      - ii. The minor parent's child.
    - b. The Department shall not include the parents and siblings of the unwed minor parent in family size.
    - c. The Department shall deem a portion of the monthly gross countable income received by the parent of the minor parent to be available to meet the needs of the unwed minor parent and his or her children as described in this subsection, unless the parent of the minor parent is a tax claimant, under subsection (d) below.
      - i. The Department shall calculate the monthly gross countable income of the parents of the unwed minor parent;
      - ii. The Department shall subtract the amount of monthly gross countable income that equates to 165% FPL as specified in Appendix A, for the number of parents and siblings of the unwed minor parent residing in the same household only; and
      - iii. The Department shall count the remaining monthly gross countable income received by the parents of the unwed minor parent as available to meet the needs of the unwed minor parent and his or her children in the income eligibility determination.
  - d. If a parent of the minor parent is a tax claimant who intends to claim the minor parent or the minor parent's child as a tax dependent, the Department shall determine family size as follows:
    - i. The Department shall include the tax claimant, the tax claimant's spouse, and the tax claimant's dependent children residing in the same household in family size with the minor parent, and his or her child; and
    - ii. The Department shall count all countable income received by the tax claimant and the tax claimant's spouse in the income eligibility determination.
  9. When a married, separated, widowed, or divorced minor parent applies for Child Care Assistance for his or her own children:
    - a. The Department shall include the minor parent and his or her own dependent children in family size;
    - b. The Department shall include monthly gross countable income received by the minor parent and the other parent or responsible person residing in the home in the income eligibility determination;
    - c. The Department shall not consider income received by the parent of the minor parent in the income eligibility determination, unless the parent of the minor parent is a tax claimant, under subsection (8)(d); and
    - d. The Department shall not include parents and siblings of the minor parent in family size, unless the parent of the minor parent is a tax claimant, under subsection (8)(d).
  10. If a tax claimant included in family size is also a parent who needs Child Care Assistance for his or her own child, the tax claimant shall submit a separate application.
    - a. The Department shall make a separate eligibility and family size determination for the tax claimant's dependent children less than age 18.
    - b. The Department shall include the parent, spouse or other parent or responsible person, and their dependent children in family size.
  11. When a guardian applies for Child Care Assistance for a child in guardianship only, the Department shall:
    - a. Make one family-size determination for the child in guardianship.
    - b. Include all children in guardianship in family size.
    - c. Exclude the guardian and the guardian's spouse from family size.
    - d. Count the income received by or for the children in guardianship.
    - e. If the parent of the child needing care is also in the household, the Department shall not include the parent in family size; and shall not count his or her income.
  12. When the applicant applies for Child Care Assistance for natural, step, or adoptive children in addition to the children in guardianship, the Department shall:
    - a. Make one family-size determination.
    - b. Include in family size the applicant, the applicant's children, the children in guardianship less than 13 years of age who need care, and any other parent or responsible person in the household.
    - c. Count the applicant's and other parent's or responsible person's income.
    - d. Count the income received by or for the children in guardianship less than 13 years of age.
  13. When a foster parent applies for Child Care Assistance for his or her own children:

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- a. The Department shall include the applicant, other parent or responsible person, and their children in family size; and
- b. The Department shall not include the foster child in family size unless the foster child is a relative.
- E. Verification of Tax Claimant Status**
1. The Department shall verify tax claimant status as described in R6-5-4914(D) by requiring:
    - a. The client to submit a signed and dated declaration stating that no relative 18 years of age or older residing in the same household intends to claim any member of the eligible family as a tax dependent for the current calendar year; or,
    - b. The client and the relative 18 years of age or older residing in the same household who intends to claim a member of the eligible family as a tax dependent for the current calendar year to:
      - i. Submit a signed and dated declaration stating that fact; and,
      - ii. State the name of the family member whom the relative intends to claim as a tax dependent.
  2. The Department shall include the tax claimant, his or her spouse, and dependent children in family size upon receipt of the signed declaration.
  3. If the tax claimant no longer intends to claim a member of the eligible family as a tax dependent, the client must sign and date a new declaration.
    - a. The new declaration shall specify that the tax claimant no longer intends to claim a member of the eligible family as a tax dependent.
    - b. The Department shall remove the tax claimant, tax claimant's spouse, and his or her dependent children from family size after receipt of the signed declaration.
- F. Countable Income.** The Department shall count the gross monthly income of a family as prescribed in subsection (D); countable income shall include:
1. Gross earnings received for work including wages, salary, armed forces pay (with the exception of specifically designated allotments for food and shelter costs), commissions, tips, overtime, piece-rate payments, and cash bonuses earned, before any deductions.
  2. Net income from non-farm self employment including gross receipts minus business expenses. Gross receipts include the value of all goods sold and services rendered. Business expenses include costs of goods and services purchased or produced, rent, heat, light, power, depreciation charges, wages, and salaries paid, business taxes, and other expenses incurred in operating the business. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.
  3. Net income from farm self employment which includes gross receipts minus operating expenses. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include costs of feed, fertilizer, seed, and other farming supplies, wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes, and other expenses incurred in operation of the farm. The value of fuel, food, or other farm products used for family living is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.
  4. Social Security payments prior to deductions for medical insurance including Social Security benefits and "survivors" benefits, and permanent disability insurance payments made by the Social Security Administration.
  5. Railroad retirement insurance income.
  6. Dividends including interest on savings, stocks and bonds, income and receipts from estates or trusts, net rental income or royalties, receipts from boarders or lodgers (net income received from furnishing room and board shall be 1/3 of the total amount charged). Interest on Series H. United States Government Savings bonds.
  7. Mortgage payments received shall be prorated on a monthly basis.
  8. Public assistance payments including payments from the following programs: Cash Assistance, Supplemental Security Income (SSI), State Supplementary Payments (SSP), General Assistance (GA), Bureau of Indian Affairs General Assistance (BIAGA), and Tuberculosis Control (TC).
  9. Pensions and annuities including pensions or retirement benefits paid to a retired person or their survivors by a former employer or by a union, or distributions or withdrawals from an individual retirement account.
  10. Unemployment Insurance payments including compensation received from government unemployment insurance agencies or private companies during periods of unemployment, and any strike benefits received from union funds.
  11. Workers' compensation payments.
  12. Money received from the Domestic Volunteer Act when the adjusted hourly payment is equal to or greater than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP).
  13. Alimony or spousal maintenance which shall be counted the month received.
  14. Child support which shall be counted the month received.
  15. Veterans' pensions including benefits and disability payments paid periodically by the Veterans Administration to members of the Armed Forces or to a survivor of deceased veterans.
  16. Cash gifts received on a monthly basis from relatives, other individuals, and private organizations, as a direct payment in the form of money.
  17. Money received through the lottery, sweepstakes, contests, or through gambling ventures whether received on an annuity or lump sum basis.
  18. Any other source of income not specifically excluded in subsection (F).
- G. Excluded Income.** The Department shall exclude the items listed in this subsection when determining a family's gross monthly income.
1. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
  2. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under Section 21(a) of the Act;
  3. Money or capital gains received as a lump sum, from the sale of personal or real property, such as stocks, bonds, or a car (unless the person was engaged in the business of

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- selling such property, in which case the net proceeds would be counted as income from self employment);
4. Withdrawals of bank deposits;
  5. Loans; money borrowed;
  6. Tax refunds;
  7. Any monies received through the federal Earned Income Credit (EIC);
  8. One time lump sum awards or benefits, including:
    - a. Inherited funds;
    - b. Insurance awards;
    - c. Damages recovered in a civil suit;
    - d. Monies contributed by a client to a retirement fund that are later withdrawn prior to actual retirement; and
    - e. Retroactive public assistance payments;
  9. The value of U.S. Department of Agriculture (USDA) Food Stamps;
  10. The value of USDA-donated food;
  11. The value of any supplemental food assistance received under the Child Nutrition Act of 1966 and special food service program for children under the National School Lunch Act, the Women, Infant, and Children Program (WIC), Child and Adult Care Food Program (C.A.C.F.P.), and the School Lunch Program;
  12. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (for example, Navajo/Hopi Relocation Act);
  13. Earnings of a child who is under the age of 18 and attending high school or other training program, and who is not a minor parent who needs Child Care Assistance for his or her own child;
  14. Home produce used for household consumption;
  15. Government-sponsored training program expenses (TRE payments) such as training-related expenses paid to JOBS participants and Job Training Partnership Act (JTPA) training expenses paid directly to the client;
  16. The value of goods or services received in exchange for work;
  17. Interest on Series E, United States Government Savings bonds;
  18. Foster care maintenance payments received for care of foster children;
  19. Adoption subsidy payments received for the care of adopted children;
  20. Educational loans, grants, awards, and scholarships regardless of their source, including Pell Grants, Supplemental Educational Opportunity Grants (SEOG), Bureau of Indian Affairs (BIA) Student Assistance Grants, college work-study income, Carl D. Perkins Vocational and Applied Technology Education Act income, and any other state or local, public, or private educational loans, grants, awards, and scholarships;
  21. Money received from the Domestic Volunteer Act when the adjusted hourly payment is less than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP);
  22. Housing and Urban Development (HUD) benefits, cash allowances and credits against rent;
  23. Vendor payments including payments made directly to a third party by friends, relatives, charities, or agencies to pay bills for the client;
  24. Vocational Rehabilitation training-related expenses (TRE) which are reimbursements for expenses paid. Subsistence and maintenance allowances, and incentive payments not designated as wages;
  25. Disaster relief funds and emergency assistance provided under the Federal Disaster Relief Act, and comparable assistance provided by a state or local government, or disaster assistance organization;
  26. Energy assistance including all state or federal benefits designated as "energy assistance" or assistance from a municipal utility or non-profit agency;
  27. Agent Orange payments;
  28. Any other income specifically excluded by applicable state or federal law.
- H. Income Deduction.** Child support that is paid for dependents who do not reside in the same household with the eligible family shall be deducted from the monthly gross countable income prior to income calculation and fee level and copayment assignment as prescribed in subsection (I) and R6-5-4915.
- I. Income Calculation.** The Department shall calculate monthly income as prescribed in this subsection.
1. The Department shall include all income of all family members included in the family-size determination, other than income excluded as prescribed in R6-5-4914(F) in the determination of income eligibility.
  2. The Department shall calculate a monthly figure for each source of income separately with the appropriate method used for calculation.
  3. After calculating monthly income for each source of income, the Department shall add the monthly amounts from each source to obtain the total monthly income.
  4. The Department shall convert income received less often than monthly to a monthly figure as provided in this subsection.
    - a. The Department shall prorate the total income over the number of months that the income is intended to cover.
    - b. If the income is received on or after the date of application, a monthly share of income shall be considered beginning with its earliest possible effective date and for a number of months equal to the number of months which the income covers.
    - c. If the family receives the income prior to the date of application, the number of months that the income is intended to cover shall be equal to the number of months of coverage remaining.
  5. The Department shall anticipate income for a current or future month based on the averaged income received in the most recent 30-day period, unless the Department receives new information that indicates that the income has changed, as verified under subsection (J).
    - a. If the income received by the household has increased due to receipt of a new source of income, an increased work schedule, or a raise in salary or wages, the Department shall calculate the gross monthly countable income for the household based on the amount of income anticipated to be received on a monthly basis. The Department shall begin counting the new or increased income as described under subsection (6).
    - b. If the income received by the household has decreased due to loss of a source of income, a decreased work schedule, or a reduction in salary or wages, the Department shall cease counting the income effective the date that the client provides verification of the loss or reduction in income.

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6. When a family receives a new or increased income source that will be received monthly, weekly, bi-weekly, or semi-monthly:
  - a. The income shall not be considered available to the family until the date that the first full payment is received.
  - b. The Department shall not assess a new fee level or ineligibility to the client until the monies are available.
  - c. Once the client has already received the payment that includes the new or increased income source, and a higher fee level or ineligibility results:
    - i. The Department shall increase the fee level or terminate assistance no earlier than 10 days after the first full paycheck has been received; and
    - ii. The Department shall send a 10-day negative action notice prior to increasing the fee level or terminating assistance.
7. The Department shall convert income received more often than monthly, for a period covering less than a month, to a monthly amount by one of the methods listed below.
  - a. If the income amount does not vary and is received monthly, weekly, bi-weekly, or semi-monthly, the conversion to a monthly amount will be obtained by multiplying the pay period amount by:
    - i. 1, if monthly;
    - ii. 4.3, if weekly;
    - iii. 2.15, if bi-weekly; or
    - iv. 2, if semi-monthly.
  - b. This amount shall be applied as income on an ongoing monthly basis until there is a change in the income.
  - c. If the monthly income received varies in amount and frequency, and exact monthly figures are unavailable, the Department shall use an average monthly figure.
8. When the Department calculates the gross monthly income for the family, the whole dollar amount only shall be used to determine income eligibility, and fee level and copayment assignment; any amount that is a fraction of a whole dollar shall be rounded down to the next whole dollar.
- J. Verification of Income. The client shall verify income by providing written documentation of income as requested by the Department such as:
  1. Pay stubs for the most recent calendar month, or for any month of potential overpayment;
  2. Employer's statement verifying work schedule, hourly rate of pay, and frequency of pay;
  3. Benefit award statements for the most recent benefit period;
  4. Statements of account to verify interest income;
  5. Quarterly or annual tax returns for the most recent quarter or year for self-employment income;
  6. Self-employment log accompanied by gross sales receipts and business expense receipts for the most recent calendar month or quarter; and
  7. Other written documentation from the source of the income indicating the amount of income received, source of income, frequency received, and naming the payee.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp.

97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4915. Fee Level and Copayment Assignment**

- A. The Department shall assign a fee level to the family based on family size and monthly gross countable income, as specified in Appendix A.
- B. The Department shall assign individual minimum required copayment amounts for each child in the family based on the fee level assignment, and the number of children needing care, as specified in Appendix A.
- C. The Department shall not assign a fee level or minimum required copayment to Jobs participants, Cash Assistance participants who need Child Care Assistance for employment, or families determined eligible and referred by CPS or DDD.
- D. When a client fails to pay the DES-required copayment, or fails to make satisfactory arrangements for payment of the DES-required copayment with a child care provider, the client is ineligible for Child Care Assistance.
- E. When the Department has determined that an client is ineligible for Child Care Assistance due to nonpayment of the copayment, the client is ineligible for any Child Care Assistance program that requires a copayment until past-due copayments have been paid, or until satisfactory arrangement have been made with the provider for payment.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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**R6-5-4916. Special Eligibility Criteria**

- A. Transitional Child Care
  1. Former Cash Assistance participants who are attempting to achieve independence from the Cash Assistance program, who need Child Care Assistance for employment, and who are otherwise eligible shall receive up to 24 months of Transitional Child Care Assistance.
  2. The former Cash Assistance participant shall have received Cash Assistance in Arizona in at least one month and shall apply for Child Care Assistance within six months after the Cash Assistance case closure date.
  3. The former Cash Assistance participant and any other parent or responsible person in the household shall need Child Care Assistance to maintain employment.
  4. The most recent Cash Assistance case closure shall not have been due to a sanction for Jobs or Child Support noncompliance, and the Cash Assistance participant shall

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not have been sanctioned due to intentional program violation (IPV) at the time of the most recent Cash Assistance case closure.

- B. Cash Assistance Diversion Participants.**
1. Applicants for Cash Assistance who are diverted from long-term Cash Assistance through the Cash Assistance Diversion program shall be treated as Cash Assistance participants during the three-month period that the Cash Assistance Diversion payment covers.
  2. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for employment activities without regard to income as prescribed in R6-5-4914(A) during the three-month Diversion period.
  3. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for job search activities during the three-month Diversion period.
  4. Cash Assistance Diversion participants shall be eligible for Transitional Child Care after the three-month Diversion period if the income eligibility requirements in R6-5-4914(B) and the TCC requirements in subsection (A) of this provision are met.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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**R6-5-4917. Waiting List for Child Care Assistance**

- A. Implementation of a Waiting List for Child Care Assistance.**
1. The Department may implement a waiting list for Child Care Assistance whenever it determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.
    - a. The Department may implement a waiting list for all applicants under subsection (B); or,
    - b. The Department may implement a partial waiting list and prioritize access to Child Care Assistance for applicants based on income under subsection (D).
  2. When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list under this subsection, and shall not authorize Child Care Assistance until the Department determines that sufficient funding is available.
- B. Applicants Who Are Subject To the Waiting List.** When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list, including individuals who are reapplying for Child Care Assistance following case closure. The Department shall place the following applicants on the waiting list:
1. Applicants who are not Cash Assistance participants but who need Child Care Assistance to maintain employment under R6-5-4912(A).
  2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D).
  3. Applicants who need Child Care Assistance because they are unable or unavailable to care for their own children

due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).

- C. Applicants Who Are Not Subject To the Waiting List.** When the waiting list is in effect, the Department shall not place the following applicants determined eligible for Child Care Assistance on the waiting list, and shall proceed to authorize Child Care Assistance under R6-5-4918.
1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B).
  2. Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4904(B).
  3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B).
  4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
- D. Prioritization of Applicants for Child Care Assistance When the Waiting List Is In Effect.** The Department shall prioritize applicants for authorization of Child Care Assistance when the waiting list is in effect under this subsection.
1. Prioritization Based On Income.
    - a. Families with gross monthly incomes at or below 100% of the Federal Poverty Level (FPL) receive the highest priority for assistance;
    - b. The Department shall prioritize the remainder of families applying for Child Care Assistance when the waiting list is in effect in the following order:
      - i. Families with gross monthly incomes between 101% FPL and 110% FPL;
      - ii. Families with gross monthly incomes between 111% FPL and 120% FPL;
      - iii. Families with gross monthly incomes between 121% FPL and 130% FPL;
      - iv. Families with gross monthly incomes between 131% FPL and 140% FPL;
      - v. Families with gross monthly incomes between 141% FPL and 150% FPL;
      - vi. Families with gross monthly incomes between 151% FPL and 160% FPL;
      - vii. Families with gross monthly incomes between 161% FPL and 165% FPL;
  2. Prioritization Based On Application Date. The Department shall place clients determined eligible for Child Care Assistance on the waiting list effective the date that the Department receives an identifiable application, under R6-5-4904(A)(2).
- E. Cooperation Requirement for Clients on the Waiting List.**
1. Clients shall cooperate with the Department to maintain eligibility while on the waiting list, under R6-5-4911(A).
  2. If the family's household income changes, the client shall notify the Department of the change in income within 2 workdays.
  3. If someone moves in or out of the household, the client is required to notify the Department within 2 workdays.
  4. The Department shall recalculate gross household income and notify the client of any changes in priority status described under subsection (D) based on the change in income or family size.
- F. Loss of Employment While On the Waiting List.**

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1. If the parent or caretaker of the child loses employment while on the waiting list, the family may remain on the waiting list without an eligible activity.
  2. When the Department selects the family for release from the waiting list under subsection (H), the Department shall require the parent or caretaker of the child to verify participation in an eligible activity under R6-5-4912 before the Department authorizes the family to receive Child Care Assistance.
- G. Determination of Ineligibility While On the Waiting List.**
1. If the family becomes ineligible for Child Care Assistance while on the waiting list, or during release from the waiting list under subsection (J), the Department shall remove the client from the waiting list and close the case.
  2. The client shall submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date.
- H. Selection from the Waiting List.**
1. The Department shall select clients for release from the waiting list within each level of income priority as described under subsection (D), and in application date order.
  2. When the Department notifies the client that he or she is being released from the waiting list, the Department may require the client to verify income, employment, other household circumstances or provider selection prior to being authorized for Child Care Assistance.
- I. Clients Determined Eligible Upon Selection for Release from the Waiting List.**
1. The Department shall authorize Child Care Assistance effective a date specified by the Department based on the availability of funding, after the client has submitted any requested verification and the Department has determined that the family remains eligible for Child Care Assistance.
  2. If the client is eligible for Child Care Assistance, the Department shall authorize Child Care Assistance, and shall notify the client in writing regarding:
    - a. The start date of Child Care Assistance;
    - b. The amount of assistance authorized for each child under R6-5-4918; and
    - c. The assigned fee level and copayment for each child.
- J. Clients Determined Ineligible Upon Selection for Release from the Waiting List.**
1. If the client is not eligible for Child Care Assistance as described in R6-5-4920, the Department shall notify the client regarding ineligibility under R6-5-4921.
  2. The Department shall require the client to submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date, if a waiting list remains in effect.
- K. Clients Selected for Release from the Waiting List in Error.**
1. If the Department determines that a client was not eligible for selection from the waiting list, and the waiting list remains in effect, the Department shall proceed as described under this subsection.
  2. If the Department determines that the client is currently at a lower level of priority for assistance under subsection (D)(1) due to a previously unreported change in income or family size, the Department shall not authorize Child Care Assistance.
  3. The Department shall reinstate the client on the waiting list effective the existing application date; and,
  4. Notify the family in writing of reinstatement to the waiting list and the newly assigned level of priority.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4917 renumbered to R6-5-4918; new R6-5-4917 made by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4918. Authorization of Child Care Assistance**

- A. Authorization Based on Eligible Activity or Need.** The Department shall authorize Child Care Assistance for a portion of each 24-hour day based on the verified eligible activity or need of the parent and responsible person for the child needing care.
- B. Authorization Based on Unavailability.** The amount of Child Care Assistance authorized by the Department shall be based on the amount of time that the client and any other parent or responsible person in the household are unavailable or incapable to provide care to their own children due to an eligible activity or need as prescribed in R6-5-4911(F) and R6-5-4912. When there are two or more parents or responsible persons in the household, Child Care Assistance shall be authorized for the amount of time that neither parent or responsible person is available due to an eligible activity or need.
- C. Authorization for Self-employment Activities.**
1. The Department shall authorize Child Care Assistance for self-employment activities based on monthly net income divided by the current hourly minimum wage standard.
  2. Authorization of Child Care Assistance for self-employment activities shall not exceed the lesser of:
    - a. The maximum number of Child Care Assistance units that can be authorized as prescribed in subsections (B) and (D), or
    - b. The number of hours calculated by dividing monthly net income from self-employment by the amount of the hourly minimum wage standard, or
    - c. The number of hours of Child Care Assistance needed by the client to perform self employment activities.
- D. Six-child Authorization Limit.**
1. The Department shall authorize no more than six children in the eligible family at any given point in time.
    - a. The six-child authorization limit applies to clients under this subsection.
      - i. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;
      - ii. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and
      - iii. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).

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- b. The six-child authorization limit shall not apply to the following clients:
  - i. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);
  - ii. Cash Assistance participants who need Child Care Assistance to maintain employment;
  - iii. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and
  - iv. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
- c. For eligible families who are not subject to the six-child limit, there is no limit to the number of eligible children whom the Department can authorize to receive Child Care Assistance in the eligible family.
- 2. If the eligible family requests Child Care Assistance for more than six children, the family shall select the six children to be authorized to receive Child Care Assistance.
- 3. If the family fails to designate six children to receive Child Care Assistance as requested, the Department shall authorize the six youngest children.
- 4. If the client is already receiving Child Care Assistance for six children and requests assistance for a new child, the Department shall not authorize assistance for the new child until the client notifies the Department which child will no longer receive Child Care Assistance.
- E. Units of Child Care Assistance.
  - 1. The Department shall authorize Child Care Assistance in full- and part-day units;
  - 2. The Department shall not authorize more than 31 units for each child, per child care provider in a calendar month;
  - 3. A part-day unit of Child Care Assistance is less than six hours;
  - 4. A full-day unit of Child Care Assistance is six hours or more;
  - 5. Each child care provider determines the upper limit of what constitutes a full day of care for that provider.
- F. Date of Eligibility. The Department shall approve eligibility for Child Care Assistance effective the application file date or referral receipt date as described in R6-5-4904 if the client satisfies all applicable conditions of eligibility as prescribed in this Article.
- G. Date of Authorization.
  - 1. The Department shall authorize Child Care Assistance to begin effective the start date of the eligible activity or need, but not earlier than application file date, request date, or referral receipt date as described in R6-5-4904.
  - 2. The Department may authorize Child Care Assistance with an effective date that precedes the referral receipt date when the referral is received untimely due to administrative delay and the eligible start date of the activity or need precedes the referral receipt date for clients who are referred for Child Care Assistance as described in R6-5-4904 (B).
- H. Exclusion from Authorization. The Department shall not authorize Child Care for educational services for children enrolled in grades 1 through 12 when such services are provided during the regular school day.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4918 renumbered to R6-5-4920; new

R6-5-4918 renumbered from R6-5-4917 and amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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**R6-5-4919. Time Limit for Child Care Assistance**

Under A.R.S. § 46-803(K), each child shall receive time-limited Child Care Assistance, unless the child's parents or caretakers qualify for an extension under this Section.

- A. Clients Who Are Subject To the Time Limit.
  - 1. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;
  - 2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and
  - 3. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).
- B. Clients Who Are Not Subject To the Time Limit.
  - 1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);
  - 2. Cash Assistance participants who need Child Care Assistance to maintain employment;
  - 3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and
  - 4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
- C. Effective Date of the Time Limit. The 60-month time limit shall begin:
  - 1. For applicants of Child Care Assistance eligible under any of the categories listed in subsection (A) who file an application on or after January 1, 2007, on the date the application is received by the Department.
  - 2. For clients receiving Child Care Assistance on January 1, 2007 under subsection (A), January 1, 2007.
  - 3. For clients receiving Child Care Assistance on January 1, 2007 under subsection (B), the first date that the Department determines that the existing client is eligible for Child Care Assistance under one of the categories described in subsection (A).
- D. Calculation of the Time Limit.
  - 1. Each child receiving Child Care Assistance under subsection (A) shall receive time-limited assistance for:
    - a. Any combination of 1380 paid full or part day child care units; or
    - b. Child Care Assistance that spans 60 calendar months, whichever is later. A calendar month is one in which the Department pays for at least one full- or part-day unit.
  - 2. Any unit of assistance used by the child, and later identified as a provider or agency caused overpayment shall not count toward the child's time limit.

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3. Any unit of assistance used by the child, and later identified as a client-caused overpayment shall not count toward the child's time limit, if the family repays the overpayment.
  4. The Department shall apply the time limit individually to each child in the family, and not to the parent or caretaker of the child.
    - a. If a different caretaker applies for the child at a later point in time, each child will be entitled to the remaining portion of time-limited Child Care Assistance that has not yet been utilized.
    - b. Any Child Care Assistance utilized by the child as part of an eligible family that was exempt from the time limit under subsection (B) shall not count toward the child's time limit.
- E. Expiration of the Time Limit.**
1. When a child exhausts time-limited of Child Care Assistance under this subsection, the Department shall stop assistance for the child unless the parents or caretakers of the child qualify for an extension under Section (F).
  2. When all of the children in a family have exhausted the time limits of Child Care Assistance, the Department shall terminate assistance for the family unless the parents or caretakers:
    - a. Qualify for an extension under subsection (F); or,
    - b. Are no longer subject to the time limit as described in subsection (B).
- F. Extension of the Time Limit for Child Care Assistance.**
1. The Department shall grant a 6-month extension to the time limit if the parents or caretakers show efforts toward self-sufficiency during the most recent 6-month period. The Department may elect to grant extensions on a 12-month basis. In order to qualify for an extension, the parents or caretakers in the family shall:
    - a. Currently be engaged in an activity that promotes self-sufficiency, which means the parents or caretakers continue to:
      - i. Be employed a monthly average of 20 or more hours per week;
      - ii. Be employed less than 20 hours per week and earning at least minimum wage;
      - iii. Be employed a monthly average of at least 20 hours per week while attending school or training;
      - iv. Remain self-employed with a net profit equating to a monthly average of 20 hours per week times minimum wage;
      - v. Attend high school, G.E.D. classes, or remedial education for the attainment of a high school diploma for a teen parent under 20 years of age;
      - vi. Follow the treatment plan prescribed by a physician, psychiatrist, psychologist for the treatment of a specified mental, physical, or emotional condition, which precludes the parent or caretaker for caring for his or her own child for a portion of a 24-hour day;
      - vii. Participate in a drug/alcohol rehabilitation plan or court-ordered community service plan; or
      - viii. Participate in a homeless or domestic violence case plan while residing in a shelter; and,
    - b. Sign and date the "Self-Sufficiency Statement" and declare that the parents or caretakers have taken at least one of the following actions during the most recent six or 12-month period to promote self-sufficiency:
      - i. Received a job promotion, or an increase in wages, hours, or benefits;
      - ii. Remained consistently employed;
      - iii. Remained self-employed and consistently demonstrated a net profit;
      - iv. Applied for a better job;
      - v. Left one job for a better job (higher pay, more hours, better schedule, or better benefits);
      - vi. Registered with DES Employment Services (e.g., One Stop Career Center or DES Job Service) or another public or private employment agency, or job searched independently;
      - vii. Not requested Cash Assistance;
      - viii. Engaged in activities to pursue or maintain child support payments from an absent parent through DES Child Support Enforcement, the county attorney's office, or a private attorney;
      - ix. Attended work-related school or training, or pursued a degree or certificate that will lead to enhanced career opportunities;
      - x. Attended high school, remedial education for the attainment of a high school diploma or G.E.D. classes;
      - xi. Attended English for Speakers of Other Languages (E.S.O.L.) classes;
      - xii. Attended a trade or vocational school, college or university and made satisfactory progress in the activity;
      - xiii. Continued with a course of treatment under the direction of a physician, psychiatrist, or psychologist;
      - xiv. Followed a shelter case plan while residing in a domestic violence/homeless shelter;
      - xv. Participated in or completed a drug/alcohol rehabilitation or court-ordered community service program;
      - xvi. Participated in other employment-related activities or career-related training activities; or
      - xvii. Any other similar action acceptable to the Department that demonstrates that the parents or caretakers are moving toward self-sufficiency.
  2. If the parents or caretakers do not meet the conditions specified at subsections (1)(a) and (b), the family does not qualify for an extension of the time limit.
  3. If the parents or caretakers meet the conditions specified at subsections (1)(a) and (b), and all other eligibility criteria are met, the family shall qualify for additional six or 12-calendar month extension periods if the parents or caretakers continue to meet the criteria at the end of each extension period.
- G. Extension of the Time Limit after Case Closure.** When a parent or caretaker applies for Child Care Assistance after the time limit for the child in care has been exhausted, the parent or caretaker of the child may qualify for an extension as follows:
1. The parent or caretaker shall be an eligible applicant under R6-5-4911(B), and shall meet the criteria for Child Care Assistance eligibility;
  2. All parents or caretakers shall meet the self-sufficiency criteria prescribed at R6-5-4919(F); and
  3. The parent or caretaker may qualify for successive extensions of the time limit under subsection (F).

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp.

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97-3). Former R6-5-4919 renumbered to R6-5-4921; new R6-5-4919 made by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4920. Denial or Termination of Child Care Assistance**

The Department shall deny or terminate Child Care Assistance and provide written notification as prescribed in R6-5-4921 when the client:

1. Is not an eligible applicant as prescribed in R6-5-4911(B);
2. Is not a U.S. citizen or legal resident of the U.S.;
3. Is not a resident of the state of Arizona;
4. Has no children under the age of 13;
5. Has income that exceeds the maximum allowable as prescribed in R6-5-4914(C);
6. Does not have an eligible need, and is not engaged in an eligible activity as prescribed in R6-5-4912;
7. Is available to care for the children for whom assistance is requested (or there is another parent or responsible person in the household who is not engaged in an eligible activity and is available to provide care);
8. Has not provided the information or documentation required for a determination or redetermination of eligibility;
9. Has failed to cooperate in the arrangement of child care services;
10. Has not selected a child care provider who is registered with the Department;
11. Has requested that the application be withdrawn or that assistance be terminated;
12. Is a member of a family that already has an active case or pending application on file for Child Care Assistance;
13. Cannot be located by phone or mail and mail addressed to last known address has been returned;
14. Is deceased, incarcerated, or confined to an institution; or
15. Does not satisfy one or more eligibility criteria listed in R6-5-4904 through R6-5-4916;
16. Has exhausted the 60-month lifetime limit for all children in the eligible family under R6-5-4919(D) and does not qualify for an extension.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4920 renumbered to R6-5-4923; new R6-5-4920 renumbered from R6-5-4918 and amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for*

*review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4921. Notification Requirements**

- A. The Department shall mail or deliver written notice to the client as follows:
1. On a decision about an application, within 30 calendar days of the date that the Department receives the completed application.
  2. On a positive action, the Department shall mail adequate notice on or before the date the action will become effective.
  3. On a change in the amount of authorized units based on a change in need, the Department shall mail adequate notice on or before the date the action will become effective.
  4. On a negative action, the Department shall mail the notice at least 10 calendar days in advance of the date the action will become effective.
  5. On changes in law or policy which affect entire classes or groups and concern issues not related to individual questions of fact, the Department shall issue notice of such action at least 10 calendar days in advance of the effective date of the action.
- B. The Department shall not provide notice on a negative action when:
1. Child Care Assistance authorized for a specified period of time is terminated and the individual was informed in writing of the termination date when the Child Care Assistance was initiated;
  2. The applicant, client, or child is deceased; and
  3. There is a loss of contact with the client and mail addressed to the last known address has been returned.
- C. Written notice shall include a statement of the action to be taken, the reasons for the intended action, citation to the specific rule supporting the action, and an explanation of the client's rights regarding a request for a fair hearing.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4921 renumbered to R6-5-4924; new R6-5-4921 renumbered from R6-5-4919 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4922. Repealed****Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(27). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit these rules to the Governor's Regulatory Review Council for review and*

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*approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4923. Overpayments**

- A. Overpayments; Date of Discovery.**
1. The Department shall pursue collection of all client- and provider-caused overpayments.
  2. The Department discovers an overpayment on the date the Department determines that an overpayment exists.
  3. The Department shall write an overpayment report within 90 days of the discovery date.
  4. If the CCA office suspects that an overpayment was caused by fraudulent activity, it shall refer the overpayment report to the Department's Office of Special Investigations for potential prosecution.
  5. The Department shall not attempt to recover an overpayment from a person who is not a current recipient when the overpayment was not the result of fraud, and the Department has exhausted reasonable efforts to collect the overpayment and has determined that it is no longer cost effective to pursue the claim.
- B. Overpayments: Persons Liable.** The Department shall pursue collection of an overpayment from:
1. The client if the overpayment was caused by the client;
  2. Any individual member of the family who was included in family size as prescribed in R6-5-4914 (D) during the overpayment period if the overpayment was caused by the client; or
  3. The child care provider if the overpayment was caused by the provider.

**Historical Note**

Adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed in the Secretary of State's Office June 30, 1998 (Supp. 98-2). Former R6-5-4923 renumbered to R6-5-4925; new R6-5-4923 renumbered from R6-5-4920 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

**R6-5-4924. Appeals**

- A. Entitlement to a Hearing.**
1. An applicant for or recipient of Child Care Assistance is entitled to a hearing to contest the following Department actions:
    - a. Denial of the right to apply for assistance;
    - b. Complete or partial denial of an application for assistance;
    - c. Failure to make an eligibility determination on an application within 30 days of the application file date;
    - d. Suspension, termination, reduction, or withholding of assistance except as provided in subsection (B);
    - e. Increase in the fee level and DES-required copayment amount; or
    - f. The existence or amount of an overpayment attributed to the family or the terms of a plan to repay the overpayment.
  2. Applicants and recipients are not entitled to a hearing to challenge benefit adjustments made automatically as a result of changes in federal or state law, unless the Department has incorrectly applied such law to the individual seeking the hearing.
- B. Request for Hearing; Time Limits.**
1. A person who wishes to appeal a negative action shall file a written request for a fair hearing with a local CCA office, within 10 days of the negative action notice date.
  2. A request for a hearing is deemed filed;
    - a. On the date it is mailed, if transmitted via the United States Postal Service or its successor. The mailing date is as follows:
      - i. As shown by the postmark;
      - ii. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
      - iii. The date entered on the document as the date of its completion, if there is no postmark or no postage meter mark, or if the mark is illegible.
    - b. On the date actually received by the Department, if not sent through the mail as provided in subsection (B)(2)(a).
- C. Hearing Requests; Preparation and Processing.**
1. Within two work days of receiving a request for appeal, the local CCA office shall notify the Office of Appeals of the hearing request.
  2. Within 10 days of receiving a request for appeal, the local CCA office shall prepare and forward to the Office of Appeals a prehearing summary which shall include:
    - a. The appellant's name (and case name, if different);
    - b. The appellant's SSN (or case number, if different);
    - c. The local office responsible for the appellant's case;
    - d. A brief summary of the facts surrounding, and the grounds supporting, the negative action;
    - e. Citations to the specific provisions of this Article or the Department's CCA manual which support the Department's action; and
    - f. The decision notice and any other documents relating to the appeal.
  3. The local office shall mail the appellant a copy of the summary. Upon receipt of a hearing request, the Office of Appeals shall schedule the hearings.
- D. Continuation of Assistance Pending Appeal; Exceptions.**
1. If an appellant files a request for appeal within 10 calendar days of the negative action notice date, the Department shall continue assistance at the current level unless:
    - a. The appellant waives continuation of current assistance,
    - b. The appeal results from a change in federal or state law which mandates an automatic adjustment for all classes of recipients and does not involve a misapplication of the law, or
    - c. The appellant is requesting continuation of TCC benefits for longer than the 24-month eligibility period.
  2. The negative action shall be stayed until receipt of an official written decision in favor of the Department, except in the following circumstances:
    - a. At the hearing and on the record, the hearing officer finds that the sole issue involves application of law, and the Department properly applied the law and computed the assistance due the appellant;

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- b. A change in eligibility or assistance amount occurs for reasons other than those being appealed, and the eligible family receives and fails to timely appeal a notice of negative action concerning such change;
  - c. Federal or state law mandates an automatic adjustment for classes of recipients;
  - d. The appellant withdraws the request for hearing; or
  - e. The appellant fails to appear for a scheduled hearing without prior notice to the Office of Appeals, and the hearing officer does not rule in favor of the appellant based upon the record.
3. Upon receipt of a decision in favor of the Department, the Department shall write an overpayment for the amount of any assistance the family received in excess of the correct amount, while the stay was in effect.

**Historical Note**

Section R6-5-4924 renumbered from R6-5-4921 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

**R6-5-4925. Maximum Reimbursement Rates For Child Care**

The Department shall pay the maximum reimbursement rates for child care as set forth in Appendix B.

**Historical Note**

Section R6-5-4925 renumbered from R6-5-4923 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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Appendix A. Child Care Assistance Gross Monthly Income Eligibility Chart and Fee Schedule

ARIZONA DEPARTMENT OF ECONOMIC SECURITY  
CHILD CARE ASSISTANCE GROSS MONTHLY INCOME ELIGIBILITY CHART AND FEE SCHEDULE  
Effective October 1, 2015

FAMILY SIZE	FEE LEVEL 1 (L1) INCOME MAXIMUM EQUAL TO OR LESS THAN 85% FPL*	FEE LEVEL 2 (L2) INCOME MAXIMUM EQUAL TO OR LESS THAN 100% FPL*	FEE LEVEL 3 (L3) INCOME MAXIMUM EQUAL TO OR LESS THAN 135% FPL*	FEE LEVEL 4 (L4) INCOME MAXIMUM EQUAL TO OR LESS THAN 145% FPL*	FEE LEVEL 5 (L5) INCOME MAXIMUM EQUAL TO OR LESS THAN 155% FPL*	FEE LEVEL 6 (L6) INCOME MAXIMUM EQUAL TO OR LESS THAN 165% FPL*
1	0 – 834	835 – 981	982 – 1,325	1,326 – 1,423	1,424 – 1,521	1,522 – 1,619
2	0 – 1,129	1,130 – 1,328	1,329 – 1,793	1,794 – 1,926	1,927 – 2,059	2,060 – 2,192
3	0 – 1,424	1,425 – 1,675	1,676 – 2,262	2,263 – 2,429	2,430 – 2,597	2,598 – 2,764
4	0 – 1,718	1,719 – 2,021	2,022 – 2,729	2,730 – 2,931	2,932 – 3,133	3,134 – 3,335
5	0 – 2,013	2,014 – 2,368	2,369 – 3,197	3,198 – 3,434	3,435 – 3,671	3,672 – 3,908
6	0 – 2,308	2,309 – 2,715	2,716 – 3,666	3,667 – 3,937	3,938 – 4,209	4,210 – 4,480
7	0 – 2,602	2,603 – 3,061	3,062 – 4,133	4,134 – 4,439	4,440 – 4,745	4,746 – 5,051
8	0 – 2,897	2,898 – 3,408	3,409 – 4,601	4,602 – 4,942	4,943 – 5,283	5,284 – 5,624
9	0 – 3,192	3,193 – 3,755	3,756 – 5,070	5,071 – 5,445	5,446 – 5,821	5,822 – 6,196
10	0 – 3,486	3,487 – 4,101	4,102 – 5,537	5,538 – 5,947	5,948 – 6,357	6,358 – 6,645**
11	0 – 3,781	3,782 – 4,448	4,449 – 6,005	6,006 – 6,450	6,451 – 6,783**	
12	0 – 4,076	4,077 – 4,795	4,796 – 6,474	6,475 – 6,922**		

MINIMUM REQUIRED COPAYMENTS

Per child in care	full day = \$1.00 part day = \$.50	full day = \$2.00 part day = \$1.00	full day = \$3.00 part day = \$1.50	full day = \$5.00 part day = \$2.50	full day = \$7.00 part day = \$3.50	full day = \$10.00 part day = \$5.00
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For families receiving Transitional Child Care (TCC) there is no co-pay assigned beyond the third child in the family

Full day = Six or more hours; Part day = Less than six hours.

Families receiving Child Care Assistance based on Department of Child Safety Foster Care, the Jobs Program or those who are receiving Cash Assistance (CA) and are employed, do not have an assigned fee level or a minimum required copayment. However, all families may be responsible for charges above the minimum required copayments if a provider’s rates exceed allowable state reimbursement maximums or the provider has other additional charges.

\*Federal Poverty Level (FPL) = US Department of Health and Human Services 2015 poverty guidelines. The Arizona state statutory limit for child care assistance is 165 percent of the Federal Poverty Level.

\*\*The Federal Child Care & Development Fund (CCDF) statutory limit for child care assistance is 85 percent of the Low Income Home Energy Assistance Program State Median Income (SMI) Estimates for Federal Fiscal Year (FFY) 2016, October 1, 2015 through September 30, 2016. 80 FR, Page 32958-32959, June 10, 2015.

Historical Note

Appendix A adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Appendix A repealed; new Appendix A adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed with the Office of the Secretary of State June 30, 1998 (Supp. 98-2). Appendix A repealed; new Appendix A adopted by exempt rulemaking at 5 A.A.R. 2379, effective July 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 6 A.A.R. 2726, effective July 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 3111, effective July 1, 2001 (Supp. 01-2). Amended by exempt rulemaking at 8 A.A.R. 2952, effective July 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 9 A.A.R. 3207, effective July 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 2938, effective July 1, 2004 (Supp. 04-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 11 A.A.R. 2731, effective July 1, 2005 (Supp. 05-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 11 A.A.R. 4137, effective October 1, 2005 (Supp. 05-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 12 A.A.R. 2700, effective July 1, 2006 (Supp. 06-3). Appendix A amended by exempt rulemaking at 13 A.A.R. 2583, effective July 1, 2007 (Supp. 07-2). Appendix A amended by exempt rulemaking at 14 A.A.R. 2859, effective July 1, 2008 (Supp. 08-2). Appendix A amended by exempt rulemaking at 15 A.A.R. 702, effective April 1, 2009 (Supp. 09-1). Appendix A repealed; new Appendix A made by exempt rulemaking at 15 A.A.R. 1222, effective July 1, 2009 (Supp. 09-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 17 A.A.R. 1334, effective July 1, 2011 (Supp. 11-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 18 A.A.R. 2070, effective July 1, 2012 (Supp. 12-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 19 A.A.R. 1988, effective July 1, 2013 (Supp. 13-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 22

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A.A.R. 1603, effective October 1, 2014, with an automatic repeal date of September 30, 2015; filed June 3, 2016, therefore these exempt rules were in effect prior to the release of Supp. 16-1 (Supp. 16-1). Appendix A repealed; new Appendix A made by exempt rulemaking at 22 A.A.R. 1607, effective October 1, 2015; filed June 3, 2016, therefore these exempt rules were in effect prior to the release of Supp. 16-2 (Supp. 16-2).

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*Editor's Note: The following Appendix was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(27). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit this Appendix to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Appendix.*

## Appendix B. Maximum Reimbursement Rates for Child Care

**ARIZONA DEPARTMENT OF ECONOMIC SECURITY  
DIVISION OF EMPLOYMENT AND REHABILITATION SERVICES  
CHILD CARE ADMINISTRATION  
MAXIMUM REIMBURSEMENT RATES FOR CHILD CARECENTERS  
(effective for services provided on or after 7/1/2007)**

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr:						
Full day	31.71	28.35	23.52	22.05	31.50	33.60
Part day	23.52	20.79	19.32	19.95	26.25	26.25
1 yr < 3 yrs:						
Full day	27.93	26.25	21.84	19.95	29.40	21.84
Part day	21.00	19.07	18.90	18.90	15.75	18.48
3 yrs < 6 yrs:						
Full day	24.99	23.19	21.00	18.90	21.00	19.95
Part day	17.85	16.80	15.75	16.80	13.02	13.65
6 yrs < 13 yrs:						
Full day	24.57	23.10	17.85	17.85	20.10	19.95
Part day	16.80	15.75	14.70	15.75	14.00	13.65

## GROUP HOMES

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr:						
Full day	25.20	23.10	24.15	21.00	19.95	22.26
Part day	16.80	16.80	24.15	14.70	13.13	18.90
1 yr < 3 yrs:						
Full day	23.10	23.10	23.10	18.90	19.95	22.31
Part day	15.75	16.80	15.75	12.60	12.60	17.85
3 yrs < 6 yrs:						
Full day	21.00	21.00	23.10	18.90	19.95	19.43
Part day	15.75	16.80	14.65	12.60	12.60	16.80
6 yrs < 13 yrs:						
Full day	18.90	21.00	17.85	18.90	19.95	19.42
Part day	14.70	16.60	14.65	12.60	12.60	17.85

## CERTIFIED FAMILY HOMES AND CERTIFIED IN-HOME PROVIDERS

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr:						
Full day	21.00	19.95	18.90	18.90	21.00	18.90
Part day	14.70	12.60	10.50	11.03	12.60	10.50
1 yr < 3 yrs:						
Full day	21.00	18.90	17.85	17.85	20.10	17.85
Part day	13.65	12.60	10.50	11.03	11.55	10.50
3 yrs < 6 yrs:						
Full day	18.90	18.90	16.80	17.85	18.90	16.80
Part day	12.60	12.60	10.50	11.03	10.50	10.50
6 yrs < 13 yrs:						
Full day	17.85	18.90	16.80	16.80	18.90	16.80
Part day	12.60	11.55	10.50	10.50	10.50	10.50

The actual reimbursement amount is equal to the reimbursement rate minus any DES designated co-payment. However, in no event shall the amount reimbursed exceed the lesser of the provider's actual charges or the maximum reimbursement rate minus any DES designated co-payment.

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Payment Rates for Non-Certified Relative Providers (NCRPs) will be \$11.03 for Full day and \$6.30 for Part day, minus any DES designated co-payment. This rate will be paid to NCRPs statewide for care provided to children of all ages.

The maximum reimbursement rates may be increased by up to ten percent for child care providers who are nationally accredited.

Full day = six or more hours per day. Part day = less than six hours per day.

**Historical Note**

Appendix B adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed with the Office of the Secretary of State June 30, 1998 (Supp. 98-2). Appendix B repealed; new Appendix B adopted by exempt rulemaking at 5 A.A.R. 2379, effective July 1, 1999 (Supp. 99-3). "Non-Certified Relative Providers" section amended by exempt rulemaking at 6 A.A.R. 2726, effective July 1, 2000 (Supp. 00-2). "Centers," "Group Homes," and "Certified Family Homes and Certified In-home Providers" sections amended by exempt rulemaking at 7 A.A.R. 4884, effective October 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3207, effective July 1, 2003 (Supp. 03-3). Appendix B amended by exempt rulemaking at 13 A.A.R. 2443, effective July 1, 2006 (Supp. 07-1). Appendix B amended by exempt rulemaking at 13 A.A.R. 2586, effective July 1, 2007 (Supp. 07-2).

**ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM****R6-5-5001. Definitions**

The following definitions apply in this Article.

1. "ADE" means the Arizona Department of Education, which administers the CACFP at the state level.
2. "Alternate approval" means a status the ADE confers on an uncertified, unlicensed provider that demonstrates compliance with CACFP child care standards to the ADE.
3. "Caregiver state licensing ratio requirements" means Arizona Department of Health Services (DHS) regulations that mandate DHS oversight of child care facilities with five or more children in care for compensation where child care is provided for periods of less than 24 hours per day.
4. "Child care" means a compensated service that is provided to a child unaccompanied by a parent or guardian during a portion of a 24-hour day. The service includes supervised and planned care, training, recreation, and socialization.
5. "CACFP" means the Child and Adult Care Food Program, funded and administered at the federal level by the Food and Consumer Services, a program of the U.S. Department of Agriculture.
6. "CCR&R" means child care resource and referral, a service the Department administers under A.R.S. § 41-1967.
7. "Center" means the same as "child care facility" in A.R.S. § 36-881(3).
8. "Certified" or "licensed" means a provider holds a license as prescribed in A.R.S. § 36-882, or is certified under A.R.S. § 46-807 or A.R.S. § 36-897.
9. "Child with special needs" means a child who needs increased supervision, modified equipment, modified activities, or a modified facility, within a child care setting, due to any physical, mental, sensory, or emotional delay, or medical condition, and includes a child with a disability.
10. "Compensation" means something given or received in return for child care, such as money, goods, or services.
11. "Contractor" means an agency with which the Department contracts for provision of CCR&R services.
12. "Customer" means a person who is requesting information from a CCR&R contractor.
13. "Database" means a computerized collection of CCR&R facts, figures, and information for licensed, certified, and registered providers and customers arranged for ease and speed of retrieval.
14. "Department" or DES means the Arizona Department of Economic Security.
15. "Dropped for cause" means an ADE Sponsoring Organization has terminated a family child care provider from participation in the CACFP.
16. "Exclude" means to refuse to include a particular provider in or to remove a provider from the CCR&R database.
17. "Family child care" means child care provided by a certified or registered provider in the provider's own home.
18. "In-home child care" means child care provided in a child's own home.
19. "Information only listing" means a provider listed on the CCR&R who will receive training information and other information about child care issues and activities, but who will not receive any referrals.
20. "Listing status" means the condition under which a provider may receive a referral (referral listing) or is restricted from receiving a referral (information only listing).
21. "Over-Ratio Referral Form" means a communication tool used to relay to the Department of Health Services (DHS) information concerning a potential violation of caregiver state licensing ratio requirements.
22. "Personally identifiable information" means any information about a person other than a provider, that, when considered alone, or in combination with other information, identifies or permits another person to readily identify the person who is the subject of the information. Personally identifiable information includes:
  - a. Name, address, and telephone number;
  - b. Date of birth or age;
  - c. Physical description;
  - d. School;
  - e. Place of employment; and
  - f. Any unique identifying number, such as driver's license number, a social security number, or regulatory license number.
23. "Program Administrator" means the person who oversees the Child Care Administration, a unit of the Department.
24. "Provider" means an adult who, or a facility that, provides child care services.
25. "Provider type" means a category of provider or program such as a center, family child care, and in-home child care.
26. "Referral" means the information listed in R6-5-5005(C), (D), and (E), that a Contractor gives to a customer.
27. "Referral listing" means that a contractor may refer a provider listed on the CCR&R registry or database to customers, and the provider may receive training and other information about child care issues and activities.
28. "Registered provider" means a family child care provider who is an adult and is not licensed or certified by any

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government agency, but who meets the requirements to be listed in the CCR&R registry.

29. "Registry" means the list of providers that:
  - a. Are not licensed or certified by a government agency,
  - b. Voluntarily list with CCR&R, and
  - c. Meet the requirements under A.R.S. § 41-1967 to receive referrals and training information.
30. "Regulated" means a provider who is required to meet licensing or certification standards set by a government agency, including a federal, state, or tribal government agency.
31. "Revocation" means the permanent removal of a child care provider's license or certificate by a government agency.
32. "SDA" means service delivery area, which is a specific geographic area where CCR&R services are offered.
33. "Sponsoring organization" means a public or non-profit private organization that administers the CACFP on behalf of ADE.
34. "Suspension" means that a regulatory agency has temporarily removed a provider's certificate or license.
35. "Work day" means Monday through Friday, excluding Arizona state holidays.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5002. Provider Participation Requirements**

- A. To be considered for inclusion in the CCR&R database, a provider shall submit the following information to the Contractor for the provider's SDA:
  1. Provider's name;
  2. Address;
  3. Phone number;
  4. Days and times the facility is open;
  5. Ages of children accepted;
  6. Capacity;
  7. Regulatory affiliation, if any;
  8. Meals provided to children in care;
  9. Training and experience;
  10. Accreditation;
  11. Fees;
  12. School transportation;
  13. DES Provider ID, if applicable;
  14. The provider's choice of listing status; and
  15. DHS Child Development Center (CDC) or Small Group Home (SGH) number.
- B. Regulated Providers: Before adding a regulated provider to the CCR&R database, the Contractor shall confirm the provider's regulatory affiliation with the appropriate regulatory agency. For the purpose of this subsection, confirmation of the regulatory affiliation is based solely on the accuracy of the information obtained from the regulatory agency.
- C. Registered Providers: The provisions in this subsection govern provider participation requirements for registered family child care providers.
  1. In addition to the information listed in subsection (A), a registered family child care provider shall complete and submit to the Contractor, on Department-approved forms, a notarized sworn statement and a notarized certification statement attesting that the provider is not subject to

exclusion or removal from the CCR&R database under any of the grounds specified in A.R.S. § 41-1967(E).

2. Before adding a registered family child care provider to the CCR&R registry and database, a Contractor shall review the provider's sworn statement and certification statement described in subsection (C)(1) and include on the registry only those providers who affirm that they are not subject to exclusion or removal under A.R.S. § 41-1967(E).
3. Before adding a registered family child care provider to the CCR&R registry and database, a Contractor shall receive clearance from the Department that neither a provider nor anyone providing care in the provider's home has had a child abuse or neglect investigation that has been substantiated by Child Protective Services (CPS) in this state.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5003. Notification of Changes**

- A. A provider listed on the CCR&R database shall notify the Contractor of any changes to the information or statement given under R6-5-5002(A) or (C)(1).
- B. A provider may modify self-initiated changes in listing status at any time by notifying the Contractor.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5004. Referrals Not Guaranteed**

- A. A Contractor shall make referrals to participating providers on a random basis based on a family's self-reported needs.
- B. A Contractor shall not:
  1. Guarantee the number or frequency of referrals to a participating provider; or
  2. Guarantee that listing on the CCR&R will result in economic benefit or gain to a participating provider.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5005. Referral Process**

- A. To obtain a referral, a customer shall give the contractor the following information, if available, about the customer's child care needs:
  1. Customer name;
  2. Address;
  3. Phone number;
  4. Days and times child care is needed;
  5. Preferred type of child care provider;
  6. Location where care is needed or preferred, and
  7. Age of child.
- B. A Contractor shall give a customer a referral that is consistent with the customer's stated preferences.
  1. The Contractor shall not make a referral unless the Contractor can give the customer the names of at least three

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- potential providers within the customer's search parameters.
2. If the Contractor cannot name at least three potential providers meeting the customer's stated preferences, the Contractor shall ask the customer to expand the search parameters until the Contractor can name at least three potential providers.
- C.** The Contractor shall provide the customer with provider profile information on each referred provider, including the following:
1. Provider's name;
  2. Address or major cross streets;
  3. Phone number;
  4. Days and hours of operation;
  5. Ages of children accepted;
  6. Ratio and capacity;
  7. Regulatory affiliation, if any;
  8. Meal information;
  9. Training and experience;
  10. Accreditation;
  11. Fees and available subsidies;
  12. School transportation.
- D.** As part of a referral, a Contractor shall give each customer written information that includes the following:
1. That the Contractor selects providers based on the customer's stated preferences;
  2. That the Contractor provides referrals and does not recommend, endorse, or guarantee any particular child care provider;
  3. That the Contractor does not regulate, monitor, or verify information supplied by a provider;
  4. That a child's parent or guardian is solely responsible for choosing an appropriate child care provider to meet a family's needs; and
  5. That a provider's listing status may change after their initial placement on the registry or database and that customers are encouraged to call back periodically for updated information.
- E.** As part of a referral, a Contractor shall provide the customer with the following Department-approved educational information:
1. A list of criteria to consider when selecting quality child care;
  2. A description of the types of child care providers in Arizona;
  3. A description of CCR&R services and a list of office locations and phone numbers statewide; and
  4. An explanation of the process for filing a child care related complaint.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5006. Monitoring; Complaint Recording and Reporting Requirements**

- A.** Monitoring and Investigation: Neither the Department nor its Contractors monitor or investigate the activities of a provider, or investigate any complaint about a provider, except as otherwise prescribed by law for a family child care provider.
- B.** Regulated Providers: Upon receipt of a complaint about a regulated provider, a Contractor shall refer the complainant to the appropriate regulatory agency, law enforcement agency, or Child Protective Services.

- C.** Registered Providers: The provisions in this subsection govern complaints about a registered provider.
1. Any person may complain about a registered family child care provider on the registry by notifying a Contractor. Upon receipt of a complaint on a registered family child care provider, a Contractor shall:
    - a. Refer the complainant to the appropriate investigative agency (law enforcement or child protective services), if the issue raised in the complaint is suspected child abuse or neglect. The contractor shall forward a complaint involving law enforcement or child protective services to the DES Child Care Administration for resolution;
    - b. Refer the complainant to DHS and forward an over-ratio referral form to DHS if the complaint alleges that the provider is caring for more children than the law allows; or
    - c. Take a complaint made in reference to a CACFP home provider not regulated by any other agency and forward the complaint to ADE for resolution by its sponsoring agencies.
    - d. Take the complaint if it raises an issue other than those described in subsections (C)(1)(a), (b) or (c).
  2. If the Contractor takes the complaint as under subsection (C)(1)(c) or (d), the Contractor shall obtain and record, on a Department approved form, the following information, if available:
    - a. Provider name and address;
    - b. Summary of the complaint, including date and time of incident;
    - c. Name, address, and phone number of the person making the complaint, unless the complainant indicates that the complainant or someone else may come to substantial harm. The Contractor shall document a complainant's claim that substantial harm may result as a result of disclosure of the complainant's name, as prescribed in A.R.S. § 41-1010; and
    - d. If applicable, witness information, such as name, address, and phone number.
  3. The person recording the information shall sign and date the form.
  4. After redacting personally identifiable information, the Contractor shall send the complaint form to the provider for response within three work days.
  5. The provider shall respond to the complaint by completing the provider response portion of the complaint form within 30 days of the complaint mailing date;
  6. The Contractor shall allow the public to inspect the complaint, and the provider's response, if given, with all personally identifiable information redacted. After the 30-day provider response period has expired, the Contractor shall make a complaint available for public inspection at the Contractor's office or the Contractor may mail a copy of the complaint.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5007. Provider Listing Status**

- A.** Regulated Providers:
1. When the Department learns that a regulatory agency has suspended a regulated provider's license, certificate, or

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alternate approval, the Department shall direct a Contractor to change the provider's listing status from referral listing to information only listing, using the process in R6-5-5009.

2. If a Contractor has changed a provider to information only listing status under subsection (A)(1), the Department shall direct the Contractor to return the provider to referral listing status if the regulatory agency removes the provider's suspension status.
  3. The Department shall notify the provider in writing when the Department returns the provider to referral status. The Department shall send the notice within 10 work days of the change in status, and shall include the effective date of the change.
- B. Registered Providers:**
1. When the Department receives a complaint or is notified that a registered provider may have failed or may be unable to meet the needs of a family due to one of the following circumstances, the Department shall direct a Contractor to change a registered provider's listing status from referral listing to information listing using the process in R6-5-5009:
    - a. A child has allegedly been abused, neglected, exploited, or abandoned while in the registered provider's care;
    - b. A registered provider has allegedly been involved in activities or circumstances that may threaten the health, safety, or emotional well-being of a child, including, acts of physical violence, domestic disputes, or incidents involving deadly weapons or dangerous or narcotic drugs; or
    - c. As determined by DHS, a registered provider has allegedly violated state law by providing care to more than four children at any one time for compensation.
  2. If a Contractor has changed a registered provider to information only listing status, as prescribed in subsection (B)(1), the Department shall direct the Contractor to return the registered provider to referral listing status if one of the following occurs:
    - a. Child Protective Services or a law enforcement agency determines that the allegation cannot be substantiated;
    - b. Child Protective Services or a law enforcement agency determines that the threat to a child has been eliminated; or
    - c. DHS determines that the registered provider may continue child care activities without obtaining a certificate or license.
  3. As used in subsection (B)(2), substantiation by a law enforcement agency means that law enforcement has referred a case to a prosecutorial agency with a recommendation to file charges.
  4. The Department shall notify the registered provider in writing when the provider is returned to referral status. The Department shall send the notice within 10 work days of the change in status, and shall include the effective date of the change.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5008. Provider Exclusion or Removal**

- A. The Department may direct a Contractor to exclude or remove a provider from the database according to the process in R6-5-5009, for the following reasons:
  1. The provider fails or refuses to provide information as requested by the Department or a Contractor;
  2. A regulatory agency or sponsoring organization verifies that the provider's license, certificate, or alternate approval has been denied, revoked, terminated, or dropped for cause;
  3. The Department learns that information in the written, sworn, and notarized statements submitted by the provider under R6-5-5002(C) is false;
  4. The provider is subject to removal or exclusion for any reason listed in A.R.S. § 41-1967(E); or,
  5. The provider fails to comply with these rules.
- B. A Contractor may summarily and without notice remove a provider from the CCR&R database for the following reasons:
  1. The Contractor is unable to contact the provider because:
    - a. The provider's phone is disconnected;
    - b. The provider is no longer at the last known address and has given no forwarding address; or
    - c. The provider has died; or
  2. The provider requests removal.
- C. A provider removed under subsection (B) may request reinstatement by calling the Contractor for the provider's SDA and providing current information.
- D. Upon receipt of a request for reinstatement, the Contractor shall update the information listed in R6-5-5002 and, if applicable, confirm that the provider has submitted information requested by the Department or Contractor.
- E. The Contractor shall reinstate the provider unless there are grounds for removal under subsections (A)(1) through (5).

**Historical Note**

Adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5009. Administrative Review Process**

- A. When the Department receives information indicating that the Department may need to change a provider's listing status or remove or exclude a provider, the Department Program Administrator or designee shall review the information and decide whether grounds exist as listed in R6-5-5007 or R6-5-5008(A).
- B. If the Department decides to change a provider's listing status or to remove or exclude a provider, the Department shall:
  1. Notify the Contractor to change the listing status or to remove or exclude the provider; and
  2. Within 10 work days of the effective date of the change of listing status, removal or exclusion, send the provider written notice via certified mail of the action taken.
- C. The notice shall include the following information:
  1. The effective date of the change in listing status or the removal or exclusion;
  2. The reason for the change in listing status or the removal or exclusion;
  3. The statutory provision requiring the provider's change in listing status or the removal or exclusion;
  4. An explanation of the provider's right to an administrative review; and,
  5. A statement explaining where the provider may file a written request for an administrative review and the time period for doing so.
- D. The Department shall mail the notice to the provider's last known address. The mailing date is presumed to be the date appearing on the notice.

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- E. A provider may request an administrative review by filing a written request for review with the Department, within 15 work days after the mailing date of the Department's notice.
- F. The provider shall mail the written request for administrative review to:  
Department of Economic Security  
Child Care Administration  
Program Administrator  
P.O. Box 6123 S.C. 801A  
Phoenix, Arizona 85005
- G. In the written request, the provider shall include the reason for requesting an administrative review and any documentation supporting the reinstatement request.
- H. A request for an administrative review is timely if:  
1. The Department receives it within the 15-day appeal period in subsection (E); or  
2. The envelope in which the request was mailed is post-marked or postage-meter marked within the period in subsection (E).
- I. The Program Administrator or designee shall review the Department's decision and all documentation submitted by the provider.
- J. The Program Administrator or designee shall notify the provider and the Contractor of the results of the administrative review within 15 work days from the date the Department receives the request for review.  
1. The decision shall be in writing and mailed to the provider's last known address. The date on the decision is presumed to be the mailing date.  
2. The decision shall include information about the provider's right to further appeal.
- K. The provider may appeal the Department's decision under R6-5-5010.

**Historical Note**

Adopted effective November 19, 1996 (Supp. 96-4).  
Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5010. Administrative Appeal Process**

- A. A provider may appeal the Department's administrative review decision under 6 A.A.C. 5, Article 75 by filing a request for an appeal with the Department within 15 work days after the mailing date of the Department's administrative review decision described in R6-5-5009(J).
- B. A provider shall mail the written request for an appeal to:  
Department of Economic Security  
Child Care Administration  
Program Administrator  
P.O. Box 6123 S.C. 801A  
Phoenix, Arizona 85005
- C. In the written request, the provider shall include the reason for requesting an appeal and any documentation supporting the request.
- D. The Department's actions in reference to removal or exclusion from the database or changes in listing status are not appealable under this Article if the action is based on:  
1. Failure to clear a fingerprint or criminal background check; or  
2. Failure to clear a Child Protective Services background check
- E. A request for an appeal is timely if:  
1. The Department receives it within the 15-day appeal period in subsection (A); or  
2. The envelope in which the request is mailed is post-marked or postage-meter marked within the 15-day period prescribed in subsection (A).

**Historical Note**

Adopted effective November 19, 1996 (Supp. 96-4).  
Amended effective June 4, 1998 (Supp. 98-2). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**ARTICLE 51. EXPIRED****R6-5-5101. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5101 repealed, new Section R6-5-5101 adopted effective September 30, 1977 (Supp. 77-5). Former Section R6-5-5101 repealed, new Section R6-5-5101 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5102. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5102 repealed, new Section R6-5-5102 adopted effective September 30, 1977 (Supp. 77-5). Amended effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5102 repealed, new Section R6-5-5102 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5103. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5103 repealed, new Section R6-5-5103 adopted effective September 30, 1977 (Supp. 77-5). Former Section R6-5-5103 repealed, new Section R6-5-5103 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5104. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5104 repealed, new Section R6-5-5104 adopted effective September 30, 1977 (Supp. 77-5). Amended effective April 25, 1978 (Supp. 78-2). Amended effective March 26, 1979 (Supp. 79-2). Amended effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5104 repealed, new Section R6-5-5104 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5105. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5105 repealed, new Section R6-5-5105 adopted effective September 30, 1977 (Supp. 77-5). Amended effective April 25, 1978 (Supp. 78-2). Amended paragraph (3) effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5105 repealed, new Section R6-5-5105 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5106. Expired**

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**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5106 repealed, new Section R6-5-5106 adopted effective September 30, 1977 (Supp. 77-5). Former Section R6-5-5106 repealed, new Section R6-5-5106 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5107. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5107 repealed, new Section R6-5-5107 adopted effective September 30, 1977 (Supp. 77-5). Amended effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5107 repealed, new Section R6-5-5107 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS****R6-5-5201. Definitions**

The following definitions apply in this Article:

1. "Abandonment" has the meaning ascribed to "abandoned" in A.R.S. § 8-201 (1).
2. "Abuse" has the meaning ascribed in A.R.S. § 8-201 (2).
3. "Age" means years of a person's lifetime when used in reference to a number, unless the term "months" is used.
4. "Adult" means a person age 18 or older.
5. "Applicant" means a person who submits a written application to the Department to become certified as a child care provider.
6. "Backup provider" means an adult who, or an entity that, provides child care when a provider is not available.
7. "CACFP" means the Child and Adult Care Food Program.
8. "Certificate" means a document the Department issues to a provider as evidence that the provider has met the child care standards of this Article.
9. "Child" means a person younger than age 18.
10. "Child care" means the compensated care, supervision, recreation, socialization, guidance, and protection of a child who is unaccompanied by a parent.
11. "Child care personnel" means all adults residing in a home facility, an in-home provider, and any backup provider.
12. "Child care registration agreement" means a written contract between a provider and the Department; that establishes the rights and duties of the provider and the Department for provision of child care.
13. "Child care specialist" means a Department child care eligibility and/or certification staff person.
14. "CHILDS" means the Children's Information Library and Data Source, which is a comprehensive, automated system to support child welfare policies and procedures, and includes information on investigations, ongoing case management, and payments.
15. "CHILDS Central Registry" means the Child Protective Services Central Registry, a confidential, computerized database within CHILDS, which the Department maintains according to A.R.S. § 8-804.
16. "Child with special needs" means a child who needs increased supervision, modified equipment, modified activities, or a modified facility, due to any physical, mental, sensory, or emotional delay, or medical condition, and includes a child who has a physical or mental impairment that substantially limits one or more major life activities; has a record of having a physical or mental impairment that substantially limits one or more of the child's major life activities; or who is regarded as having an impairment, regardless of whether the child has the impairment.
17. "Client" means a person who applies for and meets the eligibility criteria for a child care service program administered by the Department.
18. "Compensation" means something given or received, such as money, goods, or services, as payment for child care services.
19. "Corporal punishment" means any act that is administered as a form of discipline and that either is intended to cause bodily pain, or may result in physical damage or injury.
20. "CPS" means Child Protective Services, a Department administration that operates a program to investigate allegations of child maltreatment and provide protective services.
21. "Department" means the Arizona Department of Economic Security.
22. "Developmentally appropriate" means an action that takes into account:
  - a. A child's age and family background;
  - b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
  - c. The individual child's pattern and timing of growth, personality, and learning style.
23. "DHS" means the Arizona Department of Health Services.
24. "Direct supervision" means within sight and sound.
25. "Exploitation" means an act of taking advantage of, or making use of a child selfishly, unethically, or unjustly for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
26. "Evening care" means child care provided at any time between 6:30 p.m. and midnight.
27. "Heating device" means an instrument designed to produce heat for a room or inside area and includes a non-electric stove, fireplace, freestanding stove, or space heater.
28. "Home facility" means a provider's residence that the Department has certified as a location where child care services may be provided.
29. "Household member" means a person who does not provide child care services and who resides in the home facility of a provider for 21 consecutive days or longer or who resides periodically throughout the year for a total of at least 21 days.
30. "Infant" means:
  - a. A child who is younger than 12 months old; and
  - b. A child who is younger than 18 months old and not walking.
31. "In-home provider" means a provider who cares for a child in the child's home.
32. "Maltreatment" means abuse, neglect, exploitation, or abandonment of a child.
33. "Medication" means any prescribed or over-the-counter drug or medicine.
34. "Mechanical restraint" means a device to restrict a child's movement.

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35. "Neglect" has the same meaning ascribed in A.R.S. § 8-201.
36. "Night-time care" means child care provided at any time between midnight and 6:00 a.m.
37. "Non-parent relative" means a caretaker relative who exercises responsibility for the day-to day physical care, guidance, and support of a child who physically resides with the relative and who is by affinity, consanguinity, or court decree, a grandparent, great grandparent, sibling of the whole or half-blood, stepbrother, stepsister, aunt, uncle, great aunt, great uncle, or first cousin of the child.
38. "Parent" means the biological or adoptive parent of a child, a court-appointed guardian, or a non-parent relative.
39. "Provider" means an adult who is not the parent or guardian of a child needing care, and to whom the Department has issued a certificate, and includes a backup provider who performs the provider's duties when the provider is unavailable.
40. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement.
41. "Safeguard" means to use reasonable efforts and developmentally appropriate measures to eliminate the risk of harm to a child in care and ensure that a child in care will not be harmed by a particular object, substance, or activity. Safeguarding may include:
- Locking up a particular substance or item;
  - Putting a substance or item beyond the reach of a child who is not mobile;
  - Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
  - Mandating the use of a protective safety device; or
  - Providing direct supervision.
42. "Sanitize" means treatment by a heating or chemical process that reduces the bacterial count, including pathogens, to a safe level.
43. "Time out" means removing a child from a situation by directing the child to remain in a specific chair or place identified as the time out place, for no more than one minute for each year of a child's age, but no more than 10 minutes.
44. "Undue hardship" means significant difficulty or substantial expense concerning the operation of a provider's program. In this subsection, "significant" and "substantial" are measured relative to the level of net income the provider earns from child care services.
45. "Unusual incident" means any accident, injury, behavior problem, or other extraordinary situation involving a provider or a child in care, including suspected child maltreatment.
- D.** An applicant shall designate one or more backup providers from the following list:
- An individual who is age 18 or older and who satisfies the requirements for backup providers outlined in this Article;
  - A DHS-licensed child care center;
  - A DHS-certified child care group home; or
  - A DES-certified family child care home.
- E.** An applicant shall participate in any orientation and training and shall cooperate in conducting any pre-certification interviews and inspections the Department may require.
- F.** An applicant shall give the Department the names of three references who:
- Have known the applicant at least one year,
  - Are unrelated by blood or marriage to the applicant, and
  - Can furnish information regarding the applicant's character and ability to care for a child.
- G.** An applicant and any designated individual backup provider shall furnish a self-statement of physical and mental health on a form provided by the Department.
- H.** An applicant and each designated individual backup provider shall have the physical, mental, and emotional health necessary to perform the duties and meet the responsibilities established by this Article. If the Department has questions about the applicant's health that the applicant cannot satisfactorily answer or explain, the applicant, upon request by the Department, shall submit to a physical or psychological examination by a licensed physician, psychologist, or psychiatrist, and shall provide the Department with a professional opinion addressing the Department's questions. The applicant shall bear the cost of any professional examinations that the Department needs to determine whether the individual is qualified.
- I.** The Department may require an applicant to furnish at least the following information about the applicant, the applicant's spouse, members of the applicant's household, children residing outside of the applicant's home, and the individual backup provider:
- Name;
  - Current address;
  - Telephone number;
  - Date of birth;
  - Social security number;
  - Maiden name, aliases, and nicknames;
  - Relationship to the applicant or backup provider;
  - Marital status and marital history;
  - Educational background;
  - Ethnicity;
  - Gender;
  - Birthplace;
  - Physical characteristics; and
  - Citizenship status.
- J.** Child care personnel shall submit the notarized criminal history certification form required by A.R.S. § 41-1964, and disclose whether they have committed any acts of child maltreatment or have been the subject of a Child Protective Service investigation.
- K.** On a Department form, an applicant, all adult household members, and all individual backup providers shall provide employment histories for the five-year period immediately preceding the application date, beginning with the individual's present or most recent job.
- L.** An applicant shall furnish proof that the applicant, the individual backup provider, and members of the applicant's household who are age 13 or younger are immune from measles, rubella, diphtheria, tetanus, pertussis, polio, and any other dis-

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5202. Initial Application for Certification**

- A.** To become a certified child care provider, an applicant shall comply with all requirements of this Article and other applicable requirements of federal, state, or local law.
- B.** An applicant shall be at least age 18.
- C.** An applicant shall submit a complete, signed application form to the Department.

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cases for which routine immunizations are readily and safely available.

1. The Department may waive the requirements of this subsection for a household member if the applicant will be certified as an in-home provider only and submits an affidavit attesting that household members will not be present when child care services are provided.
  2. The Department shall waive the requirements of this subsection if the applicant:
    - a. Submits an affidavit stating that household members are being raised in a religion whose teachings oppose immunization; and
    - b. Affirms, in writing, that families will be notified of the religious exemption before child care services are provided.
- M.** An applicant shall submit evidence of current freedom from pulmonary tuberculosis for the applicant, all household members, and all individual backup providers. If the application is approved, this evidence shall be submitted each succeeding calendar year.
1. Evidence required under this subsection is limited to:
    - a. A report of a negative Mantoux skin test performed within three months of the date or anniversary date of initial certification.
    - b. A physician's written statement based on an examination performed within three months of the date or anniversary date of initial certification.
  2. The Department shall waive the requirements of this subsection for household members if the applicant will be certified as an in-home provider only and submits an affidavit that household members will not be present when child care services are provided.
- N.** An applicant shall provide a statement of services on a Department form. The statement shall describe:
1. The home at which services will be provided, location, and hours of operation;
  2. The applicant's daily rates and fees;
  3. The ages of children the applicant will accept;
  4. The equipment, materials, daily activities, and play areas available to children in care;
  5. Any special child care skills, knowledge, or training the applicant has; and
  6. The behavior, guidance, and discipline methods the applicant uses.
- O.** During an interview with the child care specialist, an applicant shall complete a Department questionnaire describing:
1. The applicant's child rearing philosophy;
  2. The home environment, including intra-family relationships and attitudes toward child care;
  3. The parenting and discipline methods employed by the applicant and the applicant's parents; and
  4. The applicant's child care training and experience.
- P.** Upon Department request, an applicant, all members of the applicant's household, and all individual backup providers shall comply with any additional requirements and requests for interviews, inspections, or information necessary to determine the applicant's fitness to serve as a certified child care provider.
- Q.** A complete application package consists of an applicant's completed application form and evidence that the applicant, all members of the applicant's household, and all individual backup providers have met all requirements and submitted all information and documentation listed in this Section.
- R.** The Department shall send an applicant a notice of administrative completeness or deficiency, as described in A.R.S. § 41-1074, indicating the additional information, if any, that the

applicant must provide for a complete application package. The Department shall send the notice after receiving the application and before expiration of the administrative completeness review time-frame described in R6-5-5205. If the applicant does not supply the missing information listed in the notice, the Department may close the file.

- S.** An applicant whose file is closed may reapply for certification.
- T.** After an applicant submits a complete application for initial certification, the Department shall inspect the applicant's home to determine whether the home meets the regulations of this Article.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5203. Initial Certification: The Home Facility**

A provider's home facility shall meet the requirements of this Section.

1. A provider shall maintain the indoor and outdoor premises of the home facility in a safe and sanitary condition, free from hazards and vermin, and in good repair. A mobile home shall have skirting to ensure that a child in care cannot go beneath the mobile home.
2. Any area to be occupied by a child in care shall have heat, light, ventilation, and screening. The provider shall maintain the home facility between 68° and 85° F.
3. A provider shall vent and safeguard all heating devices to protect each child from burns and harmful fumes.
4. A provider shall safeguard all potentially dangerous objects from children, including:
  - a. Household and automotive tools;
  - b. Sharp objects, such as knives, glass objects, and pieces of metal;
  - c. Fireplace tools, butane lighters and igniters, and matches;
  - d. Machinery;
  - e. Electrical boxes;
  - f. Electrical outlets;
  - g. Electrical wires; and
  - h. Chemicals, cleaners, and toxic substances.
5. A provider shall store firearms and ammunition separately from one another, under lock and key or combination lock.
6. A home facility shall have adequate space and equipment to accommodate each child in care, and other household members who are in the home facility at the same time as children in care. In this subsection, "adequate" means sufficient space and equipment to:
  - a. Permit all persons in the dwelling to have safe freedom of movement;
  - b. Permit children in care to be seated together for meals and snacks; and
  - c. Permit all children in care to be engaged in developmentally appropriate activities at the same time and in a room where the provider can keep all children within sight.
7. A provider shall keep outside play areas clean and safe and shall fence the play area if there are conditions that may pose a danger to any child playing outside. The fence shall be at least 4 feet high and free of hazards, including splinters and protruding nails or wires. The

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fence shall have only self-closing, self-latching, lockable gates.

8. A home facility shall have the following equipment:
  - a. A charged, readily accessible, operable, multi-purpose (ABC class) fire extinguisher that the applicant knows how to operate;
  - b. At least one UL-approved, working smoke detector, properly mounted on each level of the dwelling;
  - c. At least two usable outdoor exits;
  - d. A posted written plan or diagram for emergency evacuation;
  - e. A working telephone or other two-way communication device acceptable to the Department; and
  - f. An easily accessible life-saving device if the home facility has a pool or other body of water more than 12 inches deep. A "life-saving device" means a ring buoy with at least 25 feet of 1/2-inch rope attached or a shepherd's crook.
9. If a home facility has a swimming pool or other body of water more than 12 inches deep, the pool or body of water shall be enclosed by a permanent fence that separates it from all other outdoor areas and from doors and windows into the home facility. The fence shall be at least 5 feet high and shall have only self-closing, self-latching, lockable gates. Open spaces between upright or parallel posts and poles on fences and gates shall be no more than 4 inches apart. When the pool or body of water is not in use, the provider shall lock the gates.
10. A provider shall enclose spas and hot tubs with fencing as described in subsection (9), or with a hard, locked cover that prevents access and can support at least 100 pounds.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Amended effective March 5, 1979 (Supp. 79-2). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5204. Initial Certification: Department Responsibilities**

- A. Before issuing a certificate, the Department shall:
  1. Conduct at least one face-to-face interview with an applicant;
  2. Contact any other person necessary to determine an applicant's fitness to be a certified provider;
  3. Ensure that an applicant and all individual backup providers have complied with and satisfy the requirements of R6-5-5202;
  4. Inspect the home where an applicant will provide child care, unless it is the child's own home, and ensure that it meets the requirements of R6-5-5203;
  5. Conduct a CHILDS Central Registry check for:
    - a. An applicant;
    - b. The applicant's household members;
    - c. The applicant's emancipated children who live outside the applicant's home, if any; and
    - d. Any individual backup provider.
  6. Find that an applicant has the intent and ability to provide child care that is safe, developmentally appropriate, and in compliance with the requirements of this Article.
- B. The Department shall objectively determine whether to certify an applicant based on the applicant's entire application package, and the information the Department has acquired during the course of the application process.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994

(Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5205. Certification Time-frames**

For the purpose of A.R.S. § 41-1073, the Department established the following certification time-frames:

1. Administrative completeness review time-frame: 60 days,
2. Substantive review time-frame: 30 days, and
3. Overall time-frame: 90 days.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5205 renumbered to R6-5-5206 and new Section adopted by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5206. Certificates: Issuance; Non-transferability**

- A. A certificate is valid for three years from the date of issuance. The Department may revoke a certificate before expiration as provided in this Article and by law.
- B. A certificate is not transferable and is valid only for the provider and location identified on the certificate.
- C. A provider shall post the certificate in a conspicuous location in the home facility.
- D. A certificate is the property of the state of Arizona. Upon revocation or voluntary closure, a provider shall surrender the certificate issued to the provider to the Department within seven days.
- E. The Department shall designate on the certificate issued to the provider the total number of children to be allowed in child care at any one time. The total shall not exceed the limits set in R6-5-5220.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Amended effective February 24, 1977 (Supp. 77-1). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5206 renumbered to R6-5-5207; new Section R6-5-5206 renumbered from R6-5-5205 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5207. Maintenance of Certification: General Requirements; Training**

- A. Child care personnel and all individual backup providers shall be fingerprinted and pay all required fingerprint fees within the time prescribed in A.R.S. § 41-1964.
- B. A provider and all individual backup providers shall maintain the physical, mental, and emotional health necessary to fulfill all legal requirements for child care providers.
- C. No later than 60 days after the date of provider certification, a provider and individual backup providers shall furnish the Department with proof of acceptable first aid training and certification in infant/child cardiopulmonary resuscitation ("CPR"). As used in this Section, "acceptable training" means a classroom or blended-learning course that conforms to the current guidelines of the American Red Cross or the American Heart Association, as confirmed in writing by the training provider. The Department may extend the time for completing this requirement and children may remain in care during an extension, if:
  1. The class was not available within the 60-day time period; or
  2. The provider, individual backup provider, or a dependent was ill, and the provider or backup provider was unable to attend a scheduled class due to the illness.

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- D.** A provider and individual backup providers shall maintain current training and certification in first aid and infant/child CPR through acceptable training courses.
- E.** A certified provider shall attend at least six hours of training each calendar year in any of the following subjects:
1. The Department's child care program, policies, and procedures;
  2. Child health and safety, including recognition, control, and prevention of illness and disease;
  3. Child growth and development;
  4. Child abuse prevention, detection, and reporting;
  5. Positive guidance and discipline;
  6. Child nutrition;
  7. Communication with families; family involvement;
  8. Developmentally appropriate practices; and
  9. Other similar subjects designed to improve the provider's ability to provide child care.
- F.** A provider shall maintain a record of all training, and annually furnish the Department with proof of attendance.
- G.** A provider shall maintain a safe and clean home facility, including furnishings, equipment, supplies, materials, utensils, toys, and grounds, that meets the standards in this Article.
- H.** At all times, a provider shall allow the Department access to all parts of the home facility. The Department shall make at least two onsite visits each year to each home facility and in-home provider. At least one visit shall be unannounced.
- I.** A provider shall allow a parent or a designated representative access to the home facility at all times when the parent's child is present, and shall give parents and designated representatives written notice explaining this right.
- J.** A provider shall directly supervise a visitor to the home facility while the visitor is in an area with a child in care.
- K.** A provider shall not expose a child in care to tobacco products or smoke.
- L.** A provider shall not care for a child while under the influence of alcoholic beverages, medication, or any other substance, that may or does impair the provider's ability to care for a child.
- M.** A provider shall not consume alcoholic beverages while caring for a child.
- N.** A provider shall not refuse to provide care to any child on the basis of color, sex, religion, disability, or national origin.
- O.** If a provider is notified that a child or household member has a communicable disease, the provider shall ensure that a child who lacks written evidence of immunity to the communicable disease is not permitted to be present in the home facility until:
1. A parent provides written evidence of the child's immunity to the disease; or
  2. A local health department notifies the provider that the child may return to the home facility
- ences in the provision of child care services during the current certification period.
- B.** A provider shall demonstrate the continued physical, mental, and emotional health necessary to perform the duties and fulfill the responsibilities in this Article.
- C.** Before recertification, a provider and designated individual backup provider shall furnish a self statement of physical and mental health and freedom from communicable diseases on a form furnished by the Department.
- D.** The Department shall renew a certificate only after a provider demonstrates the intent and ability to provide child care that is safe, developmentally appropriate, and in compliance with the requirements of this Article.
- E.** Unless the Department, in its sole discretion, accepts a provider's written assurance of future compliance with the requirements of this subsection, the Department shall deny recertification or take other enforcement action when the provider does not accept Department-referred children on three separate occasions unless the refusal is for:
1. Illness, accident, or incapacity of the provider;
  2. Illness, accident, or incapacity of any household member, if the existing condition will pose a risk to children in care, or limit the provider's ability to provide child care in accordance with the law;
  3. The provider is not equipped or trained to provide care to the referred child, and the provider cannot acquire the equipment or training without undue hardship;
  4. The provider has no available slots;
  5. The situations listed in R6-5-5222 and a backup provider is unavailable;
  6. A child has not been immunized, and the parent or guardian is unwilling to obtain appropriate immunization, in accordance with R6-5-5219(F); or
  7. The home facility is in temporary disrepair or under construction.
- F.** The Department may obtain any supplemental information needed to determine continuing fitness to serve as a certified child care provider.
- G.** A provider, all household members, and an individual backup provider shall cooperate with the Department in providing all information required for recertification.
- H.** The Department shall determine whether to recertify a provider based on the provider's original application package, all previous monitoring reports, and all additional information the Department receives during the recertification process.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5207 renumbered to R6-5-5209; new Section R6-5-5208 renumbered from R6-5-5207 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5209. Program and Equipment**

- A.** A provider shall offer a program that is developmentally appropriate for, and meets the needs of each child in care. The daily program and activity schedule shall include a balance of the following:
1. Indoor and outdoor activities;
  2. Activities that encourage movement and quiet time;
  3. Activities that encourage a child's creativity;
  4. Individual and group activities;
  5. Small and large muscle development activities; and
  6. Activities that include social interaction, problem solving, and negotiating skills.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5207 renumbered to R6-5-5208; new Section R6-5-5207 renumbered from R6-5-5206 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5208. Recertification Requirements**

- A.** Before recertifying a provider, the Department shall interview the provider at the location where child care will be provided. The Department Representative may interview an in-home provider at the in-home provider's residence. The interview shall include a discussion and review of the provider's experi-

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- B.** A provider shall incorporate into the program each child's daily routine activities, such as diapering, toileting, eating, dressing, resting, and sleeping, in accordance with the developmental needs of each child.
- C.** A provider shall develop a flexible, developmentally appropriate program that the provider can adjust to accommodate unanticipated events such as the illness of a child or changes in the weather.
- D.** A provider shall have play equipment and materials sufficient to meet the program requirements described in subsections (A) through (C), and to ensure that all children in care can be occupied in developmentally appropriate play at the same time.
- E.** A provider who cares for a child who is younger than age 2 shall have a variety of developmentally appropriate play equipment and supplies available for the child, such as:
1. Touch boards;
  2. Soft puppets;
  3. Soft or plastic blocks;
  4. Simple musical instruments;
  5. Push-pull toys for beginning walkers;
  6. Picture and texture books;
  7. Developmentally appropriate art materials, including crayons, paints, finger paints, watercolors, and paper;
  8. Simple, 2-3 piece puzzles and peg boards; and
  9. Large beads to string or snap.
- F.** A provider who cares for a child age 2 or older shall have a variety of developmentally appropriate play equipment and supplies available for the child, such as:
1. Art supplies;
  2. Blocks and block accessories;
  3. Books and posters;
  4. Dramatic play areas with toys and dress-up clothes;
  5. Large muscle equipment;
  6. Manipulative toys;
  7. Science materials; and
  8. Musical instruments.
- G.** A provider shall have a bed, cot, mat, crib, or playpen for each child in care who requires a daily nap or rest period. Each infant in care shall have a safe crib, port-a crib, bassinet, or playpen.
- G.** A provider shall have written permission from a parent or guardian before allowing a child to engage in water play. In this subsection, "water play" means any activity in which water is likely to get into a child's ears.
- H.** A provider shall directly supervise any child who is in a pool area.
- I.** A provider shall accompany a child who is using a public or semi-public swimming place.
- J.** A provider shall have written permission from a child's parent or designated representative to bathe or shower the child, or to allow the child to bathe or shower independently.
- K.** A provider shall not permit a child younger than age 6 to bathe or shower unsupervised.
- L.** A provider shall report suspected child abuse or neglect to CPS or the local law enforcement department as required by A.R.S. § 13-3620.
- M.** A provider shall use developmentally appropriate precautions to separate a child in care from hazardous areas, including locked doors and safe portable folding gates.
- N.** A provider shall release a child only to the child's parent or to an adult who has been designated in writing by the parent.
- O.** A provider shall not allow a person addicted to or under the influence of illegal drugs or alcohol in the home facility while children in care are present.
- P.** A provider shall not permit a person who is abusive to children, or who uses unacceptable disciplinary methods as described in R6-5-5212, into the home facility when children in care are present.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Amended effective March 5, 1979 (Supp. 79-2). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5210 renumbered to R6-5-5211; new Section R6-5-5210 renumbered from R6-5-5209 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5211. Sanitation**

- A.** A provider and each child in care shall wash their hands with soap and running water after playing with animals or using the toilet, and before and after handling, serving, or eating food. If a child cannot reach a sink with running water, due to the child's age or some limiting condition, the provider shall clean that child's hands with an individual, clean, washcloth.
- B.** A provider shall wash, in hot soapy water, and sanitize, all utensils used for eating, drinking, and food preparation.
- C.** A provider shall have a garbage can with a close-fitting lid.
- D.** A provider shall dispose of garbage in the home facility at least once a day.
- E.** A provider shall empty and sanitize wading pools measuring 12 inches deep or less, after each use.
- F.** A provider shall maintain, in a sanitary condition, a swimming pool or other area or container, which is more than 12 inches deep and used for water play.
- G.** A provider shall frequently check the diaper of each child in care and shall immediately change a soiled diaper.
- H.** A provider shall have sanitary arrangements for diaper changing and disposal of soiled diapers, including the following:
1. The diaper changing area shall not be in an area where food is prepared or consumed;
  2. The diapering surface shall be cleaned, sanitized, and dried after each diaper change;
  3. Following bulk stool disposal into a toilet, soiled cloth diapers shall not be rinsed, but shall be bagged in plastic, individually labeled with child's name, stored in a cov-
- R6-5-5210. Safety; Supervision**
- A.** When a provider is unavailable to care for a child for a reason described in R6-5-5222(B), the provider may use only the backup provider designated under R6-5-5202 or R6-5-5222(E).
- B.** A provider shall give parents and guardians written notice of the provider's backup care plan.
- C.** A provider shall not engage in activities that interfere with the ability to supervise and care for children, including other employment, and volunteer or recreational activities. An in-home provider shall not perform housekeeping duties unrelated to the care of the child.
- D.** A provider shall directly supervise each child who is awake.
- E.** A provider shall have unobstructed access to and shall be able to hear each child who is sleeping.
- F.** A provider shall not permit a child in care to use a spa or hot tub.

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- ered container out of reach of children, and returned to the child's parent each day; and
4. Soiled disposable diapers shall be discarded in a tightly covered, lined container out of reach of children.

- I. Before and after each diaper change, a provider shall wash hands with soap and running water in a sink not used for food preparation.
- J. A provider shall sanitize a bathtub before bathing each child in care.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5211 renumbered to R6-5-5212; new Section R6-5-5211 renumbered from R6-5-5210 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5212. Discipline**

- A. A certified provider and all individual backup providers shall sign a written agreement to abide by the Department's policy on developmentally appropriate discipline.
- B. Only a provider may discipline a child in care;
- C. A provider may physically restrain a child whose behavior is uncontrolled, only when the physical restraint:
  1. Is necessary to prevent harm to the child or others;
  2. Occurs simultaneously with the uncontrolled behavior;
  3. Does not impair the child's breathing; and
  4. Cannot harm the child.

A provider shall use the minimum amount of restraint necessary to bring the child's behavior under control.
- D. A provider shall not use the following disciplinary measures:
  1. Corporal punishment, including shaking, biting, hitting, or putting anything in a child's mouth;
  2. Placing a child in isolation or in a closet, laundry room, garage, shed, basement, or attic;
  3. Locking a child out of the home facility;
  4. Placing a child in any area where the provider cannot directly supervise the child;
  5. Methods detrimental to the health or emotional needs of a child;
  6. Administering medications;
  7. Mechanical restraints of any kind;
  8. Techniques intended to humiliate or frighten a child;
  9. Discipline associated with eating, sleeping, or toileting; or
  10. Abusive or profane language.
- E. As a disciplinary measure, a provider may place a child in time out. During the time out period, the provider shall keep the child in full view. Time out shall not be used for children less than age 3.
- F. A provider shall maintain consistent, reasonable rules that define acceptable behavior for a child in care.
- G. A provider shall use discipline only to teach acceptable behavior and to promote self-discipline, not for punishment or retribution.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5212 renumbered to R6-5-5213; new Section R6-5-5212 renumbered from R6-5-5211 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5213. Evening And Nighttime Care**

- A. A provider who offers evening or nighttime care shall remain awake until each child in care is asleep.

- B. A provider who offers nighttime care shall have a safe and sturdy crib for each infant, and a safe and sturdy bed or cot with mattress for each child. Crib bars or slats shall be no more than 2 3/8 inches apart, and the crib mattress shall fit snugly into the crib frame so that no space remains between the mattress and frame.
- C. A provider may allow siblings to share a bed only if the provider has received written parental permission.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5213 renumbered to R6-5-5214; new Section R6-5-5213 renumbered from R6-5-5212 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5214. Children Younger than Age 2**

A provider who cares for a child younger than age 2 shall comply with the following requirements:

1. A provider shall frequently hold a child and give each infant and toddler physical contact and attention throughout the day.
2. A provider shall respond promptly to a child's distress signals and need for comfort.
3. A provider shall get written permission from a parent or guardian to give a child a bedtime or nap-time bottle. If the provider receives permission, the provider shall use only water in the bottles, unless otherwise directed by the child's physician.
4. A provider shall not confine a child in a crib, high chair, swing, or playpen, for more than one consecutive waking hour.
5. A provider shall not feed cereal by bottle, except with the written instruction of a physician.
6. A provider shall hold an infant younger than age 1 for any bottle feeding, and shall not prop bottles with a child in care.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5214 renumbered to R6-5-5215; new Section R6-5-5214 renumbered from R6-5-5213 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5215. Children with Special Needs**

- A. When enrolling a child with special needs, a provider shall comply with the requirements of this Section:
  1. A provider shall consult with parents to establish a mutually agreed upon plan regarding services for a child with special needs;
  2. A provider shall have the physical ability and appropriate training to provide the care required by a child with special needs;
  3. A provider shall use best efforts to integrate a child with special needs into the daily activities of the home facility in a manner that is the least restrictive, and that meets the child's individual needs;
  4. If a provider regularly cares for a child with special needs older than age 3 who requires diapering, the home facility shall have a diaper changing area that permits the child to have privacy. Proper sanitation shall be maintained as described in R6-5-5211.
- B. A provider shall make reasonable accommodations in the home facility, equipment, and materials for a child with special needs.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former

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Section R6-5-5215 renumbered to R6-5-5216; new Section R6-5-5215 renumbered from R6-5-5214 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5216. Transportation**

- A. A provider shall obtain prior written permission from a child's parent before transporting a child in a privately owned vehicle or on public transportation.
- B. A provider shall ensure that a child in care is transported in a private vehicle by a person who has:
  1. A valid Arizona driver's license;
  2. Automobile insurance that meets the financial responsibility requirement of Arizona law; and
  3. No convictions for driving while intoxicated within three years before the date of transportation.
- C. A provider shall transport a child only in a mechanically safe vehicle. "Mechanically safe" means a vehicle with:
  1. Functioning brakes, signal lights, and headlights;
  2. Tires with tread; and
  3. Structural integrity.
- D. A provider shall not transport a child on a motorcycle or in a vehicle that is not constructed for the purpose of transporting people, such as a truck bed, camper, or any trailered attachment to a motor vehicle.
- E. A provider shall transport a child in a separate car seat, seat belt, or child-restraint device in compliance with A.R.S. § 28-907.
- F. A provider shall never leave a child unattended in a vehicle.
- G. A provider shall maintain first-aid supplies in a privately owned vehicle used to transport children in care.
- H. A provider shall carry a child's emergency-information card when transporting a child in care.
- I. A provider shall sign a form that states that the provider will abide by R6-5-5216.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5216 renumbered to R6-5-5217; new Section R6-5-5216 renumbered from R6-5-5215 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5217. Meals and Nutrition**

- A. A provider shall serve a child in care wholesome and nutritious foods and beverages. In this Section, "wholesome and nutritious" means foods and beverages consistent with the requirements of 7 CFR 226.20 (January 1, 1998), which is incorporated by reference and available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona 85007 and in the office of the Secretary of State at 1700 West Washington, Phoenix, Arizona. The incorporated material contains no later amendments or editions.
- B. A provider shall supplement meals and snacks supplied by a parent when the supplied food does not provide a child with a wholesome and nutritious diet.
- C. A provider shall make available to a child in care meals and snacks that satisfy the child's appetite and dietary needs.
- D. A provider shall consult with a parent to identify, in writing, any special dietary needs or instructions for a child in care.
- E. A provider shall give a child any necessary assistance in feeding and shall teach self-feeding skills, but shall not force a child to eat.
- F. A provider shall monitor all perishable foods, including infant formulas and sack lunches. The provider shall ensure that food is individually labeled with a child's name, dated, covered, and properly stored to prevent spoilage at temperatures of 45°F or less.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5217 renumbered to R6-5-5218; new Section R6-5-5217 renumbered from R6-5-5216 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5218. Health Care; Medications**

- A. When a provider enrolls a child for care, the provider shall make written arrangements with the child's parent for emergency medical care of the child.
- B. If a child becomes ill while in care, a provider shall:
  1. Make the child comfortable and keep the child in full view; and
  2. Notify the parent or other designated person that the child is ill and must be immediately removed from care.
- C. A provider shall notify the parent of other children in care when a child in care contracts an infectious illness.
- D. A provider shall not provide care while knowingly infected with or presenting symptoms of an infectious disease.
- E. If a child exhibits symptoms of an infectious disease, the child may return to care when fever free and symptom free, or with written permission from the child's medical practitioner that returning will not endanger the health of the child or other children in care.
- F. A provider shall not admit a child in need of professional medical attention to the home facility and shall direct the parent to obtain medical attention for the child.
- G. Only a provider shall administer medication with signed written instructions for administering the medication from the child's parent.
- H. A provider shall not administer:
  1. Medication that is date expired or in something other than its original container; or
  2. Prescription medication that does not bear the date of issue, the child's name, the amount and frequency of dosage, and the doctor's name.
- I. A provider shall maintain a written log of all medications administered. The log shall include:
  1. The name of the child receiving the medication;
  2. The name of the medication;
  3. The date and time of administration; and
  4. The dosage administered.
- J. A provider shall use a sanitary medication measure for accurate dosage.
- K. A provider shall keep all medication in a locked storage container, and refrigerate if necessary.
- L. A provider shall have first-aid supplies available at the home facility, which shall be administered only by the provider.
- M. A provider is responsible for obtaining only emergency medical treatment for a child in care.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5218 renumbered to R6-5-5219; new Section R6-5-5218 renumbered from R6-5-5217 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5219. Recordkeeping; Unusual Incidents; Immunizations**

- A. A provider shall maintain a daily attendance log on a Department-approved form and shall require that each child be

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- signed in and out on the log by the parent or other individual designated in writing by the parent.
- B.** On a form approved by the Department, a provider shall promptly log all accidents, injuries, behavior problems, or other unusual incidents at the home facility, including any suspected child abuse or neglect.
- C.** A provider shall immediately report all unusual incidents to a parent or guardian of the child involved and shall report the incidents to the Department within 24 hours of the time of occurrence.
- D.** A provider shall maintain records in accordance with the requirements of the provider's child care registration agreement. The provider shall make the following records readily available for inspection by the Department and shall keep them separate from household and other personal records:
1. Information listed in subsection (E);
  2. Immunization records identified in subsection (F) and R6-5-5202 (L);
  3. Documentary evidence of freedom from communicable tuberculosis as required by R6-5-5202 (M);
  4. The provider's certification, re-certification, and monitoring records;
  5. Health records of child care personnel;
  6. The provider's training records;
  7. Unusual incident reports; and
  8. Daily logs of attendance, accidents, injuries, medications administered, behavior problems, or other unusual incidents.
- E.** A provider shall maintain at least the following information for each child in care:
1. The child's name, home address, telephone number, gender, and date of birth;
  2. The name, home and business addresses, and telephone numbers of the child's parent;
  3. The name, address and telephone number of the child's physician or health care provider and hospital;
  4. Authorization and instructions for emergency medical care when the parent cannot be located; and
  5. Written authorization to release a child to any individual other than the parent and the name, home and work addresses, and telephone numbers of that individual.
- F.** A provider shall maintain an immunization record or exemption affidavit for each child in care.
1. Documentation required under this subsection is limited to:
    - a. An immunization record prepared by the child's health care provider stating that child has received current, age-appropriate immunizations specified in R9-6-702, including immunizations for Diphtheria, Haemophilus influenzae type b, Hepatitis B, Measles, Mumps, Pertussis, Poliomyelitis, Rubella, and Tetanus;
    - b. An affidavit signed by the child's health care provider stating that the child has a medical condition that causes the required immunizations to endanger the child's health; or
    - c. An affidavit signed by the child's parent stating that the child is being raised in a religion whose teachings oppose immunization.
  2. If a child has received all current immunizations but requires further inoculations to be fully immunized, the provider shall require the parent to verify that the parent will have the child complete all immunizations in accordance with the DHS recommended schedule identified in R9-6-702. The provider shall:
    - a. Require the parent to produce documented records from the child's health care provider of the immunizations as they are completed; and
    - b. Maintain the records as required by subsection (F)(1).
3. The provider shall not permit a child in care to remain enrolled for more than 15 days if the parent does not provide proof of current, age-appropriate immunizations, a statement of timely completion of further inoculations, or exemption from immunization.
- G.** Children exempted from immunizations for religious or medical reasons shall be excluded from the home facility if there is an outbreak of an immunizable disease at the home facility.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5219 renumbered to R6-5-52020; new Section R6-5-5219 renumbered from R6-5-5218 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5220. Provider/Child Ratios**

- A.** The Department may certify a provider in a home facility to care for a maximum of four children at a time, from birth through age 12, for compensation. A provider in a home facility may care for a maximum of six children at a time, from birth through age 12, or a child age 13 or older who is a child with special needs, when all of the following conditions are met:
1. No more than four children in care are for compensation; and
  2. No more than two of the children in care are younger than age 1, unless a sibling group.
- B.** The Department may certify an in-home provider to provide the following care:
1. An in-home provider may care for a sibling group of no more than six children.
  2. An in-home provider shall care only for the children who live in that home.
  3. An in-home provider may bring the in-home provider's own children to the in-home location with the written permission of the client, and so long as the total number of children at the in-home location does not exceed six children.
- C.** The Department may further limit the ratios allowed in subsections (A) and (B) to protect the well-being of children in care. The Department may impose additional restrictions when:
1. There are more than two children residing in the home facility who are counted in the ratio;
  2. The Department determines that the home facility and the furnishings are inadequate to accommodate four children at a time for compensation, as provided in Section R6-5-5203(6);
  3. The Department has determined that a provider is physically unable to care for four children at a time; for compensation or
  4. A provider requests certification for fewer than four children at a time for compensation.
- D.** For the sole purpose of establishing and monitoring ratios, the Department shall not count any child who is age 13 or older, except as provided in subsection (A) for a child with special needs.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5220 renumbered to R6-5-5221; new Sec-

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tion R6-5-5220 renumbered from R6-5-5219 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5221. Change Reporting Requirements**

At least 15 days before the effective date of any scheduled change, or within 24 hours after an unscheduled change, which significantly affects the provision of child care services, a provider shall furnish the Department with written notice of the change. Significant changes include, but are not limited to:

1. Home remodeling;
2. Home repair;
3. Pool installation;
4. Relocating to a new residence;
5. Change in household composition;
6. Telephone number change;
7. Change of backup provider;
8. Voluntarily relinquishing the certificate; and
9. Any other change in the home facility or the provider's personal circumstances that affect the provider's ability to provide stable child care services.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5221 renumbered to R6-5-5222; new Section R6-5-5221 renumbered from R6-5-5220 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5222. Use of A Backup Provider**

- A. A provider shall maintain a backup provider, and shall keep clients and the Department apprised of the backup provider's identity and location.
- B. A provider may use a backup provider only in the following circumstances:
  1. When the provider is ill;
  2. When the provider is attending to an emergency related to the provision of child care;
  3. When the provider has an emergency involving the provider or the provider's dependent family members;
  4. When the provider needs to attend a non-emergency appointment for the provider or the provider's dependent family members, and the provider cannot schedule the appointment outside of normal child care hours;
  5. When the provider is attending classes to meet training requirements listed in this Article; or
  6. When the provider is taking a vacation.
- C. At the time of enrollment of a child in care, a provider shall advise the parent of the possible use of a backup provider.
- D. A provider shall notify the Department within 24 hours of the onset of the use of a backup provider.
- E. When a provider designates a new backup provider, the provider shall ensure that the backup provider meets the requirements for backup providers in R6-5-5202.
- F. A provider shall execute a backup provider agreement form furnished by the Department, which identifies the backup provider and contains assurances that the backup provider will be used in accordance with the requirement of this Section.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5222 renumbered to R6-5-5223; new Section R6-5-5222 renumbered from R6-5-5221 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5223. Claims For Payment**

- A. A provider shall submit claims for payment in the manner prescribed in the child care registration agreement with the Department.
- B. A provider shall make all financial arrangements with a backup provider. The Department shall not make direct payments to the backup provider.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5223 renumbered to R6-5-5224; new Section R6-5-5223 renumbered from R6-5-5222 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5224. Complaints; Investigations**

- A. Any person may register, with the Department, a written or verbal complaint about a provider or the operation of a home facility. Upon receipt of a complaint, or in response to the observations of Department staff, the Department shall investigate the allegations made and any matters related to certification and compliance with the child care registration agreement.
- B. A provider who is the subject of a complaint shall cooperate with the Department in conducting an investigation. The provider shall allow a Department representative to inspect the home facility and all records, and to interview any child care personnel, or household member.
- C. The Department shall maintain a file on all complaints against a provider and shall make information on valid complaints available to parents and to the general public upon request and as permitted by law.
- D. Following an investigation, the Department shall take appropriate administrative action as described in this Article.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5224 renumbered to R6-5-5225; new Section R6-5-5224 renumbered from R6-5-5223 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5225. Probation**

- A. The Department may place a provider on probation when a Department representative observes a problem or the Department receives and validates a complaint in an area of noncompliance that does not endanger a child in care.
- B. The Department shall set a term of probation that does not exceed 30 days.
- C. The Department may suspend a provider's child care certificate if the same infraction that resulted in probation is repeated during a provider's current certification period and the Department determines that the provider has not demonstrated either the intent or ability to comply with the requirements of this Article.
- D. The Department shall not authorize any new child for payment to a provider who is on probation. Children already in that provider's care may remain authorized.
- E. Probationary status is not appealable.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5225 renumbered to R6-5-5226; new Section R6-5-5225 renumbered from R6-5-5224 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5226. Certification, Denial, Suspension, and Revocation**

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- A. The Department may deny, suspend, or revoke certification when:
1. An applicant or provider violates or fails to comply with any statute or rule applicable to the provision of Child Care Services.
  2. An applicant or provider has a certificate or license to operate a child care home or facility denied, revoked, or suspended in any state or jurisdiction.
  3. An applicant or provider fails to disclose requested information or provides false or misleading information to the Department.
  4. A provider's contract with the Department to furnish child care services expires or is terminated.
  5. Child care personnel fail or refuse to comply with or meet the requirements of A.R.S. § 41-1964.
  6. A provider fails or refuses to correct or repeats a violation that resulted in probation or suspension.
  7. The Department, through its CPS hotline, receives a report of alleged child maltreatment by an applicant, provider, or household member who is under investigation by CPS or a law enforcement agency or is being reviewed in a civil, criminal, or administrative hearing.
  8. An applicant or provider fails or refuses to cooperate with the Department in providing information required by these rules or any information necessary to determine compliance with these rules.
  9. An applicant, provider, or household member engages in any activity or circumstance that may threaten or adversely affect the health, safety, or welfare of children, including inadequate supervision or failure to protect from actual or potential harm.
  10. An applicant or provider is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children.
  11. The Department, through its CPS hotline, receives a report of alleged child maltreatment in a home facility that is under investigation by CPS or a law enforcement agency or is being reviewed in a civil, criminal, or administrative proceeding.
  12. An applicant, provider, or household member is the subject of a substantiated or undetermined report of child maltreatment in any state or jurisdiction. Substantiated child maltreatment includes, but is not limited to, a probable cause finding by CPS or a law enforcement agency.
  13. CPS or a law enforcement agency substantiates a report of child maltreatment in a home facility.
- B. In determining whether to take disciplinary action against a provider, or to grant or renew a certificate, the Department may evaluate the provider's history from other certification periods, both in Arizona and in other jurisdictions, and shall consider multiple violations of statutes or rules applicable to the provision of child care services as evidence that the applicant or provider is unable or unwilling to meet the needs of children.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5226 repealed; new Section renumbered from R6-5-5225 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5227. Adverse Action; Notice Effective Date**

- A. When the Department denies, suspends, or revokes certification, it shall mail a written, dated notice of the adverse action to the applicant or the provider at the applicant's or provider's last known address.
- B. A notice of adverse action shall specify:

1. The adverse action taken and date the action will be effective;
  2. The reasons supporting the adverse action; and
  3. The procedures by which the applicant or provider may contest the action taken and the time period in which to do so.
- C. Except as provided in subsection (D), a revocation, suspension, or denial of recertification is effective 20 calendar days from the date on the notice or letter advising the provider of the adverse action.
- D. A suspension, revocation, or denial of recertification is effective on the date of the notice or letter advising the person of the adverse action if:
1. The adverse action is based on the failure of child care personnel to comply with or meet the requirements of A.R.S. § 41-1964; or
  2. The Department bases the adverse action on a determination that the health, safety, or welfare of a child in care is in jeopardy.
- E. The Department shall stop payment authorization for all subsidized children in care on the effective date of a suspension, revocation, or denial of recertification.
- F. The Department shall not authorize the referral of additional children to a provider after mailing a notice of adverse action to the provider's last known address.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Amended effective June 4, 1998 (Supp. 98-2). Former Section R6-5-5227 renumbered to R6-5-5228 and new Section adopted by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5228. Appeals**

- A. An applicant or provider may appeal the following Department decisions:
1. Denial of certification or re-certification;
  2. Suspension of a certificate; and
  3. Revocation of a certificate.
- B. A person who wishes to appeal an adverse action shall file a written request for a hearing with the Department within 15 calendar days of the date on the notice or letter advising the provider of the adverse action.
- C. The Department shall conduct a hearing as prescribed in 6 A.A.C. 5, Article 75. Decisions based on failure to clear a fingerprint check or criminal history check are not appealable under this Article.
- D. Matters relating to contractual agreements with the Department, including payment rates and amounts, are not appealable under this Article.
- E. When an adverse action based on R6-5-5226(A)(7) is appealed under this Article, allegations of child maltreatment are not at issue and shall not be adjudicated in an administrative proceeding conducted under subsection (C).

**Historical Note**

New Section R6-5-5228 renumbered from R6-5-5227 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**ARTICLE 53. REPEALED**

*Former Article 53 consisting of Sections R6-5-5301 through R6-5-5305 repealed effective April 9, 1981.*

**ARTICLE 54. REPEALED**

*Former Article 54 consisting of Sections R6-5-5401 through R6-5-5411 repealed effective November 8, 1982.*

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**ARTICLE 55. EXPIRED****R6-5-5501. Expired****Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5501 repealed, new Section R6-5-5501 adopted effective December 8, 1983 (Supp. 83-6). Amended by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5502. Expired****Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5502 repealed, new Section R6-5-5502 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Numbering of subsection (C)(3) amended to correct typographical error (Supp. 00-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5503. Expired****Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5503 repealed, new Section R6-5-5503 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5504. Expired****Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5504 repealed, new Section R6-5-5504 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5505. Expired****Historical Note**

Former Section R6-5-5505 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5506. Expired****Historical Note**

Former Section R6-5-5506 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5507. Expired****Historical Note**

Former Section R6-5-5507 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999

(Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5508. Expired****Historical Note**

Former Section R6-5-5508 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5509. Expired****Historical Note**

Former Section R6-5-5509 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5510. Expired****Historical Note**

Former Section R6-5-5510 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5511. Expired****Historical Note**

Former Section R6-5-5511 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5512. Expired****Historical Note**

Former Section R6-5-5512 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5513. Expired****Historical Note**

Former Section R6-5-5513 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5514. Expired****Historical Note**

Former Section R6-5-5514 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5515. Expired****Historical Note**

Former Section R6-5-5515 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999

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(Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5516. Expired****Historical Note**

Former Section R6-5-5516 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5517. Repealed****Historical Note**

Former Section R6-5-5517 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5518. Repealed****Historical Note**

Former Section R6-5-5518 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5519. Repealed****Historical Note**

Former Section R6-5-5519 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5520. Repealed****Historical Note**

Former Section R6-5-5520 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5521. Repealed****Historical Note**

Former Section R6-5-5521 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5522. Repealed****Historical Note**

Former Section R6-5-5522 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5523. Repealed****Historical Note**

Former Section R6-5-5523 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5524. Repealed****Historical Note**

Former Section R6-5-5524 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5525. Repealed****Historical Note**

Former Section R6-5-5525 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5526. Repealed****Historical Note**

Former Section R6-5-5526 repealed effective December 8, 1983 (Supp. 83-6).

**Appendix 1. Expired****Historical Note**

New Appendix 1 adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Appendix 1

expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**Appendix 2. Expired****Historical Note**

New Appendix 2 adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Appendix 2 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**ARTICLE 56. EXPIRED****R6-5-5601. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5601 repealed, new Section R6-5-5601 adopted effective January 13, 1977 (Supp. 77-1). R6-5-5601 recodified to A.A.C. R6-8-201 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5602. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5602 repealed, new Section R6-5-5602 adopted effective January 13, 1977 (Supp. 77-1). R6-5-5602 recodified to A.A.C. R6-8-202 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5603. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5603 repealed, new Section R6-5-5603 adopted effective January 13, 1977 (Supp. 77-1). R6-5-5603 recodified to A.A.C. R6-8-203 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5604. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5604 repealed, new Section R6-5-5604 adopted effective January 13, 1977 (Supp. 77-1). R6-5-5604 recodified to A.A.C. R6-8-204 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5605. Expired**

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**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5604 renumbered as Section R6-5-5605 effective January 13, 1977 (Supp. 77-1). R6-5-5605 recodified to A.A.C. R6-8-205 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5606. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5605 renumbered as Section R6-5-5606 effective January 13, 1977 (Supp. 77-1). R6-5-5606 recodified to A.A.C. R6-8-206 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5606 repealed; new Section R6-5-5606 renumbered from R6-5-5607 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5607. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5606 renumbered as Section R6-5-5607 effective January 13, 1977 (Supp. 77-1). R6-5-5607 recodified to A.A.C. R6-8-207 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5607 renumbered to R6-5-5606; new Section R6-5-5607 renumbered from R6-5-5608 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5608. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5607 renumbered as Section R6-5-5608 effective January 13, 1977 (Supp. 77-1). R6-5-5608 recodified to A.A.C. R6-8-208 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5608 renumbered to R6-5-5607; new Section R6-5-5608 renumbered from R6-5-5609 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5609. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5608 renumbered as Section R6-5-5609 effective January 13, 1977 (Supp. 77-1). R6-5-5609 recodified to A.A.C. R6-8-209 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5609 renumbered to R6-5-5608; new Section R6-5-5609 renumbered from R6-5-5610 and amended by

final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5610. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5609 renumbered as Section R6-5-5610 effective January 13, 1977 (Supp. 77-1). R6-5-5610 recodified to A.A.C. R6-8-210 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5610 renumbered to R6-5-5609; new Section R6-5-5610 renumbered from R6-5-5612 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-5-5611. Repealed****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5610 renumbered as Section R6-5-5611 effective January 13, 1977 (Supp. 77-1). R6-5-5611 recodified to A.A.C. R6-8-211 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section heading corrected at request of the Department, Office File No. M12-330, filed September 4, 2012 (Supp. 12-2). Repealed by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5612. Renumbered****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5611 renumbered as Section R6-5-5612 effective January 13, 1977 (Supp. 77-1). R6-5-5612 recodified to A.A.C. R6-8-212 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). R6-5-5612 renumbered to R6-5-5610 by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5613. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5612 renumbered as Section R6-5-5613 effective January 13, 1977 (Supp. 77-1). R6-5-5613 recodified to A.A.C. R6-8-213 effective February 13, 1996 (Supp. 96-1).

**R6-5-5614. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5613 renumbered as Section R6-5-5614 effective January 13, 1977 (Supp. 77-1). R6-5-5614 recodified to A.A.C. R6-8-214 effective February 13, 1996 (Supp. 96-1).

**R6-5-5615. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5614 renumbered as Section R6-5-5615 effective January 13, 1977 (Supp. 77-1). R6-5-5615 recodified to A.A.C. R6-8-215 effective February 13, 1996 (Supp.

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96-1).

**R6-5-5616. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5615 renumbered as Section R6-5-5616 effective January 13, 1977 (Supp. 77-1). R6-5-5616 recodified to A.A.C. R6-8-216 effective February 13, 1996 (Supp. 96-1).

**R6-5-5617. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5616 renumbered as Section R6-5-5617 effective January 13, 1977 (Supp. 77-1). R6-5-5617 recodified to A.A.C. R6-8-217 effective February 13, 1996 (Supp. 96-1).

**R6-5-5618. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5617 renumbered as Section R6-5-5618 effective January 13, 1977 (Supp. 77-1). R6-5-5618 recodified to A.A.C. R6-8-218 effective February 13, 1996 (Supp. 96-1).

**R6-5-5619. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5618 renumbered as Section R6-5-5619 effective January 13, 1977 (Supp. 77-1). R6-5-5619 recodified to A.A.C. R6-8-219 effective February 13, 1996 (Supp. 96-1).

**R6-5-5620. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5619 renumbered as Section R6-5-5620 effective January 13, 1977 (Supp. 77-1). R6-5-5620 recodified to A.A.C. R6-8-220 effective February 13, 1996 (Supp. 96-1).

**R6-5-5621. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5620 renumbered as Section R6-5-5621 effective January 13, 1977 (Supp. 77-1). R6-5-5621 recodified to A.A.C. R6-8-221 effective February 13, 1996 (Supp. 96-1).

**R6-5-5622. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5621 renumbered as Section R6-5-5622 effective January 13, 1977 (Supp. 77-1). R6-5-5622 recodified to A.A.C. R6-8-222 effective February 13, 1996 (Supp. 96-1).

**R6-5-5623. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5622 renumbered as Section R6-5-5623 effective January 13, 1977 (Supp. 77-1). R6-5-5623 recodified to A.A.C. R6-8-223 effective February 13, 1996 (Supp. 96-1).

**R6-5-5624. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5623 renumbered as Section R6-5-5624 effective January 13, 1977 (Supp. 77-1). R6-5-5624 recodified to A.A.C. R6-8-224 effective February 13, 1996 (Supp. 96-1).

**ARTICLE 57. REPEALED****R6-5-5701. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5701 repealed, new Section R6-5-5701 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5702. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5702 repealed, new Section R6-5-5702 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5703. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5703 repealed, new Section R6-5-5703 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5704. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5704 repealed, new Section R6-5-5704 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5705. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5705 repealed, new Section R6-5-5705 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5706. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5706 repealed, new Section R6-5-5706 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5707. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5707 repealed, new Section R6-5-5707 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5708. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5708 repealed, new Section R6-5-5708 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5709. Repealed**

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**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5709 repealed, new Section R6-5-5709 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**ARTICLE 58. EXPIRED****R6-5-5801. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5801 repealed, new Section R6-5-5801 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5801 repealed, new Section R6-5-5801 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5802. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5802 repealed, new Section R6-5-5802 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5802 repealed, new Section R6-5-5802 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5803. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Amended effective August 15, 1979 (Supp. 79-4). Former Section R6-5-5803 repealed, new Section R6-5-5803 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5803 repealed, new Section R6-5-5803 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5804. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5804 repealed, new Section R6-5-5804 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5804 repealed, new Section R6-5-5804 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5805. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5805 repealed, new Section R6-5-5805 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5805 repealed, new Section R6-5-5805 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5806. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Amended as an emergency effective May 28, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former Section R6-5-5806 repealed, new Section R6-5-5806 adopted effective April 1, 1981 (Supp. 81-2).

Former Section R6-5-5806 repealed, new Section R6-5-5806 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5807. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5807 repealed, new Section R6-5-5807 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5807 repealed, new Section R6-5-5807 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5808. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5808 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5809. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Amended subsection (G) as an emergency effective March 12, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-2). Amended effective August 15, 1979 (Supp. 79-4). Amended as an emergency effective May 28, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5809 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5810. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5809 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5811. Expired****Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5811 adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5812. Expired****Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5813. Expired****Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5814. Expired**



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**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5836. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5837. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5838. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5839. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5840. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5841. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5842. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5843. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5844. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5845. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5846. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5847. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5848. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5849. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5850. Expired**

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**ARTICLE 59. EXPIRED**

**R6-5-5901. Expired**

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5902. Expired**

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5903. Expired**

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5904. Expired**

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5905. Expired**

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5906. Expired**

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**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5907. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Amended effective June 4, 1998 (Supp. 98-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5908. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5909. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Amended effective February 21, 1980 (Supp. 80-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5910. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-5911. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5912. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**ARTICLE 60. EXPIRED****R6-5-6001. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6002. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6003. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6004. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Amended effective May 25, 1979 (Supp. 79-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6005. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6006. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6007. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6008. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6009. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6010. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6011. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6012. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective May 25, 1979 (Supp. 79-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6013. Expired****Historical Note**

Adopted effective March 11, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6014. Expired**

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**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**R6-5-6015. Expired****Historical Note**

Adopted effective May 15, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 581, effective June 30, 2016 (Supp. 17-1).

**Exhibit 1. Repealed****Historical Note**

Exhibit as filed is incomplete. Exhibit adopted effective March 28, 1978 (Supp. 78-2). Amended by adding Maximum Allowable Anesthesia Fee Schedule effective April 17, 1980 (Supp. 80-2). Amended Medicine - Psychiatric Services; Radiology - Urinary Tract; Dental - Restorative, Endodontics, and Fixed Prosthodontics effective September 17, 1980; Maximum Allowable Anesthesia Fee Schedule not included (Supp. 80-5). Repealed effective May 15, 1990 (Supp. 90-2).

**ARTICLE 61. REPEALED****R6-5-6101. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6101 repealed, new Section R6-5-6101 adopted effective August 29, 1984 (Supp. 84-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6102. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6102 repealed, new Section R6-5-6102 adopted effective August 29, 1984 (Supp. 84-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6103. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6103 repealed, new Section R6-5-6103 adopted effective August 29, 1984 (Supp. 84-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6104. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6104 repealed, new Section R6-5-6104 adopted effective August 29, 1984 (Supp. 84-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6105. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**R6-5-6106. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**R6-5-6107. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**R6-5-6108. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**ARTICLE 62. REPEALED**

*Former Article 62 consisting of Sections R6-5-6201 through R6-5-6209 repealed effective August 29, 1984.*

**ARTICLE 63. REPEALED**

*Former Article 63 consisting of Sections R6-5-6301 through R6-5-6304 repealed effective November 8, 1982.*

**ARTICLE 64. REPEALED**

*Former Article 64 consisting of Sections R6-5-6401 through R6-5-6408 repealed effective February 1, 1979.*

**ARTICLE 65. EXPIRED****R6-5-6501. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6502. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6503. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1722, effective July 29, 2011 (Supp. 11-3).

**R6-5-6503.01. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1722, effective July 29, 2011 (Supp. 11-3).

**R6-5-6504. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Amended effective November 22, 1978 (Supp. 78-6). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J)

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at 22 A.A.R. 5267, effective March 31, 2016 (Supp. 16-3).

**R6-5-6505. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Amended effective November 22, 1978 (Supp. 78-6). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6506. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6507. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6508. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6509. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Amended effective November 22, 1978 (Supp. 78-6). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6510. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6511. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 66. EXPIRED****R6-5-6601. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-

1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6602. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6603. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Repealed effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6604. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6605. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended subsection (C) effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6606. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6607. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6608. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6609. Expired**

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**Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6610. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6611. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 1006, effective March 18, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6612. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6613. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6614. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6615. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6617. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1722, effective July 29, 2011 (Supp. 11-3).

**R6-5-6618. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 1006, effective March 18, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6620. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6621. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6622. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6623. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6624. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 67. EXPIRED****R6-5-6701. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6702. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6703. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6704. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6705. Expired**

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**Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6706. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Amended by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6707. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Amended by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6708. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6709. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6709 repealed, former Section R6-5-6710 renumbered and amended as Section R6-5-6709 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6710. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6710 renumbered and amended as Section R6-5-6709, former Section R6-5-6711 renumbered and amended as Section R6-5-6710 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6711. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6711 renumbered and amended as Section R6-5-6710, former Section R6-5-6713 renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6,

2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6712. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed effective June 19, 1979 (Supp. 79-3). New Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6713. Renumbered****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3).

**ARTICLE 68. REPEALED****R6-5-6801. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6802. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6803. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6804. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6805. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6806. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6807. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6808. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 69. CHILD PLACING AGENCY LICENSING STANDARDS****R6-5-6901. Objectives**

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The objective of this Article is to establish licensing and operating standards to promote quality services for children and unmarried mothers whose needs are not adequately met in their family homes.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6902. Authority**

A.R.S. §§ 8-501 through 8-520 and 46-134.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6903. Definitions**

- A. "Adult." Any person 18 years of age or older.
- B. "Authorized representative." A designated employee of the Department.
- C. "Casework supervisor." A person who holds a Bachelor's degree from a university or college and has at least three years of casework experience in a certified or licensed family/child welfare agency.
- D. "Caseworker." A person who holds a Bachelor's degree from a university or college and who has training and/or experience in the field of behavioral science.
- E. "Child." Any person under 18 years of age.
- F. "Child placing agency." A child welfare agency which is authorized in its license to place children.
- G. "Department." The Arizona State Department of Economic Security.
- H. "Division." The Arizona State Department of Economic Security.
- I. "Executive Director." The person responsible for overall administration of the child placing agency; also referred to as Administrator, or Director.
- J. "Foster care." A social service which, for a planned period, provides substitute care for a child when its own family cannot care for it for a temporary or extended period of time. Foster care may be in a private family home or a group home.
- K. "Foster child." A child placed in a foster home or child welfare agency.
- L. "Foster home." A home maintained by an individual or individuals having the care or control of children, other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals (A.R.S. § 8-501(4)).
- M. "License." The legal authorization to operate a child placing agency issued by the Arizona Department of Economic Security.
- N. "Licensed medical practitioner." Any physician or surgeon licensed under the laws of this State to practice medicine pursuant to Title 32, Chapter 13 and 17 (A.R.S. § 36-501(4)).
- O. "Licensing." Includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
- P. "Parent or parents." The natural or adoptive parent or parents of the child.
- Q. "Provisional license." A temporary license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security for a period not to exceed six months; a provisional license is issued to an agency that is temporarily unable to conform to all licensing standards and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of a child and the agency agrees to correct the deficiency or deficiencies, and where there is a demonstrated need for the services. A provisional license is not renewable.
- R. "Receiving foster home." A licensed foster home suitable for immediate placement of children when taken into custody or

pending medical examination and court disposition which is designated as a receiving foster home and it is licensed.

- S. "Regular foster home." A licensed foster home suitable for placement of not more than five minor children.
- T. "Regular license." A license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security; a regular license which may be issued following a provisional license is valid for one year from the date of issuance and must be renewed annually.
- U. "Social worker." A person who holds a Master of Social Work degree from an accredited school of social work.
- V. "Special foster home." A licensed foster home capable of handling not more than five minor children who require special care for physical, mental or emotional reasons or have been adjudicated a delinquent (A.R.S. § 8-501(10)).

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6904. Licensing Requirements**

- A. Consultation. Individuals, association, institutions or corporations considering the establishment of a Child Placing Agency shall consult the Social Services Bureau of the department about such plans:
  1. Before a specific program is developed;
  2. Before filing a petition for corporation; and
  3. Before an application is filed.
- B. Application. Individuals, associations, institutions or corporations shall make written application to the Department for a Child Placing Agency license.
- C. Fingerprints
  1. All members of the Child Placing Agency staff having contact with the foster children must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
  2. A license for a Child Placing Agency will not be issued, or will be revoked, if any staff member, having contact with foster children has ever been convicted of a sex offense, has been involved in child abuse, child neglect, selling narcotics, or contributing to the delinquency of a minor, or has a substantial criminal record.
- D. Demonstration of need for services in the community. Evidence of need shall consist of:
  1. Communication from community leaders in the field of child welfare indicating a need for the services proposed by the applicant or
  2. Recent research data establishing a need for the services being proposed by the applicant.
- E. Licensing study
  1. A study will be made as required by A.R.S. § 8-505(C) by an authorized representative of the Department to evaluate the potential and actual ability of the Child Placing Agency to provide services to children according to the Standards prescribed in this Article.
  2. To obtain this information, the authorized representative of the Department must make at least one visit to evaluate the agency setting and interview the Director and staff.
  3. In addition, the authorized representative of the Department shall review documentary evidence provided by the Executive Director of the Child Placing Agency regarding agency operation and services to be provided.
- F. Provisional license
  1. A provisional license shall be issued to any Child Placing Agency that is temporarily unable to conform to all licensing standards, and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of the children served, and where the agency

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agrees to correct the deficiencies, and where there is a demonstrated need for the services.

2. A provisional license is valid for up to six months and may not be renewed.
3. Prior to the expiration of the provisional license, a review of Standards will be conducted by the Department to determine eligibility for regular licensing. The Child Placing Agency must meet all licensing standards for the issuance of a regular license.

**G. Regular license**

1. The license is valid for one year from the date of issuance and must be renewed annually.
2. Each license shall state in general terms the kind of child welfare services the licensee is authorized to undertake; and the number of children that can be received or placed and supervised in foster homes, their ages and sex, and the geographical area the agency is equipped to serve (A.R.S. § 8-505(D)).

- H. Supervision by the Department.** The Department shall provide training, consultation and technical assistance to Child Placing Agencies.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6905. Denial, Suspension, or Revocation of a License**

- A.** The Department shall deny, suspend or revoke any license when:
1. The Child Placing Agency is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes; or
  2. The care and/or services needed by children are not provided.
- B.** A license that has been suspended can be reinstated by the correction of the deficiency.
- C.** When a license is revoked, it is necessary to correct the deficiency and make a new application.
- D.** When an initial application, or an application for a renewal of a license is denied, or a license is revoked or suspended, a written notification of the action shall be forwarded by certified mail to the applicant or licensee.
1. The written notice shall state the reasons for the denial, revocation or suspension with references to applicable statutes, regulations and standards.
  2. The Department shall notify the Child Placing Agency of the right to request a hearing within 20 days after receipt of the written notice.
  3. The hearing shall be held within ten days of the request, and at that time the applicant or holder shall have the right to present testimony and confront witnesses.
  4. When a hearing is requested, the denial, suspension or revocation of the license shall not become final until after the hearing decision is published.
  5. The fair hearing process shall be in accordance with A.A.C. Title 6, Chapter 5, Article 24.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6906. License Renewal Requirements**

- A.** Every regular license shall expire one year from the date of issuance and may be renewed annually upon application of the Child Placing Agency.
1. License renewal is not automatic.
  2. License renewal requires:
    - a. A consultation;
    - b. An application;
    - c. A written description of services provided; and

- d. Licensing study (see R6-5-6904(E)).
3. For license renewal, each Child Placing Agency must meet all standards for licensing as specified in this Article.

**B.** An application for the renewal for a Child Placing Agency shall be made in the same manner as the original application.

A licensee shall reapply when:

1. The present license will expire within 30 days to 60 days; or
2. There is a plan to move within 30 days from the address on the current license; or
3. There is substantial material change in the program and/or purpose of the Child Placing Agency.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6907. Standards for Licensing and Operating a Child Placing Agency****A.** Requirements for the staff of a Child Placing Agency

1. Executive Director. The Agency Board shall select an Executive Director.
    - a. If the Executive Director is not directly involved in supervising child placing activities, the Director shall at least have a Bachelor's degree in a field related to social work such as administration, psychology, education or other allied profession, as well as demonstrated satisfactory experience in the area of service provided by the agency.
    - b. If the Executive Director directly supervises child placing activities, he shall have a Master's degree in Social Work or at least a Bachelor's degree and a minimum of three years of experience in child welfare services in a certified or licensed family or child welfare agency.
  2. Casework supervisor. The casework supervisor shall possess above average ability in casework practice and have knowledge of and skills applicable to casework supervision. The supervisor shall have a Bachelor's degree and at least three years of casework experience in a licensed family or child welfare agency.
  3. Social worker. A person shall have a Master of Social Work degree from an accredited school of social work.
  4. Caseworker. A caseworker shall have a Bachelor's degree from a university or college and have training and/or experience in the field of behavioral science.
  5. Office staff. The agency shall have sufficient clerical services to keep correspondence, records, bookkeeping, and files current and in good order.
  6. Consultants
    - a. The agency shall have a consulting Licensed Medical Practitioner who makes recommendations as to the medical aspects of the agency program, coordinates medical care for selected children, and advises staff regarding the health problems of specific children.
    - b. Psychiatric, psychological and legal consultation and/or services shall be available to the agency.
- B.** Requirements for the organization of a Child Placing Agency
1. Type of organization. A Child Placing Agency shall be maintained by the state, or a political subdivision thereof, a person, firm, corporation, association, or organization.
  2. Incorporation
    - a. Incorporated Child Placing Agencies shall provide the Department with a copy of the Articles of Incorporation and Bylaws and the Certificate of Incorporation.

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- ration issued by the Arizona Corporation Commission.
- b. The purpose for which the agency is incorporated shall be stated in its Articles of Incorporation and the agency shall not enter any other fields of service than those provided in its Articles of Incorporation.
3. Board of Directors
    - a. All Child Placing agencies shall have a Board of Directors. The Department shall be provided a current list of all Board members, their address and office held.
    - b. Persons employed by or who receive compensation from a group care agency (see Title 6, Chapter 5, Article 74) may not be Board members of a Child Placing Agency due to a possible conflict of interest.
    - c. The Board of Directors shall:
      - i. Assume responsibility, jointly with the Executive Director, for formulating the plans and policies of the Child Placing Agency.
      - ii. Keep sufficiently informed through Board meetings and through the reports of its Executive Director and committees to ensure that the agency fulfills all of its functions in the best interest of the children.
      - iii. Meet at least quarterly. Its executive committee shall meet as needed.
      - iv. Keep minutes of each meeting which shall be made a permanent part of the records of the Child Placing Agency.
      - v. Refrain from direct administration or operation of the Child Placing Agency, either through individual members or committees, except in emergencies.
      - vi. Select and employ an Executive Director to whom the responsibility for administration of the agency shall be delegated and, when necessary, terminate such employment.
      - vii. Require and approve the Child Placing Agency's annual program and financial reports.
    - d. The Board of Directors should be composed of adult residents who have a genuine interest in child welfare, concern for social conditions in the community, and reflect equitably the ethnic and economic standing of the population served. The Board members should have sufficient time to discharge their obligations and have a variety of interests, talents and points of view so that no single group or profession will have a controlling voice.
    - e. The names, addresses and offices held of all members of the Board of Directors shall be currently filed with the Department. All changes in composition of the Board of Directors or Officers of the Child Placing Agency must be reported to the Department in writing within 30 days of a change.
    - f. Provision should be made for replacement of members who become inactive for six months. Terms for Board members shall be overlapping and election of one-third of the Board membership annually is recommended to ensure continuity of policy, as well as the introduction of new and changing points of view. Administrators and staff of the Child Placing Agencies shall not be members of the Board of Directors. Agencies which do not have overlapping terms or which currently have administrators or staff members on their Board of Directors will have one year from the date of issuance of these standards to bring their Board of Directors into compliance.
  4. Financing
    - a. Requirement for sufficient funding. The agency must furnish evidence that it has sufficient funds to pay all start-up and operating costs through the year of operation for which a license may be issued.
    - b. Budget and financial records
      - i. Child Placing Agency shall operate on a budget which has been approved by its governing board before the beginning of the fiscal year.
      - ii. A Child Placing Agency must maintain financial records of all receipts, disbursements, assets, and liabilities for at least three years. These records should be available for inspection by the Department upon request.
    - c. Solicitation of funds from the public. Each Child Placing Agency shall comply with all local and state laws relating to the solicitation of funds.
  5. Operations manual. Each agency shall compile an operations manual. It shall be available to all agency staff members, and all staff members shall be familiar with the contents. It shall contain:
    - a. The overall philosophy, which guides the agency's services.
    - b. A statement of the primary purpose, services, and goals of the agency.
    - c. A chart of organizational structure.
    - d. The agency's intake policies and procedures.
    - e. The manual of the agency's governing board.
    - f. The operational procedures, which guide the delivery of the agency's services.
    - g. Copies of the agency's forms.
  6. Records and reports
    - a. Files. Case records and financial records shall be kept in a locked, fire-resistant file. Access to records shall be limited to the staff who have need for the data, and to authorized representatives of the Department.
    - b. Case records
      - i. The agency shall maintain up-to-date, confidential and well-organized case records. Each child's record should indicate, from the point of admission to discharge, the service plan and the progress of the child.
      - ii. Records shall include the current information needed to provide services, make service plans, and evaluate each child.
      - iii. The case record should be divided into sections for easy reference, with the material filed under the following headings, as appropriate:
        - (1) Intake -- intake study, including referral material from other agencies, court, or referral sources;
        - (2) Legal -- specific verified information relative to the status of the child's legal guardianship and custody. Statements, agreements, and consents signed by parent(s) or guardian(s) pertaining to the child's placement, financial responsibility, and other data required for protection of the child;
        - (3) Medical -- medical history, including immunizations, physical defects, significant developmental history, illnesses, and hospital care and/or operations. Medical

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releases and/or authorizations for treatment or medical care, including the names of medical personnel involved. Records of all prescription medications consumed;

- (4) Dental -- date of examinations, etc.;
- (5) Psychological -- reports of psychological and/or psychiatric evaluations and examinations;
- (6) Progress -- periodic (not less than every three months) evaluation of the child's progress, adjustment, development and future plans and goals.
- (7) School -- school records indicating attendance and scholastic achievement;
- (8) Correspondence -- letters received or sent concerning the child;
- (9) Each record shall have a face sheet listing the following information which shall be kept up-to-date:
  - (a) Full name of child, including aliases;
  - (b) Date and place of birth (verified);
  - (c) Sex;
  - (d) Religion and race;
  - (e) Names, addresses of parents and siblings;
  - (f) Names, addresses and relationships of other responsible persons;
  - (g) Date referred to the agency;
  - (h) Date service was terminated;
  - (i) Other pertinent identifying information.

c. Reports

- i. Each agency shall maintain and report accurate statistics on children receiving services, and staff employed, on forms provided for that purpose by the Department. These reports shall include:
  - (1) Form FC-005, "Foster Child Placement, Replacement and Discharge Central Registry Form," which must be submitted within five working days of the date action is taken.
  - (2) Form LC-008, "Child Welfare Agency Employee Central Registry," which must be submitted within five days of employment or discharge.
- ii. The Child Placing Agency shall report to the Department any planned change of address, change in program, or other change which significantly affects the services provided. The Department shall be notified 30 days prior to any planned changes.

C. Requirements for the personnel of a Child Placing Agency

1. Personnel practices. An agency shall employ an individual only after careful evaluation of the applicant which will include references as to character, skills, knowledge, and experience.
2. Personnel policies. The agency shall maintain a manual of all personnel policies and procedures including job descriptions and all personnel forms. The written statement of personnel policies outlining personnel practices as they affect both employer and employee should include:
  - a. The conditions of employment and the conditions under which employment may be terminated.
  - b. Salary scales.

- c. Provision for sick leave, time off, and paid vacation.
- d. Information regarding employment benefits, such as retirement and insurance plans.
- e. Provision for periodic assessment of work performance.
- f. Provision for staff development through in-service training.

3. Personnel records

- a. A personnel record shall be maintained for each employee. This shall include identifying and qualifying information; such as, references, previous work history and education, date of employment and evaluation.
- b. When employees resign, retire, or are discharged, the date and reason for termination shall be recorded.

D. Placement services

1. Foster care

a. Types of homes

- i. Boarding Home. A Boarding Home provides temporary or permanent care and compensation to the foster parents for room and board. These Boarding Homes may be either Regular or Special Foster Homes.
- ii. Free home. A free home provides temporary or permanent care without compensation other than special needs.
- iii. Work and Wage Home

- (1) Work and Wage Homes are those in which the child's duties within the home constitute reimbursement for room and board and for which the child may be paid an additional wage. These homes shall be used only as a resource for mature and well adjusted children from 16 to 18 years with good work skills. The Child Placing Agency shall prepare a written statement to be signed by the agency, foster parents and child which will clearly define:
  - (a) The amount of work required; and
  - (b) The remuneration the child is to receive and by whom; and
  - (c) The work schedule which shall permit the child time for school attendance, study, recreation, and other normal activities for a child in this age group.
- (2) The Department shall not place adjudicated dependent children in Work and Wage Homes.

b. Foster care placement procedures

- i. The agency shall follow the preplacement procedures set forth in A.R.S. § 8-511.
- ii. Following the preplacement procedures outlined in A.R.S. § 8-511, if it is determined that the child should be placed in foster care, the agency shall provide appropriate counseling services to the child and his parents to prepare them for the placement.
  - (1) If the family does not explain the reason for placement and prepare the child for this experience, the representative of the Child Placing Agency should do so.
  - (2) The representative of the Child Placing Agency should explain the foster home program to the parents.

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- iii. When a child is placed in foster care, the Child Placing Agency shall comply with the requirements and procedures set forth in A.R.S. § 8-514(B) and (C).
  - 2. Adoption. If authorized in its license to place children for adoption, the agency shall comply with all laws (including but not limited to A.R.S. Title 8, Chapter 1, Article 1) regarding the investigation of potential adoptive parent and the adoption of children. The agency shall comply with the requirements of the following rules of the Department:
    - a. Title 6, Chapter 5, Article 65, Adoption Placement;
    - b. Title 6, Chapter 5, Article 66, Adoption Study;
    - c. Title 6, Chapter 5, Article 67, Adoption Subsidy; and
    - d. Title 6, Chapter 6, Article 68, Relinquishment and Severance Services.
  - 3. Parents
    - a. When there are social and/or emotional problems regarding the pregnancy, social services shall be given in accordance with the needs of mother during pregnancy and to help her with plans for her rehabilitation after delivery.
    - b. Unless inappropriate, the father shall be involved in planning for the mother and child.
    - c. Services to unmarried parents may also include establishing paternity and shall include making suitable plans for the child.
- E. Supervision
  - 1. The licensed Child Placing Agency shall supervise:
    - a. All children placed by the agency in foster homes; and
    - b. All foster homes where children are placed by the agency.
  - 2. The licensed Child Placing Agency's representative shall:
    - a. Visit Receiving Foster Homes at least once per month;
    - b. Visit Regular and Special Foster Homes at least once every three months; and
    - c. Prepare written reports of the visits.
  - 3. A Child Placing Agency may allow a child to participate in activities and functions generally accepted as usual or normal for his/her age group. Permission for a child to participate in activities shall be given in accordance with A.R.S. § 8-513.
  - 4. Following the initial placement, the child placed in a setting other than that of his parent's home shall have medical examinations at periodic intervals, and not less than once every year.
- F. Foster home studies
  - 1. The study. Child Placing Agencies that wish to submit foster homes for licensing shall conduct an investigation of the foster home, meeting the standards established by the Department in Title 6, Chapter 5, Article 58, Family Foster Home Licensing Standards.
  - 2. Fingerprints. Foster parent applicants and members of the household, 18 years of age or older, must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
  - 3. Demonstration of health
    - a. The potential foster care application, prior to licensing, shall furnish a report of a physical examination, done within the last six months, demonstrating that the person has good health and is free from any communicable disease.
    - b. Prior to licensing, children of the foster care applicant shall have current immunizations as prescribed by the Arizona Department of Health Services.
  - 4. Sanitation inspection. The Child Placing Agency shall request the local or state health department to conduct a sanitation inspection of the prospective foster home prior to licensing.
  - 5. Licensing. If the foster home meets all requirements set by the Department, the Child Placing Agency shall submit an application stating the foster home's qualifications to the Department. The Child Placing Agency may also recommend the types of licensing and certification to be granted to the foster home. The Department shall review the foster home study, and issue a license for the foster home if all licensing standards have been met.
  - 6. License renewal. Foster home license renewal is required annually by the Department.
  - 7. Homes exempt from licensing by the Department. When a child is placed in a home by a means other than by a court order, and when the home receives no compensation from the state or any political subdivision of the state, licensing by the Department is not required.
- G. Requirements of physical plant and equipment
  - 1. Offices
    - a. There should be sufficient office space for interviewing children and families and for supervisory conferences.
    - b. The Child Placing Agency shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located.
  - 2. Fire protection. All Child Placing Agencies shall have a written fire evacuation plan posted and should conduct fire drills at least every six months.
  - 3. Telephone. There shall be telephone service in the Child Placing Agency.
  - 4. Vehicle(s). The vehicle(s) for transporting children shall be in a safe operating condition and all drivers shall have a current driver's license. Persons who frequently transport children as a part of their employment shall have a chauffeur's license.
  - 5. Insurance
    - a. The Child Placing Agency shall provide for insurance coverage for adequate protection against accidents.
    - b. Insurance coverage must include liability insurance to cover acts of children or staff, and protection against damages to, or loss of, buildings and other valuable properties.
    - c. There shall be liability insurance on all vehicles transporting children.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6908. Confidentiality**

The rules and regulations of the Department for securing and using confidential information concerning the client shall be followed. Refer to Title 6, Chapter 5, Article 23, "Safeguarding of Records and Information."

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6909. Civil Rights**

The rules of the Department regarding civil rights shall be followed. Refer to Title 6, Chapter 5, Article 26, Civil Rights.

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**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6910. Fair Labor Standards Act**

The hiring and compensation policies of the Child Placing Agency shall comply with the Fair Labor Standards Act.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**ARTICLE 70. EXPIRED****R6-5-7001. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7002. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7003. Expired****Historical Note**

Adopted as an emergency effective January 21, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed and amended effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7004. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed and amended effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section

adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7005. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 1006, effective March 18, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7006. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7007. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7008. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7009. Expired**





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**Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7034. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7035. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7036. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7037. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.P.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7038. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7039. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Amended effective June 4, 1998 (Supp. 98-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7040. Expired****Historical Note**

Adopted as an emergency effective October 17, 1996, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 71. REPEALED****R6-5-7101. Repealed****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-7102. Repealed****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-7103. Repealed****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-7104. Repealed****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**ARTICLE 72. REPEALED**

*Former Article 72 consisting of Sections R6-5-7201 through R6-5-7214 repealed effective July 12, 1984.*

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**ARTICLE 73. REPEALED & RENUMBERED**

*Editor's Note: Article 73 was repealed except for Sections R6-5-7307 and R6-5-7308 which were both renumbered, effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).*

**R6-5-7301. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7302. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7303. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7304. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7305. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7306. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7307. Renumbered****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7307 renumbered to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7308. Renumbered****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7308 renumbered to R6-5-7471 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7309. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**ARTICLE 74. LICENSING PROCESS AND LICENSING REQUIREMENTS FOR CHILD WELFARE AGENCIES****OPERATING RESIDENTIAL GROUP CARE FACILITIES AND OUTDOOR EXPERIENCE PROGRAMS****R6-5-7401. Definitions**

In addition to the definitions contained in A.R.S. § 8-501, the following definitions apply in this Article:

1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-531(1).
2. "Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to § 8-821 and which is caused by the acts or omissions of an individual having care, [physical] custody and control of a child. Abuse includes:
  - (a) Inflicting or allowing sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553, incest pursuant to § 13-3608 or child prostitution pursuant to § 13-3212.
  - (b) Physical injury to a child that results from abuse as described in § 13-3623, subsection C. A.R.S. § 8-201(2).
3. "Accredited" means the approval and recognition of an institution of learning as maintaining those standards requisite for its graduates to gain admission to other institutions of higher learning or to achieve credentials for professional practice. An example of an accrediting body is the North Central Association of Colleges and Universities.
4. "Administrative completeness review time frame" means the number of days from [the Licensing Authority's] receipt of an application for a license until [the Licensing Authority] determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application. A.R.S. § 41-1072(1).
5. "Adverse action" means suspension or revocation of a license, denial of a renewal license, or making a material change in licensing status.
6. "After-care" means services provided to a child after the child is discharged from a licensee's care and may also include services for the child's family.
7. "Applicant" means a person who submits a written application to the Licensing Authority to become licensed or to renew a license to operate a child welfare agency or a residential group care facility.
8. "Barracks" means a building that:
  - a. Is designed and constructed or remodeled for the specific purpose of housing large numbers of children of the same gender;
  - b. Has wide, open sleeping areas for children, under one roof;
  - c. Is identified and described as a barracks or dormitory in the agency's promotional and organizational materials; and

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- d. Is made known as a barracks or dormitory to placing agencies and persons considering placement of a child.
9. "Behavior management" means the policies, procedures, and techniques a licensee uses to control conduct as prescribed in R6-5-7456.
10. "Child placing agency" means a person or entity that is licensed or authorized to receive children for care, maintenance, or placement in a foster home, because:
- The Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505; or
  - It is an entity with statutory authorization to place children.
11. "Child welfare agency" or "agency"
- Means:
    - Any agency or institution maintained by a person, firm, corporation, association, or organization to receive children for care and maintenance or for 24-hour social, emotional, or educational supervised care or who have been adjudicated as a delinquent or dependent child.
    - Any institution that provides care for unmarried mothers and their children.
    - Any agency maintained by the state, or a political subdivision thereof, person, firm, corporation, association, or organization to place children or unmarried mothers in a foster home.
  - Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to Title 36, Chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques. A.R.S. § 8-501(A)(1).
12. "Corrective action" means a specific course of conduct an agency will follow to remedy violations of the licensing requirements prescribed in this Article, within a specified period of time.
13. "Corrective action plan" means a written document describing an agency's corrective action, as prescribed in R6-5-7418.
14. "CPS" means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
15. "CPSCR" means the Child Protective Services Central Registry, a computerized database, which CPS maintains according to A.R.S. § 8-804.
16. "De-escalation" means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupt a child's behavior crisis and calm the child.
17. "Department" or "DES" means the Department of Economic Security.
18. "Developmentally appropriate" means an action that takes into account:
- A child's age and family background;
  - The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
  - A child's individual pattern and timing of growth, personality, and learning style.
19. "DHS" means the Department of Health Services.
20. "Direct care staff" means the facility staff who provide primary personal care, guidance, and supervision to children in care.
21. "Discharge plan" means:
- A written description of:
    - A program of action to prepare a child for release from a facility; and
    - After-care;
  - That is developed by a licensee in cooperation with a child's service team.
22. "Discipline" means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to accepted levels of social behavior.
23. "Document" means to make and retain a permanent written or electronic record of a fact, event, circumstance, observation, contact, or communication.
24. "Exploitation" means the act of taking advantage of, or to make use of a child selfishly, unethically, or unjustly, for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
25. "Facility" or "residential group care facility" means a living environment operated by a child welfare agency, where children are in the care of adults unrelated to the children, 24 hours per day.
- "Facility" does not include a program licensed as a behavioral health service agency by the Department of Health Services under A.R.S. § 36-405 and 9 A.A.C. 20.
  - "Facility" does include an outdoor experience program.
  - When used in reference to an outdoor experience program, "facility" means the campsite at which or the mobile equipment in which children are housed.
26. "File" means a place where information is stored through written, electronic, or computerized means.
27. "Foot candles" means a unit of luminous intensity that can be measured with a light meter.
28. "Governing body" means an individual or group of individuals responsible for the policies, activities, and operations of a facility, as prescribed in R6-5-7424.
29. "Individual education plan" or "IEP" means a written document that describes educational goals for a particular child and the services the child needs to attain those goals.
30. "Institution" as used in A.R.S. § 8-501(A)(1) means an entity meeting two or more of the following criteria:
- Solicits charitable contributions;
  - Is organized as a profit or non-profit corporation with a board of directors and officers;
  - Publishes and distributes information or promotional materials about its program or operations;
  - Requires residents to formally apply for residency through use of application forms or other similar paperwork;
  - Operates a structured program of care pursuant to written policies, procedures, guidelines, or rules; or
  - Advertises itself or holds itself out in the community as an institution that provides care or social services.
31. "Institution for Unwed Mothers and Children" means a child welfare agency, as described in A.R.S. § 8-501(A)(1)(a)(ii), that is licensed to care for unmarried mothers who are under age 18 at the time of admission to the agency and the children of those mothers.

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32. "License" means a document issued by the Licensing Authority to an individual or non-governmental business, which authorizes the individual or business to operate a child welfare agency in compliance with this Article.
33. "Licensee" means the person or entity holding a license. When used in reference to a duty, task, or obligation, the term "licensee" includes the staff who work at an agency or facility and who are responsible for doing the acts necessary to fulfill the requirements of this Article.
34. "Licensed medical practitioner" means a person who holds a current license as a physician, surgeon, nurse practitioner, or physician's assistant pursuant to A.R.S. §§ 32-1401 et seq., Medicine and Surgery; A.R.S. §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; A.R.S. §§ 32-2501 et seq., Physician Assistants; and A.R.S. §§ 32-1601 et seq., Nursing and R4-19-501(A)(1), Registered Nurse Practitioner, respectively.
35. "Licensing Authority" means the Department administrative unit that monitors and makes licensing determinations for agencies and facilities, including issuance, denial, suspension, and revocation of a license or operating certificate, and imposition of corrective action.
36. "Licensing representative" means a person employed by the Licensing Authority to investigate and monitor applicants and licensees.
37. "Licensing year" means a one-year time period that begins on the date an agency obtains its initial license to operate, and ends one year later.
38. "Living unit" means a specific grouping of children who are assigned to and share a distinct and common physical space within a facility.
39. "Maltreatment" means abuse, neglect, abandonment, or exploitation, of a child.
40. "Material change in licensing status" means, for the purpose of A.R.S. § 8-506.01,
- a. Any of the following actions:
    - i. Denial, suspension, or revocation of an operating certificate;
    - ii. At any time following issuance of an initial license, imposition of provisional license status, in lieu of a regular license as prescribed in R6-5-7419; or
    - iii. A change in a term appearing on the face of a license or operating certificate, including: a.) Geographic area served; b.) Age, number, or gender of children served; or c.) Type of services offered;
  - b. But does not include the act of placing an agency on a corrective action plan to bring the agency into compliance with licensing requirements as prescribed in R6-5-7418.
41. "Mechanical restraint" means:
- a. An article, device, or garment that:
    - i. Restricts a child's freedom of movement or a portion of a child's body;
    - ii. Cannot be removed by the child; and
    - iii. Is used for the purpose of limiting the child's mobility;
  - b. But does not include an orthopedic, surgical, or medical device that allows a child to heal from a medical condition or to participate in a treatment program.
42. "Medication" means an agent, such as a drug or remedy, used to prevent or treat disease, illness or injury, including both prescribed and over-the-counter agents.
43. "Mobile dwelling" means a structure, such as a trailer or recreational vehicle as defined in A.R.S. § 41-2142(30). Mobile dwelling does not mean a mobile, manufactured, prefabricated, or modular home as defined in A.R.S. § 41-2142(14), (24), or (26).
44. "Neglect" has the same meaning as A.R.S. § 8-201(21).
45. "Non-ambulatory child" means a child who cannot walk due to a physical disability or impairment, rather than as a result of the child's normal age and developmental level.
46. "Onsite" means located on the physical property operated by the licensee for the purpose of the licensee's residential program and includes the contiguous area within:
  - a. A single structure;
  - b. A cluster of structures;
  - c. A complex containing single or multiple family dwelling units with or without separate entrances for each unit;
  - d. A campus containing any combination of the residences listed in subsections (a)-(c), as approved by the Licensing Authority.
47. "Operating certificate" means a document that the Licensing Authority issues to a particular facility that is run by an agency holding a license, as prescribed in R6-5-7409.
48. "Outdoor experience program" means a child welfare agency that is located in a cabin or portable structure such as a tent or covered wagon and primarily uses the outdoors to provide recreational and educational experiences in group living, either in a fixed campsite or in a program with an unfixd site, such as a wagon train or wilderness hike.
49. "*Out-of-home placement*" means the placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian and includes placement in temporary custody pursuant to § 8-821, subsection A or B, voluntary placement pursuant to 8-806 or placement due to dependency actions. A.R.S. § 8-501(A)(7).
50. "*Overall time frame*" means the number of days after receipt of an application for a license during which [the licensing authority] determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame. A.R.S. § 41-1072(2).
51. Paid staff means:
  - a. A licensee's paid employees who work at a facility;
  - b. Any temporary worker or independent contractor the licensee uses as a temporary replacement for an employee who is sick, on leave, or unavailable; and
  - c. Any independent contractor that the licensee retains to provide children in care with direct services at the facility.
52. "*Parent or parents*" means the natural or adoptive mother or father of a child. A.R.S. § 8-501(A)(8).
53. "Person" means an individual, partnership, joint stock company, business trust, voluntary association, corporation, or other form of business enterprise, including non-profit or governmental organizations.
54. "Personally identifiable information" means any information which, when considered alone, or in combination with other information, identifies, or permits another person to readily identify the person who is the subject of the information, and includes:
  - a. Name, address, and telephone number;
  - b. Date of birth;
  - c. Photograph;
  - d. Fingerprints;

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- e. Physical description;
  - f. School;
  - g. Place of employment; and
  - h. Unique identifying number, including:
    - i. Social Security number;
    - ii. Driver's license number;
    - iii. License number; and
    - iv. Court case number.
55. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement, but does not include holding a child firmly enough to prevent the child from harming himself or herself, or others, but gently enough so that the child is not harmed by being held.
56. "Placing agency or person" means the child placing agency, parent, or guardian, having legal custody of a child and who makes the decision to send the child to reside at a particular agency.
57. "Potentially hazardous food" means a food that is:
  - a. Natural or synthetic and capable of rapid and progressive growth of infectious or toxigenic microorganisms or the growth and production of *Clostridium botulinum*;
  - b. Of animal origin and is raw or has been heated;
  - c. Of plant origin and is heated or consists of raw seed sprouts;
  - d. A cut melon; or
  - e. A garlic and oil mixture.
58. "Program director" means a person who meets the qualifications listed in R6-5-7432(B).
59. "*Relative*" means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle, or first cousin. A.R.S. § 8-501(A)(12).
60. "Residential environment" means a facility building or any portion of a facility building that is used for living, sleeping, counseling, dining, or academic purposes.
61. "Restrictive behavior management" means a form of behavior control that is subject to limitations as prescribed in R6-5-7456(D)-(F).
62. "Safeguard" means to use reasonable and developmentally appropriate measures to minimize the risk of harm to a child in care and to ensure that a child in care will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
  - a. Locking up a particular substance or item;
  - b. Putting a substance or item beyond the reach of a child who is not mobile;
  - c. Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
  - d. Mandating the use of protective safety devices;
  - e. Providing staff supervision; or
  - f. Providing a young adult with safety information and generalized instruction necessary to promote the safe and appropriate use of potentially dangerous objects.
63. "Seclusion" means placing a child alone in a room with closed, locked doors that cannot be opened from the inside as prohibited by R6-5-7456(C)(6).
64. "Service plan," which is sometimes described as a "case plan," means a goal-oriented, time-limited individualized program of action that:
  - a. Describes the plans for treating and providing services to a child and the child's family, and
  - b. Is developed by a licensee in cooperation with a child's service team.
65. "Service team" means the group of persons listed in R6-5-7441(D)(1) who participate in development and review of a child's service plan and discharge plan.
66. "Shelter care facility" means an agency facility that receives children for temporary out-of-home care, 24 hours per day, when children request care, or are placed in care by a placing agency, a law enforcement agency, a parent, a guardian, or a court.
67. "Significant person" means a person who is important or influential in a child's life and may include a family member or close friend.
68. "Sleeping area" means a single bedroom, or a cluster of two or more bedrooms, located in an adjacent area of a dwelling.
69. "Social worker" means a person with a bachelor's, master's, or doctoral degree in a field of organized work called social work, which is intended to advance the social conditions of a community through provision of counseling, guidance, and assistance, especially in the form of social services to individuals.
70. "Staff" means a licensee's paid staff and unpaid staff.
71. "*Substantive review time frame*" means the number of days after the completion of the administrative completeness review time frame during which [the licensing authority] determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame. A.R.S. § 41-1072(3).
72. "Swimming pool" means any on-grounds, natural or man-made body of water that is used for the purposes of swimming, recreation, or physical therapy, and includes spas and hot tubs.
73. "Threat" means an expression of intent to hurt, destroy, or take action prohibited by this Article or the licensee's policies, but does not include an expression of intent to impose a planned consequence for misbehavior if the consequence is not prohibited by this Article or the licensee's policies.
74. "Transitional program" means services provided to a child who is being emancipated as an adult, or a person who has reached the age of 18 and is considered an adult as a matter of law, in order to assist the child or person in becoming independent.
75. "Unpaid staff" means a licensee's volunteers, students, and interns who work, train, or assist at a facility.
76. "Unusual incident" means one or more of the events listed in R6-5-7434(C), (D), (E), or (G).
77. "Work day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Arizona state holidays.
78. "Young adult" means an individual, age 16 to 21, who has been assessed and determined to be appropriate for preparation for adult self-sufficiency. The assessment or determination shall be made by:
  - a. The placing agency, if the young adult is in the care, custody, and control of the state of Arizona;
  - b. A parent or legal guardian of the young adult, if subsection (a) does not apply;
  - c. The licensee, if subsections (a) and (b) do not apply.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7401 repealed; new Section R6-5-7401 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at

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12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

**R6-5-7402. Request for Initial Application - New Applicant**

- A.** A person who wants to operate a residential group care facility shall initiate the licensing process by contacting the Licensing Authority to request an application for a child welfare agency license.
- B.** Upon request, the Licensing Authority shall send the prospective applicant an application package containing:
1. A cover letter outlining the licensing process and requesting a responsive letter of intent,
  2. An application form,
  3. A statement of requirements for licensure, and
  4. A form the applicant can use to obtain city or county zoning clearance.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7402 repealed; new Section R6-5-7402 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7403. Letter of Intent - New Applicant**

- A.** The prospective applicant shall prepare a responsive letter of intent to proceed with licensure, and return it to the Licensing Authority. The letter of intent shall include the following information:
1. The applicant's name, address, and telephone and telefacsimile numbers;
  2. The name of the applicant's chief executive officer or administrator, with a description of that person's qualifications to operate the agency;
  3. A description of community or statewide need for the service or program the applicant intends to provide;
  4. A plan for financing the proposed agency during the first year of operation;
  5. A statement that the applicant has conferred with the school district where the facility will be located to advise the district of any special needs that children likely to be in care at the facility may have; and
  6. A description of the proposed agency's program and services, which shall address the following areas, if applicable:
    - a. Any organization from which the applicant will seek accreditation;
    - b. The form of on-campus educational programs the applicant will offer;
    - c. The characteristics of the children the applicant plans to serve;
    - d. The applicant's primary source of referrals;
    - e. The frequency and method by which the applicant will provide or offer psychiatric, psychological, or counseling services;
    - f. Whether the applicant will employ behavioral health practitioners, or contract for behavioral health services; and
    - g. A general description of the number and qualifications of the applicant's professional staff.
- B.** Within 10 work days of receiving a letter of intent, a licensing representative shall contact the applicant.
1. If the Licensing Authority determines that an applicant may require licensure as a behavioral health service agency under A.R.S. § 36-405 and 9 A.A.C. 20, the Licensing Authority shall refer the applicant to the Department of Health Services for evaluation. In determining whether to refer an applicant to DHS, the Licens-

ing Authority shall consider the factors set forth on Appendix 1.

2. For all other applicants, the representative shall schedule an appointment for a licensing consultation. The appointment shall occur within 45 calendar days of the date the Licensing Authority receives the letter of intent, unless the applicant requests a later consultation.
3. If DHS declines to license an applicant as a behavioral health service agency, and refers an applicant to the Department for licensure as a child welfare agency, the applicant shall contact the Licensing Authority to request a licensing consultation. The Licensing Authority shall schedule the consultation within 45 calendar days of the date of the request, unless the applicant requests a later consultation.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Amended subsection (O), paragraph (1) effective January 21, 1985 (Supp. 85-1). Former Section R6-5-7403 repealed; new Section R6-5-7403 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7404. The Licensing Consultation; Time for Completion of Application**

- A.** At the licensing consultation, a licensing representative shall review the licensing application form with the applicant. The licensing representative shall explain the requirements for licensure and shall advise the applicant about:
1. The information and documentation the applicant must provide to complete the application or licensing process, as set forth in R6-5-7405;
  2. The fingerprinting and background checks required by A.R.S. § 46-141 and R6-5-7431;
  3. The need for a DHS health and safety inspection of the agency and each facility, and the process for scheduling the inspection;
  4. The need to obtain a fire inspection and zoning clearance for the each facility;
  5. The need to confer with the local school district to discuss any special educational needs that the children to be served may present;
  6. The timelines for submission of application information; and
  7. The need for the Licensing Authority to conduct a site inspection as prescribed in R6-5-7406.
- B.** No later than 60 days after the licensing consultation, the applicant shall provide the Licensing Authority with a complete application package, as prescribed in R6-5-7405(A).
- C.** If the applicant cannot provide the information within 60 days, the applicant shall contact the Licensing Authority to request an extension of time. The Licensing Authority shall allow an extension for a fixed period of time, which shall not exceed 120 days past the original 60 days.
- D.** If the applicant fails to provide the information within the time periods specified in subsections (B) and (C), the Licensing Authority shall close the applicant's file and send the applicant a written notice of closure. An applicant whose file has been closed shall reapply.
- E.** For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the applicant submits the application form and the required documentation listed in R6-5-7405(A).

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7404 repealed; new Section R6-5-7404

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filed with the Secretary of State's Office May 15, 1997;  
adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7405. Complete Application; Initial License - New Applicant**

- A.** A complete application package for an initial license of a new agency shall contain the information and supporting documentation listed in this subsection.
1. Identification and background information: agency, facility, administrators.
    - a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
    - b. Name, title, business address, and telephone and telefacsimile numbers of:
      - i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
      - ii. The person who serves as the program director as prescribed in R6-5-7432(B);
      - iii. The person with delegated authority to act when the CEO is absent;
      - iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
      - v. Persons holding at least a 10% ownership interest in the applicant; and
      - vi. The agency and facility medical directors, if applicable;
    - c. The educational qualifications and work history for each person identified in subsection (A)(1)(b), with that person's attached resume, employment application, or curriculum vitae;
    - d. A list of the members of the agency's governing body described in R6-5-7424, including: name, address, position in the agency, term of membership, and any relationship to the applicant;
    - e. A list of licenses or certificates for provision of medical or social services, currently or previously held by the applicant or persons listed in subsection (A)(1)(b), including those held in this state or another state or country;
    - f. A written description of any proceedings for denial, suspension or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (A)(1)(b), including those held in this state or another state or country; and
    - g. A written description of any litigation in which the applicant or a person listed in subsection (A)(1)(b) has been a party, including, without limitation, collection matters and bankruptcy proceedings during the 10 years preceding the date of application.
  2. Business organization.
    - a. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority;
    - b. Business organization documents appropriate to the applicant, including:
      - i. Articles of incorporation, by-laws, annual reports for the preceding three years; or
      - ii. Partnership or joint venture agreement;
    - c. For corporations, a certificate of good standing from the Arizona Corporation Commission or comparable entity from a foreign state; and
    - d. A statement as to whether the applicant is for-profit or not-for-profit if not explained in other documents already provided.
  3. Staff.
    - a. A list of the applicant's paid staff, including:
      - i. Name;
      - ii. Position or title;
      - iii. Degrees, certificates, or licenses held;
      - iii. Business address;
      - iv. Date of hire;
      - v. Date of last physical; and
      - vi. Date of submission for fingerprinting and background clearance;
    - b. Evidence that staff have submitted fingerprints and criminal background information, as prescribed in A.R.S. § 46-141 and R6-5-7431 and obtained a physical exam as prescribed in R6-5-7431(F); and
    - c. For any staff whose primary residence is the facility,
      - i. The name and date of birth of any persons residing with the staff member;
      - ii. Evidence that any adult residing with the staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
      - iii. Evidence that the staff member's children who reside at the facility have current immunizations.
  4. Financial Stability.
    - a. A written, proposed operating budget for start up and the first year of operation;
    - b. Verifiable documentation of funds available to pay start-up costs; the funds shall be in the form of cash or written authorization for a line of credit;
    - c. Verifiable documentation of funds available to pay operating expenses for the first three months of operations; the funds shall be in the form of cash or written authorization for a line of credit;
    - d. Verifiable documentation of financial resources to operate in accordance with the proposed operating budget for the remaining nine months of the licensing year; the resources may include:
      - i. Cash;
      - ii. Contracts for placement;
      - iii. Donations;
      - iv. Grants; and
      - v. Authorization for a line of credit;
    - e. If the applicant or one of the persons listed in subsection (A)(1)(b) has operated any child welfare agency in this state or any other state during the past 10 years, the most recent financial statement and financial audit for that agency, unless the most recent statement or audit is more than 10 years old; and
    - f. A certificate of insurance, or letter of commitment from an insurer, showing that the applicant has insurance coverage as prescribed in R6-5-7426.
  5. Program.
    - a. Informational or advertising material about the agency and its facility;
    - b. For each facility, a written description of:
      - i. All services the applicant intends to provide;
      - ii. The number and type of children the applicant will serve, including: age, gender, special needs, or particular behavior problems;
      - iii. The anticipated sources of placement and referral;

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- iv. Number and qualifications of paid staff who will provide services, including the staff-child ratio, per living unit, during a 24-hour day, for a seven-day week; and
  - c. Program description, including:
    - i. Goals and objectives;
    - ii. Educational activities, with attached copy of Arizona Department of Education approval, if applicable;
    - iii. Recreational activities;
    - iv. Food and nutrition, with sample menus;
    - v. Behavior management practices;
    - vi. Religious practices, if any; and
    - vii. Medical services.
  - 6. Documentation, Forms, and Notices. Samples of all documents, forms, and notices which the applicant will use with or provide to children placed with the agency, the parents and guardians of those children, and the persons and entities who place children, including:
    - a. Agency application for services;
    - b. Agency placement agreement;
    - c. Intake form;
    - d. Child's case file and medical record;
    - e. Forms for reports to courts and placing agencies;
    - f. Statement of client rights;
    - g. Unusual incident reports; and
    - h. Sample medication logs.
  - 7. Policies and Procedures. The applicant's internal policies, procedures, and operations manual.
  - 8. Physical site and environment.
    - a. The floor plan for each facility;
    - b. A DHS health and safety inspection report for each facility;
    - c. Documentation showing that the local zoning authority verifies that each agency facility complies with all applicable zoning requirements;
    - d. Fire safety inspection report from the state fire marshal or a local fire department inspector for each facility;
    - e. Any water supply report as prescribed in R6-5-7458(D);
    - f. Gas equipment inspection report as prescribed in R6-5-7465(D)(1); and
    - g. Any other inspection certificates or reports prescribed in this Article, and any building occupancy certificates.
  - 9. Miscellaneous.
    - a. A statement authorizing the Department to investigate the applicant;
    - b. The signature, under penalty of perjury, of the agency administrator or person submitting the application, attesting to the truthfulness of the information contained in the application; and
    - c. The date of application.
- B.** If an applicant has attached a copy of a policy or procedure which describes the applicant's practice or procedure on a particular issue, the applicant need not separately describe the policy or procedure on the application form, but shall indicate that the description is contained in a particular identified and attached policy.
- C.** If the Licensing Authority needs additional information to determine the applicant's fitness to hold a license or an operating certificate, ability to perform the duties of a licensee as prescribed in this Article, or ability to fulfill the requirements prescribed in the applicant's policies, procedures, and program description, the Licensing Authority may require the applicant to provide additional information, including a signed form permitting a specifically named person or entity to release information to the Licensing Authority.
- D.** An agency which does not have or is unable to obtain all or part of the information or supporting documentation listed in subsection (A) shall so indicate in a written statement filed with the application. The written statement shall explain why the information or documentation is unavailable.
- Historical Note**  
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7405 repealed; new Section R6-5-7405 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).
- R6-5-7406. Site Inspection**
- A.** After receiving a complete application package, the Licensing Authority shall notify the applicant that the application is complete, and shall schedule the applicant for a site inspection, which may require more than one visit to a site.
- B.** The site inspection shall begin no later than 45 days after the Licensing Authority receives the applicant's completed application package.
- C.** During the site inspection, the licensing representative shall:
  1. Inspect the facility to ensure that any deficiencies identified in the DHS inspection report have been remedied;
  2. Verify that the facility meets the requirements of this Article;
  3. Review the applicant's policies and procedures;
  4. Review model client files;
  5. Review personnel files;
  6. Inspect the applicant's books, records, and proposed forms;
  7. Interview one or more of the applicant's governing board members, incorporators or organizers, and a representative sampling of staff who have been hired; and
  8. Inspect the applicant's computer security system and review the applicant's confidentiality safeguards.
- D.** For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 75 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).
- E.** If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.
- Historical Note**  
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7406 repealed; new Section R6-5-7406 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).
- R6-5-7407. Licensing Study**
- A.** The licensing representative shall summarize the results of the site visit, and other information gathered during the licensing process in a written licensing study, which shall be the basis for the licensing decision.
- B.** The licensing study shall describe whether the applicant has:
  1. Complied with all application and inspection requirements; and
  2. Demonstrated that it has:
    - a. The capital to pay all start-up costs and the financial ability to meet one year's operating expenses, as prescribed in R6-5-7405(A)(4);

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- b. The staff, expertise, facilities, and equipment to provide the services it plans to offer; and
  - c. The ability and intent to comply with the standards and requirements of this Article.
- C. The applicant may obtain a copy of the licensing study, upon request.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7407 repealed; new Section R6-5-7407 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7408. Licensing Decision: Issuance; Denial; Time-Frames**

- A. The Licensing Authority shall issue a written licensing decision within 30 days of concluding the applicant's final site visit. This 30 day period is the substantive review time-frame required by A.R.S. § 41-1072(3).
- B. The licensing decision shall explain whether the Licensing Authority will grant or deny a license, and the terms of the license.
1. If the Licensing Authority grants a license, the Licensing Authority shall send the license and any operating certificates with the notification letter.
  2. If the Licensing Authority issues a provisional license as prescribed in R6-5-7419 or denies a license, the Licensing Authority shall send the notice by certified mail. The notice shall contain the information listed in R6-5-7421(B) for a notice of adverse action.
- C. The overall time-frame for an initial license is 105 days.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7408 repealed; new Section R6-5-7408 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7409. Licenses and Operating Certificates: Form; Term; Nontransferability**

- A. If an agency's administrative office is located separately from an agency facility, the Licensing Authority shall issue a license to the agency and an operating certificate to each facility the agency operates. If the agency and facility occupy the same location, the Licensing Authority shall issue only a license, with the information required for an operating certificate.
1. A license shall:
    - a. Identify the agency name, and the geographic area in which the agency is licensed to operate;
    - b. List each facility the agency operates, and the total number of children the agency is authorized to serve; and
    - c. Require the agency to operate each facility in accordance with the operating certificate issued to the particular facility.
  2. An operating certificate shall:
    - a. Identify the agency operating the facility;
    - b. Identify the facility name, if different from the agency name, and the geographical area in which the facility is authorized to operate;
    - c. List the type of service or program to be offered at the facility; and
    - d. Specify the number, gender, and ages of children the facility may receive for care.
- B. An operating certificate is not valid unless it has been issued in the name of an agency holding a license. Except as otherwise prescribed in subsection (A) for an agency and facility at the

same location, a facility cannot operate without a current operating certificate.

- C. A license and an operating certificate expire one year from the date of issuance, except as otherwise provided in R6-5-7410 for satellite facilities and in R6-5-7419 for provisional licenses.
- D. An agency shall post its current license in the agency, in a conspicuous location, visible to the public. The agency shall post a facility's current operating certificate in a conspicuous location within the facility.
- E. A license and an operating certificate cannot be transferred or assigned, and shall expire upon a change in ownership. For the purpose of this Section, a "change in ownership" includes any of the following events:
1. Sale or transfer of the agency or facility;
  2. Bulk sale or transfer of the agency's or facility's assets or liabilities;
  3. Placement of the agency or facility in the control of a court appointed receiver or trustee;
  4. Bankruptcy of the agency or facility;
  5. Change in the composition of the partners or joint venturers of an agency or facility organized as a partnership;
  6. Sale or transfer of a controlling interest in the stock of a corporate agency or facility; or
  7. Loss of an agency's or facility's nonprofit status.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Amended effective May 25, 1979 (Supp. 79-3). Amended subsection (H) effective January 2, 1981 (Supp. 81-1). Former Section R6-5-7409 repealed; new Section R6-5-7409 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7410. Licensed Agency: Application for an Operating Certificate for an Additional Satellite Facility**

- A. A currently licensed agency that wishes to obtain an operating certificate for an additional satellite facility shall send the Licensing Authority a letter of intent. The letter of intent shall include the following information:
1. The applicant's name, address, and telephone and telefacsimile numbers;
  2. The name of the applicant's chief executive officer or administrator;
  3. The name, address, and telephone and telefacsimile numbers of the additional facility;
  4. A request that the Licensing Authority schedule the additional facility for a DHS health and safety inspection;
  5. The name of the person who will be in charge of the additional facility, with a description of that person's qualifications;
  6. A description of program and services to be offered at the proposed facility, including any policy or procedures unique to the facility;
  7. A statement as prescribed in R6-5-7403(A)(5) for the applicable school district; and
  8. All of the information listed in R6-5-7405(A) that differs from the information already on file for the agency, including:
    - a. Floor plan,
    - b. Fire inspection,
    - c. Zoning clearance letter,
    - d. Certificate of insurance,
    - e. Evidence of financial stability,
    - f. List of paid staff with the information required by R6-5-7405(A)(3), and
    - g. Facility staffing schedule.

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- B.** Upon receipt of all information listed in subsection (A), and a report of the DHS health and safety inspection, the Licensing Authority shall schedule the facility for a site inspection, as provided in R6-5-7406.
- C.** The Licensing Authority shall prepare a licensing study and issue a licensing decision on the application for the additional operating certificate as prescribed in R6-5-7407 through R6-5-7408. In determining whether to grant an additional operating certificate to an agency operating under a provisional license, the Licensing Authority shall also consider:
1. The nature and extent of the problems giving rise to the deficiency that caused the agency to be placed on provisional license status; and
  2. The agency's progress on its corrective action to resolve the problems.
- D.** An operating certificate for an additional satellite facility expires at the end of an agency's regular licensing year.
- iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
  - v. Persons holding at least 10% ownership interest in the applicant; and
  - vi. The agency and facility medical directors, if applicable;
- c. The educational qualifications and work history for each person listed in subsection (D)(4)(b), with that person's attached resume, employment application, or curriculum vitae;
  - d. A list of the members of the agency's governing body described in R6-5-7424, including name, address, position in the agency, term of membership, and any relationship to the applicant;
  - e. A list of licenses or certificates for provision of medical or social services currently or previously held by the applicant or persons listed in subsection (D)(4)(b), including those held in this state or another state or country; the list shall include the dates the person held the license or certificate;
  - f. A written description of any proceedings for denial, suspension, or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (D)(4)(b), including those held in this state or another state or country; and
  - g. A written description of any litigation in which the applicant or a person listed in subsection (D)(4)(b) has been a party during the 10 years preceding the date of application, including, collection matters and bankruptcy proceedings.
5. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority.
  6. The following information on staff:
    - a. A list of applicant's paid staff, including:
      - i. Name;
      - ii. Position or titles;
      - iii. Degrees, certificates, or licenses held;
      - iv. Business address;
      - v. Date of hire;
      - vi. Date of last physical; and
      - vii. Date of submission for fingerprinting and background clearance;
    - b. For any staff whose primary residence is the facility:
      - i. The name and date of birth of any persons residing with a staff member;
      - ii. Evidence that any adult residing with a staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
      - iii. Evidence that the staff member's children who reside at the facility have current immunizations.
  7. Copies of any written complaints the agency has received about its performance at its facilities during the expiring license year and the agency's response to the complaints; and
  8. A written description of any changes in program services or locations, or the children served by the agency.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7410 repealed; new Section R6-5-7410 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7411. Application for Renewal of License and Operating Certificates**

- A.** No earlier than 90 and no later than 60 days prior to the expiration date of a license, an agency may apply to the Licensing Authority for renewal of its license and any operating certificates. The Licensing Authority does not have a duty to notify the agency of license expiration. The agency shall contact the Licensing Authority to request a renewal application and to schedule a DHS health and safety inspection. The agency shall schedule its own fire inspection. Failure to timely apply or obtain inspections may result in suspension of the agency's license until the renewal process is completed.
- B.** An agency shall apply for renewal on a Department application form containing the information required in this Section.
- C.** An agency shall submit copies of the completed renewal application and supporting documents to the Licensing Authority. If the agency has not amended, changed or updated the information or documentation since the agency last applied for or renewed its license, the agency shall indicate "no change" on the documents submitted with the renewal application.
- D.** With a renewal application, the agency shall also submit the following documentation:
1. A current financial statement prepared by an independent certified public accountant who is not employed by the agency;
  2. A certificate of current insurance coverage as prescribed in R6-5-7426;
  3. A copy of the agency's current budget and the agency's audit report for its preceding fiscal year;
  4. Identification of and the following background information on the agency, facility, and administrators:
    - a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
    - b. Name, title, business address, and telephone and telefacsimile number of:
      - i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
      - ii. The person who serves as the program director as prescribed in R6-5-7432(B);
      - iii. The person with delegated authority to act when the CEO is absent;
- E.** For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins

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when the applicant submits a renewal application form and the required documentation listed in this Section.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7411 repealed; new Section R6-5-7411 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7412. Renewal of License and Operating Certificates: Site Inspection; Time-frames; Standard for Issuance**

- A. Upon receipt of a complete renewal application, the Licensing Authority shall schedule the renewal applicant for a DHS health and safety inspection.
- B. Upon receipt of the DHS inspection report and a complete renewal application package, the Licensing Authority shall schedule the applicant for a site inspection of the agency and each agency facility.
- C. At the renewal site inspection, the licensing representative shall investigate the agency and facilities as prescribed in R6-5-7406, and may also:
  1. Interview staff,
  2. Interview clients and references,
  3. Observe staffings,
  4. Review a random sample of client and staff files,
  5. Conduct field visits to agency branch offices and facilities.
- D. For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 45 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).
- E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.
- F. The Licensing Authority shall issue a licensing decision within 25 calendar days of concluding the applicant's final site visit. This 25-day period is the substantive review time-frame under A.R.S. § 41-1072(3). The overall time-frame for a issuance of a renewal license is 70 days.
- G. The Licensing Authority may renew an agency's license and any operating certificate for its facility when the agency and facility:
  1. Demonstrate compliance with the standards set forth in applicable statutes and this Article;
  2. Have complied with applicable statutes and the requirements of this Article during the expiring period of license; and
  3. Have corrected any problems that resulted in imposition of a provisional license.
- H. The Licensing Authority shall issue a renewal licensing decision as prescribed in R6-5-7408(B).

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7412 repealed; new Section R6-5-7412 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7413. Notification to Licensing Authority of Changes Affecting License; Staff Changes**

- A. A licensee shall send the Licensing Authority written notification of any planned change in the licensee's name, ownership,

agency location, facility location, governing board member, chief executive officer, or program director, at least one month before the change. If the change occurs without sufficient time for prior written notice, the licensee shall orally notify the Licensing Authority as soon as the change is known, and shall send the Licensing Authority written confirmation within 48 hours of giving oral notice.

- B. If a licensee wishes to make a substantial change as described in subsection (C), the licensee shall:
  1. Provide the Licensing Authority with prior written notice of the change at least one month before the effective date of the change; and
  2. Apply for an amended license as prescribed in R6-5-7414.
- C. As used in subsection (B), "substantial change" means any of the following:
  1. An event that will cause the licensee to be out of compliance with:
    - a. The terms stated on the face of the license or an operating certificate; or
    - b. A standard prescribed in this Article;
  2. A change in a building or a physical site at the agency or facility if that change will alter the level or nature of care provided to children; or
  3. Substantive revision of the policies and procedures required by this Article.
- D. Within five work days of a paid staff member's hiring or separation, the licensee shall complete and send the Licensing Authority a Department form LC-008, "Child Welfare Agency Employee Central Registry," with the following information on the paid staff member:
  1. Name,
  2. Date of birth,
  3. Social security number,
  4. Date fingerprinted and fingerprinting results,
  5. Position held,
  6. Date of and reason for separation from employment, and
  7. Opportunity for rehire.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7413 repealed; new Section R6-5-7413 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7414. Amended License or Operating Certificate**

- A. The Licensing Authority may issue an amended license or operating certificate to reflect a change in an agency or facility name or the terms of a license or an operating certificate if the change does not cause the agency or facility to fall out of compliance with applicable statutes and this Article.
- B. The Licensing Authority shall not issue a license for an agency or an operating certificate for a facility that has moved to a new location until the agency or facility has:
  1. Provided the information listed in R6-5-7405(A)(8),
  2. Passed a DHS health and safety inspection,
  3. Passed a fire inspection,
  4. Passed a Licensing Authority site inspection, and
  5. Submitted any new staff and household members for fingerprinting and criminal background checks as prescribed in A.R.S. § 46-141 and R6-5-7431.
- C. An amended license or operating certificate expires at the end of the agency or facility's regular licensing year.

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**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7415. Alternative Method of Compliance**

- A.** The Licensing Authority, with the approval of the Attorney General's Office, may permit a licensee to substitute an alternative method of compliance for a licensing requirement or objective prescribed in this Article and not otherwise required by law, if the following conditions are met:
1. The licensee seeking to achieve compliance through an alternative methodology proposes, to the satisfaction of the Licensing Authority, that the licensee can satisfy the objective of the requirement through the alternative methodology; and
  2. Allowing the licensee to achieve compliance through an alternative method will not jeopardize the health, safety, or well-being of children who are or may be placed in the licensee's care.
- B.** Approval of an alternative methodology expires as prescribed in the written letter authorizing the alternative, or at the end of the licensing year, and must be annually renewed.
- C.** The Licensing Authority is not obligated to permit an alternative method of compliance or to renew approval of the alternative methodology.
- D.** The Licensing Authority shall document the alternative and the findings required by subsection (A) in the licensing file.
- E.** The Licensing Authority may revoke the licensee's permission to comply through an alternative method if the Licensing Authority finds that a condition listed in subsection (A)(1) or (2) is not met.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7416. Monitoring**

- A.** The Licensing Authority shall monitor the ongoing operations of agencies and facilities.
- B.** Monitoring activities may include the following:
1. Announced and unannounced inspections of an agency or a facility, including both physical premises and internal operations, books, records, policies, procedures, logs, manuals, files, inspection reports, certificates, and any other document prescribed by this Article;
  2. Interviews with clients, staff, or other persons with information about the agency; and
  3. Observation of program activities.
- C.** A licensee shall cooperate with the Licensing Authority's monitoring functions. Cooperation includes:
1. Making the agency, facility, and program activities available to licensing representatives for inspection and observation;
  2. Providing the Licensing Authority with information or documentation requested;
  3. Making staff available for interview; and
  4. Allowing children in care to be interviewed.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7417. Complaints; Investigations**

- A.** If the Licensing Authority receives an oral complaint about a licensee, agency, or facility, the Licensing Authority shall ask the complaining party to submit the complaint in writing, but shall investigate complaints as prescribed in this Section even if the complaining party does not put the complaint in writing.

- B.** The Licensing Authority shall refer all complaints involving allegations of child maltreatment to CPS as required by A.R.S. § 13-3620 for investigation as prescribed in A.R.S. § 8-546.01(C).
- C.** The Licensing Authority shall investigate complaints about a licensee through one or more of the following methods:
1. Telephone contact with the licensee,
  2. Interviews with the complaining party,
  3. Interviews with the licensee's staff,
  4. Interviews with the licensee's clients,
  5. Interviews of witnesses to the matters at issue,
  6. Inspections of records and documents related to the issues raised in the complaint,
  7. Announced and unannounced inspections of the agency or a facility,
  8. Evaluation of a law enforcement or CPS report for evidence of a licensing violation, and
  9. Any other activity necessary to validate or refute the allegations.
- D.** A licensee shall cooperate in any Department investigation as prescribed in R6-5-7416(C).
- E.** Upon completion of an investigation as described in subsection (C), the Licensing Authority shall:
1. Find that the complaint is invalid, document the findings in the agency's licensing file, and close the investigation;
  2. Find that the complaint is valid and take disciplinary action against the licensee as prescribed in R6-5-7419 and R6-5-7420, or require corrective action as prescribed in R6-5-7418; or
  3. Find that the complaint cannot be validated or refuted based on the available evidence and document the finding in the licensing file.
- F.** The Licensing Authority shall provide the licensee with an oral report of any findings made under subsection (E) and, upon the licensee's request, a copy of the written findings placed in the licensee's file. At the time of giving the oral report, the licensing representative shall advise the licensee of the opportunity to obtain a copy of the written findings.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7418. Corrective Action**

- A.** If a deficiency is correctable within a specified period of time and does not jeopardize the health or safety of a child, the Licensing Authority may place the agency on a corrective action plan to cure the deficiency in lieu of the disciplinary measures prescribed in R6-5-7419 and R6-5-7420.
- B.** In determining whether to require corrective action in lieu of other disciplinary action, the Licensing Authority shall consider the following criteria:
1. The nature of the deficiency;
  2. Whether the deficiency can be corrected;
  3. Whether the licensee and its affected staff understand the deficiency and show a willingness and ability to participate in corrective action;
  4. The length of time required to implement corrective action;
  5. Whether the same or similar deficiencies have occurred on prior occasions;
  6. Whether the licensee has had prior corrective action plans, and, if so, the licensee's success in achieving the required goals of the plan;
  7. The licensee's history in providing care; and

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8. Other similar or comparable factors demonstrating the licensee's ability and willingness to follow through with a corrective action plan and avoid future deficiencies.
- C. The agency shall prepare a corrective action plan for the review and approval of the Licensing Authority.
1. The plan shall explain:
    - a. How the agency will remedy the non-compliance;
    - b. The time periods for completing all corrective action; and
    - c. The agency staff responsible for carrying out the corrective action plan.
  2. The plan shall provide for the agency to send the Licensing Authority periodic reports on the agency's progress, and a final report when all corrective action is completed.
  3. An authorized representative of the agency shall sign and date the corrective action plan.
- D. In deciding whether to approve a plan, the Licensing Authority shall ensure that the plan:
1. Will correct the identified deficiency within a specified period of time;
  2. Identifies persons responsible for executing the steps listed in the plan; and
  3. Permits the Licensing Authority to monitor the Licensee's progress in completing the plan.
- E. The Licensing Authority may conduct announced and unannounced inspections of the agency or facility to monitor implementation of a corrective action plan. The licensee shall cooperate in any monitoring inspection as prescribed in R6-5-7416(C).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7419. Provisional License**

- A. If an agency or a facility is temporarily unable to conform to the standards prescribed in this Article, the Licensing Authority may issue a provisional license to the agency, or convert a regular license to provisional status, as prescribed in A.R.S. § 8-505(C). For the purpose of this Section, "temporarily unable" means a time period of six months or less.
- B. The Licensing Authority may impose provisional license status on an agency operating multiple facilities even though less than all facilities are out of compliance.
- C. The Licensing Authority may issue a provisional license only when:
1. The non-compliance is correctable; and
  2. The non-compliance does not jeopardize the health, safety, or well-being of children in care.
- D. If the Licensing Authority issues a provisional license, the agency shall cooperate with the Licensing Authority to develop a written corrective action plan that meets the requirements of R6-5-7418(C) and (D) and shall comply with the terms of the plan.
- E. If an agency receives a provisional license at the time of annual renewal and the license is later converted to a regular license during the agency's licensing year, the regular license expires one year from the date the provisional license was issued.
- F. If an agency receives a regular license at the time of annual renewal, and the license is converted to a provisional license during the agency's licensing year, the agency's license expires one year from the date the regular license was issued.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7420. Denial, Suspension, and Revocation of a License or Operating Certificate**

- A. The Licensing Authority may deny, suspend, or revoke a license or operating certificate when:
1. An applicant or licensee has violated or is not in compliance with licensing rules and standards, Arizona state or federal statutes, or city or county ordinances or codes;
  2. An applicant or licensee refuses to cooperate with the Licensing Authority in providing information required by these rules or any information required to determine compliance with these rules;
  3. An applicant or licensee misrepresents or fails to disclose information to the Department regarding qualifications, experience, or performance of duties;
  4. A licensee fails to cooperate in developing a corrective action plan after a request by the Licensing Authority, or fails to comply with a corrective action plan; or
  5. An applicant or licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children in care.
- B. In determining whether to deny a license, to take disciplinary action against a licensee, or to renew a license, the Licensing Authority may consider the licensee's past history from other licensing periods, both in Arizona and in other jurisdictions, and shall consider a pattern of violations of applicable child welfare statutes or rules, as evidence that an applicant or licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children.
- C. The Licensing Authority shall deny, suspend, or revoke a license when an individual applicant or licensee has been convicted of or is awaiting trial on the criminal offenses listed in A.R.S. § 46-141.
- D. The Licensing Authority shall deny, suspend, or revoke a license when an agency or facility:
1. Retains staff who have been convicted of or are awaiting trial on the criminal offenses listed in A.R.S. § 46-141;
  2. Allows an adult other than those described in subsection (D)(1), who has been convicted of or is awaiting trial on the offenses listed in A.R.S. § 46-141, to reside at a facility; or
  3. Allows any staff or other adult at the facility, who has committed an offense listed in A.R.S. § 46-141(D), to have contact with children in care.
- E. The Licensing Authority may deny, suspend, or revoke a license when an applicant or licensee, any staff member, or any other adult who resides at the facility, has been convicted of or found by a court to have committed, or is awaiting trial on any criminal offense, other than those listed in A.R.S. § 46-141. In determining whether a person's criminal history affects an applicant's or licensee's fitness to hold a license, the Licensing Authority shall consider all relevant factors, including the following:
1. The extent of the person's criminal record, if any;
  2. The length of time which has elapsed since the offense was committed;
  3. The nature of the offense and whether the offense was originally classified as a felony or a misdemeanor;
  4. The circumstances surrounding the offense;
  5. The degree to which the person participated in committing the offense;
  6. The extent of the person's rehabilitation; and
  7. The person's role within the agency or facility.

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**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7421. Adverse Action; Procedures; Effective Date**

- A.** When the Licensing Authority plans to take adverse action against a licensee, the Licensing Authority shall give the licensee written notice of the adverse action by certified mail.
- B.** The notice shall specify:
1. The action taken;
  2. All reasons supporting the action;
  3. The sections of law justifying the action;
  4. The procedures by which an applicant or licensee may contest the action taken, and the time periods for doing so;
  5. An explanation of the applicant or licensee's right to request an informal settlement conference as prescribed in A.R.S. § 41-1092.03(A); and
  6. If the Licensing Authority summarily suspends a license as provided in A.R.S. § 41-1064(C), the required finding of emergency.
- C.** The following actions are not appealable adverse actions:
1. Imposition of a corrective action plan to bring the licensee into compliance with licensing requirements, absent any material change in licensing status;
  2. Denial or revocation of permission for an alternate method of compliance or operation of a barracks facility as prescribed in R6-5-7461(B) and R6-5-7462(B); and
  3. A staff member's failure to clear the criminal history check prescribed in R6-5-7431(B).
- D.** Except as otherwise provided in A.R.S. § 41-1064 for emergency suspensions, adverse action is effective:
1. If a licensee does not appeal the adverse action, 31 days after the postmark date of the notice prescribed in subsection (A); or
  2. If the licensee appeals the adverse action, when there is a final administrative decision, as prescribed in A.R.S. § 41-1092.08(D), affirming the adverse action.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7422. Appeals**

- A.** An applicant may appeal the denial of a license and a licensee may appeal adverse action under A.R.S. § 8-506.01 and A.R.S. Title 41, Chapter 6, Article 10.
- B.** The applicant or licensee shall file a notice of appeal with the Licensing Authority. The notice shall contain the information required by A.R.S. § 41-1092.03(B).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7423. Statement of Purpose; Program Description and Evaluation; Compliance With Adopted Policies; Client Rights; Single Category of Care**

- A.** A licensee shall have a written statement which describes its philosophy, purpose, and program for children in care, and the nature and extent of any family involvement in the program.
- B.** A licensee shall have a written description of all services each facility provides to children in care and their families and the methods of service delivery.
- C.** A licensee shall follow all plans, policies, and procedures the licensee adopts in accordance with this Article.
- D.** A licensee shall annually evaluate whether a facility is achieving the objectives described in R6-5-7405(A)(5)(c)(i). The

licensee shall make a written report of the evaluation and provide a copy to the Licensing Authority at the time of license renewal.

- E.** A licensee shall have a statement of client rights.
- F.** A licensee shall not combine its child welfare program, as defined pursuant to subsection (A), with other forms of care or programming such as child care, nursing or convalescent care for adults, or adult developmental care unless the licensee:
1. Physically separates children in the child welfare program from persons in other programs, and
  2. Prevents interaction between children in the child welfare program and persons in other programs.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7424. Governing Body**

- A.** A licensee shall have a governing body to oversee the operations, policies, and practices of the agency and its facilities. The governing body shall be:
1. The board of directors for an agency that is a non-profit corporation, or
  2. The board of directors or individual owner of an agency that is a for-profit organization.
- B.** The governing body shall:
1. Ensure that the licensee provides the services described in the licensee's statement of purpose;
  2. Adopt an annual budget of anticipated income and expenditures necessary to provide the services described in the licensee's statement of purpose;
  3. Approve the licensee's annual financial audit report;
  4. Establish a policy and procedure for selection and retention of staff sufficient to operate the agency and its facilities in accordance with this Article;
  5. Unless the licensee is a sole proprietorship, meet at least four times each year, and maintain records of attendance and minutes of the meetings;
  6. Develop criteria and written procedures for selection of the governing body members, and the chief executive officer as required by R6-5-7432(A);
  7. Employ a chief executive officer who meets the qualifications prescribed in R6-5-7432(A), to whom the governing body shall delegate responsibility for the daily administration and operation of the agency;
  8. Regularly evaluate the chief executive officer's performance; and
  9. Review and approve the agency's policies and procedures, and any amendments to them.
- C.** A licensee shall maintain a list of the governing body's members; the list shall include each member's the name, address, term of membership, and relationship to the licensee, if any.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7425. Business and Fiscal Management; Annual Audit**

- A.** A licensee shall maintain complete and accurate accounts, books, and records as prescribed in this Article, and in accordance with generally accepted accounting practice.
- B.** A licensee shall operate on the annual budget approved by its governing board.
- C.** A licensee shall regularly record its financial transactions and maintain, for five years, its financial records including receipts, disbursements, assets, and liabilities.
- D.** A licensee shall have an annual, fiscal year-end, financial audit by an independent certified public accountant who shall con-

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duct the audit in accordance with generally accepted auditing standards. The audit report shall include the following financial information:

1. Income statement,
2. Balance sheet,
3. Statement of cash flow,
4. A statement showing monies or other benefits the licensee has paid or transferred to any of the following:
  - a. Business entities affiliated with the licensee,
  - b. The licensee's directors or officers,
  - c. The licensee's chief executive officer or program director,
  - d. The family member of a person listed in subsections (D)(2)(e)(ii) or (iii), or
  - e. Another agency.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7426. Insurance Coverage**

A licensee shall have insurance coverage that provides protection against financial loss as prescribed in this Section.

1. The licensee shall carry liability insurance covering accidents, injuries, errors and omissions in the minimum amount of \$100,000 per person, and \$300,000 per accident or event.
2. The licensee shall ensure that any vehicle the licensee owns or uses to transport children in care has the following insurance coverage:
  - a. Injury per person: \$100,000,
  - b. Injury per accident: \$300,000, and
  - c. Property damage: \$25,000.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7427. Confidentiality**

- A. Except as otherwise allowed by law, a licensee's records concerning children in care and their families are confidential, and the licensee shall not disclose or knowingly permit the disclosure of confidential information.
- B. A licensee shall have written policies and procedures for keeping records secure, in a manner that preserves confidentiality and prevents loss, tampering, or unauthorized use. The policies and procedures shall:
  1. Be consistent with any laws applicable to the specific records at issue; and
  2. Cover the following:
    - a. The form in which children's records are maintained and stored;
    - b. Identification of the staff who:
      - i. Supervise the maintenance of records,
      - ii. Have custody of records, and
      - iii. Have access to records;
    - c. The persons to whom records may be released and under what circumstances records may be released, including release of information to custodial and non-custodial parents and guardians;
    - d. Photography, audio or audio-visual recording, and public identification of children; and
    - e. Participation of children or use of children's records in data research.
- C. Before using personally identifiable information for publicity, fundraising, or research, a licensee shall obtain:

1. A written consent to release, as prescribed in subsection (E), from the child who is the subject of the information, if developmentally appropriate; and
  2. A written consent to release, as prescribed in subsection (E), from the child's placing agency or person; or
  3. Written authorization from the court, if the child is a ward of the court.
- D. A licensee may release personally identifiable information about a child or family to persons who require the information to treat or provide services to the child unless the release is prohibited by law.
  - E. A consent to release shall include the following information:
    1. The name of the person or agency to whom the information is to be released;
    2. A description of the information to be disclosed;
    3. The reason for disclosure;
    4. The expiration date of the consent, not to exceed six months from date of signature; and
    5. The dated signature of the person authorizing the release.
  - F. Notwithstanding any other provision of this Article, in a medical emergency, the licensee shall promptly release information from a child's record to persons who require the information to treat the child.
  - G. A licensee may withhold information if, in the judgment of the professional person treating the child, or the agency's program director, the release of information would be contrary to the child's best interests, unless the release is:
    1. Ordered by a court,
    2. Mandated by federal or state law,
    3. Required by the licensee's agreement with the placing agency or person, or
    4. Required by the Department to assess the licensee's compliance with the law.
  - H. If a licensee withholds information pursuant to subsection (G), the licensee shall:
    1. Document, in the child's record, the reason for withholding the information;
    2. Advise the person who requested the information that the person may grieve the withholding pursuant to the licensee's internal grievance process adopted in accordance with R6-5-7429.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7428. Children's Records: Contents, Maintenance, Destruction**

- A. A licensee shall maintain a current, separate case record for each child in care. The record shall be readily accessible to persons providing services to the child and shall include at least the following information:
  1. The name, gender, race, religion, birthdate, and birthplace of the child;
  2. The name, address, telephone number, and marital status of the child's parents;
  3. The date of admission and source of referral;
  4. The name, address, telephone number, and relationship to the child of the person with whom the child was living prior to admission, if other than the child's parent;
  5. All documents related to the child's referral and admission of the child to the facility;
  6. Documentation of the current custody and legal guardianship of the child;
  7. The child's court status, if applicable;
  8. Consent forms signed by the placing agency or person at the time of placement, allowing the licensee to authorize

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- necessary medical care, medications, routine tests, and immunizations;
9. Service plans and all reviews, revisions, notes, and updates reflecting the child's and family's goals, and progress towards achievement of goals;
  10. A plan for permanent placement of the child;
  11. Education records and reports;
  12. Vocational training and employment records, if applicable;
  13. Treatment and clinical records and reports; and
  14. The discharge summary required by R6-5-7442(B).
- B.** A licensee shall have the medical records required by R6-5-7455. While the child is in care, the licensee may keep the child's medical records in a location separate from the records described in this Section. If the licensee keeps medical records in a separate location, the child's main record shall identify the location of the medical record.
- C.** All record entries shall be made in permanent ink or electronically. The licensee shall require personnel to date and legibly sign entries in a child's records.
- D.** If a licensee maintains a child's records in more than one place, the licensee shall:
1. Identify, in one location that is readily accessible to inspection by the Licensing Authority, the location of all parts of the record; and
  2. Consolidate all records and notes into one case file, at one location, within 15 days following either:
    - a. A request for consolidation from the Licensing Authority; or
    - b. The date of the child's discharge from the facility.
- E.** A licensee shall maintain a child's record for the longest of the following time periods:
1. At least five years after the child's last discharge from the licensee's care;
  2. At least three years after the child's 18th birthday; or
  3. Another time period specified by applicable law or contract.
- F.** A licensee shall dispose of expired records in a manner that maintains confidentiality.
- Historical Note**  
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).
- R6-5-7429. Grievances**
- A.** A licensee shall have a written policy and written procedures governing the receipt, consideration, and resolution of grievances brought to the licensee by children in care and their parents, regarding the licensee's program and care of children. The procedures shall:
1. Be written in a clear and simple manner that is developmentally appropriate for children in care;
  2. Prohibit reprisal or retaliation against an individual who brings a grievance for the act of bringing the grievance;
  3. Describe a process for fair and expeditious resolution of a grievance; and
  4. Provide a means to tell the grievant about the action taken in response to the grievance.
- B.** A licensee shall maintain written records of grievance decisions for at least 12 months after the resolution.
- C.** The licensee shall maintain a log of grievances filed against the licensee. The licensee may keep a centralized agency log, or can maintain a separate log for each facility. The log shall include the following information:
1. Name of grievant;
  2. Date grievance filed;
  3. Description of the substance of the grievance;
  4. Summary of the grievance resolution;
  5. A copy of the grievance decision required by subsection (B), or a description of where the Licensing Authority can find the decision.
- D.** Copies of the grievance decisions may serve as the grievance log if:
1. The copies are kept in one central location that is readily accessible to the Licensing Authority;
  2. The grievance decisions contain all the information listed in subsection (C), and
  3. The licensee retains the decisions for at least three years following the date of grievance resolution.
- Historical Note**  
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Numbering for subsections (C) and (D) amended to correct typographical errors (Supp. 00-3).
- R6-5-7430. Staff Management and Staff Records**
- A.** A licensee shall have written staff policies and procedures which shall describe:
1. How the licensee recruits, screens, hires, supervises, trains, retains, develops, evaluates, disciplines, and terminates staff;
  2. How the licensee handles staff resignations;
  3. A job title, description and minimum qualifications for each position within the agency and all facilities;
  4. The duties assigned to each position;
  5. How the licensee handles staff grievances;
  6. An organizational chart for the agency and all facilities; and
  7. A method to assure privacy of staff records.
- B.** The licensee shall give all staff a copy of the person's own job description and allow staff access to the licensee's staff policies and procedures.
- C.** A licensee shall maintain a personnel record for all paid staff. The record shall include the following information, if applicable:
1. Application for employment including previous employment history and educational background;
  2. Reference letters and documentation of phone notes on references that are dated and signed;
  3. Documentation of the highest level of education achieved; the documentation may include a copy of a diploma, equivalence certificate, or record of notes of calls to educational institutions;
  4. Medical examination reports on paid staff as required by R6-5-7431(F);
  5. Medical examination reports on any other adult residing at the facility showing that the adult is free from communicable diseases as required by R6-5-7431(H);
  6. Medical and immunization records on children who reside at the facility but are not in care, as required by R6-5-7431(H);
  7. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
  8. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
  9. Record of all orientation and training received during employment;
  10. Documentation showing that the paid staff member has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the paid staff member and a witness;

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11. Documentation showing that the paid staff member has a valid driver's license if the paid staff member transports children;
  12. Reports of all performance evaluations;
  13. Documentation of any personnel actions or investigations that result in a written report;
  14. Dates the paid staff member started and separated from employment; and
  15. Reason for separation from employment.
- D.** A licensee shall maintain a personnel record on unpaid staff. The record shall include the following information, if applicable:
1. Application for work or study, including previous employment history and educational background;
  2. Reference letters and documentation of phone notes on references that are dated and signed;
  3. Medical examination reports, as required by R6-5-7431(F);
  4. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
  5. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
  6. Record of all orientation and training received while affiliated with the licensee;
  7. Documentation showing that the person has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the person and a witness;
  8. Documentation showing that the person has a valid driver's license if the person transports children;
  9. Reports of all performance evaluations;
  10. Documentation of any personnel actions or investigations that result in a written report;
  11. Dates the person began and ended affiliation with the licensee; and
  12. Reason for ending affiliation with the licensee.
- E.** The licensee shall keep personnel records for at least three years after the staff member's separation from the licensee.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7431. General Qualifications for Staff**

- A.** A licensee shall ensure that all staff providing services to children and their families under the licensee's program are currently certified, registered, or licensed as required by state law.
- B.** As prescribed in A.R.S. § 46-141, all staff having direct contact with children, and any persons age 18 or older who live at a facility, excluding children in care, shall be fingerprinted and shall certify on notarized forms provided by the Department whether they:
1. Are awaiting trial on or have ever been convicted of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    - a. Sexual abuse of a minor;
    - b. Incest;
    - c. First or second degree murder;
    - d. Kidnapping;
    - e. Arson;
    - f. Sexual assault;
    - g. Sexual exploitation of a minor;
    - h. Contributing to the delinquency of a minor;
    - i. Commercial sexual exploitation of a minor;
    - j. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs;

- k. Burglary;
  - l. Robbery;
  - m. A dangerous crime against children as defined in A.R.S. § 13-604.01;
  - n. Child abuse;
  - o. Sexual conduct with a minor;
  - p. Molestation of a child;
  - q. Manslaughter;
  - r. Aggravated assault; and
2. Have ever committed any of the acts listed in subsections (B)(1)(a), (g), (i), (m), (n), (o), and (p).

- C.** A licensee shall not knowingly employ, retain, or allow to reside at a facility, any staff, or person age 18 or above, who is awaiting trial on or has been convicted of any of the criminal offenses listed in subsection (B), or the same or similar offenses in another state or jurisdiction. A licensee shall not knowingly allow a person who has committed any of the offenses listed in subsection (B)(2) to have contact with children in care.
- D.** For all staff, a licensee shall:
1. Verify at least two years immediate, or most recent, past employment through reference checks;
  2. Obtain at least three references from persons not related to the staff member by blood or marriage, who can attest to the staff member's character, knowledge, and skill.
- E.** The licensee shall document verification of the reference information required in subsection (D).
- F.** A licensee shall have staff providing direct care to children obtain a physical examination by a licensed medical practitioner before beginning assigned duties and at least every two years while working.
- G.** All staff shall be free from any communicable disease that poses a danger to children in care and shall have the capacity to perform the essential functions of that person's job.
- H.** Other adults who reside at the facility shall be free from communicable disease that poses a danger to children in care. Children who reside at the facility but are not in care shall have current immunizations and be free from communicable disease that poses a danger to children in care.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7432. Qualifications for Specific Positions or Tasks; Exclusions**

- A.** Chief Executive Officer "CEO": A licensee shall have a chief executive officer for the agency. The CEO:
1. Is responsible for general management, administration, and operation of the agency in accordance with this Article;
  2. Ensures that:
    - a. Each child in care receives necessary professional services;
    - b. Appropriately qualified staff render services to children in care; and
    - c. The services are coordinated;
  3. Shall have management experience and meet any other qualifications prescribed by the Governing Body;
  4. Shall reside in Arizona;
  5. Shall be accessible to staff, representatives of the Licensing Authority, and other governmental agencies; as used in this subsection, "accessible" means readily available to answer questions and to handle problems or emergencies that arise, either personally or through a chain of command; and

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6. Shall designate a qualified person to perform administrative responsibilities whenever the CEO is inaccessible.
- B.** Program Director: A licensee shall have at least one person who is responsible for development, implementation, and supervision of an agency's programs and services. This person shall have at least:
1. A master's degree in social work or a related area of study from an accredited school and at least one year experience in the child welfare or child care services field; or
  2. A bachelor's degree in social work or a related area of study from an accredited school and two years of experience in the child welfare or child care services field.
- C.** Facility Supervisor: If a licensee operates more than one facility, the licensee shall designate a person to supervise the operations of each facility.
- D.** Supervisors: Any staff member who supervises, evaluates, or monitors the work of the direct care staff shall have at least six months paid child care experience and at least 3 1/2 years of any combination of the following:
1. Paid child care or related experience; or
  2. Post-high school education in social work or a related field.
- E.** Direct Care Staff: A person who supervises, nurtures, or cares for a child in care shall have at least:
1. A high school diploma or equivalency degree and one year experience in working with children; or
  2. One year post-high school education in a program leading to a degree in the field of child welfare or human services.
- F.** Program Instructors: A person who supervises, trains, or teaches children in the performance of a physical activity that poses an unusually high risk of harm, such as archery, river rafting, rock climbing, caving, rappelling, and hang gliding, shall:
1. Be currently certified to perform the activity, if applicable;
  2. Have at least three years of experience related to the activity; or
  3. Have at least three letters of reference attesting to skill and experience in the activity.
- G.** CPR and First Aid Certification: A licensee shall ensure that:
1. Direct care staff are certified in pediatric cardiopulmonary resuscitation (CPR) and in first aid by the American Red Cross, the American Heart Association, or the Arizona Chapter of the National Safety Council within three months of being hired and before caring alone for children in care.
  2. At least one staff member per shift, per facility is currently certified in CPR and first aid.
- H.** Multiple Functions: A licensee may allow one person to perform multiple functions or fill more than one position so long as:
1. The person performing multiple functions is qualified for the jobs held; and
  2. The licensee does not violate the requirements of this Article, including R6-5-7437 governing staff-child ratios.
- I.** Exclusions: The educational requirements set forth in this Section do not apply to persons employed with a licensee on the effective date of this Article. These requirements do apply to:
1. Persons hired as employees after the effective date of this Article; and
  2. Persons who:
    - a. Are employed with a licensee on the effective date of this Article;
    - b. Subsequently separate from that employment; and
    - c. Later seek employment with the same or a different licensee.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7433. Orientation and Training for Staff**

- A.** A licensee shall have a written plan for orientation and training of all staff. The plan shall include a method for the licensee to evaluate whether the person has actually learned the information that was the subject of orientation or training.
- B.** All staff shall receive initial orientation and training before assignment to solo supervision of children. The initial orientation and training shall include:
1. Acquainting staff with the licensee's philosophy, organization, program, practices, and goals;
  2. Familiarizing staff with the licensee's policies and procedures, including those on confidentiality, client and family rights, grievances, emergencies and evacuations, behavior management, preventing and reporting child maltreatment, recordkeeping, medications, infection control, and treatment philosophy;
  3. Training staff in cardiopulmonary resuscitation (CPR) and first aid according to American Red Cross guidelines as prescribed in R6-5-7432(G);
  4. Training staff to do the initial health screening prescribed in R6-5-7438(E)(9); the licensee shall have a licensed medical practitioner provide this training;
  5. Training staff in de-escalation and any physical restraint practices used at the facility by an instructor qualified under this subsection. An instructor is qualified to train staff in de-escalation and physical restraint practices if:
    - a. The instructor has a written curriculum that conforms to the requirements of this Article and state law.
    - b. The classroom instruction provided conforms to the requirements of this Article and state law.
  6. Familiarizing staff with the specific child care responsibilities outlined in the person's job description;
  7. Training staff to recognize expected responses to and side effects of medications commonly prescribed for children in care; and
  8. Training staff in the licensee's emergency admissions process if applicable to the licensee's services.
- C.** The licensee's training plan for ongoing training shall satisfy the requirements of this subsection.
1. A full-time support staff member shall receive at least four hours of annual training.
  2. A full-time direct care staff member shall receive at least 24 hours of annual training.
  3. The training shall cover matters related to the person's job responsibilities, and at least the following subjects, as appropriate to the characteristics of the children in care at the facility:
    - a. Child management techniques;
    - b. Discipline, crisis intervention, and behavior management techniques;
    - c. A review of the licensee's policies;
    - d. Health care issues and procedures;
    - e. Maintenance of current certification in CPR and first aid;
    - f. Attachment and separation issues for children and families;

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- g. Sensitivity towards and skills related to cultural and ethnic differences;
- h. Self-awareness, values, and professional ethics; and
- i. Children's need for permanency and how the agency works to fulfill this need.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7434. Notification of Unusual Incidents and Other Occurrences**

- A. A licensee shall make a record of any unusual incident on an incident reporting form which shall include the following information:
  - 1. Location of the unusual incident;
  - 2. Name and address of any child involved in or observing the incident;
  - 3. Name of the agency if different from the facility;
  - 4. Name, title, and address of any staff involved in or observing the incident;
  - 5. Name and address of any other person involved in or observing the incident;
  - 6. Date of the incident;
  - 7. Time of the incident;
  - 8. Description of the incident; and
  - 9. Licensee's response to the incident.
- B. The licensee shall maintain a record of all unusual incidents occurring at the facility in a separate log or place, which shall permit the Licensing Authority to easily locate the incident reporting form if the licensee maintains the form in a location separate from the log.
- C. When a child in care dies, the licensee shall notify the child's placing agency or person, and the Licensing Authority within two hours of knowledge of the death.
- D. When a child in care suffers a serious illness, serious injury, or a severe psychiatric episode requiring hospitalization, the licensee shall notify the child's placing agency or person within 24 hours of knowledge of the occurrence.
- E. A licensee shall comply with the statutory obligation to report child maltreatment, as prescribed in A.R.S. § 13-3620.
- F. A licensee shall comply with any reporting requirements set forth in the licensee's contracts with placing agencies or persons.
- G. No later than 5:00 p.m. on the next business day, the licensee shall notify the Licensing Authority when any of the following occurs:
  - 1. Fire or a natural disaster affecting the licensee;
  - 2. Law enforcement involvement in which a formal complaint is filed by or against the licensee, but excluding incidents of children cited solely for absence without leave from the facility;
  - 3. Any incident of alleged child maltreatment of a child in care;
  - 4. When a child in care or any other person suffers any injury from use of restrictive behavior management, and which requires treatment by a licensed medical practitioner;
  - 5. When a child in care suffers any physical injury from an incident involving another child in care and requires treatment by a licensed medical practitioner;
  - 6. When a child in care suffers an injury or psychiatric episode that is severe enough to require hospitalization or external medical intervention for the child; and

7. When a child in care requires external emergency services including a suicide watch.

- H. Within five calendar days, a licensee shall give the Licensing Authority written documentation of an event listed in subsection (G) above. The documentation shall contain at least the information required by subsection (A), and may be a copy of the licensee's unusual incident reporting form.
- I. If a child in care dies, a licensee shall notify the local law enforcement authority and cooperate in any arrangements for examination, autopsy, and burial.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7435. Investigations of Child Maltreatment**

- A. A licensee shall have written procedures for handling alleged and suspected incidents of child maltreatment, including at least the following provisions:
  - 1. Reporting suspected incidents of maltreatment to law enforcement or Child Protective Services as required by A.R.S. § 13-3620;
  - 2. Notifying the Licensing Authority, and notifying the child's placing agency or person if so requested;
  - 3. Taking precautions to prevent further risk to the child who allegedly suffered the maltreatment and potential risk to other children in care;
  - 4. Evaluating the retention of any staff who commit or allow child maltreatment; and
  - 5. If the licensee internally investigates incidents, conducting the internal investigation.
- B. A licensee shall require all staff to read and sign a statement describing the duty to report child maltreatment as prescribed in A.R.S. § 13-3620.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7436. Runaways and Missing Children**

A licensee shall have a written policy and procedures for handling runaways and missing children. The policy shall include at least the following:

- 1. Procedures for making staff who provide services to a child with a history of or potential for running away, aware of that child's history or potential;
- 2. Procedures for immediately notifying the designated administrator of the child's facility or that person's designee when a child is discovered to be missing;
- 3. Procedures for notifying the local law enforcement agency, the child's placing agency or person, and others as necessary;
- 4. Procedures to prevent runaways; and
- 5. Procedures for submitting a written report to the child's placing agency or person within five days or the time specified in the placement agreement.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7437. Staff Coverage; Staff-child Ratios**

- A. A licensee shall have a written plan to minimize the risk of harm to children. The written plan shall describe the staffing for each facility, for 24 hours per day, seven days per week. The staffing plan shall explain:
  - 1. How staff coverage is assured:
    - a. When assigned staff are absent due to illness, vacation, or other leaves of absence; and

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- b. During emergencies when only one staff member is on duty; and
2. The methods the licensee uses to assure adequate communication and support among staff to provide continuity of services to children.
- B.** A licensee shall also have a written staffing schedule for each facility shift; the schedule shall document the staff actually on duty during each shift. The licensee shall retain the schedules in one designated location for at least two years.
- C.** A licensee shall have at least the paid staff to child ratios prescribed in this subsection.
1. Age 12 and above:
    - a. At least one paid staff member for each 10 children when children are under the licensee's direct supervision and awake.
    - b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
  2. Age 6 through 11:
    - a. At least one paid staff member for each eight children when children are under the licensee's direct supervision and awake.
    - b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
  3. Age 3 through 5:
    - a. At least one paid staff member for each six children when children are under the licensee's direct supervision and awake.
    - b. At least one paid staff member in each building where children in care are sleeping.
  4. Under age 3:
    - a. At least one paid staff member for each five children when children are under the licensee's direct supervision and awake.
    - b. At least one paid staff member for each six children when children are sleeping.
  5. Nonambulatory children, under age 6: At least one paid staff member for each four children at all times.
  6. Young adults:
    - a. At least one paid staff member onsite for each 10 young adults when young adults are under the licensee's direct supervision and awake.
    - b. During sleep hours, at least one paid staff member onsite for each 20 young adults.
- D.** For the purpose of the paid staff-child ratios in subsection (C):
1. Students and volunteers do not count as staff;
  2. A child who lives at the facility is counted as a child, unless the child is not in the care, custody, and control of the state of Arizona, and the child's parent is:
    - a. In care, residing in the same facility; and
    - b. Determined to be the child's primary caregiver by:
      - i. The placing agency;
      - ii. A court; or
      - iii. The licensee, when subsections (i) and (ii) do not apply;
  3. When a child resides with a parent in a facility licensed under this Article, the licensee shall provide, at the Department's request, documentation of:
    - a. The custodial relationship between parent and child; and
    - b. If applicable, the determination that the parent is an acceptable primary caregiver for the child.
  4. Any paid staff member counted in the ratio shall be someone who is qualified to provide direct child care as prescribed in R6-5-7432(E).
- E.** A licensee shall not fall below the minimum paid staff-child ratios specified in subsection (C), and shall, notwithstanding those ratios, have paid staff:
1. Sufficient to care for children as prescribed in this Article and in the licensee's own program description, statement of purpose, and policies;
  2. That take into account the following factors:
    - a. The ages, capabilities, developmental levels, and service plans of the children in care;
    - b. The time of day and the size and nature of the facility; and
    - c. The facility's history and the frequency and severity of unusual incidents, including runaways, sexual acting-out behavior, disciplinary problems, and injuries.
- F.** A licensee shall have sufficient numbers of qualified staff to perform the fiscal, clerical, food service, housekeeping, and maintenance functions prescribed in this Article and in the licensee's own policies.
- G.** A licensee shall make a good faith effort to employ staff who reflect the cultural and ethnic characteristics of the children in care.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

**R6-5-7438. Admission and Intake; Criteria; Process; Restrictions**

- A.** Admissions: A licensee shall have a written admissions policy, which shall:
1. Describe the licensee's admission criteria, including:
    - a. Population to be served, including age range, gender, physical development, social behavior, and custody and guardianship status;
    - b. Geographic area of service;
    - c. The needs, problems, and child-related issues best served at the licensee's facility; and
    - d. The method used to assign a child to a particular living unit;
  2. Contain an acknowledgment that the licensee abides by the Interstate Compact on the Placement of Children, the Indian Child Welfare Act, and the Interstate Compact on Juveniles; and
  3. Provide that the licensee shall not refuse admission to any child on the grounds of race, religion, or ethnic origin.
- B.** Age Limit; Continuing Care for Persons in High School: A licensee shall not admit a person who is age 18 or older, except a licensee may continue to care for an individual under age 22 who was a child in care and turned age 18 while in care, as long as the individual is currently enrolled in and regularly attending a high school program or vocational training program. A licensee shall not allow an individual to remain in care after the individual receives a high school degree or certificate of equivalency, or completes the vocational training program.
- C.** Admissions Outside of Criteria: A licensee shall not accept a child who is not within the licensee's admission criteria unless:

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1. The placing agency or person specifically authorizes the admission after reviewing the agency's program description;
  2. The admission is consistent with the terms of the agency's license and will not result in a violation of this Article; and
  3. The child's individual service plan explains:
    - a. The reasons for acceptance, and
    - b. How the facility will meet the child's needs.
- D. Intake Assessment:**
1. A licensee shall not accept a child into care unless:
    - a. The child has a current intake assessment covering the child's social, health, educational, legal, family, behavioral, psychological, and developmental history; or
    - b. The licensee completes such an assessment within seven days following the child's admission.
  2. In this subsection, "current" means within the six months prior to admission.
- E. Admission and Intake Process and Requirements:** The licensee shall have a written policy and procedures describing the process and requirements for both regular and emergency admissions and intake. The policy shall include the provisions listed in this subsection.
1. The licensee shall have a method to allow a child to participate in admission and intake decisions, including selection of a living unit, if developmentally appropriate and consistent with the licensee's program.
  2. The licensee shall provide the placing agency or person with a reasonable opportunity to participate in admission and intake decisions.
  3. Except for emergency admissions as prescribed in subsection (F), the licensee shall not admit a child unless the licensee has, at the time of or prior to admission:
    - a. A written agreement with the child's placing agency;
    - b. A court order; or
    - c. The written consent of the child's custodial parent or guardian.
  4. The licensee shall obtain any available medical information about the child before or at the time of the child's admission. The information may include:
    - a. A report of a medical examination of the child performed within 45 days prior to admission;
    - b. A report of a dental examination of the child performed within six months prior to admission; and
    - c. The child's and family's medical history.
  5. If the information described in subsection (D)(4) is not available, the licensee shall comply with the requirements of R6-5-7452 to obtain an examination.
  6. At the time of or prior to admission, the licensee shall obtain written consent from the child's placing agency or person for the licensee to authorize routine medical and dental procedures for the child.
  7. If a child is taking medication at the time of admission, the licensee shall:
    - a. If the medication is in its original container, labeled by the dispensing pharmacist with a fill date, prescribing physician, and instructions for administration, document the receipt of the medication as prescribed in subsection (E)(7)(c); or
    - b. If the medication is not in its original container, or if the container is not labeled as described in subsection (E)(7)(a), contact the prescribing physician to verify the medication administration schedule and reason for the medication; and
    - c. Document the contact in the child's medical record required by R6-5-7455 and the medication administration schedule as prescribed in R6-5-7453(B).
  8. A licensee shall not refill a prescription that a child brings at admission without having a licensed medical practitioner determine the child's need for the medication and documenting the need as prescribed in subsection (E)(7)(c).
  9. Within 24 hours of a child's admission, a direct care staff member who has the training prescribed in R6-5-7433(B)(4), or a licensed medical practitioner, shall assess the child's general health, by:
    - a. Looking at the child for signs of obvious physical injury and symptoms of disease or illness;
    - b. Assessing the child for evidence of apparent vision and hearing problems; and
    - c. Documenting any conditions or problems and referring the child for immediate or further assessment or treatment, if indicated.
- F. Emergency Admissions:** In an emergency situation requiring immediate placement, a licensee shall:
1. Gather as much information as possible about the child and the circumstances requiring placement;
  2. Record this information in the child's record, within two days of admission, as an emergency admission notation; and
  3. Keep an emergency admission record, which shall include at least the following information about the child:
    - a. Physical health,
    - b. Family history,
    - c. Educational background,
    - d. Legal status, and
    - e. A statement explaining the need for care.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7439. Information and Services Provided to the Placing Agency or Person**

- A.** No later than the date of a child's admission, a licensee shall provide information about the following subjects to the placing agency or person.
1. The licensee's statement of purpose and program description prescribed in R6-5-7423(A) and (B);
  2. Daily routines at the facility where the child is or will be placed;
  3. The behavior management policies and procedures prescribed in R6-5-7456;
  4. Services and treatment strategies provided or used at the facility;
  5. The visitation and communications policy prescribed by R6-5-7448;
  6. The education program or method for providing a child with education;
  7. Any religious practices observed by the licensee or religious observances required of children.
- B.** The licensee may provide the information in summary form or orally, but shall:
1. Convey the information in a language or form that the placing agency or person can understand;
  2. Advise the placing agency or person that the licensee will provide a copy of the licensee's policies or procedures, upon request.
  3. Provide the name and telephone number of a staff person that the placing agency or person may contact to obtain information about the program, facility, or child.

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- C. The licensee shall provide the placing agency or person with a copy of the licensee's grievance procedures required by R6-5-7429 and the statement of client rights required by R6-5-7423(C).
- D. The licensee shall obtain the dated signature of the placing agency or person indicating receipt of the information listed in subsections (A) through (C).
- E. Before obtaining the signature of a child's parent or guardian on a contract, consent, or release, the licensee shall explain the contents of the documents.
  1. If a child has an existing service plan at the time of admission, the licensee shall:
    - a. Review the plan before or at the time of the child's admission, and
    - b. Assess the existing plan and make any necessary changes to conform to the requirements of this Section.
  2. If a child does not have a service plan at the time of admission, the licensee shall initiate service planning at the time of admission.
  3. Within seven days of a child's admission, a licensee shall document all interim planning efforts identifying the child's needs and initial plans for service.
  4. No later than 30 days after the child's admission to a facility, the licensee shall complete the child's initial service plan and any initial modifications to an existing plan.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7440. Orientation Process for a Child In Care**

- A. A licensee shall provide a child admitted into care with the orientation described in this Section in a language and manner that the child can understand and to the extent developmentally appropriate to the child.
- B. During the first full day of a child's placement, a licensee shall:
  1. Explain the facility's emergency procedures,
  2. Show the child where emergency exits are located,
  3. Take the child on a tour of the facility, and
  4. Introduce the child to staff and other residents.
- C. During the first week following a child's admission and as part of each child's orientation, a licensee shall:
  1. Familiarize the child with the licensee's program;
  2. Explain the licensee's expectations and requirements for behavior;
  3. Explain the criteria for successful participation in and completion of or emancipation from the program;
  4. Make available a copy of the behavioral rules prescribed by R6-5-7456(A)(3)(a), (b), (c), (d), and (h);
  5. Make available a copy of the visitation and communication policy prescribed by R6-5-7448; and
  6. Describe and, upon request, make available a copy of the grievance procedures prescribed by R6-5-7429 and the statement of client rights prescribed by R6-5-7423(E).
- D. The licensee shall document the orientation and other information given to a child in the child's case record.
  1. Plan Review: The licensee shall review and update a child's service plan at least every 90 days following completion of the child's service plan described in subsection (B)(4).
  2. Planning Participants:
    1. The licensee shall invite, or delegate the responsibility for inviting, at least the following persons to participate in development of the service plan and periodic review:
      - a. A representative of the facility;
      - b. A representative of the placing agency, if applicable;
      - c. The child, if the child's presence is developmentally appropriate; and
      - d. The child's parent or guardian.
    2. At least one participant on the service team shall have the qualifications listed in R6-5-7432(B)(1) or (2).
  3. Methods of Participation: The licensee shall allow service team members to participate in service planning through the following methods:
    1. Attendance at a planning meeting,
    2. Submission of a written report or documentation,
    3. Review and approval of the plan through signing and dating, or
    4. Audio or audio-visual teleconference.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7442. Discharge; Discharge Summary**

- A. Policy and Procedure: A licensee shall have written policy and procedures for planned and unplanned discharges of children.
    1. Before a child's planned discharge, the licensee shall explain the discharge plan to the child and help the child understand the plan.
    2. The licensee shall also explain the discharge plan to the person removing the child.
    3. Before discharging a child to another out-of-home placement, the licensee shall make a reasonable effort to:
      - a. Arrange for the service team to meet or communicate with a representative from the new placement to share information about the child; and
      - b. Arrange for the child to visit the new placement.
  - B. Discharge Summary: Within 15 days of the date a child is discharged, the licensee shall complete a written discharge summary which shall include the following information:
    1. The name, address, telephone number, and relationship of the person to whom the child was discharged;
    2. The planned and actual discharge dates;
    3. A summary of the contacts between the licensee and the facility or person to whom the child was discharged about the child's pending discharge;
    4. A summary of services provided during care;
- B. Timing for Plan Development and Review:

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5. A list of medication provided during care, with a summary of the reasons for prescribing the medication and any outcomes of the medication;
  6. A summary of progress toward service plan goals;
  7. An assessment of the child's unmet needs and alternative services which might meet those needs;
  8. Any after-care plan and identification of any person or agency responsible for follow-up services and after-care; and
  9. For an unplanned discharge, a description of the circumstances surrounding the unplanned discharge, including the licensee's actions.
- C. Notice of Unplanned Discharge: When a child's placing agency or person has not participated in the decision to discharge the child, the licensee shall notify the placing agency or person within one hour of discharge, or document attempts at notification.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7443. Personal Care of Children**

- A. A licensee shall provide children in care with:
1. Developmentally appropriate supervision, assistance, and instruction in, good habits of personal care and hygiene and culturally appropriate grooming;
  2. Necessary toiletry items; and
  3. The opportunity to have a daily shower or tub bath in private, as developmentally appropriate, or as otherwise prescribed in program policy.
- B. A licensee shall not allow community use of grooming and hygiene articles such as towels, toothbrushes, soap, hairbrushes, and deodorants.
- C. If a licensee restricts personal care or grooming practices, the licensee shall have a policy describing the restrictions and the reasons for the restrictions.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7444. Children's Clothing and Personal Belongings**

- A. A child may bring clothing and personal belongings to the facility and acquire belongings while in care, in accordance with the child's service plan and the facility's policy.
- B. If a licensee limits a child's right to have, wear, or display certain clothes or personal belongings, the licensee shall:
1. Have a written policy explaining the limitations and the reasons for the limitations; and
  2. Explain the limitations to the child in a form and manner that the child can understand.
- C. When a child is admitted, the licensee shall inventory the child's clothing and personal belongings; the licensee shall provide a copy of the inventory to the placing agency or person and keep a copy in the child's file.
- D. The licensee shall either store any restricted possessions or return the possessions to the child's placing agency or person.
- E. The licensee shall ensure that each child has a personal supply of clean and seasonable clothing as required for health, comfort, and physical well-being and as appropriate to the child's age, gender, size, and individual needs.
- F. The licensee shall allow a child to help select his or her own clothing when developmentally appropriate and allowed by programmatic requirements.
- G. The licensee shall have a policy governing retention, return, and disposal of the clothes and personal belongings of a child who has had an unplanned discharge. At the time of a child's

planned discharge, the licensee shall allow the child to take clothing and personal belongings.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7445. Children's Money; Restitution**

The licensee shall provide opportunities for children to develop a sense of the value of money through allowances, earnings, spending, giving, and saving. Any practices regarding children's money shall comply with this Section.

1. The licensee shall have a written policy regarding allowances.
2. The licensee shall treat a child's money as that child's personal property.
3. The licensee may limit the amount of money to which a child may have access when the limitations are:
  - a. In the child's best interest and explained in the child's service plan; or
  - b. In accordance with the facility's program description.
4. The licensee shall not deduct sums from a child's allowance as restitution for damages caused by the child unless:
  - a. The licensee has discussed restitution with the child; and
  - b. The deduction is:
    - i. Reasonable in amount,
    - ii. Consistent with the child's ability to pay,
    - iii. In accordance with the licensee's policy, and
    - iv. Explained in the child's service plan.
5. The licensee shall maintain individual accounting records for the money of each child.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7446. Nutrition, Menus, and Food Service**

- A. A licensee shall have a written, dated menu of planned meals. The menu shall be available at the facility at least one week before meals are served. The licensee shall post the weekly menu in the dining area or in a location where children may review it. The licensee shall keep a copy of the menu and any menu substitutions on file for one year.
- B. The licensee shall prepare and serve meals in compliance with the written, dated menus.
- C. A registered nutritionist or dietitian shall either prepare or approve the licensee's menus. The licensee shall maintain a record of any approvals for one year, and keep the record in a central location at the agency or facility.
- D. A licensee shall develop and follow a specialized menu for a child with special nutritional needs. The licensee shall make special menus available to nutritional staff, but shall not post special menus in an area that is readily seen by other children in care.
- E. Menus shall reflect the religious, ethnic, and cultural differences of children in care.
- F. When developmentally appropriate, a licensee shall allow children to make menu suggestions.
- G. A licensee shall provide each child with at least three meals daily, with no more than 14 hours between the evening and morning meals. Between meal snacks shall not replace regular meals.
- H. A licensee shall provide meal portions that are consistent with each child's caloric needs.

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- I. A licensee shall serve children meals that are substantially the same as those served to staff unless special dietary needs require differences in diet.
- J. A licensee shall allow children to eat at a reasonable rate; unless otherwise prescribed in agency policy, staff shall encourage social interaction and conversation during meals.
- K. A licensee shall have potable water available at all times.
- L. Staff shall directly supervise children involved in food preparation.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7447. Sleeping Arrangements**

A licensee shall comply with the sleeping arrangement provisions in this Section.

1. A child age 6 or older shall not share a bedroom with a child of the opposite gender.
2. A child shall not share a bedroom with an adult unless one of the conditions listed in this subsection is met.
  - a. The child is younger than age 3.
  - b. The child's service plan contains specific reasons and authorization from the placing agency or person for a shared bedroom.
  - c. The child has a temporary need for special adult care during sleeping hours and the need is documented in the child's service plan.
  - d. The child has regularly shared a bedroom with another child in the licensee's care; the other child has reached age 18; and the placing agency and licensee agree that continuing the shared arrangement is in the best interests of both the child and the adult.
  - e. The child is sharing a room with his or her parent.
  - f. The sleeping area at the facility is a barracks that has been approved as described in R6-5-7461(B) and R6-5-7462(B), and a paid staff member sleeps in the same room to supervise the children in care.
3. Only children age 8 or older may sleep on the upper bed of a bunk bed.
4. If a child has a documented record of behavior that poses a risk to other children in care, the licensee, in consultation with the placing agency or person, shall develop special sleeping arrangements for that child, to minimize the risk of harm to other children. The licensee shall document the arrangements in the child's service plan.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

**R6-5-7448. Visitation, Outings, Mail, and Telephones**

- A. The licensee shall have a written policy and procedures regarding visitation, mail, telephone calls, and other forms of communication between children and family, friends, and other persons. The policy and procedures shall conform to the requirements of this Section.
  1. The licensee shall allow a child reasonable privacy during a visit unless the child's service plan requires supervised visitation.

2. A licensee shall have facility visiting hours which meet the needs of the children and their parents.
  3. A licensee shall not deny, monitor, or restrict a child's communication with the child's social worker, attorney, Court Appointed Special Advocate, guardian ad litem, or clergy. The licensee may establish a schedule and rules for communication to prohibit undue interference with programming.
  4. A licensee shall not deny, monitor, or restrict communications between a child and the child's parent, guardian, or friends except as prescribed:
    - a. By court order;
    - b. In the child's service plan, which shall contain specific treatment reasons for the restriction which shall be time limited; or
    - c. In the facility's policy and statement of purpose required by R6-5-7423.
  5. The licensee may require a child to open mail in the presence of staff in order to inspect the mail for contraband.
  6. When a licensee is monitoring a communication as allowed in subsection (A)(4) above, the licensee shall tell the parties to the communication about the monitoring.
- B. The licensee shall have written policy and procedures to govern situations when a child temporarily leaves the facility on a visit or outing with a person other than a staff member. The procedures shall include:
    1. A method for recording the child's location, the duration of the activity, and the anticipated and actual time of the child's return;
    2. The name, address, and telephone number of the person responsible for the child while the child is absent from the facility; and
    3. A procedure for action if a child fails to return.
  - C. Subsection (B) does not apply to regularly scheduled trips to school.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7449. Educational and Vocational Services; Work Assignments**

- A. The licensee shall have a written policy regarding its educational program or a plan for ensuring that each child attends an educational program in accordance with state and local laws.
- B. Within 10 local school days of a child's admission to a facility, the licensee shall arrange for the educational needs of the child. The arrangements shall:
  1. Meet the child's individual needs;
  2. Be consistent with the child's Individual Education Plan (I.E.P.) if applicable; and
  3. Comply with federal and state education laws.
- C. The licensee shall communicate with staff at an educational program in which a child in care is enrolled to discuss the child's progress. At a minimum, the licensee shall attend scheduled parent-teacher conferences.
- D. If a child's service plan provides for the child to receive vocational services, the licensee shall comply with the plan requirements.
- E. The licensee shall provide children in care with:
  1. Space for quiet study;
  2. Developmentally appropriate supervision and assistance with homework; and
  3. Access to necessary reference materials.
- F. The licensee may use work assignments to provide an instructional experience for children in care, but shall not use a child as an unpaid substitute for staff.

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- G. A work assignment shall be developmentally appropriate for a child, and scheduled at a time that does not interfere with other routine activities such as school, homework, sleep, and meals.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7450. Recreation, Leisure, Cultural Activities, and Community Interaction**

- A. A licensee shall have a written plan for making a variety of cultural, religious, indoor and outdoor recreational and leisure opportunities available for children in care. The plan shall:
1. Reflect the interests and needs of the children in care, including an allotment of time for children to pursue individual interests, and time to address the special needs of the children in the living unit;
  2. Provide for use of community resources such as schools, museums, libraries, parks, recreational facilities, and places of worship; and
  3. Specify procedures for children's participation in community activities and use of community resources.
- B. A licensee shall help children in care learn about the community in which the facility is located and use community resources, as developmentally appropriate.
- C. A licensee shall arrange transportation and supervision so that children in care can attend community activities and maximize use of community resources.
- D. The licensee shall make available recreational equipment that is suitable to the size, age, and developmental level of children in care.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7451. Religion, Culture, and Ethnic Heritage**

- A. A licensee shall have a written description of:
1. Its religious orientation, if any;
  2. Any religious practices observed at a facility;
  3. Any restrictions on admission based on religion; and
  4. How the licensee provides opportunities for each child to participate in religious activities in accordance with the faith of the child or the child's parent or guardian.
- B. A licensee's program and the service plans of children in care shall reflect consideration of and sensitivity to the racial, cultural, ethnic, and religious backgrounds of children in care.
- C. A licensee may encourage children to participate in religious, cultural, and ethnic activities but shall not require children to participate unless otherwise provided in the licensee's statement of purpose and program description.
- D. If a child asks to change religious affiliation while in care, the licensee shall obtain the written permission of the child's parent or guardian before assisting the child in making the change. A licensee is not required to obtain this permission if a child changes religious affiliation without the licensee's assistance.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7452. Medical and Health Care**

- A. General health care.
1. A licensee shall have a written plan for meeting the preventive, routine, and emergency physical and mental health needs of children in care. The plan shall identify where and from whom children at a facility may obtain

qualified health care, 24-hours per day, seven days per week.

2. A licensee shall ensure that children in care receive:
  - a. Preventive health services, including routine medical examinations and dental cleanings and examinations; and
  - b. The following health services, if necessary:
    - i. Evaluation and diagnosis,
    - ii. Treatment, and
    - iii. Consultation.
3. A licensee shall ensure that a child in care receives a developmentally appropriate explanation of any health treatment the child receives, in a language and manner the child can understand.
4. A licensee shall not ignore a child's complaints of pain or illness and shall document persistent complaints and any actions taken in response to the complaints.

**B. Medical care.**

1. A licensee shall arrange for a physician, physician's assistant, or nurse practitioner to give a child a medical examination within one week of the child's admission unless:
  - a. A licensed medical practitioner examined the child within the 45 days preceding the child's admission; and
  - b. The licensee has a report of the examination as prescribed in R6-5-7438(E)(4)(a).
2. A licensee shall also arrange for a child in care to receive an annual medical exam from a physician, physician's assistant, or nurse practitioner.
3. The initial and annual medical examinations shall include:
  - a. Screening for communicable disease unless restricted by law;
  - b. Vision and hearing screening; and
  - c. For children who wish to participate in sports or physically strenuous activities such as backpacking, an evaluation of the child's capacity to participate.
4. A licensee shall obtain a report of the examination, and, if applicable, a statement signed by the medical practitioner conducting the examination, or the practitioner's designee, regarding the child's capacity, fitness, and clearance to participate in sports or physically strenuous activities.
5. After attempting to determine a child's immunization history, a licensee shall arrange for the child to receive any routine immunizations and booster shots within 30 days of admission.

**C. Dental care.**

1. A licensee shall arrange for each child to have a dental examination within 60 days of admission unless the licensee is provided the written results of a dental examination conducted within six months prior to admission.
2. A licensee shall arrange for each child age 3 and older to receive a dental examination every six months.
3. In cooperation with the placing agency or person, a licensee shall arrange for a child to receive any prescribed dental care.

**D. First aid. A licensee shall equip the residence of each living unit with at least the following first aid supplies:**

1. Adhesive strip bandages;
2. Sterile, individually wrapped gauze squares;
3. Roller gauze;
4. Adhesive tape;
5. Individually wrapped non-stick sterile pads;
6. A triangular bandage to be used for a sling;
7. Disposable latex gloves;

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8. A pair of scissors;
9. A pair of tweezers; and
10. A cardiopulmonary resuscitation mouth guard or mouth shield.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7453. Medications**

- A. A licensee shall have written policies and procedures governing medications. The policies and procedures shall specify:
  1. The conditions under which medications can be prescribed and administered which shall be in accordance with any applicable laws;
  2. The qualifications of the persons allowed to administer medications;
  3. The qualifications of persons allowed to supervise self-administration of medication;
  4. How a facility will document the prescription and administration of medication, medication errors, and drug reactions; and
  5. How staff will notify a child's attending physician in cases of medication errors and drug reactions.
- B. The licensee shall have a written medication schedule for each child who receives medication. The schedule shall include the following information:
  1. Child's name;
  2. Name of the prescribing physician;
  3. Telephone number at which the prescribing physician can be reached in case of medical emergency;
  4. Reason for prescribing the medication;
  5. Date on which the medication was prescribed;
  6. Generic or commercial name of the medication;
  7. Dosage level and time of day when medication is to be administered, including any special administration instructions;
  8. The date, time, and dosage administered; and
  9. The signature of the person administering each dosage. If the medication is self-administered, the chart shall include the signature of the child and the person supervising the child's self-administration.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7454. Storage of Medications**

A licensee shall store medications as prescribed in this Section.

1. Medications shall be kept in securely locked spaces that are not used for any other purpose and to which children do not have access.
2. All medications requiring refrigeration shall be stored separately from food items, in a locked container, in a refrigerator and under temperature ranges recommended by the manufacturer.
3. All prescription medication shall be kept in its original container which shall have a label with the following information:
  - a. Child's name;
  - b. Name of the medication;
  - c. Prescribing physician;
  - d. Date of purchase and, if known, expiration date; and
  - e. Directions for administering.
4. All over-the-counter medication shall be kept in its original container with the manufacturer's label.
5. At least once every 90 days, the licensee shall dispose of all:

- a. Outdated medications;
- b. Medications for children no longer at the facility; and
- c. Medications specifically prescribed for an illness from which a child has recovered.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7455. Children's Medical and Dental Records**

A licensee shall maintain health records for each child. The records shall include the information listed in this Section if available to the licensee.

1. The child's past medical history of:
  - a. Immunizations,
  - b. Serious illness or injuries,
  - c. Surgeries,
  - d. Known allergies, and
  - e. Adverse drug reactions.
2. Developmental history.
3. Medication history.
4. History of any alcohol or substance abuse and treatment.
5. Immunizations provided while in care.
6. Medications received while in care and a record of any medication errors.
7. Copies of consents for treatment or care.
8. Authorization to participate in sports or physically strenuous activities, if applicable.
9. Reports of vision and hearing screening and physical and dental examinations.
10. Record of any treatment provided for specific illness or medical emergencies, including the name and location of medical personnel who provided treatment.
11. The name of the person or agency bearing financial responsibility for the child's health care.
12. Documentation showing the licensee's efforts, consistent with the terms of the placing agreement, to obtain glasses, hearing aids, prosthetic devices, corrective physical or dental devices, or any other health equipment recommended by a child's attending physician.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7456. Behavior Management**

A. A licensee shall have written behavior management policies and procedures which shall:

1. Be developmentally appropriate for the children in care;
2. Be designed to encourage and support the development of self-control;
3. Describe the following:
  - a. Behavior expectations of children;
  - b. Consequences for violations of the licensee's policies and rules which shall be:
    - i. Reasonably related to the violation; and
    - ii. Administered without prolonged and unreasonable delay;
  - c. Physical restraint and restrictive behavior management techniques used by the licensee;
  - d. The kinds of behaviors warranting use of physical restraints or restrictive behavior management techniques;
  - e. The licensee's methods of documenting use of physical restraints or restrictive behavior management techniques;

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- f. Behavior management techniques which require supervisory authorization or written documentation before being used;
  - g. The licensee's process for supervisory review to evaluate whether staff properly applied the restraints or techniques in a particular case; and
  - h. Behavior management techniques prohibited by the licensee.
- B.** The licensee's staff are responsible for control and discipline of children in care. The licensee shall not allow children to discipline other children.
- C.** The licensee shall not threaten a child or allow any child to be subjected to maltreatment, abuse, neglect, or cruel, unusual, or corporal punishment, including the following practices:
- 1. Spanking or paddling a child;
  - 2. All forms of physical violence inflicted in any manner upon the body;
  - 3. Verbal abuse, ridicule, or humiliation;
  - 4. Deprivation of shelter, bedding, food, water, clothing, sufficient sleep, or opportunity for toileting;
  - 5. Force-feeding, except as prescribed by a licensed medical practitioner;
  - 6. Placing a child in seclusion;
  - 7. Requiring a child to take a painfully uncomfortable position, such as squatting or bending for extended periods of time; and
  - 8. Administration of prescribed medication or medication dosage without specific physician authorization.
- D.** To determine whether a licensee has violated subsection (C)(7), the Licensing Authority shall consider all the circumstances at the time of the action, including the following:
- 1. The child's physical condition;
  - 2. Whether the child was taking any medications that may have affected the child's ability to perform the action, such as psychotropic medications or antibiotics;
  - 3. The climatic conditions under which the child was performing the action, such as intense heat or cold, rain, or snow;
  - 4. The level of force, if any, the licensee used to require the child to perform the activity and whether any use of force resulted in injury to the child; and
  - 5. Whether the activity was consistent with the licensee's program description and procedures.
- E.** The behavior management practices listed in this subsection are restricted. A licensee may use a restricted practice only when the licensee satisfies the conditions listed in subsection (F) and any additional conditions listed in this subsection.
- 1. Required physical exercises such as running laps or performing push-ups, and assignment of physically strenuous activities, except:
    - a. As expressly prescribed in a child's service plan and as part of a regular physical conditioning program, or as part of a work experience that meets the requirements of R6-5-7449(F) and (G);
    - b. With documented clearance by a physician who is knowledgeable about the physical activities in which the child will participate; and
    - c. Within sight supervision of staff.
  - 2. Disciplinary measures taken against a group because of the individual behavior of a member of the group.
  - 3. Denial of visitation or communication with significant persons outside the facility solely as a consequence for inappropriate behavior.
  - 4. Use of a mechanical restraint unless:
    - a. The licensee's policy lists the qualifications of staff allowed to use the restraint;
    - b. Staff allowed to use the restraint have received training in the proper use of the restraint;
    - c. The licensee has documentation of the restraint training in the personnel file of the staff member;
    - d. Use of the restraint is authorized in a child's individual service plan; and
    - e. Staff have tried less restrictive measures which have failed.
- 5.** Physical restraint, except:
- a. When the child needs restraint to prevent danger to the child or danger to another; and
  - b. After staff have tried less restrictive measures which have failed.
- F.** A licensee may use a restricted practice only when the practice and the circumstances warranting its use are:
- 1. Consistent with the licensee's program description and purpose;
  - 2. Described in the licensee's behavior management policy;
  - 3. Used as prescribed in this Section; and
  - 4. Not otherwise prohibited by these rules.
- G.** If a licensee cannot use a specific physical restraint or behavior management technique on a particular child, the child's service plan shall describe the restriction.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7457. Body Searches**

If a licensee permits a body search of children in care, the licensee shall have a written policy describing the conditions warranting a body search and the procedures for conducting the search.

- 1. When searching a child, staff shall use the minimum amount of physical contact required to determine if the child has contraband.
- 2. The licensee shall not conduct an internal body cavity search on a child.
- 3. The licensee shall not use any instruments to search a child.
- 4. The licensee shall not conduct a strip search beyond underwear.
- 5. Unless a licensed medical practitioner is searching a child, a person of the same gender as the child shall do the search.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7458. Buildings; Grounds; and Water Supply**

- A.** Structures and Improvements: A licensee shall maintain a facility's structures and improvements in good repair, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:
- 1. Repair doors, windows and other building features that protect a building from weather damage or pest infestation, within 48 hours of finding that the building part is in disrepair;
  - 2. Document efforts to make or obtain repairs if repairs cannot be completed in 48 hours;
  - 3. Keep buildings free of vermin infestation;
  - 4. Keep exits free of obstruction or impediments to immediate use; and
  - 5. Have barriers appropriate to the developmental needs of children in care to prevent falls from porches and elevated areas, walkways, and stairs.
- B.** Exits: The licensee shall equip each building used by children with exits as prescribed in this subsection.

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1. Each building shall have at least two exterior means of egress on each floor.
  2. Exits above ground level shall have an outside fire escape or a fire-resistant stairwell that has been approved by the state or a local fire inspector.
  3. Exit doors shall have only locks that allow the doors to be opened from the inside without use of a key or knowledge of special or restrictive operating procedures.
- C.** Grounds: A licensee shall maintain a facility's grounds in good condition, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:
1. Store garbage and rubbish in non-combustible, covered containers, separate from play areas;
  2. Remove refuse and recyclables from the building at least once a day;
  3. Remove refuse and recyclables from the facility grounds at least once a week.
  4. Use safeguarding measures to separate children in care from potentially hazardous areas on or near the facility grounds;
  5. Maintain fences and other barriers in good repair; and
  6. Locate and install playground or recreational equipment at the facility in accordance with the manufacturer's instructions and recommendations, and maintain the equipment in good repair and in accordance with the manufacturer's instructions and recommendations.
- D.** Water supply: If a facility's water is from any source other than an approved public water supply, the licensee shall obtain a written water analysis report, showing that the water is potable and meets the applicable requirements for safe drinking water in 18 A.A.C. 4. The licensee shall get the analysis and report from a laboratory certified by the Department of Health Services before initial operation and each annual renewal.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7459. Building Interior**

- A.** A licensee shall ensure that a facility's physical plant can structurally accommodate the physical and program needs of all children in care according to the standards prescribed in this Article and the licensee's own program description.
- B.** The licensee shall keep a facility clean and sanitary.
- C.** The licensee shall have and maintain furnishings as prescribed in this subsection.
1. All living areas shall have furniture designed to suit the size and capabilities of the children in care.
  2. A licensee shall replace or repair broken, dilapidated, or defective furnishings and equipment.
  3. A licensee shall have mirrors in the facility to permit children in care to examine their personal appearance.
  4. A licensee shall secure the mirrors to walls at heights convenient to the children in care.
- D.** A licensee shall ensure that all spaces used by children have outside ventilation from a window, louvers, air conditioning, or other mechanical equipment. A window or door used for outside ventilation shall have a screen.
- E.** A licensee shall maintain a facility's residential environment at temperatures that do not:
1. Exceed 85° F,
  2. Fall below 65° F during daylight hours, or
  3. Fall below 60° F during sleeping hours.
- F.** A licensee shall use thermometers scaled at no more than 2 degree increments to determine temperature.

- G.** A licensee shall not use free-standing stoves that use wood, sawdust, coal, or pellets, or portable heaters as the primary source of heat for a residential area.
- H.** A licensee shall safeguard hot water radiators or steam radiators and pipes or any other heating device capable of causing a burn.
- I.** A licensee shall maintain and use all electrical equipment, wiring, cords, switches, sockets, and outlets in good working order, under safe conditions, in accordance with the manufacturer's recommendations, and as prescribed in this subsection.
1. Electrical outlets in areas accessible to children younger than 6 shall have safety plugs or plates.
  2. The licensee shall not:
    - a. Use extension cords exceeding 7 feet in length,
    - b. Allow extension cords to be connected together to extend their length, or
    - c. Allow extension cords to run across or through a room or to pass from one room into another.
- J.** A licensee shall provide illumination for a facility's rooms, corridors, and stairways so that children and personnel can perform activities and tasks safely and without eye strain.
- K.** A licensee shall illuminate a facility's outdoor walkways and premises so that children and personnel using areas at night can perform activities and tasks safely.
- L.** A licensee housing more than 10 children shall install and maintain emergency lighting systems in children's living quarters.
1. In this subsection, "emergency lighting system" means a battery or generator operated system that:
    - a. Automatically activates if electrical power fails; and
    - b. Provides sufficient light for persons to exit safely in an emergency.
  2. If a licensee provides written documentation showing that a facility's emergency lighting system meets applicable city or county building codes for such systems, the system is presumed adequate to satisfy this subsection.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7460. Kitchens; Food Preparation; and Dining Areas**

- A.** A licensee shall maintain a facility's kitchen and dining areas, and shall handle food, as prescribed in this Section.
- B.** The licensee shall:
1. Equip a facility kitchen used for meal preparation with the fixtures, appliances, equipment, tools, and utensils ("kitchen equipment") necessary for the safe and sanitary preparation, storage, service, and cleanup of food;
  2. Keep kitchen equipment clean and in good working order;
  3. Not use defective, damaged, tin, or aluminum dishes or utensils;
  4. Not use disposable dinnerware or flatware on a daily basis unless the licensee provides evidence, at the time of initial licensure and at each renewal, that disposable items are necessary to protect the health or safety of children in care;
  5. Maintain the temperature of potentially hazardous food at or below 45° F or above 140° F, except when the food is being handled or served;
  6. Cover all food that is to be transported outside of the kitchen and dining areas of the facility; and
  7. Not use home canned foods.

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- C. If a facility has more than 20 children, the licensee shall comply with the requirements in A.A.C. R9-8-132 through R9-8-137.
- D. If a facility has less than 21 children, the licensee shall comply with A.A.C. R9-8-113, R9-8-115, R9-8-116, R9-8-117, and R9-8-121 through R9-8-127, and shall have:
1. One refrigerator for each 10 children at a facility; and
  2. A three-compartment sink; or
  3. A National Sanitation Foundation (NSF)-listed dishwasher; or
  4. A domestic dishwasher with a sanitizer cycle.
- E. A facility shall have clean dining areas and tables which allow children, staff, and guests to eat together.
- and a designated space for hanging clothing in or near the child's bedroom.
- B. The square footage area prescribed in subsection (A)(2)(c) is presumed adequate. If a licensee operates a barracks type facility that does not meet these square footage requirements, the licensee shall present a written plan showing how the licensee's square footage provides enough space for sleeping, rest, study, recreation, ingress, and egress in an emergency. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.
- C. A licensee shall not have bedroom doors that can be locked.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7461. Sleeping Areas and Furnishings**

- A. A licensee shall provide each child in care with a designated area for rest and sleep as prescribed in this Section.
1. A licensee shall not use mobile dwellings, trailers, or vehicles as sleeping quarters.
  2. The licensee shall provide children in care with bedroom space that:
    - a. Has a direct source of natural light;
    - b. Has a window that:
      - i. Opens to the outside without a grill or other impediment to immediate, emergency exit;
      - ii. Can be easily opened from the inside;
      - iii. Measures at least 22 inches on each side; and
      - iv. Has a bottom sill that is no more than 48 inches from the floor; and
    - c. Is at least:
      - i. A 74 square foot floor area for a single occupant;
      - ii. A 50 square foot floor area for each occupant in a multiple sleeping area; or
      - iii. A 40 square foot floor area for each crib.
  3. The licensee shall provide each child in care with a bed that:
    - a. Is proportional to the child's height,
    - b. Is at least 30 inches wide,
    - c. Has a solidly constructed bed frame, and
    - d. Has safety railings if developmentally appropriate for the child using the bed.
  4. If a licensee uses a bunk bed, the bed shall be limited to a double bunk, and shall have sufficient head room to allow the upper occupant to sit up.
  5. A licensee shall use only cribs that have:
    - a. Bars or slats no more than 2 3/8 inches apart;
    - b. A mattress that fits snugly into the crib frame so that there is no space between the mattress and frame; and
    - c. No openings through which a child could place his or her head.
  6. A licensee shall provide sheets, pillow cases, and blankets for each child and shall maintain bedding in good repair, without tears or stains.
    - a. The licensee shall ensure that sheets and pillowcases are washed at least weekly and more frequently if necessary.
    - b. The licensee shall use water resistant bedding when necessary.
  7. A licensee shall provide each child with a dresser or other storage space adequate to contain the child's belongings

**R6-5-7462. Bathrooms**

- A. A licensee shall maintain bathrooms and bathroom fixtures in good operating and sanitary condition, and as prescribed in this Section.
1. The licensee shall have facility bathrooms equipped with:
    - a. At least one wash basin and one toilet for every six children in care;
    - b. At least one bathtub or shower for every eight children in care;
    - c. Cold and hot running water, with enough hot water to allow each child a daily bath or shower;
    - d. Bathtubs and showers that are slip-resistant; and
    - e. Toilets and bathtubs or showers which allow a child to have privacy, as developmentally appropriate, or as otherwise prescribed in written program policy.
  2. The licensee shall not permit children age 5 or older who are of different genders to share a bathroom at the same time.
  3. The licensee shall equip bathrooms to facilitate maximum self-help by children through one or more of the following methods:
    - a. Providing children with step-stools to reach a sink,
    - b. Providing smaller sized bathroom fixtures,
    - c. Providing training toilets,
    - d. Placing towel racks and dispensers at lower heights, or
    - e. Other similar or comparable methods.
  4. A licensee shall have bathrooms large enough to permit staff to help children who require it.
  5. A licensee shall provide bathrooms with sufficient toilet paper, towels, soap, and other items required to maintain good personal hygiene, or shall provide children with personal supplies of these items.
- B. The bathroom fixture requirements prescribed in subsections (A)(1)(a) and (b) are presumed adequate. If a licensee operates a barracks type facility which does not meet these requirements, the licensee shall present a written plan showing how the licensee's bathroom facilities permit children in care to maintain adequate hygiene. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7463. Other Facility Space; Staff Quarters**

- A. A licensee shall ensure that a facility has:

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1. A place other than children's living areas to serve as an administrative office for records, secretarial work, and bookkeeping; and
  2. Space for private discussions and counseling sessions between individual children and staff.
- B.** If a licensee has staff who reside at the facility, the licensee shall provide those staff with living and sleeping space that is separate from children's areas, including a separate bathroom. The licensee shall provide the children of these staff, who also reside at the facility, with a residential environment that meets the requirements of this Article for children in care.
- C.** A licensee operating a barracks type facility that has been approved as described in R6-5-7461(B) and R6-5-7462(B) is not required to provide separate space as described in subsection (B).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7464. Fire, Emergency, and Fire Prevention**

- A.** Emergency Procedures: A licensee shall have written procedures for staff and children to follow in case of emergency or disaster (natural, medical, or human-caused). The procedures shall include the following:
1. Provisions for the evacuation of buildings, including the evacuation of children with physical disabilities;
  2. Assignment of staff to specific tasks and responsibilities;
  3. Instructions on the use of alarm systems and signals;
  4. Specification of evacuation routes and procedures, with clearly marked diagrams; and
  5. Notification as prescribed in R6-5-7434.
- B.** Emergency Practices and Drills: A licensee shall prepare staff and children to respond to emergencies as prescribed in this subsection.
1. The licensee shall train all staff to perform assigned tasks during emergencies, including the location and use of fire fighting equipment.
  2. The licensee shall train staff and children to report fires and other emergencies in accordance with written emergency procedures.
  3. The licensee shall post evacuation procedures in conspicuous locations throughout all buildings.
  4. The licensee shall train staff and children in evacuation procedures and conduct emergency drills at least once a month as prescribed in this subsection.
    - a. Practice drills shall include actual evacuation of children to safe areas.
    - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
    - c. All persons in the building at the time of a drill shall participate in the drill.
  5. A licensee shall maintain a record of all emergency drills. The record shall include:
    - a. Date and time of drill,
    - b. Total evacuation time,
    - c. Exits used,
    - d. Problems noted, and
    - e. Measures taken to ensure that children understand the purpose of a drill and their responsibilities during a drill.
- C.** Fire Prevention and Control: A licensee shall have and maintain fire prevention and safety equipment as prescribed in this subsection.
1. In a facility's residential environment, the licensee shall install and maintain smoke detectors according to the

manufacturer's instructions, recommendations, and test specifications and shall maintain smoke detectors in good working order. Each smoke detector shall have a signal to indicate that batteries are low or are not working properly.

2. The licensee shall put a smoke detector in each separate sleeping area.
3. The licensee shall clean and test smoke detectors at least every three months. The licensee shall keep a written record of the cleaning and testing at the facility.
4. A licensee shall install and maintain portable fire extinguishers appropriate in number and size to the area to be protected.
5. A licensee shall have a qualified person inspect and, if necessary, recharge fire extinguishers at least once a year and immediately after use.
6. A licensee shall:
  - a. Document the dates that a fire extinguisher is charged and the person or agency responsible for charging it; and
  - b. Attach the documentation to the extinguisher.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7465. General Safety**

- A.** Ground Floor: A licensee shall house non-ambulatory children and children younger than 6 only on the ground floor.
- B.** Licensees that provide services to young adults:
1. A licensee that provides services to young adults shall provide adequate safety information and individualized instruction to promote the safe use of a substance or item that is:
    - a. Required to be safeguarded under this Section; and
    - b. Necessary for the young adult's self-sufficiency, such as laundry and cleaning supplies, tools, and kitchen knives.
  2. A licensee that provides services to young adults placed in care with their own children shall safeguard substances and items in a manner appropriate to protect the youngest child in residence.
- C.** Dangerous objects: A licensee shall safeguard all potentially dangerous objects, including:
1. Firearms and ammunition;
  2. Recreation and hunting equipment;
  3. Household and automotive tools;
  4. Sharp objects such as knives, glass objects, and pieces of metal;
  5. Fireplace tools, matches, and other types of lighters;
  6. Machinery;
  7. Electrical wires, boxes, and outlets;
  8. Gas appliances;
  9. Chemicals, cleaners, and toxic or flammable substances;
  10. Swimming pools, ponds, spas, and other natural or artificial bodies of water; and
  11. Motorized vehicles.
- D.** Water Temperature: A licensee shall maintain water that is accessible to children for personal use at a temperature at or below 120° F.
- E.** Gas appliances:
1. A licensee shall have a licensed and bonded heating and cooling technician annually inspect all gas-fired devices at a facility. The licensee shall get a written report of the inspection for submission to the Licensing Authority at the time of license renewal.

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2. A licensee shall equip all gas-fired devices with an automatic pilot gas shut-off control.
  3. A licensee shall remove the valves from unused gas outlets and cap the disconnected gas line with a standard pipe cap.
  4. A licensee shall not use unvented water heaters.
  5. A licensee shall not use kerosene or gasoline for lighting, cooking, or heating.
  6. If a licensee uses a natural or propane gas burning device inside a facility, the licensee shall:
    - a. Install, test, and check carbon monoxide monitoring equipment in a facility's residential environment according to the manufacturer's instructions;
    - b. Maintain the monitoring equipment in good working condition; and
    - c. At the facility, keep a copy of the manufacturer's instructions, and, for one year, a record of the tests.
- F. Finishes and surfaces:**
1. A licensee shall not surface walls or ceilings with materials that contain lead except as allowed by law for protection from wood, pellet, or peat burning stoves.
  2. A licensee shall not have any walls, equipment, furnishings, toys, or decorations surfaced with lead paint.
  3. A licensee that accepts children who are under age 6, developmentally disabled, or severely emotionally disturbed, shall maintain the facility free of lead paint hazards, including permanent removal of any paint that a child may ingest.
- G. Toxic and Flammable Substances:**
1. A licensee shall ensure that any poisons and toxic or flammable substances used at a facility are used in a manner and under conditions that will not contaminate food or be hazardous to children.
  2. A licensee shall ensure that containers of poisons and toxic or flammable substances are prominently and distinctly marked or labeled for easy identification of contents.
  3. A licensee may burn trash only when:
    - a. Local authorities and ordinances allow burning;
    - b. The fire is at least 50 feet from any building used for children's residences; and
    - c. An adult supervises any child involved in the burning.
  4. A licensee shall not use charcoal or gas grills indoors or on covered porches.
- H. Firearms, Weapons, and Recreational and Hunting Equipment:**
1. A licensee shall ban firearms, explosives, and ammunition from a facility and grounds, except a licensee may allow the following:
    - a. Firearms maintained and used exclusively by trained security guards; and
    - b. Non-functional, permanently disabled firearms used for ceremonial purposes if such use is documented in the licensee's policy and procedures.
  2. A licensee shall keep bows and arrows, knives, and other potentially hazardous hunting and recreational equipment in locked secure storage that is not accessible to children.
- I. Tools and Equipment:** A licensee shall maintain lawn and garden equipment and maintenance tools and equipment safe and in good repair, and shall allow children to use them only under the supervision of staff. Depending on the developmental level of the child, the supervision need not be direct supervision.
- J. Telephone service:**
1. A licensee shall equip each living unit that does not house young adults with 24-hour telephone service or an intercom system linked to an outside telephone service, or
2. A licensee that provides services to young adults shall provide a device in each living unit that allows a young adult to immediately summon on-duty staff or emergency services. In addition, the licensee shall provide a telephone onsite. The licensee shall provide written and verbal information to each young adult explaining how to summon assistance in the event of an emergency.
  3. A licensee shall conspicuously post, adjacent to the telephone:
    - a. The address and telephone number of the facility; and
    - b. Emergency telephone numbers, including fire, police, physician, poison control, Child Protective Services, and ambulance.
- K. Smoking:**
1. A licensee shall not expose a child in care to tobacco products or smoke.
  2. A licensee shall not allow any person to use tobacco products inside buildings.
  3. A licensee shall not allow a child in care to use or possess tobacco products.
- L. Animals:**
1. The licensee shall not maintain, at a facility, any animal that poses a danger to children in care.
  2. The licensee shall have written evidence that dogs kept at a facility have current vaccinations against rabies.
- Historical Note**
- Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).
- R6-5-7466. Swimming Areas**
- A.** A licensee shall fence an outdoor swimming pool to separate it from all buildings, with a fence that:
1. Is at least 5 feet high, as measured on the exterior side of the fence; and
  2. Has a self-closing, self-latching gate that opens away from the swimming pool. The licensee shall maintain the latching equipment in good working order.
- B.** If the licensee accepts children younger than 6, the fence shall:
1. Have no opening through which a spherical object of 4 inches in diameter can pass;
  2. Have horizontal components which:
    - a. Are spaced at least 45 inches apart, measured vertically; or
    - b. Do not have any openings greater than 1 3/4 inches, measured horizontally; or
  3. Not have any openings for handholds or footholds, or any horizontal components, that can be used to climb the fence from the outside.
- C.** Subsections (A) and (B) do not apply to outdoor swimming pools that are entirely surrounded by permanent walls or buildings with doors that can be locked, so long as the walls or building meet the requirements for fencing set forth in subsections (A) and (B).
- D.** A licensee shall lock all entrances to a swimming pool when the pool is not in use.
- E.** A licensee shall maintain the following life-saving equipment in good repair and readily accessible to the swimming pool:
1. A ring buoy with 1/2-inch width rope that is at least half the distance of the pool measured at its longest point, plus 10 feet; and

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2. A shepherd's crook attached to its own pole.
- F.** At least one of the staff members supervising children in a pool, shall remain out of the water.
- G.** When a pool is in use, a licensee shall keep a daily log to record water quality test results of an on-grounds swimming pool and shall maintain the pool free from contamination in accordance with 9 A.A.C. 8, Article 8.
- H.** The licensee shall, when chlorination is used, maintain a free chlorine residual of between 0.1 and 4.0 parts per million, and a pH range of 7.0 to 8.0. A licensee may add dry or liquid chemical sources directly to pool water only when enough time exists for dispersal before use.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7467. Access; Transportation; Outings**

- A.** Access.
1. A facility shall be accessible by public or private motor vehicle.
  2. If the facility cannot be accessed by a road that is passable by motor vehicle 12 months of the year the licensee shall have alternative transportation arrangements to provide access to the facility.
- B.** Transportation.
1. A licensee shall provide, arrange, or negotiate responsibility for arranging, with the placing agency or person, transportation required to implement a child's service plan.
  2. A licensee shall provide staff supervision in any vehicle the licensee uses to transport a child in care.
- C.** Outings.
1. For every facility sponsored outing which is not part of the daily routine, such as a recreational trip of four hours or more, or an outing where emergency medical services cannot respond within 12 minutes, a licensee shall maintain, at the facility, a record of the following information:
    - a. A list of children participating in the outing;
    - b. Departure time and anticipated return time;
    - c. License plate numbers of every vehicle used for the outing; and
    - d. Name, location, and, if known, telephone number of the destination.
  2. The licensee shall give the driver of a vehicle written emergency information on each child who is participating in the outing and riding with that particular driver.
  3. The person supervising the child shall keep the information during the outing. The information shall include:
    - a. Each child's medication requirements, if any;
    - b. Common and known potential adverse reactions a child may have to a medication;
    - c. Adverse reactions a child may have as the result of delay in administration of medication; and
    - d. Any other adverse reaction a child is likely to have due to the child's special needs, including allergic reactions to particular substances or insects.
  4. The licensee shall tell the driver about a child's particular needs or problems which may reasonably cause difficulties during transportation, including seizures, tendency toward motion sickness, disability, anxiety, or other phobias.
- D.** Extended outings: If a licensee takes children in care on an outing that lasts more than 30 consecutive days, the licensee shall:
1. Obtain court permission for any children who are court wards;

2. Comply with the requirements in R6-5-7469 through R6-5-7471 governing outdoor experience programs.
- E.** Vehicles.
1. A licensee shall ensure that all vehicles used for the transportation of children in care:
    - a. Are mechanically sound and in good repair,
    - b. Conform to applicable motor vehicle laws, and
    - c. Have equipment appropriate to the terrain and the weather.
  2. The licensee shall not allow the number of individuals in a vehicle used to transport children in care to exceed the number of available seats and seat belts in a vehicle other than a bus. If the vehicle is a bus, the licensee shall not exceed the maximum stated occupancy on the bus inspection certificate.
  3. A licensee serving nonambulatory children or children with disabilities shall provide access to transportation that accommodates the children's special needs and disabilities.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7468. Special Provisions for Shelter Care Facilities**

- A.** General Requirements: A licensee operating a shelter care facility shall comply with all requirements prescribed in this Article, unless otherwise provided in this Section.
- B.** Admission Policy and Practice:
1. If a child has already been in shelter care for more than 42 days, a licensee shall not admit the child into shelter care at the licensee's facility, or permit the child to continue residing at the licensee's facility, unless the licensee has:
    - a. Asked the child's placing agency or person to have a multidisciplinary team:
      - i. Assess the child through a review of the child's records or in person; and
      - ii. Develop a service plan for the child; and
    - b. Documented the request in the child's record.
  2. When a child self-refers to a shelter care facility, the licensee shall, within 24 hours of the child's arrival:
    - a. Notify the Department or the child's guardian; and
    - b. Document the placing agency or person's consent for the child's continued placement in a written agreement with the placing agency or person, or by obtaining a court order.
  3. A licensee does not have to obtain medical information and consents before or at the time of a child's admission to a shelter care facility as prescribed in R6-5-7438(E)(4) and (5), but shall document attempts to obtain the medical consents from the placing agency or person within two days of the child's admission.
  4. At the time of a child's admission, the licensee is not required to obtain the comprehensive intake assessment required by R6-5-7438(D), but shall work with the placing agency or person to compile information on and assess the child's current social, behavioral, psychological, developmental, health, legal, family, and educational status, as applicable to the child.
- C.** Staff-child ratio: A shelter care facility shall comply with the staff-child ratios prescribed in R6-5-7437, except that a licensee who accepts six or more children in care at a shelter facility shall have at least one awake staff member on duty during sleeping hours.
- D.** Staff development: In addition to the training requirements prescribed in R6-5-7433, a licensee shall train staff members

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who work at a shelter care facility to recognize the signs and effects of:

1. Substance use and abuse,
  2. Common childhood illness, and
  3. Communicable disease.
- E.** Medical care: A shelter care facility does not have to provide or arrange a medical examination as required by R6-5-7452(B)(1) unless the general health assessment required by R6-5-7438(E)(9) indicates a need for further medical attention.
- F.** Service planning: Unless a child remains in continuous shelter care for more than 42 consecutive days, a licensee operating a shelter care facility is not required to comply with the R6-5-7441 regarding service planning.
- G.** Children's records: A licensee shall maintain a record for each child in a shelter care facility as prescribed in R6-5-7428 except the licensee need not:
1. Comply with R6-5-7441, except as otherwise provided in subsection (F) above; or
  2. Maintain treatment or clinical records and reports or progress monitoring notes as required by R6-5-7428(9) and (13).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7469. Special Provisions and Exemptions for Outdoor Experience Programs**

- A.** A licensee operating an outdoor experience program shall comply with the requirements in 6 A.A.C. 5, Article 74, except as otherwise provided in this Section.
- B.** An outdoor experience program shall not accept children younger than age 8.
- C.** An outdoor experience program is exempt from the requirements set forth in the following rules:
1. R6-5-7458. Buildings; Grounds; Water Supply;
  2. R6-5-7459. Building Interior;
  3. R6-5-7460. Kitchens; Food Preparation; and Dining Areas;
  4. R6-5-7461. Sleeping Areas and Furnishings;
  5. R6-5-7462. Bathrooms;
  6. R6-5-7463. Other Facility Space; Staff Quarters;
  7. R6-5-7464. Fire, Emergency, and Fire Prevention;
  8. R6-5-7465. General Safety;
  9. R6-5-7466. Swimming Areas;
  10. R6-5-7467. Access; Transportation; Outings; and
  11. R6-5-7468. Special Provisions for Shelter Care Facilities.
- D.** An outdoor experience program shall comply with the requirements in R6-5-7470 and R6-5-7471.
- E.** If there is a conflict between the requirements set forth in R6-5-7401 through R6-5-7468 and the requirements set forth in R6-5-7469 through R6-5-7471, the latter requirements govern.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7470. Planning Requirements for Outdoor Experience Programs**

- A.** Definitions. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.
- B.** Trip itinerary. The agency shall develop a tentative day-to-day itinerary and a trip map for each trip prior to departure. One copy each of the itinerary and map shall be distributed as follows: to the agency for its office files; to the mobile program staff; when appropriate, to local authorities at each point on the itinerary before departure; to the child placing agency repre-

sentative for each child who will be departing on the trip, and to the Department licensing representative. When major amendments to the itinerary are necessary due to unforeseen circumstances on the trip, written notification to the designated individuals shall be made. The itinerary shall reflect the following:

1. The travel schedule shall allow for daily periodic rest stops, relaxation, exercise, and personal time.
  2. The travel schedule shall not exceed five consecutive days without at least two full intervening non-traveling days, unless emergency conditions such as storms force travel to safer sites.
  3. The travel schedule shall specify the number of days of the trip, including departure and return dates and times, and mileage to be covered each day.
  4. The travel schedule shall specify the route, specific tentatively planned locations of overnight stops, and activities in which children will participate.
  5. The travel schedule shall specify the mode of transportation.
- C.** Trip plans. The agency shall develop written plans prior to the departure of each trip. These plans shall include:
1. The name, age, sex, address, and emergency phone number of each staff participant and of each child's parent or guardian and placing agency;
  2. The exact location and access route for emergency rescue, search, fire, and medical assistance and law enforcement authorities at each program stop or location including the names, addresses, telephone numbers of other alternative means of communication with such authorities in case of an emergency. This information shall be included and identified on the trip map;
  3. Contingency plans to deal with medical problems, fire, natural disasters, lost children, and other emergencies;
  4. Plans for the care of any person who, for any reason, must be excluded from the program for a period of time;
  5. Provision for and storage within ready access of the program staff, documents which fully identify the group, its leadership, ownership of equipment, purpose, insurance coverage, home base, and which contain completed health history forms and emergency treatment release forms;
  6. Identification of appropriate sources or locations for water, food, doing laundry, bathing, liquid and solid waste, and garbage disposal;
  7. A scheduled progress and condition report system between the mobile program and the agency administrator;
  8. The maintenance by staff of a trip log which details each day's operation including travel time, mileage covered, and occurrences of the day;
  9. The safe storage for all supplies and equipment while in transit as well as at the campsites.
- D.** Pre-departure procedures
1. The appropriate permissions shall be secured, if possible prior to departure, for traveling on roads and properties, using sites, and building fires.
  2. Prior to departure, each child shall receive medical clearance from a physician in order to participate in the mobile portion of the program.
  3. Prior to departure, all children and staff shall receive instruction in the safe and proper use of all equipment to be used on the trip.
  4. Prior to departure, all children and staff shall be oriented as to safety regulations, emergency procedures, and transportation to emergency facilities or personnel, or both.

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5. Prior to departure, the route, activities and logistics shall be approved in writing by the agency administrator.
  6. An emergency liaison coordinator shall be appointed prior to departure. This coordinator or the coordinator's designee shall be available on a 24-hour basis. This person shall be located at the agency administrative office, and shall be at least 21 years of age and shall possess the following information about the program:
    - a. Names of individuals on the trip, including the staff member in charge;
    - b. Exact trip itinerary;
    - c. Number of days, including departure and return dates and times;
    - d. Rescue and evacuation plans and locations;
    - e. Pertinent medical information about program participants.
- This warning shall be on a sign or stenciled directly on the shelter.
- g. Sleeping areas shall have direct exit access to the outside which is free of all obstruction or impediments to immediate use in the case of fire or other emergency.
2. Sleeping equipment
    - a. Sleeping equipment shall be provided by the agency and shall be clean, comfortable, non-toxic and fire-retardant.
    - b. Sleeping equipment shall provide reasonable insulation from cold and dampness. In addition to sleeping bag or blankets, insulation from the ground such as with a waterproof ground cloth or air or foam mattress shall be provided. A waterproof sleeping bag is not satisfactory.
    - c. All sleeping equipment shall be laundered, dry cleaned, and otherwise sanitized between assignment to different children or staff. Bedding shall be aired at least once every five days and laundered, dry cleaned, and sanitized once every 30 days.
    - d. Each child shall have a place for personal own sleeping equipment, clothes, and personal belongings. Such items shall be labeled or marked as to which child is using or owns such items.

**Historical Note**

Renumbered from R6-5-7307 to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7471. Special Physical Environment and Safety Requirements for Outdoor Experience Programs**

- A. Definition. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.
- B. Campsite location
  1. General. The agency shall conduct activities on sites appropriate for the children in terms of individual needs, program goals, and access to service facilities.
  2. Hazards
    - a. When selecting a campsite, the agency shall consider supervision of children, security, evacuation routes, animal hazards, and weather conditions, including the possibilities of lightning or flood.
    - b. A campsite shall be located on land that provides good drainage. A campsite shall not be located in a river bed or desert wash.
    - c. A campsite shall be free of debris, poisonous vegetation, and uncontrolled weeds or brush.
    - d. Children shall be warned and protected from hazardous areas such as traffic, cliffs, sinkholes, pits, falling rock or debris, abandoned excavations and poisonous vegetation. Hazardous areas shall be guarded or posted to reduce the possibility of accidents.
- C. Physical environment
  1. Sleeping shelters
    - a. All tents, teepees, or other sleeping shelters made of cloth shall be fire retardant or, if purchased after January 1985, shall be of the fiber-impregnated flame-retardant variety. Plastic sleeping enclosures of any type are prohibited.
    - b. Tents or other shelters used for sleeping areas shall be easily cleanable and in good repair, shall be structured and maintained in safe condition and shall afford adequate protection against inclement weather.
    - c. Tents or other types of temporary shelters shall provide sleeping space of not less than 15 square feet per person.
    - d. Campfires and open flames of any type are prohibited within 21 feet of any tent, teepee, or other sleeping shelter.
    - e. Smoking is prohibited within any sleeping shelter.
    - f. All sleeping shelters shall be posted with a permanent warning "No open flame in or near this shelter."
  2. Outdoor toilet areas
    - a. The agency with outdoor toilet areas shall provide facilities which allow for individual privacy.
    - b. Toilet areas shall be constructed, located and maintained so as to prevent any nuisance or public health hazard. Facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner as prescribed by the Department of Health Services in A.A.C. R9-8-301 through R9-3-308, and the Department of Environmental Quality in 18 A.A.C. 8, Article 6.
    - c. Toilet areas which do not have plumbing shall be located at least 75 feet from but within 300 feet of any living or sleeping area, or both, and shall be located at least 100 feet from any lake, stream, or water supply.
    - d. Toilets, outhouses, or portable shacks shall be adequate in number based on one seat for every 10 children in care.
      - i. There shall be a minimum of two seats if there are more than five children.
      - ii. If the agency serves physically disabled children, toilet facilities shall provide one seat for every eight persons.
    - e. Toilet facilities shall be well ventilated, allow for air circulation, be screened and periodically treated to deter insects, and be in good repair. An adequate supply of toilet paper shall be provided.
    - f. Toilets, outhouses, and portable shacks shall be cleaned and disinfected at least daily. Portable shacks shall be dumped daily in an approved dump station.
    - g. Toilet seats shall be constructed of nonporous materials. Wood is not acceptable.
    - h. Handwashing facilities shall be adjacent to the toilet area and shall be separate and apart from sinks and areas used for food preparation or washing pots, pans, kitchen, and eating utensils. Individual soaps and hand-drying devices shall be available.
  3. Food preparation and serving

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- a. Menus. Menus shall be planned at least one week in advance and shall then be dated, posted, and kept on file for one year.
  - b. Food
    - i. All food and drink shall be stored to prevent spoilage. Only the foods which can be maintained in a wholesome condition with the equipment available shall be used.
    - ii. All milk and milk products utilized by the agency shall be obtained from sources approved by the State Department of Health Services.
    - iii. Only pasteurized milk and U.S. Government-inspected meat shall be served to the children. Powdered milk may only be used for cooking or when no refrigeration is available on a wilderness trip.
    - iv. Spoiled or contaminated foods shall not be used.
    - v. Raw fruits and vegetables shall be washed before use.
  - c. Preparation
    - i. All persons handling food shall wear clean outer garments and keep their hands and fingernails clean at all times while handling food, drink, utensils, or equipment.
    - ii. Smoking in the food preparation area is prohibited.
    - iii. Handwashing areas, including water, soap, and approved sanitary towels or other approved hand-drying devices, shall be provided adjacent to food preparation areas.
    - iv. Areas in which food and drink are stored, prepared or served, or in which utensils are washed, shall be rodent proof, rodent free, and rubbish free. They shall be cleaned after the serving of each meal. Any floors, walls, shelves, tables, utensils, and equipment in these areas shall be of such construction as to be easily cleaned, and shall be well lighted and ventilated.
    - v. All food preparation and service shall comply with applicable Department of Health Services food service rules in 9 A.A.C. 8, Article 1.
    - vi. No dish, receptacle, or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, or broken.
    - vii. Prepared food shall be maintained at temperatures below 45° F or above 140° F; leftovers shall be reheated to 165° F.
  - d. Serving
    - i. Meal time shall be structured to make it a pleasant experience with sufficient time allowed for the children to eat at a reasonable, leisurely rate.
    - ii. Normal conversation shall be allowed and encouraged during meals.
  - e. Dish and utensil washing
    - i. Disposable or single-use dishes, utensils, receptacles or towels used in handling or preparing food shall be discarded after one use.
    - ii. Non-disposable food service dishes and utensils shall be cleaned and disinfected after each use in accordance with the following:
      - (1) A three-compartment sink or vat shall be used. Dishes and utensils shall be thoroughly scraped, washed with soap or detergent in hot water, kept clean, then rinsed free of detergents in clear water and then immersed for a period of at least two minutes in a warm or hot chlorine solution containing at no time less than 50 parts per million of available chlorine or such other solution as may be approved by the state or local health authority.
      - (2) Sinks shall be large enough to thoroughly immerse pots and pans.
      - (3) Dish towels shall not be used.
      - (4) Dishes and utensils shall be air dried. Drain boards shall be provided for draining dishes and utensils.
- D. Equipment**
1. Tools. Power tools, garden tools, and repair equipment shall be kept in a locked area and used by children only under adult supervision.
  2. Protective clothing/equipment. Appropriate protective clothing/equipment shall be provided to children by the agency, when children are participating in potentially hazardous activities.
  3. Program equipment
    - a. The agency shall use program equipment that is maintained in good repair, stored in such a manner as to safeguard the effectiveness of the equipment, and is given a complete safety check periodically and immediately prior to each use. Equipment shall be discarded after a period of time designated by the manufacturer.
    - b. The agency shall use program equipment appropriate to the age, size, and ability of each child in the activity.
- E. Storage.** The agency shall provide sufficient and appropriate storage facilities.
1. Toxic substances
    - a. The agency shall have securely locked storage spaces for all harmful materials. The keys to such storage spaces shall be available only to authorized staff members.
    - b. House and garden insecticides and other poisonous materials and all corrosive materials shall be kept in locked storage out of reach of children. Such storage shall not be in or near kitchen or food preparation or storage areas.
    - c. The agency shall have only those poisonous or toxic materials needed to maintain the program.
  2. Drugs
    - a. A special cabinet shall be designated for medicine only. The medicine cabinet shall be kept locked and periodically cleaned. All outdated medications and those prescribed for past illnesses or for children discharged from the agency shall be destroyed.
    - b. All prescription medicines, drugs, etc., requiring refrigeration shall be marked with the required temperature range and stored in a refrigerator with a thermometer separate from food items and maintained under temperature ranges recommended by the manufacturer.
  3. Flammable materials. Flammable liquids and gases shall be stored in metal containers only. The storage area must be separated from the rest of the living/program area.
  4. Food
    - a. All food and drink shall be stored so as to be protected from dust, flies, vermin, rodents, and other

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contamination. No live animals shall be allowed in any area in which food or drink is stored.

- b. Food and nontoxic cleaning supplies must be stored separately. Clean dishes and utensils shall be stored on properly covered shelves or in containers which are cleaned once a week with a chlorine solution (1 tablespoon of bleach to one gallon of water or an acceptable equivalent).
- c. All perishable food items shall be kept refrigerated except during the time of preparation and service.
- d. The temperature of refrigerated food must be maintained within a range from 38°F to 45°F.
- e. A thermometer shall be located in each refrigerator, including ice boxes and ice chests, as well as electric or gas refrigerators. Where ice and ice boxes or chests are used, adequate ice shall be provided, meats and other highly perishable foods shall not be stored over 24 hours and ice chests shall be drained to prevent accumulation of water from melted ice.

**F. Water**

1. Approved source. The agency must have a sufficient water supply which is potable and from an approved source or purified for drinking, brushing teeth, and cooking.
2. Water purification. Water purification tablets or other means of disinfecting water shall be available at all times. The agency shall have a written policy on effective purification methods to be employed according to the water sources utilized and possible types of contamination.
3. Bathing. Warm water facilities shall be planned for and available for each child to bathe at least once a week.
4. Washing and laundering. Personal washing and laundering is not permitted in any body of water. Water used for these purposes shall be taken in a container from the lake, river or pond, and after use, shall be dumped on land at least 50 yards from the water source.
5. Drinking water
  - a. Cool, potable drinking water shall be available for all children at all times.
  - b. The use of a common drinking utensil is prohibited.

**G. Sanitation**

1. Health and Environmental requirements
  - a. The disposal of sewage, garbage, and other wastes shall be done in accordance with local health and applicable state requirements, as provided in 18 A.A.C. 8, Article 6 and 18 A.A.C. 9, Article 8.
  - b. The agency shall obtain sanitation inspections of mobile kitchens or mobile toilet facilities, or both, prior to each trip by state or county authorities. Written reports of the sanitary inspections shall be kept on file at the agency. The agency shall meet all local, state, and federal health rules and regulations.
2. Garbage and rubbish
  - a. Garbage and rubbish shall be stored securely in durable, noncombustible, leakproof, non-absorbent containers covered with tight-fitting lids. Such containers shall be provided with a waterproof liner or thoroughly cleaned after each emptying.
  - b. Garbage and rubbish storage shall be separate from living/sleeping areas.
  - c. Garbage, rubbish and other solid wastes shall be disposed of twice weekly at an approved sanitary landfill or similar disposal facility. In areas where no facilities are immediately available, solid wastes shall be packed out or disposed of in a manner in accordance with the regulations governing the area.

3. Sewage and wastes
  - a. Sewage and other liquid wastes shall be disposed of in a public sewage system or, in the absence thereof, in a manner approved by the local health authority.
  - b. Where possible, adequate and safe sewage facilities with flush toilets shall be provided.
4. Insects and rodents. Methods utilized in control of insects and rodents shall be used in a safe, cautious manner to avoid poisonous or toxic contamination to human beings.

**H. Safety**

1. Emergency procedures
  - a. The agency shall have and follow written procedures for staff and children in case of emergency. These procedures shall be developed with the assistance of qualified fire, safety, and rescue personnel and shall include provisions for the evacuation of all program areas and assignment of staff.
  - b. The agency shall train staff and children to report fires and other emergencies appropriately. Children and staff shall be trained in fire prevention.
  - c. The agency shall conduct emergency drills which shall include actual evacuation of children to safe areas at least monthly. The agency shall provide training for personnel on all shifts in performing assigned tasks during emergencies and making personnel familiar with the use of agency fire-fighting equipment.
    - i. Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions of fire or other disasters.
    - ii. All persons in the program area shall participate in emergency drills.
    - iii. A record of such emergency drills shall be maintained.
    - iv. The agency shall make special provisions for the evacuation of any physically handicapped children in the program.
    - v. The agency shall help emotionally disturbed or perceptually handicapped children understand the nature of such drills.
2. General program safety
  - a. The agency shall have written operating procedures, safety regulations, and emergency procedures for special program activities in which children participate, including aquatics, diving, lifesaving, instructional swimming, recreational swimming, water skiing, skin diving, scuba diving, boating, canoeing, rowing, sailing, crafts, bicycling, farming, horse-back riding, mountaineering, rock climbing, rappelling, caving, outdoor living skills, physical fitness, snow and ice activities, archery, gymnastics, riflery, contact sports, backpacking, expedition travel, and animal handling.
  - b. The agency shall provide the written operating procedures, safety regulations, and emergency procedures to the Department licensing staff for review and approval.
  - c. All children and staff shall receive instruction in the safe and proper use of all equipment and animals to be used by the program.
  - d. All children and staff shall be oriented as to safety regulations, emergency procedures and transportation to emergency facilities and/or personnel.
3. Electrical

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- a. Electrical wiring and electrical appliances shall be installed in accordance with the Arizona State Fire Code at A.A.C. R4-36-201.
- b. Electrical wires extending over activity areas shall be fully insulated and located at least 12 feet above the activity area.
- c. All exposed wiring shall be fully insulated.
4. Gas appliances
  - a. The installation of gas appliances for lighting, cooking, space heating, and water heating shall conform to state and local codes. Where no code applies, the provisions of A.R.S. §§ 36-1621 through 36-1626, together with the standards for the installation of gas appliances and gas piping, shall be followed.
  - b. All unused gas outlets shall have the valves removed and shall be capped off with a standard pipe cap.
  - c. Gasoline shall not be used for lighting, cooking, or heating.
5. Fire safety equipment
  - a. Portable fire extinguishers shall be available and maintained for emergency fire protection. The number and type shall depend on the area to be protected.
  - b. All fire extinguishers shall be inspected at least monthly by staff members for proper location and to determine whether they are accessible, fully charged, and operable.
  - c. All fire extinguishers shall be inspected by an authorized fire extinguisher company at least once a year from the date of last charge and recharged immediately after use, or as otherwise necessary, showing the date of charging and the agency or company performing the work.
  - d. A dependable method of sounding a fire alarm shall be maintained in every agency area where children are located.
  - e. A written fire evacuation plan shall be posted.
- I. Water safety
  1. Water activities supervision
    - a. A water activities program operated by the agency shall at all times be under the immediate supervision of a person holding current certification as a Red Cross Water Safety Instructor, a YMCA Instructor in swimming and life saving, or an Aquatic Instructor Boy Scouts of America. A water-activities program includes recreational and instructional swimming in a pool, on a beach, or other approved water areas, rowing, canoeing, sailing, boating, water skiing, snorkeling and scuba diving.
    - b. The water activities supervisor shall provide pre-service training programs for participating children, supervise qualified lifeguards for water activities and maintain water activities equipment in safe working order.
    - c. There shall be a minimum of one guard currently certified in Red Cross Advanced Lifesaving, YMCA Lifesaving, or a Lifeguard Boy Scouts of America on duty for each 25 persons in or on the water, and in addition one staff member directly watching every 10 or less persons in or on the water.
  2. Swimming procedures
    - a. American Red Cross, YMCA, or Boy Scouts of America tests shall be used to determine each child's swimming ability. Children shall be confined to an area equal to the limits of their swimming skills or an area requiring lesser skills for which they have been classified.
    - b. A method of supervising and checking bathers shall be established and enforced. The system used shall be supervised during swimming periods by a member of the aquatics staff and checks shall be conducted not less than every 10 minutes. A written "lost swimmer" plan shall be established and all staff shall know exactly what their duties are in case of an emergency.
    - c. Children shall swim only in areas designated by the water activities supervisor as safe.
    - d. Swimming is prohibited during the hours of darkness except in lighted pools.
3. Swimming areas
  - a. A swimming area shall be maintained in a clean and safe condition, free from holes, sharp edges, and hidden dangers. The agency shall post notice of any known hazard in the vicinity and shall properly safeguard children.
  - b. The swimming area shall have a delineation of areas for non-swimmers, intermediates, and swimmers in accordance with the standards of the American Red Cross, YMCA, Boy Scouts of America.
  - c. Lifesaving equipment shall be provided at a swimming area and placed so it is immediately available in case of an emergency. The equipment shall be kept in good working order and include a bell or whistle, two assist poles, and a ring buoy.
  - d. The water of a natural swimming area shall be free from contamination by garbage, refuse, sewage pollution, or foreign material.
4. Watercraft and water-skiing
  - a. Any watercraft activities shall be conducted during daylight hours and supervised by the aquatics program instructor. A U.S. Coast Guard-approved life preserver shall be provided for each occupant of a watercraft. A non-swimmer shall wear a vest-type Coast Guard-approved life preserver and not be permitted in a watercraft unless accompanied by a staff member. A child shall wear a vest-type Coast Guard-approved life preserver before entering and while in white water or on a lake when the water is rough or while water-skiing.
  - b. During a watercraft activity period, a lifeguard shall patrol the watercraft area in a lifeboat. A watercraft docking area shall not be in the swimming area.
  - c. The swimming area shall not be used for the launching or stopping of water-skiers.
  - d. The agency which requires or permits children to use watercraft shall have special coverage for such activities included in the agency's liability insurance.
- J. Communications. The agency shall have a plan for emergency communication and communication equipment available with each mobile program unit, which may include:
  1. Telephone in camp units and outposts;
  2. Two-way radio or walkie-talkie;
  3. Knowledge of phone or radio locations on backpack, horseback, canoe or car trips, such as Ranger stations in remote areas;
  4. Simple code by flag, smoke, or mirror or other means if planned in advance.
- K. Transportation
  1. Vehicles

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- a. The agency shall provide or arrange transportation necessary for implementing the child’s service plan.
- b. Vehicles used in transporting children in care of the agency shall be licensed and inspected in accordance with Arizona state law.
- c. Vehicles used for the transportation of children shall be maintained in a safe condition and be equipped in a fashion appropriate for the season.
- d. The agency shall maintain written evidence that all vehicles owned, leased, borrowed, or rented by the agency to transport children are serviced regularly and maintained safely.
- e. Vehicles used for the transportation of children shall be equipped with a first-aid kit and emergency accessories including tools, a fire extinguisher and flares or reflectors.
- f. The agency shall not allow the number of persons in any vehicle used to transport children to exceed the number of available seats in the vehicle.
- g. The agency shall not transport children in open truck beds or in trailers.
- h. The agency shall ensure that any vehicle used to transport children has the following minimum amounts of liability insurance:  
 Injury per person: \$300,000  
 Injury per accident: \$1,000,000
- 2. Drivers
  - a. Any person transporting children in care of the agency shall be licensed to operate that class of vehicle according to Arizona state law.
  - b. The agency shall provide adequate supervision in any vehicle used by the agency to transport children in care.
  - c. The agency shall ascertain the nature of any need or problem of a child which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness, or a disability. The agency shall communicate such information to the operator of any vehicle transporting children in care.
- 3. Transportation of nonambulatory children. The following additional arrangements are required for agencies serving handicapped, nonambulatory children.
  - a. A ramp device to permit entry and exit of a child from the vehicle must be provided for all vehicles except automobiles used to transport physically handicapped children. A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.
  - b. In all land vehicles except automobiles, wheelchairs shall be securely fastened to the floor.
  - c. In all land vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.
- 4. Emergency transportation
  - a. The agency shall have means of transporting children in cases of emergency.
  - b. The agency shall have a written plan for transportation of injured persons to emergency medical services.
- L. Animals
  - 1. Safety. The agency shall be responsible for the care and behavior of pets or any animals allowed or used in the program. Animals shall have had necessary rabies shots.
  - 2. Insurance. The agency which requires or permits children to ride horses or other domesticated animals shall have specific coverage for such activities included in the agency’s liability insurance.
  - 3. Sanitation. A temporary, shelter, corral, tie-rail, or hitching post shall be located beyond 50 feet of an area where food is prepared, cooked, or served. Fly repellents and daily removal of manure shall be used to prevent such a location from becoming an attraction for or breeding place for flies.

**Historical Note**

Renumbered from R6-5-7308 and amended effective July 1, 1997; filed with the Secretary of State’s Office May 15, 1997 (Supp. 97-2).

**Appendix 1.**

FACTOR	INDICIA OF A BEHAVIORAL HEALTH AGENCY	INDICIA OF A CHILD WELFARE AGENCY
1. Primary purpose	To provide mental health treatment	To provide a safe & healthy living environment
2. Accreditation	JCAHO; COA; CARF	COA; Never JCAHO for this specific facility seeking licensure
3. Nursing Services	Integrated into services	Occasional use
4. On-campus educational services	Primarily seriously emotionally disturbed (SED); occasional regular education	Primarily regular education & learning disabilities; occasional SED
5. Population served	Described as psychiatrically disordered; seriously emotionally disturbed; psychologically disturbed	Described as behavior disordered, delinquent, dependent, neglected, undersocialized

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6. Self-description	Behavioral Health Program Psychiatric Facility Psychosocial orientation	Child Welfare Agency; Social Services Agency;
Educational		orientation; Re-education
7. Primary source of referrals	Psychologists; psychiatrists; Insurance companies; CHAMPUS; RBHA's	DES; Juvenile courts; Juvenile Corrections; RBHA's as transition or with wrap-around
8. Counseling, psychological, psychiatric services	Routinely provided to all clients	Provided only on an "as-needed" basis
9. Location of behavioral health services	Within the program	Usually in office of contracted practitioner
10. Behavioral health practitioners	Employees or contractors	Usually contracted services; may be contractor from another program or agency
11. Case work services	Social workers, if any, are only part of professional staff	Social workers are primary part of professional staff
12. Staff titles; direct care workers	Behavioral health technicians; psychiatric technicians; psychiatric nurses	House parents; child care workers; teaching parents

**Historical Note**

Appendix 1 adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, FAMILY CHILD CARE HOME PROVIDERS, AND PERSONS LISTED ON THE CHILD CARE RESOURCE AND REFERRAL SYSTEM**

**R6-5-7501. Definitions**

The following definitions apply in this Article.

1. "Adverse action" means:
  - a. Denial, suspension, or revocation of a child care provider's certification, an adoption agency license, or a foster home license; and
  - b. Exclusion from the child care resource and referral system described in A.R.S. § 41-1967.
2. "Administration" means the Department organizational unit responsible for taking adverse action which is the subject of an appeal. "Administration" includes the Division of Children, Youth, and Families and the Child Care Administration.
3. "Adoption agency" has the meaning ascribed to "agency" in A.R.S. § 8-101(2).
4. "Appeals Board" means the Department's independent, quasi-judicial, administrative appellate body, established under A.R.S. § 23-672, and authorized to review administrative decisions issued by hearing officers as prescribed in A.R.S. § 41-1992(D).
5. "Appellant" means a person who seeks a hearing with the Office of Appeals to challenge adverse action taken by the Department.
6. "Child Care Administration" means the administrative unit within the Department which is responsible for certification and supervision of family child care home providers and administration of the Child Care Resource and Referral System.
7. "Child Care Resource and Referral System," which is sometimes referred to as "CCR&R," means the child care provider information system which the Department administers under A.R.S. § 41-1967.
8. "Department" means the Arizona Department of Economic Security.
9. "Division of Children, Youth, and Families" means the administrative unit in the Department responsible for licensing foster homes and adoption agencies.
10. "Family child care home provider" has the meaning prescribed in R6-5-5201(29).
11. "Foster parent" has the meaning prescribed in A.R.S. § 8-501(A)(5).
12. "Hearing officer" means an individual appointed by the Department Director under A.R.S. § 41-1992(A) to conduct hearings when an appellant challenges adverse action.
13. "Licensee" means a person:
  - a. Applying for a license as, or currently licensed as, a foster parent or an adoption agency;
  - b. Applying for certification as, or certified as, a family child care home provider; or
  - c. Listed on the Child Care Resource and Referral System.
14. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body which includes hearing officers appointed under A.R.S. § 41-1992(A).

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15. "Person" means a natural person, partnership, joint venture, company, corporation, firm, association, society, or institution.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7502. Entitlement to a Hearing; Appealable Action**

- A.** A licensee who disputes adverse action may obtain an administrative hearing to challenge the action as provided in this Article.
- B.** The following actions are not appealable:
1. An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
  2. Failure to clear a fingerprint check or criminal history check;
  3. Imposition of noncompliance status as prescribed in R6-5-7035;
  4. Imposition of a corrective action plan as prescribed in R6-5-5818;
  5. Removal of a child from a placement;
  6. Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and
  7. Imposition of a provisional license as prescribed in A.R.S. § 8-509(D).
- C.** Findings made in a Child Protective Services ("CPS") investigation are not appealable under this Article. A person may appeal findings made in a CPS investigation of a licensee as prescribed in A.R.S. § 8-546.12.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7503. Computation of Time**

- A.** In computing any time period,
1. The term "day" means a calendar day;
  2. The term "work day" means Monday through Friday, excluding Arizona state holidays;
  3. The date of the act, event, notice, or default from which a designated time period begins to run is not counted as part of the time period; and
  4. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.
- B.** A document mailed by the Department is deemed given to the addressee on the date mailed to the addressee's last known address. The mailing date is presumed to be the date shown on the document, unless the facts show otherwise.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7504. Request for Hearing; Form; Time Limits; Presumptions**

- A.** Except as otherwise provided in R6-5-5010(A) and R6-5-5227, a person who wishes to appeal an adverse action shall file a written request for hearing with the Administration within 20 days of the date on the notice or letter advising the person of the adverse action. The Administration shall provide a form for this purpose, and, upon request, shall help an appellant fill out the form.
- B.** An appellant shall include the following information in the request for hearing:
1. Name, address, and telephone number, and, if applicable, telefacsimile number of the person subject to the adverse action;
  2. Identification of the Administration initiating the adverse action;

3. A description of the adverse action which is the subject of the appeal;
4. The date of the notice of adverse action; and
5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.

- C.** The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (B), so long as the request contains sufficient information for the Department to determine the identity of the appellant and the issue on appeal.
- D.** A request for hearing is deemed filed:
1. On the mailing date, as shown by the postmark, if sent first-class mail, postage prepaid, through the United States Postal Service to the Department; or
  2. On the date actually received by the Department, if not mailed as provided in subsection (D)(1).
- E.** The Department may determine that a document was timely filed if the sender of the document can demonstrate that the 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 caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.
- F.** When the Office of Appeals receives a request for hearing that was not timely filed, the Office of Appeals shall schedule a hearing to determine whether the delay in submission is excused as provided in subsection (E).
- G.** An appellant whose appeal is denied as untimely may petition for review as provided in R6-5-7518.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7505. Administration: Transmittal of Appeal**

An Administration that receives a request for appeal shall send the Office of Appeals a copy of the request and the adverse action notice within two work days of receipt of the request.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7506. Stay of Adverse Action Pending Appeal**

- A.** The Department shall not carry out the adverse action until the time for appeal has run, except as otherwise provided in subsection (C), and in the following circumstances:
1. The appellant expressly waives the delay of action; or
  2. The appellant
    - a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice, and
    - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice.
- B.** If an appellant timely appeals an adverse action as provided in R6-5-7504, the Department shall not carry out the adverse action until a hearing officer issues a decision affirming the adverse action, except as otherwise provided in subsection (C), and in the following circumstances:
1. The appellant expressly waives the delay of action;
  2. The appellant
    - a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice; and
    - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice;

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3. The appeal challenges an action that is not appealable according to R6-5-7502(B);
  4. The appellant withdraws the request for hearing; or
  5. The appellant fails to appear for the hearing.
- C. The Department may summarily suspend a license, a certificate, or registration on the CCR & R, as provided in A.R.S. § 41-1064(C).

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7507. Hearings: Location; Notice; Time**

- A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing or permit a witness to appear telephonically.
- B. Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing as follows:
1. For appeals of adverse action against a foster parent, within 10 days of the date the Department receives the appellant's request for hearing, as required by A.R.S. § 8-506; and
  2. For all other appeals, no earlier than 20 days from the date the Department receives the appellant's request for hearing.
- C. The Office of Appeals shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is scheduled within the 10-day period specified in subsection (B)(1). For hearings scheduled within the 10-day period, the Office of Appeals shall notify the parties telephonically and send written notice at the earliest date practicable.
- D. The notice of hearing shall be in writing and shall include the following information:
1. The date, time, and place of the hearing;
  2. The name of the hearing officer;
  3. A general statement of the issues involved in the case;
  4. A statement listing the parties' rights, as specified in R6-5-7511; and
  5. A general statement of the hearing procedures.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7508. Rescheduling the Hearing**

- A. An appellant may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to why the hearing should be postponed. Good cause exists where circumstances beyond the appellant's reasonable control make it difficult or burdensome for the appellant to attend the hearing on the scheduled date.
- B. Except in emergency circumstances, the appellant shall ensure that the Office of Appeals receives the request for postponement at least five work days before the scheduled hearing date. The Office of Appeals may deny an untimely request. Emergency circumstances mean circumstances
1. Beyond the reasonable control of the party;
  2. Which did not arise until after the five-day period; and
  3. Which could not reasonably have been anticipated.
- C. When the Office of Appeals reschedules a hearing under this Section or R6-5-7514, the Office of Appeals shall notify all interested parties, in writing, prior to the hearing. The 20-day notice requirement in R6-5-7507(C) does not apply to rescheduled hearings.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7509. 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 and conduct hearings in an orderly and dignified manner that avoids unnecessary repetition and affords due process to all participants;
  3. Ensure that all relevant issues are considered;
  4. Exclude irrelevant evidence from the record;
  5. Request, receive, and incorporate into the record, relevant evidence;
  6. Upon compliance with the requirements of R6-5-7511, subpoena witnesses or documents needed for the hearing;
  7. Open, conduct, and close the hearing;
  8. Rule on the admissibility of evidence offered at the hearing;
  9. Direct the order of proof at the hearing;
  10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary for the proper disposition of an appeal, including the following:
    - a. Disqualify himself or herself from the case;
    - b. Continue the hearing to a future date or time;
    - c. Prior to the entry of a final decision, reopen the hearing to take additional evidence;
    - d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this Article; and
    - e. Exclude non-party witnesses from the hearing room; and
  11. Issue a written decision resolving the appeal.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7510. 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 which 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 scheduled hearing date.
- C. Unless a party is challenging a hearing officer for cause as provided in subsection (D), a party may request only one change of hearing officer.
- D. At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- E. A party who brings a challenge for cause shall file a request as provided in subsection (A) and send a copy of the request to all other parties. The request shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- F. 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 disqualifies himself or herself from the decision.
- G. 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 (C), or
  2. A hearing officer is removed for cause as provided in subsections (D) through (F).

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- H. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7511. 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. Department documents are available to the appellant as prescribed in R6-5-7512(2).
- B. If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical 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, with a description of the subject matter of the witness's anticipated testimony;
  4. A description of any documents or physical evidence to be subpoenaed, including the title, appearance, and location of the item, and the name and address of the person in possession of the item; and
  5. A description of the party's efforts to obtain the witness or evidence by voluntary means.
- D. A party who wants a subpoena shall ask for the subpoena at least five days before the scheduled 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 cumulative.
- F. The Office of Appeals shall prepare all subpoenas and serve them by certified mail, return receipt requested, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their state employment, by regular mail, hand-delivery, or state courier service.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7512. Parties' Rights**

A party to a hearing has the following rights:

1. The right to request a postponement of the hearing, as provided in this Article;
2. The right to copy, before or during the hearing, any documents in the Department's file on the appellant, and documents the Department may use at the hearing, except documents shielded by the attorney-client or work-product privilege, or as otherwise prohibited by federal or state confidentiality laws;
3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-5-7510;
4. The right to request subpoenas for witnesses and evidence as provided in R6-5-7511;
5. The right to present the case in person or through an authorized representative, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31(a);
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, as provided in R6-5-7518 and R6-5-7520, if dissatisfied with an Office of Appeals' decision.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7513. Withdrawal of an Appeal**

- A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose. An appellant may also orally withdraw an appeal on the open record.
- B. Upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or a statement of withdrawal made on the record, the Office of Appeals shall dismiss the appeal.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7514. Failure to Appear; Default; Reopening**

- A. If an appellant fails to appear at the scheduled 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 if the appellant notifies the Office of Appeals, before the scheduled time of hearing, that the appellant cannot attend the hearing, due to good cause, and still desires a hearing or wishes to have the matter considered on the available record.
- C. No later than 10 days after a scheduled hearing date at which a party failed to appear, the non-appearing party may file a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
- D. The hearing officer may decide the issue of good cause on the available record or may set the matter for briefing or for hearing.
- E. If the hearing officer finds that the party had good cause for non-appearance, the hearing officer shall reopen the proceedings and schedule a de novo hearing with notice to all interested parties as prescribed in R6-5-7508(C).
- F. Good cause exists where the non-appearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" has the meaning applied to "excusable neglect" as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7515. Hearing Proceedings**

- A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.
- B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department's action was unauthorized, unlawful, or an abuse of discretion.
- 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. § 23-674(D).
- D. The Office of Appeals shall tape record all hearings or record the hearing by other stenographic means. The Department need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.
- E. The Office of Appeals charges a fee of 15¢ per page for providing a transcript. A party may obtain a waiver of the fee by

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submitting an affidavit stating that the party cannot afford to pay for the transcript.

- F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing.
- G. The hearing officer shall call the hearing to order and dispose of any pre-hearing motions or issues.
- H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
- I. 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. Unless the hearing officer allows a longer period of time, a statement shall not exceed three minutes.
- J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.
- K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal and shall exclude any irrelevant evidence.
- L. The hearing officer may require 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.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7516. 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 caused by the appellant.
- 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; and
  6. A statement of further appeal rights and the time period for exercising those rights.
- C. The Office of Appeals shall mail a copy of the decision to each party's representative, or to the party if the party is unrepresented.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7517. Effect of the Decision**

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective on the mailing date of the hearing officer's decision. 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 reverses the Administration's decision to take adverse action, the Administration shall not take the action unless and until the Appeals Board or Arizona Court of Appeals issues a decision affirming the adverse action.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7518. Further Administrative Appeal**

- A. A party may 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 date of the hearing officer's decision.

- B. The petition for review shall:
  1. Be in writing,
  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.
- C. The party petitioning for review shall mail a copy of the petition to all other parties.
- D. The Office of Appeals shall have the proceedings of the hearing below transcribed for the Appeals Board.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7519. Appeals Board**

- A. The Appeals Board shall conduct proceedings in accordance with A.R.S. § 41-1992(D) and A.R.S. § 23-672.
- B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information would help in deciding the appeal. The Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required, or any further issues to be considered.
- C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer and any further evidence or testimony presented to the Board.
- D. The Appeals Board shall issue, and mail to all parties, a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The Board's decision shall specify the parties' rights to further review and the time for filing a request for review.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7520. Judicial Review**

Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**ARTICLE 76. REPEALED****R6-5-7601. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7602. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7603. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7604. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).



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**R6-5-7631. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7632. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7633. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7634. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7635. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7636. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7637. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7638. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7639. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 77. REPEALED**

*Former Article 77 consisting of Sections R6-5-7701 through R6-5-7704 repealed effective November 8, 1982.*

**ARTICLE 78. REPEALED**

*Former Article 78 consisting of Sections R6-5-7801 through R6-5-7804 repealed effective November 8, 1982.*

**ARTICLE 79. REPEALED**

*Former Article 79 consisting of Sections R6-5-7901 through R6-5-7913 repealed effective November 8, 1982.*

**ARTICLE 80. EXPIRED****R6-5-8001. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8002. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8003. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8004. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8005. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8006. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8007. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8008. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8009. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8010. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 81. REPEALED**

*Former Article 81 consisting of Sections R6-5-8101 through R6-5-8104 repealed effective November 8, 1982.*

**ARTICLE 82. REPEALED**

*Former Article 82 consisting of Sections R6-5-8201 through R6-5-8204 repealed effective November 8, 1982.*

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**ARTICLE 83. REPEALED****R6-5-8301. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8302. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8303. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8304. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8305. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8306. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-35-8307. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8308. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 84. REPEALED**

*Former Article 84 consisting of Sections R6-5-8401 through R6-5-8404 repealed effective November 8, 1982.*

**ARTICLE 85. REPEALED**

*Former Article 85 consisting of Sections R6-5-8501 through R6-5-8508 repealed effective November 8, 1982.*

**ARTICLE 86. REPEALED****R6-5-8601. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8601 repealed, new Section R6-5-8601 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8602. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8602 repealed, new Section R6-5-8602 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8603. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8603 repealed, new Section R6-5-8603 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8604. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8604 repealed, new Section R6-5-8604 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 87. REPEALED****R6-5-8701. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8702. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8703. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8704. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 88. REPEALED**

*Former Article 88 consisting of Sections R6-5-8801 through R6-5-8804 repealed effective November 8, 1982.*

**ARTICLE 89. RESERVED****ARTICLE 90. RESERVED****ARTICLE 91. REPEALED****R6-5-9101. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9102. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9103. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9104. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

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**ARTICLE 92. REPEALED****R6-5-9201. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9202. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9203. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9204. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 93. REPEALED**

*Former Article 93 consisting of Sections R6-5-9301 through R6-5-9304 repealed effective November 8, 1982.*

**ARTICLE 94. REPEALED**

*Former Article 94 consisting of Sections R6-5-9401 through R6-5-9404 repealed effective November 8, 1982.*

**ARTICLE 95. REPEALED**

*Former Article 95 consisting of Sections R6-5-9501 through R6-5-9504 repealed effective November 8, 1982.*

**ARTICLE 96. REPEALED**

*Former Article 96 consisting of Sections R6-5-9601 through R6-5-9604 repealed effective November 8, 1982.*

**ARTICLE 97. REPEALED**

*Former Article 97 consisting of Sections R6-5-9701 through R6-5-9704 repealed effective November 8, 1982.*

**ARTICLE 98. REPEALED**

*Former Article 98 consisting of Sections R6-5-9801 through R6-5-9804 repealed effective November 8, 1982.*

**ARTICLE 99. REPEALED**

*Former Article 99 consisting of Sections R6-5-9901 through R6-5-9904 repealed effective November 8, 1982.*

**ARTICLE 100. REPEALED**

*Former Article 100 consisting of Sections R6-5-10001 through R6-5-10004 repealed effective November 8, 1982.*

**ARTICLE 101. REPEALED**

*Former Article 101 consisting of Sections R6-5-10101 through R6-5-10104 repealed effective November 8, 1982.*

**ARTICLE 102. REPEALED**

*Former Article 102 consisting of Sections R6-5-10201 through R6-5-10204 repealed effective November 8, 1982.*

**ARTICLE 103. REPEALED**

*Former Article 103 consisting of Sections R6-5-10301 through R6-5-10304 repealed effective November 8, 1982.*

**ARTICLE 104. REPEALED****R6-5-10401. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10402. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10403. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10404. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 105. REPEALED****R6-5-10501. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10502. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10503. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10504. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 106. REPEALED**

*Former Article 106 consisting of Sections R6-5-10601 through R6-5-10604 repealed effective November 8, 1982.*

**ARTICLE 107. REPEALED**

*Former Article 107 consisting of Sections R6-5-10701 through R6-5-10704 repealed effective November 8, 1982.*

**ARTICLE 108. REPEALED**

*Former Article 108 consisting of Sections R6-5-10801 through R6-5-10804 repealed effective November 8, 1982.*

**ARTICLE 109. REPEALED**

*Former Article 109 consisting of Sections R6-5-10901 through R6-5-10904 repealed effective November 8, 1982.*

**ARTICLE 110. REPEALED**

*Former Article 110 consisting of Sections R6-5-11001 through R6-5-11004 repealed effective November 8, 1982.*

#### 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.

41-1967. Child care resource and referral system; immunity.

A. The department shall establish and maintain a statewide child care resource and referral system, including a child care home provider registry, through community-based organizations to:

1. Provide families with:

- (a) Information on all types of child care.
- (b) Referrals to child care providers and programs.
- (c) Information about child care resources and services.
- (d) Information about choosing child care.
- (e) Information about registered child care home providers.

2. Assist child care providers and programs with:

- (a) Information on training related to child care issues.
- (b) Technical assistance that relates to initiating or providing child care services.
- (c) Parent referrals.
- (d) Becoming registered as a child care home provider.

3. Coordinate with the community to:

- (a) Develop statistics of the demand for and supply of child care.
- (b) Maintain ongoing relationships with all local groups interested in child care.

B. The child care resource and referral system shall:

1. Identify all available child care providers and programs through coordination with public and private agencies.

2. Collect in a uniform method provider information for the referral database that includes:

- (a) The type of program.
- (b) The hours of service.
- (c) The ages of children served.
- (d) Fees for service.
- (e) The licensure, certification and registration status of providers.
- (f) Other significant provider and program information.

3. Establish and maintain a referral process that responds to parental need for information. The child care resource and referral system shall make referrals to child care providers and programs that:

- (a) Promote parental choice and meet the needs of families.

(b) Are included in the resource and referral database.

4. Collect in a uniform method family information for the referral database that includes the:

(a) Number of calls and contacts.

(b) Ages of children in need of care.

(c) Days and times of care requested.

(d) Type of care requested.

(e) Special needs and requests made by the family.

(f) Reason that the care is needed.

5. Provide outreach services that include:

(a) Efforts to reach parents and providers in local communities.

(b) Involvement in the local communities.

(c) Publication of services through all available media sources, agencies and other appropriate channels.

(d) Public awareness information to parents and providers about the child care home provider registry and the benefits of using the registry or becoming registered.

6. Provide technical assistance to existing and prospective child care providers and programs that include:

(a) Information on all aspects of initiating new child care services including child care regulations, zoning, program and budget development and assistance in finding information from other sources.

(b) Educational information and resources that assist existing child care providers and programs to better serve the children and parents in their community.

(c) Local coordination of existing child care and child related services.

7. Establish and maintain a child care home provider registry that includes:

(a) Child care home providers that are registered pursuant to section 41-1967.01.

(b) A complaint tracking system that contains written complaints concerning providers and written provider responses. The complaints and responses are available to the public.

(c) A system for notifying a provider that is excluded or removed from the registry that the provider may appeal directly to the entity making the determination resulting in the exclusion or removal.

(d) Information provided by registered providers relating to the services provided and child care environment.

C. The following child care providers are eligible to be considered for inclusion in the child care resource and referral database, unless barred by other provisions of law:

1. Child care providers licensed or certified by a government agency that is authorized by law to license, certify or approve child care providers.

2. Child care home providers that are registered pursuant to section 41-1967.01. These providers shall submit and amend when necessary sworn, written statements to the department or its designees, on forms approved by

the department, attesting that the provider is not subject to exclusion or removal from the child care resource and referral database under any of the grounds specified in subsection E of this section.

D. Child care providers identified in subsection C, paragraph 1 of this section may be excluded or removed from the child care resource and referral database whenever the provider's license or certification is revoked, terminated or suspended, or when a child care facility is closed for cause.

E. Child care home providers identified in subsection C, paragraph 2 of this section may be excluded or removed from the child care home provider registry and the child care resource and referral database if:

1. The provider fails to obtain a fingerprint clearance card or the provider's fingerprint clearance card is revoked or suspended.

2. The provider has been denied a license to operate a facility for the care of children or had a license or certificate to operate a facility revoked or has been removed for cause from participation in the child and adult food program in this state or in any other state or jurisdiction.

3. The provider, the provider's employees or any person eighteen years of age or older who resides in the provider's child care facility has been convicted of or is awaiting trial on any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar criminal offenses in any other state or jurisdiction.

4. The provider, the provider's employees or any person who resides in the provider's child care facility has been the subject of an investigation where a report of child abuse or neglect has been substantiated by the department of child safety or a child safety services agency or a law enforcement agency in this state or in any other state or jurisdiction.

5. The provider fails to maintain current training and certification in first aid and infant and child cardiopulmonary resuscitation.

6. The provider fails to enclose a pool pursuant to section 36-1681, subsections A, B and C.

7. The provider fails to separately store firearms and ammunition under lock and key or combination lock.

F. This section and section 41-1967.01 do not create an affirmative obligation on the part of any state agency or any child care resource and referral agency to review, monitor or investigate child care providers and programs.

G. Neither this state nor its officers or employees, acting within the scope of their employment, are liable for any damage or injury caused by their conduct pursuant to this section or section 41-1967.01, except for gross negligence or conduct intended to cause injury.

H. Neither a child care resource and referral agency nor its officers and employees, acting within the scope of their employment, are liable for any damage or injury caused by their conduct pursuant to this section or section 41-1967.01, except for gross negligence or conduct intended to cause injury.

I. The department shall adopt rules that are consistent with the terms of 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.

#### 46-802. Child care services

The department shall establish and administer child care services. Child care services include:

1. Child care assistance to eligible families.
2. Certification of child care home and in-home providers who are not required to be licensed pursuant to title 36, chapter 7.1 for the purposes of caring for children eligible for child care assistance.
3. Establishment of rights and duties of providers and the department for the provision of child care assistance and services.
4. Consumer education to families and the public, including activities that help families make informed decisions about child care options.
5. Activities that improve the quality and availability of child care.
6. Consultation, technical assistance, training and resources to improve the provision and expand the access to child care services.

46-804. [Appeals](#)

A decision denying, reducing or terminating child care assistance is subject to appeal pursuant to title 41, chapter 6, article 6 and title 41, chapter 14.

46-805. Child care assistance; rates; definitions

A. The department shall establish payment rates for child care assistance. Payment rates shall provide for equal access for eligible families to comparable child care services provided to families who are not eligible to receive child care assistance.

B. Payment rates shall be identical in form for all child care assistance.

C. The department may pay different levels of child care assistance according to the category of child care provider, age of children, geographic area, level of national accreditation or another state-approved quality indicator, varying child care costs for children with special needs or other circumstances to meet the child care needs of eligible families.

D. Each federal fiscal year, the department shall pay at least thirty-three percent of quality set-aside monies for tiered reimbursement of child care providers that meet the quality standard.

E. The department shall establish a sliding fee scale and formula for determining child care assistance based on:

1. Income and earnings of the family.

2. Family size.

3. Number of children receiving child care assistance.

4. Child support to other minor dependent children of the parent living outside the family unit.

5. Income and earnings of a family member who is at least eighteen years of age and who is residing in the home with a parent who is receiving child care assistance, if the family member claims any member of a family unit applying for assistance as a dependent on a federal or state income tax return.

6. Income and earnings of a nonfamily member who is at least eighteen years of age and who is residing in the home of and cohabiting with a parent who is receiving child care assistance if the cohabiting nonfamily member claims any member of a family unit applying for assistance as a dependent on a federal or state income tax return.

7. Other factors of a similar nature.

F. The department shall annually review and adjust the sliding fee scale and formula for determining child care assistance pursuant to subsection D of this section and section 46-803.

G. The department shall post on the department's website the payment rates and the most current sliding fee scale and formula for determining child care assistance established pursuant to this section.

H. All child care providers shall remain in good standing with licensing and certification laws and adopted rules.

I. For the purposes of this section:

1. "Quality set-aside monies" means the total amount of federal child care and development fund monies that must be used for activities that do one or more of the following:

(a) Improve the quality of child care services.

(b) Increase parental options for and access to high quality child care.

(c) Relate to the quality of care for infants and toddlers.

2. "Quality standard" means accreditation from a national organization or a state-approved quality indicator that is recognized by the department.
3. "Tiered reimbursement" means a child care assistance system that is offered by the department and that provides higher payments for child care services that meet higher quality standards.

46-806. Choice of child care providers

The department shall allow parental choice of child care providers for families, except that those families referred by the department of child safety or children in foster care pursuant to title 8, chapter 4 may not receive child care assistance to use uncertified relative providers.

46-807. Certification of family child care home and in-home providers; hearing

A. The department shall establish health, safety and training standards for the certification of child care home providers and in-home providers.

B. All child care personnel shall be fingerprinted according to section 41-1964.

C. The department may deny the application or suspend or revoke the certification of a child care home or in-home provider for violation of any provisions of law or failure to maintain the standards of care. Written notice of the grounds of suspension or the proposed denial or revocation shall be given to the applicant or provider. The applicant or provider has a right to request a hearing on the suspension, denial or revocation of a certification, and a hearing shall be held pursuant to title 41, chapter 14, article 3 and according to rules of the department.

46-808. Confidentiality

A. The department shall maintain records of complaints and investigations concerning child care home providers and in-home providers.

B. Section 41-1959 does not apply to personally identifiable information concerning child care providers.

## 46-809. Rules

The department shall adopt rules it deems reasonable or necessary to implement child care services and to further the objectives of this article. Rules adopted by the department shall include:

1. Criteria for making child care assistance eligibility determinations.
2. Criteria for certifying child care home and in-home providers.
3. Criteria for operating child care resource and referral services and for suspending and terminating referrals to participating child care providers pursuant to section 41-1967.

**DEPARTMENT OF AGRICULTURE**  
Title 3, Chapter 7, Weights and Measures Services Division



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 4, 2021

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

**FROM:** Council Staff

**DATE:** December 13, 2021

**SUBJECT:** Arizona Department of Agriculture  
Title 3, Chapter 7

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This Five-Year-Review Report from the Department of Agriculture relates to rules in Title 4, Chapter 7, regarding the Weights and Measures Services Division.

In the last 5YRR of these rules, the Department proposed to amend some of the rules. The Department completed a Rulemaking addressing the changes in the previous report in August 2017.

### **Proposed Action**

For the reasons mentioned in the report, the Department is proposing to amend some of its rules to improve overall clarity, consistency, and understandability. The Department indicates the division was approached by industry stakeholders in November 2021, with a request to conduct a rulemaking to allow the sale of E15 motor fuel within the Cleaner Burning Gasoline area.

The Department plans to complete one single rulemaking that would address the issues in the report, along with the changes proposed by their industry stakeholders on or before January 2023.

- 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 states in their five year review that they believe that the economic, small business, and consumer impact statement prepared on the last making of each rule was accurate and complete. Stakeholders include the Department, consumers, motor fuel dispensing sites, the regulated community, public weighmasters/deputy weighmasters, retailers, fuel terminals, and biodiesel blenders and producers. The Department indicates that the Weights and Measures Services Division (WMSD) licensed over 120,000 commercial devices and other regulated entities in fiscal year 2016.

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 WMSD is required by A.R.S. §§ 3-3416 and 3-3452 to impose fees for licenses, registrations, and certifications. The Department believes that the benefits of the rules outweigh the minimal cost of the rules and imposes the least burden and cost to any regulated persons.

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 of the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable, but that some of the rules could be revised to simplify text and eliminate redundancies.

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

Yes, the Department indicates the rules are overall consistent with other rules and statutes, with the exception of the following:

R3-7-705 - Dispenser Labeling at Motor Fuel Dispensing Sites

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written with the exception of the following:

R3-7-204 - Livestock and Vehicle Scale Installation

R3-7-601 - Qualifications; License and Renewal Application Process

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

No, the rules are not more stringent than corresponding federal laws.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes, the Department complies with A.R.S. 41-1037 as the licenses and permits are issued to qualified individuals or entitled to conduct activities that are similar in nature.

**11. Conclusion**

As mentioned above, the Department is planning to submit one single rulemaking that would address the issues identified in the report, along with changes proposed by their stakeholders. The rulemaking would result in rules that are more clear, concise, understandable, and consistent with other rules and statues. The Department plans to submit a rulemaking no later than January 2023.

Council staff recommends approval of this report.

DOUGLAS A. DUCEY  
Governor



MARK W. KILLIAN  
Director

# Arizona Department of Agriculture

Weights and Measures Services Division  
1688 W. Adams Street, Phoenix, Arizona 85007  
State Metrology Laboratory: 4425 W. Olive Avenue, Glendale, AZ 85302  
(602) 542-4373 FAX: (623) 939-8586

October 20, 2021

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Department of Agriculture, A.A.C. Title 3, Chapter 7, Five Year Review Report**

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Agriculture (hereafter identified as "The Department") for A.A.C. Title 3, Chapter 7, which is due on October 29, 2021.

The Department has reviewed all of the rules contained in A.A.C. Title 3, Chapter 7, and does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies that it is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Kevin Allen at (480) 848-1709 or [kallen@azda.gov](mailto:kallen@azda.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark W. Killian', is written over a horizontal line.

Mark W. Killian  
Director

**ARIZONA DEPARTMENT OF AGRICULTURE  
WEIGHTS AND MEASURES SERVICES DIVISION**

**FIVE-YEAR REVIEW REPORT**

**TITLE 3. AGRICULTURE  
CHAPTER 7. WEIGHTS AND MEASURES SERVICES DIVISION  
ARTICLES 1 THROUGH 10**

**December 20, 2021**

**1. Authorization of the rules by existing statutes:**

Authorizing statute: A.R.S. § 3-3414(A)(4)

Implementing statutes: A.R.S. §§ 3-3401 to 3-3514

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
<b>R3-7-101</b>	To establish definitions of additional terms used in the rules
<b>R3-7-102</b>	To specify the fees charged by the Division for services provided by the State Metrology Laboratory
<b>R3-7-103</b>	To provide detail about the enforcement of license fees established in A.R.S. § 3-3452
<b>R3-7-104</b>	To specify standards for administrative enforcement action taken by the Division for a violation of statute or rule relating to commercial devices, public and deputy weighmasters, packaging, price verification, price posting, fuel quality and labeling, gasoline vapor recovery (“GVR”) systems, and registered service agencies and representatives
<b>R3-7-105</b>	Repealed
<b>R3-7-106</b>	Repealed
<b>R3-7-107</b>	Repealed
<b>R3-7-108</b>	To specify the maximum time-frames in which the Division will act on a license or an application for an “Authority to Construct” plan review
<b>R3-7-109</b>	To specify that the Division conducts hearings using the procedures set forth in A.R.S. Title 41, Chapter 6, Articles 6 and 10
<b>R3-7-110</b>	To specify the procedure for making a motion for rehearing or review of a Division decision, the grounds on which the Division will grant a motion, and the procedure the Division follows to act on a motion for rehearing or review
<b>R3-7-111</b>	Repealed
<b>R3-7-112</b>	Repealed

<b>R3-7-113</b>	Renumbered
<b>R3-7-114</b>	Renumbered
<b>R3-7-115</b>	Renumbered
<b>R3-7-116</b>	Renumbered
<b>R3-7-117</b>	Renumbered
<b>Table 1</b>	To specify the maximum time-frames in which the Division will act on a license application or an application for an “Authority to Construct” plan review, as well as the time-frames in which an applicant is allowed to respond to requests for additional information
<b>R3-7-201</b>	To specify the commercial device licensing process and information required to be on a device license application
<b>R3-7-202</b>	Repealed
<b>R3-7-203</b>	To specify the approval, installation, and sale requirements for commercial devices
<b>R3-7-204</b>	To specify requirements for livestock and vehicle scales in addition to the requirements outlined in NIST Handbook 44
<b>R3-7-301</b>	Repealed
<b>R3-7-302</b>	To establish packaging, labeling, and method of sale requirements as outlined in NIST Handbooks 130 and 133, as well as specify additional labeling, method of sale, and pricing requirements
<b>R3-7-303</b>	Repealed
<b>R3-7-304</b>	Repealed
<b>R3-7-305</b>	Repealed
<b>R3-7-306</b>	Repealed
<b>R3-7-307</b>	Repealed
<b>R3-7-308</b>	Repealed
<b>R3-7-309</b>	Repealed
<b>R3-7-310</b>	Repealed
<b>R3-7-311</b>	Repealed
<b>R3-7-312</b>	Repealed
<b>R3-7-313</b>	Repealed
<b>R3-7-401</b>	Repealed

<b>R3-7-402</b>	To specify the inspection procedure for price posting inspections and provide guidance as to what is and is not a price posting violation
<b>R3-7-403</b>	Repealed
<b>R3-7-404</b>	Repealed
<b>R3-7-405</b>	Repealed
<b>R3-7-406</b>	Repealed
<b>R3-7-407</b>	Repealed
<b>R3-7-408</b>	Repealed
<b>R3-7-409</b>	Repealed
<b>R3-7-410</b>	Repealed
<b>R3-7-411</b>	Repealed
<b>R3-7-412</b>	Repealed
<b>R3-7-501</b>	To specify the qualifications and license or license renewal application process for public weighmasters and deputy public weighmasters
<b>R3-7-502</b>	To specify the duties of a public weighmaster
<b>R3-7-503</b>	To specify the grounds on which the Division may deny a public weighmaster license or impose discipline on a public weighmaster
<b>R3-7-504</b>	To specify the manner in which a weight determination is made, establish that the owner or user of a weighing device is responsible for the accuracy of the device, and explain that each device must be licensed by the division
<b>R3-7-505</b>	To specify the information required on a weight certificate, the procedure for issuing a weight certificate, and the recordkeeping requirements for weight certificates
<b>R3-7-506</b>	To specify the design, procurement, implementation, and use of a seal of authority to certify weight certifications
<b>R3-7-507</b>	To specify prohibited acts relating to public weighmasters and weight certificates
<b>R3-7-601</b>	To specify the qualifications and license or license renewal application process for registered service agencies and registered service representatives
<b>R3-7-602</b>	To specify the duties of registered service agencies and registered service representatives

<b>R3-7-603</b>	To specify the grounds on which the Division may deny the license of, and impose discipline on, a registered service agency or registered service representative. This rule also specifies certification requirements and standards for registered service agencies; registered service representatives; and test equipment
<b>R3-7-604</b>	To specify prohibited acts relating to registered service agencies and registered service representatives
<b>R3-7-605</b>	To specify those California Air Resources Board (“CARB”) Executive Orders that are incorporated by reference
<b>R3-7-701</b>	To establish definitions of additional terms used in the rules that relate to motor fuels and petroleum products
<b>R3-7-702</b>	To specify material incorporated by reference that relates to motor fuels and petroleum products
<b>R3-7-703</b>	To specify that the Division shall return motor fuel collected during an inspection back to the owner or operator of the motor fuel dispensing site
<b>R3-7-704</b>	To establish requirements for price and grade posting on external street price signs installed at motor fuel dispensing sites
<b>R3-7-705</b>	To establish requirements for price and product information labeling on motor fuel dispensers
<b>R3-7-706</b>	Repealed
<b>R3-7-707</b>	To establish requirements for product transfer documentation and record retention for motor fuels other than Arizona CBG and AZRBOB
<b>R3-7-708</b>	To specify the maximum amount of oxygenate that may be in a gasoline oxygenate blend as well as establish product transfer documentation requirements for gasoline oxygenate blends
<b>R3-7-709</b>	Repealed
<b>R3-7-710</b>	To specify allowable blending procedures in the event that a motor fuel dispensing site has a non-compliant gasoline oxygenate blend
<b>R3-7-711</b>	To establish requirements intended to ensure that water is not present in a gasoline-alcohol blend storage tank as well as procedures required by the tank owner or operator if water is detected
<b>R3-7-712</b>	To specify the maximum amount of water allowed inside of a motor fuel storage tank that contains products other than gasoline-alcohol blends
<b>R3-7-713</b>	To establish labeling and color-coding requirements for motor fuel storage tanks
<b>R3-7-714</b>	To establish additional requirements and prohibited activities relating to motor fuels

<b>R3-7-715</b>	To specify motor fuel testing methods
<b>R3-7-716</b>	To specify where the Division shall obtain motor fuel samples as well as recordkeeping requirements relating to motor fuels
<b>R3-7-717</b>	To establish requirements for motor fuel dispensing site equipment
<b>R3-7-718</b>	To establish registration, reporting, quality assurance, and quality control requirements for biofuels and biofuel blends
<b>R3-7-719</b>	Repealed
<b>R3-7-720</b>	Renumbered
<b>R3-7-721</b>	Renumbered
<b>R3-7-722</b>	Reserved
<b>R3-7-723</b>	Reserved
<b>R3-7-724</b>	Reserved
<b>R3-7-725</b>	Reserved
<b>R3-7-726</b>	Reserved
<b>R3-7-727</b>	Reserved
<b>R3-7-728</b>	Reserved
<b>R3-7-729</b>	Reserved
<b>R3-7-730</b>	Reserved
<b>R3-7-731</b>	Reserved
<b>R3-7-732</b>	Reserved
<b>R3-7-733</b>	Reserved
<b>R3-7-734</b>	Reserved
<b>R3-7-735</b>	Reserved
<b>R3-7-736</b>	Reserved
<b>R3-7-737</b>	Reserved
<b>R3-7-738</b>	Reserved
<b>R3-7-739</b>	Reserved
<b>R3-7-740</b>	Reserved
<b>R3-7-741</b>	Reserved

<b>R3-7-742</b>	Reserved
<b>R3-7-743</b>	Reserved
<b>R3-7-744</b>	Reserved
<b>R3-7-745</b>	Reserved
<b>R3-7-746</b>	Reserved
<b>R3-7-747</b>	Reserved
<b>R3-7-748</b>	Reserved
<b>R3-7-749</b>	To establish definitions of additional terms used in the rules that relate to Arizona Cleaner Burning Gasoline (“CBG”) and Arizona Reformulated Blendstock for Oxygenate Blending (“AZRBOB”)
<b>R3-7-750</b>	To establish registration requirements relating to Arizona CBG and AZRBOB
<b>R3-7-751</b>	To establish general property and performance standards for Arizona CBG, requirements relating to the certification of Arizona CBG, and prohibited activities and consequences relating to Arizona CBG that fails to comply with applicable standards
<b>R3-7-752</b>	To specify the certification, recordkeeping, record retention, quality assurance, and quality control procedures for Arizona CBG and AZRBOB, and establish requirements for comparison of data between in-house and independent laboratories
<b>R3-7-753</b>	To specify the responsibilities of a pipeline or third-party terminal when taking custody of Arizona CBG or AZRBOB, and establish notification requirements for receipt of non-compliant products as well as QA/QC requirements
<b>R3-7-754</b>	To specify downstream blending exceptions for transmix into Arizona CBG or AZRBOB
<b>R3-7-755</b>	To establish requirements that ensure AZRBOB is blended in a manner that complies with the standards for Arizona CBG, and establish quality assurance/quality control, sampling and testing requirements for AZRBOB
<b>R3-7-756</b>	To establish requirements for blending non-oxygenated blendstock with Arizona CBG
<b>R3-7-757</b>	To establish requirements for product transfer documentation and record retention for Arizona CBG and AZRBOB
<b>R3-7-758</b>	Repealed
<b>R3-7-759</b>	To specify the testing methodologies that must be used when certifying Arizona CBG and AZRBOB

<b>Table A</b>	To specify the Division-approved test methods for various fuel parameters of Arizona CBG and AZRBOB
<b>R3-7-760</b>	To specify procedures relating to compliance surveys of Arizona CBG and AZRBOB if the registered supplier has elected to average fuel properties
<b>R3-7-761</b>	To specify the persons liable for non-compliant Arizona CBG or AZRBOB as well as the defenses available to a persons who would otherwise be liable for non-compliant Arizona CBG or AZRBOB
<b>R3-7-762</b>	To specify the penalty for violating any provision of Article 7
<b>Table 1</b>	To establish the “volatile organic compound” and “oxides of nitrogen” reduction requirements of Type 1 Arizona CBG, and to allow for alternative compliance options
<b>Table 2</b>	To establish standards for various fuel properties of Type 2 Arizona CBG, and to allow for alternative compliance options
<b>Table 3</b>	Repealed
<b>R3-7-901</b>	To specify material incorporated by reference relating to GVR test procedures
<b>R3-7-902</b>	To establish the criteria and procedures for obtaining an exemption from GVR system requirements
<b>R3-7-903</b>	To establish standards and rejection criteria for GVR systems and components
<b>R3-7-904</b>	To establish requirements for the “Authority to Construct” application and plan approval process
<b>R3-7-905</b>	To specify the timeframe and procedures for conducting the initial inspection and testing of a new or modified GVR system, and the enforcement action that may be taken by the Division in the event that a test is not scheduled or administered properly, or results in a failure
<b>R3-7-906</b>	To specify the fee for the “Authority to Construct” plan approval
<b>R3-7-907</b>	To establish requirements for the operation of GVR systems
<b>R3-7-908</b>	To establish requirements for training and documentation of training of operators of gasoline-dispensing sites that use a stage II GVR system, and to require that information on how to report equipment problems is posted on each gasoline dispenser
<b>R3-7-909</b>	To establish recordkeeping and reporting requirements for the owner/operator of a gasoline dispensing site that uses a stage II GVR system
<b>R3-7-910</b>	To establish annual inspection and testing requirements for GVR systems
<b>R3-7-911</b>	To inform the owner or operator of a gasoline dispensing sites that the Division may conduct unannounced inspections of GVR systems

<b>R3-7-912</b>	To specify the enforcement procedure that the Division shall follow when a GVR system or component is found to be non-compliant
<b>R3-7-913</b>	To establish requirements for mandatory decommissioning of stage II GVR system
<b>R3-7-1001</b>	To specify material incorporated by reference that relates to stage I test procedures for GVR systems
<b>R3-7-1002</b>	To establish the criteria and procedures for obtaining an exemption from requirements for stage I GVR systems
<b>R3-7-1003</b>	To establish standards and rejection criteria for stage I GVR systems and components
<b>R3-7-1004</b>	To establish requirements for the “Authority to Construct” application and plan-approval process, and the requirements for stage I GVR systems
<b>R3-7-1005</b>	To specify the timeframe and procedures for conducting the initial inspection and testing of a new or modified stage I GVR system, and the enforcement action that may be taken by the Division in the event that a test is not scheduled or administered properly, or results in a failure
<b>R3-7-1006</b>	To specify the fee for the “Authority to Construct” plan approval
<b>R3-7-1007</b>	To establish requirements for the operation of stage I GVR systems
<b>R3-7-1008</b>	To establish the requirements for training and documentation of training for all persons operating a gasoline dispensing site using a stage I GVR system
<b>R3-7-1009</b>	To establish recordkeeping and reporting requirements for the owner/operator of a gasoline dispensing site employing a stage I GVR system
<b>R3-7-1010</b>	To establish annual inspection and testing requirements for stage I GVR systems
<b>R3-7-1011</b>	To inform the owner or operator of a gasoline dispensing sites that the Division may conduct unannounced inspections of stage I GVR systems
<b>R3-7-1012</b>	To specify the enforcement procedure that the Division shall follow when a stage I GVR system or component is found to be non-compliant
<b>R3-7-1013</b>	To establish requirements for removal of stage II GVR equipment found to be operated after September 30, 2018
<b>Table 1</b>	To establish the testing criteria to be used for determining compliance when performing CARB TP-201.3

3. **Are the rules effective in achieving their objectives?** Yes   X   No       

The rules in Title 3, Chapter 7 are effective in achieving their objectives.

4. **Are the rules consistent with other rules and statutes?** Yes  No

Except for the two minor inconsistencies listed below, the rules in Title 3, Chapter 7 are consistent with other rules and statutes.

Exceptions:

- R3-7-705(B)(4) sets a standard for non-oxygenated gasoline to contain less than 0.5 percent by volume of any oxygenate. This has been identified as more stringent than A.R.S. § 3-3414(G), which defines “oxygenated fuel” as a motor fuel blend containing 1.5 percent or more by weight of oxygen.
- Some minor inconsistencies in terminology exist between certain rules and rules or statutes, including definitions of terminology that are not incorporated anywhere else within Title 3, Chapter 7, or in A.R.S. Title 3, Chapter 19. These minor inconsistencies would be easily addressed through editorial changes that occur as the result of a rulemaking.

5. **Are the rules enforced as written?** Yes  No

Unless otherwise noted below, the rules in Title 3, Chapter 7 are enforced as written.

Exceptions:

- R3-7-204(C) and (D) are not enforced, as a two foot platform clearance does not improve the accuracy of a vehicle scale, nor does it add a significant benefit to a vehicle scale test and inspection procedure.
- R3-7-601(B) is not enforced as the Arizona Registrar of Contractors is responsible for ensuring compliance with registered contractor statutes and rules.

6. **Are the rules clear, concise, and understandable?** Yes  No

The objectives of the rules in Title 3, Chapter 7 are generally clear, concise, and understandable. However, those reading the rule may benefit from some minor editorial changes that simplify the text or eliminate redundancies.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

The Division has not received written criticisms of the rules within the last five years.

8. **Economic, small business, and consumer impact comparison:**

The Division believes that the economic, small business, and consumer impact statement prepared on the last making of each rule was accurate and complete.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes  No

The Division has not received any business competitiveness analyses of the rules.

**10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

The Division completed the course of action indicated in the previous five-year-review report. Rules were adopted in the Notice of Final Rulemaking on August, 25, 2017.

**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 the regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

WMSD is required by A.R.S. §§ 3-3416 and 3-3452 to impose fees for licenses, registrations, and certifications. The benefits of the rules outweigh the minimal cost of the rules and imposes the least burden and cost to any regulated persons.

**12. Are the rules more stringent than corresponding federal laws?**

Yes \_\_\_\_\_ No  X

The rules in Title 3, Chapter 7 are not more stringent than corresponding federal laws.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The following rules were adopted on August 25, 2017 and comply with A.R.S. § 41-1037 as the licenses or permits are issued to qualified individuals or entities to conduct activities that are substantially similar in nature:

- R3-7-501, *Qualifications; License and Renewal Application Process*
- R3-7-601, *Qualifications; License and Renewal Application Process*
- R3-7-904, *Application Requirements and Process for Authority to Construct Plan Approval*
- R3-7-1004, *Application Requirements and Process for Authority to Construct Plan Approval*

R3-7-201, *Licensing Process*, was adopted on August 25, 2017 and the Division believes that an exception from A.R.S. § 41-1037 applies to this rule for the following reasons:

- Commercial device licenses are specifically authorized under A.R.S. § 3-3451
- Under A.R.S. § 3-3451(C), each commercial device is licensed separately
- Each commercial device has an individual license fee as provided under A.R.S. § 3-3452(A), and these fees vary based on the type of device

- A licensee may hold multiple licenses for one or more commercial devices of the same type, or multiple licenses for a combination of different types of commercial devices
- Each licensee operates commercial devices at different types of facilities (e.g. fuel station vs. grocery store), and these devices may be used for varying business activities and practices
- The inspection approach and regulatory requirements for each licensee varies based on the type and quantity of devices that they operate, as well as the nature of their business
- A general permit for a commercial device license is not technically feasible and would not meet the requirements of A.R.S. § 3-3451

**14. Proposed course of action:**

The Division intends to conduct a rulemaking to make editorial revisions toward improving clarity and consistency throughout Title 3, Chapter 7, as well as eliminate any unnecessary and/or redundant language. In addition, the Division was approached by industry stakeholders in November 2021 with a request to conduct a rulemaking that would revise Article 7 to allow the sale of E15 motor fuel within the Cleaner Burning Gasoline (“CBG”) area. In order to make efficient use of State resources, the Division plans to combine both of the revisions noted above into a single rulemaking. The Division expects to submit the proposed rules, Economic Impact Statement, and letters of approval from the Governor’s Office, to the Governor’s Regulatory Review Council on or before January 1, 2023.

# Arizona Administrative CODE

3 A.A.C. 7 Supp. 18-3

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2018 through September 30, 2018

## Title 3



**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

## TITLE 3. AGRICULTURE

### CHAPTER 7. DEPARTMENT OF AGRICULTURE - WEIGHTS AND MEASURES SERVICES DIVISION

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

<a href="#">R3-7-101.</a>	<a href="#">Definitions.....</a>	<a href="#">4</a>	<a href="#">R3-7-755.</a>	<a href="#">Additional Requirements for AZRBOB and</a>	
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<a href="#">R3-7-752.</a>	<a href="#">General Requirements for Registered Suppliers.</a>	<a href="#">33</a>			

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#### The release of this Chapter in Supp. 18-3 replaces Supp. 17-3, 52 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

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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



Administrative Rules Division  
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

**TITLE 3. AGRICULTURE**

**CHAPTER 7. DEPARTMENT OF AGRICULTURE - WEIGHTS AND MEASURES SERVICES DIVISION**

*Editor's Note: Chapter 7, including new Articles 1 through 10, were recodified from 20 A.A.C. 2 by the Department of Agriculture at 22 A.A.R. 2786. When recodified, all former Section references were revised to the new numbering scheme in this Chapter. Sections in this Chapter were originally adopted in 20 A.A.C. 2 under certain exemptions from the provisions of the Administrative Procedure Act, A.R.S. Title 41, Chapter 6. Refer to Laws 1997, Chapter 117, § 3 for more information (Supp. 16-3).*

**ARTICLE 1. ADMINISTRATION AND PROCEDURES**

*Article 1, consisting of Sections R3-7-101 through R3-7-117 and Table 1 recodified from R20-2-101 through R20-2-117 and Table 1, at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).*

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## ARTICLE 1. ADMINISTRATION AND PROCEDURES

## R3-7-101. Definitions

The definitions in A.R.S. §§ 3-3401, 3-3414, 3-3436, and 3-3511 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the Division issues for a violation of A.R.S. Title 3, Chapter 19, or this Chapter, that orders a person to:
  - a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
  - b. Stop selling a commodity or liquid fuel until the person provides documentation to the Division that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;
  - c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Division that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;
  - d. Stop performing weighmaster, deputy public weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Division that the person is complying with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;
  - e. Comply with labeling, policies, and cash register indicator displays according to A.R.S. Title 3, Chapter 19, and this Chapter;
  - f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title 3, Chapter 19, and this Chapter;
  - g. Excavate a vapor recovery site according to R3-7-104(L); or
  - h. Comply with scheduling a test according to R3-7-104(L).
3. "Application" means, for purposes of R3-7-108, forms and all documents and additional information the Division requires an applicant to submit when applying for a license.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. § 49-541.
6. "Area B" has the same meaning as in A.R.S. § 49-541.
7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
  - a. At a location where there was not one previously;
  - b. To replace all gasoline storage tanks; or
  - c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.
14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.
15. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.
16. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January 2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.
17. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.
18. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.
19. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.
20. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.
21. "NCWM" means the National Conference on Weights and Measures.
22. "NIST" means the National Institute of Standards and Technology.
23. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.
24. "Out-of-service tag" means a red rejection tag that signifies a commercial device does not meet the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter.
25. "Person" as defined in A.R.S. § 3-3401, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.
26. "Placed in service" means the certification by a registered service agency or representative that a commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter, and may be used, unless the Division orders otherwise.
27. "Placed-in-service report" means the form that a registered service representative completes and submits to the Division after placing a commercial device in service.

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28. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.
29. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.
30. "Seal of authority" means a stamp or press of the Division's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.
31. "Service Counter" means a display staffed by a sales associate and requires a customer to receive assistance in order to purchase a product.
32. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the Division.
33. "Stage II vapor recovery" means a system where at least ninety percent by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.
34. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.
35. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.
36. "Underground storage tank" means a tank as described in A.R.S. § 491001.
37. "Unit" means a quantity adopted as a standard of measurement.
38. "Vapor recovery registered service representative" means an individual to whom the Division has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title 3, Chapter 19 or this Chapter including annual vapor-recovery tests.
39. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, or this Chapter.
40. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Division, which certifies the accuracy of the weight of the commodity measured.

**Historical Note**

New Section R3-7-101 recodified from Section R20-2-101 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**R3-7-102. Metrology Laboratory Testing and Calibration Fees**

- A.** For all services of the Division's Metrology Laboratory, the Division shall charge \$110 per hour with a minimum charge of \$50.
- B.** In addition to the fee in subsection (A), the Division shall charge for travel and per diem at the rates established under

A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

**Historical Note**

New Section R3-7-102 recodified from Section R20-2-102 at 22 A.A.R. 2786, effective August 16, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-103. Licensing and Fees**

- A.** A license is effective on the first day of the month following the date that the license application is filed with the Division. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.
- B.** A payment is delinquent if not received or postmarked on or before the due date. The Division shall not process a license or renewal application for which payment is delinquent.
- C.** If the Division receives payment for a license that excludes the payment of applicable late fees or past due civil penalties, the Division shall apply the license fee payment to the licensee's account and issue a separate invoice for the additional monies owed to the Division. The license will not be issued by the Division until all fees due are paid.

**Historical Note**

New Section R3-7-103 recodified from Section R20-2-103 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-104. Administrative Enforcement Action**

- A.** The Division shall take progressive enforcement action for a violation of A.R.S. Title 3, Chapter 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.
- B.** The Division shall make available a copy of its inspection report to the person who owns or operates a location that the Division inspects. The report shall include the inspection results and violations. The Division shall send a copy of the inspection report to the owner of a location by e-mail if the owner has provided an e-mail address to the Division. Inspection results and violations shall be posted on the Division website.
- C.** The person who owns or operates a location inspected by the Division may request a hearing under R3-7-109 to dispute the inspection results, violation, or enforcement action.
- D.** The Division shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.
- E.** A maximum civil penalty may be doubled as stated in A.R.S. § 3-3475(C).
- F.** Commercial device.
- The Division may place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.
  - The Division may confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Division authority.
  - The Division may condemn and confiscate a weight, measure, or other commercial device that the Division determines is incorrect and not capable of compliance with Handbook 44.
  - The Division shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in A.R.S. Title 3 Chapter 19,

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- Handbook 44 or this Chapter and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.
- a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.
  - b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter.
5. The Division shall issue a warning tag when a commercial device is not in compliance with the requirements in A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter and the lack of compliance creates a situation favorable to the consumer. The Division shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter.
  6. The Division may issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.
  7. The Division shall issue an out-of-service tag if a Division inspector cannot conduct an inspection of a commercial device because of malfunction, abnormal performance, or a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.
  8. The Division shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero as prescribed in Handbook 44.
  9. The Division shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Division shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.
  10. The Division shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Division shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.
  11. In addition to any enforcement action under subsections (F)(1) through (10):
    - a. If the Division finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title 3, Chapter 19, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:
      - i. The Division may impose a civil penalty up to \$300 on the person who owns or operates the commercial device; and
      - ii. The Division may impose a civil penalty up to \$500 on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.
    - b. If the Division finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:
      - i. The Division may issue an administrative order to the person at the conclusion of the inspection and impose a civil penalty up to \$300; and
      - ii. The Division may issue an administrative order to the person and impose a civil penalty up to \$500 at each reinspection until the person complies with Handbook 44 and this Chapter.
- G. Public and deputy public weighmaster.
    1. The Division may issue an administrative order if a public weighmaster's:
      - a. Weigh tickets are not in numbered sequence or are missing,
      - b. The seal, press, or electronic seal is not readable, or
      - c. Records are not maintained according to R3-7-505.
    2. The Division may issue an administrative order and impose a civil penalty up to \$500 on a public weighmaster if:
      - a. The public weighmaster's weigh tickets contain inaccurate information,
      - b. The public weighmaster violates an administrative order,
      - c. The public weighmaster misuses a seal or press or has an unauthorized seal or press; or
      - d. The public weighmaster misuses an electronic seal or signature.
    3. The Division shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
    4. The Division shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.
    5. The Division shall issue an administrative order and a civil penalty up to \$300 to a person who performs public weighmaster duties without a license.
    6. If a public weighmaster permits an unlicensed person to perform deputy public weighmaster duties, the Division may:
      - a. Impose a civil penalty up to \$300 on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties;
      - b. Impose a civil penalty up to \$500 on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties; and
      - c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties more than twice.
  - H. Packaging.
    1. The Division shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:
      - a. Returning the package to the packer or manufacturer,
      - b. Labeling the package to reflect its correct quantity,
      - c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or
      - d. Repackaging the commodity so the package contains the quantity represented.
    2. In addition to an administrative order, the Division may impose a civil penalty up to \$500 per lot on a person who violates a requirement in Handbook 130 or Handbook 133.
  - I. Price verification.

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1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
  2. The Division shall issue a stop-sale, stop-use tag to a person who fails a price verification inspection if the violation cannot be corrected within 30 minutes of the Division completing the inspection.
    - a. The Division may impose a civil penalty up to \$100 per violation on a person who fails a reinspection if the Division finds more than one item at more than its posted price.
    - b. The Division may impose a civil penalty up to \$200 per violation on a person who fails a second reinspection. The Division shall increase the per violation civil penalty imposed by \$100 for each subsequent reinspection until the violation is corrected.
  3. If the Division receives and substantiates a complaint about a person against whom the Division took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is \$100 more than the civil penalty that the Division previously imposed against this person.
  4. The Division may issue a warning tag to a person who does not have a written price-error policy. The Division may impose a civil penalty up to \$500 if the person does not have a written price-error policy upon reinspection.
  5. The Division shall issue a warning tag to a person who does not have a price display visible to the consumer at a check-out location. The Division shall issue an out-of-service tag if the person does not have a price display visible to the consumer at a check-out location upon reinspection.
- J. Price posting.**
1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
  2. The Division shall issue a stop-sale, stop-use tag to a person who fails a price posting inspection if the violation cannot be corrected within 30 minutes of the Division completing the inspection.
  3. The Division may impose a civil penalty up to \$50 for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
  4. The Division may impose a civil penalty up to \$100 for each inspected lot not priced if a person fails a second reinspection.
  5. If the Division receives and substantiates a complaint about a person against whom the Division took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is \$100 more than the civil penalty that the Division previously imposed against this person.
- K. Fuel quality and labeling.**
1. The Division shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title 3, Chapter 19, or this Chapter. The Division shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.
  2. The Division may issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title 3, Chapter 19, or this Chapter. The Division may impose a civil penalty up to \$300 if the person does not correct the labeling or signage violation within the time specified in the administrative order.
3. The Division may issue an administrative order and impose a civil penalty up to \$500 per octane level or fuel grade to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
    - a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,
    - b. Selling the motor fuel at the correct octane level,
    - c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
    - d. Removing all water from the storage tank or emptying the tank per R3-7-711 or R3-7-712, or
    - e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.
  4. The Division may issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Division's request. The Division may impose a civil penalty up to \$300 on a person who provides the requested documentation between 24 and 72 hours. The Division may impose a civil penalty up to \$500 on a person who does not provide the requested documentation within 72 hours.
- L. Vapor recovery.**
1. The Division may issue an administrative order to stop construction at a vapor recovery site and impose a civil penalty up to \$500 on a person who:
    - a. Begins construction or makes a major modification without an authority to construct plan approval,
    - b. Does not comply with the authority to construct plan approval, or
    - c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
      - i. The vapor recovery system and its components comply with A.R.S. Title 3, Chapter 19, and this Chapter; and
      - ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title 3, Chapter 19, and this Chapter.
  2. The Division may issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Division pre-burial inspection and may impose a civil penalty up to \$500 if the excavated system does not pass required vapor recovery tests according to A.R.S. Title 3, Chapter 19, and this Chapter.
  3. The Division shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The Division shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.
  4. The Division may impose a civil penalty up to \$100 on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.
  5. The Division may issue a warning tag to a person whose vapor recovery system labeling does not comply with R3-7-713. The Division may issue a stop-sale, stop-use tag and impose a civil penalty up to \$500 on a person who

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- does not correct a labeling violation within the time specified on a warning tag.
6. The Division shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under R3-7-905, R3-7-910, R3-7-1005, or R3-7-1010. If the test failure is isolated to a system component, the Division's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.
  - M. The Division may impose a civil penalty up to \$500 and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Division may impose a civil penalty up to \$500 and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.
  - N. Registered service agency and registered service representative.
    1. If a registered service agency submits to the Division an inaccurate or incomplete placed-in-service or test report, the Division may impose a civil penalty up to \$50 on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
    2. The Division may impose a civil penalty up to \$300 on a registered service representative who incorrectly:
      - a. Installs a commercial device,
      - b. Repairs a commercial device,
      - c. Tests a vapor recovery system, or
      - d. Repairs a vapor recovery system.
    3. If an unlicensed person represents itself as a registered service agency, the Division may:
      - a. Issue an administrative order,
      - b. Impose a civil penalty up to \$500 and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
      - c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
    4. The Division may issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Division may impose a civil penalty up to \$300 on the registered service agency for which the unlicensed individual works.
    5. The Division may issue an administrative order if a registered service representative places a commercial device into service without Division authorization. The Division may impose a civil penalty up to \$500 on the registered service agency whose representative places a commercial device into service without Division authorization.
    6. The Division may impose a civil penalty up to \$500 on a registered service agency whose registered service representative uses a metrology standard or vapor recovery testing equipment that is not certified according to this Chapter and, as applicable, CARB test methods. The Division may confiscate a metrology standard or vapor recovery testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Division shall return the standard or equipment when it is properly certified.
    7. The Division shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title 3, Chapter 19, and this Chapter:
      - a. Notify the Division of a test date and time,
      - b. Begin a test at the approved time,
      - c. Appear for a witnessed test,
      - d. Close a vapor recovery system for repairs if the system fails, or
      - e. Perform a test.
    8. The Division may impose a civil penalty up to \$300 on a vapor RSA that violates subsections (M)(7)(a), (b), (d), or (e). The Division may impose a civil penalty up to \$300 on a vapor recovery registered service agency that violates subsection (M)(7)(c) twice in 12 months.
    9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Division may:
      - a. Impose a civil penalty up to \$300 on the registered service agency for the first violation, and
      - b. Impose a civil penalty up to \$500 on the registered service agency for each subsequent violation by the registered service representative.
    10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title 3, Chapter 19, or this Chapter, the registered service representative shall:
      - a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by R3-7-910;
      - b. Notify the Division of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and
      - c. Notify the Division of the time of the test required by R3-7-910 or R3-7-1010 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.
    11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the Division may:
      - a. Impose a civil penalty up to \$300 on the registered service representative;
      - b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
      - c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).
    12. If a registered service representative fails to notify the Division of a non-compliant commercial device under R3-7-602(B)(1)(f), the Division may impose a civil penalty up to \$300.

**Historical Note**

New Section R3-7-104 recodified from Section R20-2-104 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-105. Repealed****Historical Note**

Repealed Section R3-7-105 recodified from repealed Section R20-2-105 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-106. Repealed**

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**Historical Note**

Repealed Section R3-7-106 recodified from repealed Section R20-2-106 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-107. Repealed****Historical Note**

Repealed Section R3-7-107 recodified from repealed Section R20-2-107 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct**

- A.** For each type of license, renewal, or authority issued by the Division, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.
- B.** For each type of license, renewal, or authority issued by the Division, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the Division receives an application.
1. If the application is not administratively complete, the Division shall send a deficiency notice to the applicant.
    - a. The deficiency notice shall state each deficiency and the information needed to complete the application.
    - b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Division the missing information specified in the deficiency notice. The time-frame for the Division to finish the administrative completeness review is suspended from the date the Division mails or e-mails the deficiency notice to the applicant until the date the Division receives the missing information.
    - c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Division shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.
  2. If the application is administratively complete, the Division shall send a written notice of administrative completeness to the applicant. If the Division, within 10 days of submittal, fails to send a written notice of administrative completeness or deficiency notice outlined in subsection (B)(1), the application shall automatically be deemed administratively complete.
- C.** For each type of license, renewal, or authority issued by the Division, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the Division sends written notice of administrative completeness to the applicant.
1. During the substantive review time-frame, the Division may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Division to finish the substantive review is suspended from the date the Division mails or e-mails the request until the Division receives the information.
  2. If the applicant does not submit the requested additional information within the time-frame in Table 1, the Division shall issue a written notice informing the applicant that the application is deemed withdrawn. The applicant may request in writing that the Division deny the application within 15 days of the date of the notice of with-

drawal. An applicant who desires to reapply shall begin the application process anew.

3. The Division shall issue a written notice of denial of license, renewal, or authority if the Division determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title 3, Chapter 19, and this Chapter for a license, renewal, or authority. The notice of denial shall include:
  - a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and
  - b. The name and telephone number of a Division employee who can answer questions regarding the application process.
4. If the applicant meets all of the substantive criteria required by A.R.S. Title 3, Chapter 19, and this Chapter for a license, renewal, or authority the Division shall issue the license, renewal, or authority to the applicant.

**D.** The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.

**E.** In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays.

**F.** An applicant whose license, renewal, or authority is denied has a right to a hearing, an opportunity for rehearing, and if the denial is upheld, judicial review pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10, and A.R.S. Title 12, Chapter 7, Article 6.


**Historical Note**

New Section R3-7-108 recodified from Section R20-2-108 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-109. Administrative Hearing Procedures**

A.R.S. Title 41, Chapter 6, Articles 6 and 10 apply to the Division's hearings.

**Historical Note**

New Section R3-7-109 recodified from Section R20-2-109 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-110. Motion for Rehearing or Review**

- A.** Except as provided in subsection (G), any party in a contested case or appealable agency action before the Division who is aggrieved by a decision rendered in the case may file with the Division, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion.
- B.** A motion for rehearing or review may be amended at any time before it is ruled upon by the Division. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Division may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C.** A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights or ability to receive a fair hearing:
  1. Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the Division.

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- 2. Misconduct of the Division, the administrative law judge, or the prevailing party.
  - 3. Accident or surprise that could not have been prevented by ordinary prudence.
  - 4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the original hearing.
  - 5. Excessive or insufficient penalties.
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.
  - 7. That the decision is not justified by the evidence or is contrary to law.
- D.** The Division may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Division may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.
- E.** The Division, within the time for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set forth in subsection (C), after giving the parties notice and an opportunity to be heard.
- F.** When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The Division may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the Division permits reply affidavits, the replying party has five days in which to serve them.
- G.** If the Division makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Division may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Division's final decision.

16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-111. Repealed**

**Historical Note**

Repealed Section R3-7-111 recodified from repealed Section R20-2-111 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-112. Repealed**

**Historical Note**

Repealed Section R3-7-112 recodified from repealed Section R20-2-112 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-113. Renumbered**

**Historical Note**

Renumbered Section R3-7-113 recodified from renumbered Section R20-2-113 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-114. Renumbered**

**Historical Note**

Renumbered Section R3-7-114 recodified from renumbered Section R20-2-114 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-115. Renumbered**

**Historical Note**

Renumbered Section R3-7-115 recodified from renumbered Section R20-2-115 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-116. Renumbered**

**Historical Note**

Renumbered Section R3-7-116 recodified from renumbered Section R20-2-116 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-117. Renumbered**

**Historical Note**

Renumbered Section R3-7-117 recodified from renumbered Section R20-2-117 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**Historical Note**

New Section R3-7-110 recodified from Section R20-2-110 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**Table 1. Time-frames (calendar days)**

Type of License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Commercial Device	R3-7-201	14	28	30	30	44
Public Weighmaster	R3-7-501	14	28	30	30	44
Registered Service Agency/Representative	R3-7-601	14	28	30	30	44
Authority to Construct	R3-7-904 R3-7-1004	14	28	30	30	44

**Historical Note**

Article 1, Table 1, Time-frames (in days), recodified from 20 A.A.C. 2, Article 1, Table 1, Time-frames (in days), at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

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**ARTICLE 2. COMMERCIAL DEVICES****R3-7-201. Licensing Process**

Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the Division. The application shall be on a form supplied by the Division that includes:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device;
4. The applicant's signature; and
5. An e-mail address for the owner or operator for the Division to provide licenses, invoices, inspections and reports, enforcement action, and other notifications.

**Historical Note**

New Section R3-7-201 recodified from Section R20-2-201 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-202. Repealed****Historical Note**

Repealed Section R3-7-202 recodified from repealed Section R20-2-202 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-203. Approval, Installation, and Sale of Devices**

- A. A commercial device installed or placed in use after January 1, 1975, shall have an NCWM National Type Evaluation Program (NTEP) Certificate of Conformance or have a certificate of approval from the California Type Evaluation Program. NTEP Certificate of Conformance issuance may be verified at the NCWM website: [http://www.ncwm.net/ntep/cert\\_search](http://www.ncwm.net/ntep/cert_search).
  1. If a commercial device has been continuously licensed, or evidence shows it has been in use by the owner in Arizona since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval.
  2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a Division inspection, the Division shall issue an out of service tag or confiscate the device per R3-7-104(F)(3) and revoke the commercial device license. A person shall no longer use the device commercially.
- B. The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured.

**Historical Note**

New Section R3-7-203 recodified from Section R20-2-203 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-204. Livestock and Vehicle Scale Installation**

- A. Portable livestock and portable vehicle scales shall be designed to be moveable from one location to another.
- B. Portable scales and low-profile electronic scales shall be accessible for maintenance.
- C. Notwithstanding Handbook 44, vehicle and livestock scales installed above ground shall have 2 feet minimum clearance from the bottom of the lowest platform support girder to the ground.

- D. Notwithstanding Handbook 44, vehicle and livestock scales, installed with a pit, shall have 2 feet minimum clearance from the bottom of the main girder that is lowest in platform support to the pit floor.

**Historical Note**

New Section R3-7-204 recodified from Section R20-2-204 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE****R3-7-301. Repealed****Historical Note**

Repealed Section R3-7-301 recodified from repealed Section R20-2-301 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-302. Handbook 130 and Handbook 133**

- A. A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.
- B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:
  1. Clearly labels the price-per-pound where the packaged produce is displayed, and
  2. Deducts a tare for the packaging from the gross weight at the time of sale.
- C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.
- D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.
- E. A person who owns or operates a plant nursery shall label each commodity with its identity and price, or post a sign with this information adjacent to the point of display.
- F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.
- G. Items in or behind a service counter that can be sold only with the assistance of a sales associate are not required to have a price displayed. If a price is displayed, it must meet the requirements of this Chapter.

**Historical Note**

New Section R3-7-302 recodified from Section R20-2-302 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-303. Repealed**

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**Historical Note**

Repealed Section R3-7-303 recodified from repealed Section R20-2-303 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-304. Repealed****Historical Note**

Repealed Section R3-7-304 recodified from repealed Section R20-2-304 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-305. Repealed****Historical Note**

Repealed Section R3-7-305 recodified from repealed Section R20-2-305 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-306. Repealed****Historical Note**

Repealed Section R3-7-306 recodified from repealed Section R20-2-306 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-307. Repealed****Historical Note**

Repealed Section R3-7-307 recodified from repealed Section R20-2-307 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-308. Repealed****Historical Note**

Repealed Section R3-7-308 recodified from repealed Section R20-2-308 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-309. Repealed****Historical Note**

Repealed Section R3-7-309 recodified from repealed Section R20-2-309 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-310. Repealed****Historical Note**

Repealed Section R3-7-310 recodified from repealed Section R20-2-310 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-311. Repealed****Historical Note**

Repealed Section R3-7-311 recodified from repealed Section R20-2-311 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-312. Repealed****Historical Note**

Repealed Section R3-7-312 recodified from repealed Section R20-2-312 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-313. Repealed****Historical Note**

Repealed Section R3-7-313 recodified from repealed Section R20-2-313 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING****R3-7-401. Repealed****Historical Note**

Repealed Section R3-7-401 recodified from repealed Section R20-2-401 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-402. Price-posting Inspection Procedure and Violation Exceptions**

- A. The Division shall choose one item that was used and up to four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.
- B. If the Division finds an alleged price-posting violation involving an item used during its price-verification inspection, the Division shall record the price-posting violation on the inspection report.
- C. The following are price-posting violations:
  1. No price is posted or displayed for an inspected item unless it is not required under subsection (D)(12);
  2. Less than 98 percent of the prices of inspected items are posted accurately; or
  3. A percentage off is provided, but there is no price displayed for the item on, in, or behind a service counter.
- D. The following are not price-posting violations:
  1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
  2. A price is posted on the shelf or on a hook in front of or behind a row of items at the farthest left side of all items with the same price for up to 3 feet of shelf space or at the farthest left and farthest right side of the shelf or hooks with the same priced items. For items of the same price, the uniform price codes may differ for the commodities with prices labeled in this manner, as long as the price posted is a generic price and does not refer to a specific product;
  3. A price is posted on a vertical display in a location clearly visible to the consumer for items of the same price;
  4. Self-contained refrigerated coolers may have prices posted on the inside or outside of the refrigerator doors located on the left, right, or center of the shelving units in a location clearly visible to the consumer.
  5. A storage area that is posted as a storage area for which a customer should ask for assistance;
  6. A restocking area that is posted as a restocking area for which a customer should ask for assistance;
  7. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
  8. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display;
  9. A menu-type sign at a point of display that lists the name and price of every item at the point of display in legible text. A menu-type sign may also be used to display single-item purchase prices in areas where space is limited, or used to display a price for purchase of multiple items and single-item purchase prices at the point of display as long as it is located at, above or near the point of display;

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10. A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item in the point of display is posted;
11. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department;
12. A notice states that there is an additional charge based on an item's size and each size and the additional charge for each size is posted; and
13. An item that does not have a price and is located in or behind a service counter and available only with the assistance of a sales associate. If a price is displayed, it must meet the requirements of this Chapter.

**Historical Note**

New Section R3-7-402 recodified from Section R20-2-402 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-403. Repealed****Historical Note**

Repealed Section R3-7-403 recodified from repealed Section R20-2-403 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-404. Repealed****Historical Note**

Repealed Section R3-7-404 recodified from repealed Section R20-2-404 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-405. Repealed****Historical Note**

Repealed Section R3-7-405 recodified from repealed Section R20-2-405 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-406. Repealed****Historical Note**

Repealed Section R3-7-406 recodified from repealed Section R20-2-406 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-407. Repealed****Historical Note**

Repealed Section R3-7-407 recodified from repealed Section R20-2-407 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-408. Repealed****Historical Note**

Repealed Section R3-7-408 recodified from repealed Section R20-2-408 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-409. Repealed****Historical Note**

Repealed Section R3-7-409 recodified from repealed Section R20-2-409 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-410. Repealed****Historical Note**

Repealed Section R3-7-410 recodified from repealed

Section R20-2-410 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-411. Repealed****Historical Note**

Repealed Section R3-7-411 recodified from repealed Section R20-2-411 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-412. Repealed****Historical Note**

Repealed Section R3-7-412 recodified from repealed Section R20-2-412 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**ARTICLE 5. PUBLIC WEIGHMASTERS****R3-7-501. Qualifications; License and Renewal Application Process**

- A. In addition to the requirements of A.R.S. § 3-3453, to be a public weighmaster or a deputy public weighmaster, a person shall:
  1. Be at least 18 years old,
  2. Be able to operate a scale accurately, and
  3. Be able to execute weight certificates properly.
- B. A person shall not perform the duties of a public weighmaster until the person passes the written weighmaster examination administered by the Division with a minimum score of 75 percent. A person may not take the examination more than three times in six months and must wait 7 days before retaking the exam.
- C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the Division. A separate application shall be submitted for each location the public weighmaster or deputy public weighmaster will issue weight tickets.
  1. The application form includes:
    - a. The applicant's name, address, and telephone number;
    - b. A statement by the applicant that the applicant knows and understands weighmaster laws and rules;
    - c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
    - d. The applicant's signature.
  2. The public weighmaster's application form also includes:
    - a. The name of each deputy public weighmaster operating at each location;
    - b. A statement that the public weighmaster understands they are responsible to ensure that any deputy public weighmasters working at the location are adequately trained and licensed;
    - c. The name and address of the scale; and
    - d. The scale description.
  3. The deputy public weighmaster application shall include a certification that they understand the requirements on a form provided by the Division and be signed by both the public weighmaster and the applicant.
  4. An applicant may be required to submit evidence of qualifications.
  5. The public weighmaster shall ensure all deputy public weighmasters are licensed for the location prior to their issuance of weight tickets.
  6. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. § 41-1080.
- D. Before the Division issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the

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required fees and provide information required in A.R.S. Title 3, Chapter 19, and this Chapter.

- E. The Division does not charge a fee to process a change in name or address.
- F. In the event a public weighmaster leaves employment, a licensed deputy public weighmaster may utilize a public weighmaster stamp which contains only the location identity as issued under R3-7-506(B) for 30 days at a location while a public weighmaster license application is underway. A public weighmaster stamp containing the public weighmaster's name may not be continued to be used following a public weighmaster's departure.

**Historical Note**

New Section R3-7-501 recodified from Section R20-2-501 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-502. Duties**

A public weighmaster shall:

1. Be responsible for the daily operation and maintenance of the licensed scale used when performing weighmaster duties;
2. Use scales according to applicable laws and rules;
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster; and
4. Ensure deputy public weighmasters are licensed prior to their issuance of a weight ticket and cancel deputy public weighmasters licenses within 10 days of their leaving employment to ensure each location has the correct licensed deputy public weighmasters. A deputy public weighmaster license may be canceled by sending an e-mail or other written notification to the Division.

**Historical Note**

New Section R3-7-502 recodified from Section R20-2-502 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action**

- A. The Division may deny a weighmaster license for any of the following reasons:
  1. Providing false or misleading information;
  2. Failing to meet the requirements stated in this Article; or
  3. Any of the reasons stated in subsections (B)(1) through (9).
- B. The Division may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the Division has determined that the public weighmaster:
  1. Does not have the ability to weigh accurately;
  2. Has not correctly made weight certificates;
  3. Has been found to have violated any provision of A.R.S. Title 3, Chapter 19, or this Chapter;
  4. Has falsified a weight certificate;
  5. Has delegated authority to someone other than a licensed public weighmaster or deputy public weighmaster;
  6. Has improperly used a weighmaster's seal of authority;
  7. Has presigned certificates for later use;
  8. Has issued a weight certificate on which changes or alterations were made; or
  9. Has used a scale for public weighing that is not properly licensed.

**Historical Note**

New Section R3-7-503 recodified from Section R20-2-

503 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-504. Scales and Vehicle Weighing**

- A. When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.
- B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.
- C. The owner or user of a weighing device is responsible for the accuracy of the device used by a public weighmaster. The owner or user shall comply with Handbook 44.
- D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.
- E. The Division shall separately license and regulate each scale location.
- F. A weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.
- G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

**Historical Note**

New Section R3-7-504 recodified from Section R20-2-504 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-505. Weight Certificates**

- A. In issuing a weight certificate, a public weighmaster shall enter only those weight values that the weighmaster or deputy public weighmaster has accurately and personally determined.
- B. A public weighmaster or deputy public weighmaster shall not make any entries on a weight certificate issued by another person.
- C. By signing a weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.
- D. A weight certificate is valid only when properly signed and sealed by the issuing public weighmaster or the deputy public weighmaster. The name and image of the seal of the public weighmaster and deputy public weighmaster may be imprinted electronically on the weighmaster certificate in lieu of a hand-written signature and embossed seal if the electronically imprinted name and seal is that of the weighmaster or deputy public weighmaster who weighed, measured, or counted the commodity. To issue an electronic signature or seal, the weighmaster or deputy public weighmaster shall have an individual login associated with the electronic signature and seal or other security measures in place to prevent non-licensed persons from use.
- E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.
- F. A weight certificate shall state:
  1. The date of issuance;
  2. The name of the declared owner, agent, or consignee of the material weighed;
  3. The accurate weight of the material weighed or counted;
  4. The means by which the material is being transported at the time it is weighed or counted;
  5. An identification number of the transporting unit, including a license number; and
  6. The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise was weighed,

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counted, or measured by a public or deputy public weighmaster, and when properly signed and sealed, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law.”

7. The printed name, signature, and license number of the public weighmaster or deputy public weighmaster issuing the weight ticket.

**G.** A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A weighmaster also shall ensure that weight certificates are consecutively numbered and filed numerically, including voids. A weighmaster shall not use another filing system without Division approval.

**H.** A public weighmaster is liable for any forged signatures or electronic signatures.

**Historical Note**

New Section R3-7-505 recodified from Section R20-2-505 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-506. Seal of Authority**

**A.** A weighmaster shall obtain a seal for the certification of weight certificates at cost through the Division.

**B.** The Division shall assign a number to a seal identifying the specific location for which the seal is issued.

**C.** A seal is the property of the state. A weighmaster shall surrender a seal to the Division within 30 days after the weighmaster no longer operates as a licensed public weighmaster if the seal contains the public weighmaster’s name. If the seal was issued under R3-7-506(B) and only contains the location identification, it may be retained for use by the next licensed public weighmaster if it is still legible. Illegible seals shall be surrendered to the Division.

**D.** A public weighmaster shall have one seal for use at each scale location.

**E.** A seal shall be accessible to the weighmaster and authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.

**F.** A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the Division during all business hours.

**G.** A public weighmaster may recreate the state-assigned seal in an electronic format for use as provided under subsection R3-7-505(D). The Division shall provide a template of seal.

**Historical Note**

New Section R3-7-506 recodified from Section R20-2-506 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-507. Prohibited Acts**

**A.** A person shall not:

1. Issue a certified weight certificate without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;
2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a deputy public weighmaster authorized to act for a public weighmaster;
3. Possess unfilled or unused public weighmaster weight certificate forms without being a licensed public weighmaster or a deputy public weighmaster authorized to act for a public weighmaster;
4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;

5. Present a certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing weighmaster;

6. Use without authorization the title “licensed public weighmaster” or any similar title;

7. Represent oneself to be a public weighmaster without holding a license issued by the Division;

8. Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;

9. Use an unlicensed scale in the performance of public weighmaster duties; or

10. Operate a scale for public weighing unless that person is licensed as a public or deputy public weighmaster.

11. Nothing in this subsection shall be construed to prevent administrative staff of the public or deputy public weighmaster from performing administrative duties such as filing weight tickets.

**B.** People engaged in the business of printing weight certificate forms, their representatives, and the Division are exempt from the prohibitions specified in subsections (A)(2) and (3).

**Historical Note**

New Section R3-7-507 recodified from Section R20-2-507 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES****R3-7-601. Qualifications; License and Renewal Application Process**

**A.** Registered service agency.

1. To obtain a license as a registered service agency, an applicant shall provide evidence that:

a. The applicant’s registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter;

b. The applicant provided its representative with a copy of the portions of A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter relating to registered service representative duties;

c. The applicant:

i. Possesses the necessary certified standards and testing equipment to service commercial devices; and

ii. Possesses the necessary test equipment calibrated in the time-frame required by the equipment manufacturer or CARB Executive Orders to perform the required testing of a vapor recovery system or vapor recovery component properly; or

iii. Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and

d. The applicant shall ensure that its registered service representative operates the equipment according to A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter.

2. The Division shall not issue a registered service agency license until at least one of the applicant’s employees passes a registered service representative competency exam.

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3. An applicant for a registered service agency license shall submit an application form, obtained from the Division that provides:
  - a. Name, address, telephone number, electronic mail address, and facsimile number;
  - b. License information from other states;
  - c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
  - d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;
  - e. Branch office information;
  - f. Names of registered service representatives and their experience with other registered service agencies or states;
  - g. License and disciplinary history; and
  - h. Applicant's signature.
- B. Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the Division with evidence that the third-party registered service agency:
  1. Holds a valid license issued by the Arizona Registrar of Contractors,
  2. Complies with workers' compensation insurance laws, and
  3. Maintains liability insurance sufficient to cover the value of work to be performed.
- C. Registered service representative.
  1. To obtain a license as a registered service representative, an applicant shall provide evidence that:
    - a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter;
    - b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application;
    - c. The applicant will operate according to appropriate laws within A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders; and this Chapter; and
    - d. The applicant has passed the competency examination specified in subsection (D).
  2. An applicant for a registered service representative license shall submit an application on a form obtained from the Division that provides:
    - a. Name, address, telephone number, and facsimile number;
    - b. License information from other states;
    - c. An indication of whether the applicant is applying to be a registered service representative or a vapor recovery service representative;
    - d. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
    - e. Work experience with other registered service agencies in Arizona or other states;
    - f. License and disciplinary history; and
    - g. Applicant's signature.
  3. An applicant for a vapor recovery registered service representative license shall maintain and make available to the Division upon request evidence of being:
    - a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or
    - b. Determined qualified by the Division to test or repair all vapor recovery systems and components.
4. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. § 41-1080.
- D. Competency examination. Before being issued a registered service representative license, an applicant shall pass a Division-administered competency examination.
  1. An applicant for a vapor recovery registered service representative license shall complete the Division's training class before taking the competency examination. The Division may waive the training class requirement for up to 12 months for new applicants.
  2. An applicant shall bring a copy of Handbook 44 to the examination site. An applicant for a vapor recovery registered service representative license shall additionally bring copies of CARB test procedures, Executive Orders, and Division Standard Operating Procedures.
  3. An applicant shall complete the competency examination within the time specified by the Division and pass with a score of 75 percent or greater.
  4. The Division shall not allow an applicant to take the competency examination more than three times in six months and the applicant must wait seven days prior to retaking the exam.
  5. The associate director may contract with a third-party testing company to administer testing to provide added convenience to registered service representatives. Taking exams through the third party is optional and the registered service representative shall be responsible for payment of any additional costs related to third-party testing.
- E. As required under A.R.S. § 3-3454(G), the Division shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the Division for the registered service representative.
- F. Renewal of a registered service representative license. Under A.R.S. § 3-3454(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with R3-7-603(E). Before complying with R3-7-603(E), the registered service agency shall ensure that once every 36 months a vapor registered service representative completes the Division's training class and takes and passes the Division's written vapor recovery competency examination.
- G. The Division does not charge a fee to process a change in business name or address.

**Historical Note**

New Section R3-7-601 recodified from Section R20-2-601 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-602. Duties**

- A. Registered service agency.
  1. A registered service agency shall:
    - a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and
    - b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components

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- according to this Chapter, CARB test procedures, and manufacturer specifications.
2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the Division.
    - a. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall complete an online placed-in-service report to the Division. If an online placed-in-service report is not available for the device, a paper report shall be submitted;
    - b. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;
    - c. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;
    - d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or repairs the commercial device and completes the report;
    - e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;
    - f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and
  3. A registered service agency shall have all equipment used for commercial device certification certified annually by the manufacturer. Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.
  4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.
  5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.
  6. A registered service agency shall use a form approved by the Division to record vapor recovery test results and violations. The test results shall be e-mailed to the Division within seven days after completion of the test.
  7. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, at least 5 business days before an initial or annual test.
- B. Registered service representative.**
1. A registered service representative shall:
    - a. Install only commercial devices that meet the requirements of this Chapter;
    - b. Perform all vapor recovery tests according to this Chapter;
    - c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title 3, Chapter 19, this Chapter, Handbook 44, and CARB Executive Orders are met;
    - d. Report to the user equipment or commercial devices that do not conform to NIST standards; and
    - e. Complete placed-in-service reports accurately.
    - f. Report to the Division within one hour by e-mail or phone of finding a device that is not certified as part of the Certificate of Conformance under R3-7-203(A) and is installed to fraudulently obtain consumer credit card information. Additionally, the registered service representative shall contact the local law enforcement agency for collection of the device as evidence.
  2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by R3-7-910. The registered service representative shall notify the Division of the stop-sale, stop-use prior to leaving the site. The registered service representative shall notify the Division regarding retest of the site by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Division may witness the test.

**Historical Note**

New Section R3-7-602 recodified from Section R20-2-602 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment**

- A.** The Division shall not issue a license or renewal until an applicant pays all appropriate fees.
- B.** Upon receipt and acceptance of all required documents, fees, and Division certification of standards, the Division shall issue the agency a license or renewal.
- C.** The Division shall include on a license an assigned number, that remains effective until either withdrawn by the Division or until it expires. The Division shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.
- D.** Neither a registered service agency nor a registered service representative shall transfer a license.
- E.** A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.
- F.** The Division may deny a license or renewal for any of the following reasons:
  1. Providing false or misleading information;
  2. Failure to meet annual certification requirements for standards or testing equipment;
  3. Failure to meet the requirements stated in this Article; or
  4. For any reason that would be grounds for suspension, revocation, or refusal to renew.
- G.** The Division may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties

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required or has been found to have violated any provision of A.R.S. Title 3, Chapter 19, or this Chapter.

- H. Every registered service agency and representative shall comply with the Division's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § 3-3416(F).

**Historical Note**

New Section R3-7-603 recodified from Section R20-2-603 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-604. Prohibited Acts****A.** A person shall not:

1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the Division;
2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
3. Remove an official out-of-service, warning, or stop-sale, stop-use tag except as authorized in this Chapter, or by the Division.

**B.** A registered service agency or registered service representative shall not:

1. Fraudulently complete or file a placed-in-service report;
2. Delegate licensed authority or responsibility to an unlicensed person;
3. Perform a function without certified equipment;
4. Install or place in service a commercial device before satisfying all of the statutory and rule requirements;
5. Fail to report a commercial device to the Division that is found to be out of compliance under R3-7-602;
6. Install, calibrate, or repair a commercial device without placing a decal or label on the device as prescribed by the associate director;
7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use

**Historical Note**

New Section R3-7-604 recodified from Section R20-2-604 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-605. Material Incorporated by Reference**

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.

1. California Air Resources Board Executive Order G-70-17-AD, *Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System*, May 6, 1993, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
2. California Air Resources Board Executive Order G-70-36-AD, *Modification of Certification of the OPW Balance Phase II Vapor Recovery System*, September 18, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

3. California Air Resources Board Executive Order G-70-52-AM, *Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery Systems*, October 4, 1991, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
4. California Air Resources Board Executive Order G-70-70-AC, *Modification of Certification of the Healy Phase II Vapor Recovery System for Gasoline Dispensing Facilities*, June 23, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
5. California Air Resources Board Executive Order G-70-150-AE, *Modification to the Certification of the Marconi Commerce Systems Inc. (MCS) "Formerly Gibarco" VaporVac Phase II Vapor Recovery System*, July 12, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
6. California Air Resources Board Executive Order G-70-153-AD, *Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System*, April 3, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
7. California Air Resources Board Executive Order G-70-154-AA, *Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System*, June 10, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
8. California Air Resources Board Executive Order G-70-163-AA, *Modification to the Certification of the OPW VaporEZ Phase II Vapor Recovery System*, September 4, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
9. California Air Resources Board Executive Order G-70-164-AA, *Modification to Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System*, December 10, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
10. California Air Resources Board Executive Order G-70-165, *Certification of the Healy Vacuum Assist Phase II Vapor Recovery System with the Model 600 Nozzle*, April 20, 1995, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
11. California Air Resources Board Executive Order G-70-169-AA, *Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System*, August 11, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
12. California Air Resources Board Executive Order G-70-177-AA, *Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System*, December 9, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
13. California Air Resources Board Executive Order G-70-180, *Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities*, April 17, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
14. California Air Resources Board Executive Order G-70-183-AA, *Relating to Language Correction in Existing Executive Order G-70-183 (Healy Systems, Inc.)*, June 29, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
15. California Air Resources Board Executive Order G-70-186, *Certification of the Healy Model 400 ORVR Vapor Recovery System*, October 26, 1998, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

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16. California Air Resources Board Executive Order G-70-188, *Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System*, May 18, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
17. California Air Resources Board Executive Order G-70-191-AA, *Relating to Language Correction in Existing Executive Order G-70-191 (Healy Systems, Inc.)*, July 30, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
18. California Air Resources Board Executive Order G-70-196, *Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System*, December 30, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

**Historical Note**

New Section R3-7-605 recodified from Section R20-2-605 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS****R3-7-701. Definitions**

In addition to the definitions in A.R.S. § 3-3401 and R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

“Address” means a street number, street name, city, state, and zip code.

“Approved oxygenate” means an oxygenate not prohibited by A.R.S. 3-3491(E).

“Area A” has the same meaning as in A.R.S. § 3-3401.

“Area B” has the same meaning as in A.R.S. § 3-3401.

“Area C” has the same meaning as in A.R.S. § 3-3401.

“Arizona Cleaner Burning Gasoline” or “Arizona CBG” means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § 3-3493(I).

“AST” means aboveground storage tank.

“AZRBOB” or “Arizona Reformulated Blendstock for Oxygenate Blending” means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of an approved oxygenate after the blendstock is supplied from the facility at which it was produced or imported.

“Batch” means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

“Beginning of transport” means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or

A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

“Biodiesel” has the same meaning as prescribed under A.R.S. § 3-3401.

“Biodiesel blend” has the same meaning as prescribed under A.R.S. § 3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel and is not considered to be a biodiesel blend.

“Biofuel” has the same meaning as prescribed under A.R.S. § 3-3401.

“Biofuel blend” has the same meaning as prescribed under A.R.S. § 3-3401.

“Biofuel blender” means a person that modifies a motor fuel by adding a biofuel.

“Biofuel producer” means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.

“Biofuel Supplier” means a marketer or jobber of a biofuel or biofuel blend.

“Biomass” has the same meaning as prescribed under A.R.S. § 3-3401.

“Biomass-based diesel” has the same meaning as prescribed under A.R.S. § 3-3401.

“Biomass-based diesel blend” has the same meaning as prescribed under A.R.S. § 3-3401.

“Blendstock” means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

“CARB” means the California Air Resources Board.

“CARBOB Model” means the procedures incorporated by reference in R3-7-702(11).

“CARB Phase 2 gasoline” means gasoline that meets the specifications incorporated by reference in R3-7-702(8).

“CBG-covered area” means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

“Conventional gasoline” means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

“Diesel fuel” or “Diesel” has the same meaning as prescribed under A.R.S. § 3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel.

“Duplicate” means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

“EPA” means the United States Environmental Protection Agency.

“EPA waiver” means a waiver granted by the Environmental Protection Agency as described in “Waiver Requests under Section 211(f) of the Clean Air Act,” which is incorporated by reference in R3-7-702.

“Ethanol flex fuel” has the same meaning as prescribed under A.R.S. § 3-3401.

“Final destination” means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

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“Final distribution facility” means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

“Fleet” means at least 25 motor vehicles owned or leased by the same person.

“Fleet vehicle fueling facility” means a facility or location where a motor fuel is dispensed for final use by a fleet.

“Fuel ethanol” means denatured ethanol that meets the requirements in ASTM D4806, which is incorporated by reference in R3-7-702.

“Gasoline” has the same meaning as prescribed under A.R.S. § 3-3401.

“Isobutanol” means butanol isomer 2-methyl-1-propanol that meets the requirements in ASTM D7862, which is incorporated by reference in R3-7-702.

“Jobber” means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

“Manufacturer’s proving ground” has the same meaning as prescribed under A.R.S. § 3-3401.

“Marketer” means a person engaged in selling or offering for sale motor fuels.

“Motor Fuel” has the same meaning as prescribed under A.R.S. § 3-3401.

“Motor fuel dispensing site” means a facility or location where a motor fuel is dispensed into commerce for final use.

“Motor fuel property” means any characteristic listed in R3-7-751(A)(1) through (7), R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

“Motor vehicle” means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

A vehicle that runs on or is guided by rails, or

A vehicle designed primarily for travel through air or water.

“Motor vehicle racing event” has the same meaning as prescribed under A.R.S. § 3-3401.

“MTBE” means methyl tertiary butyl ether.

“Neat” means pure or 100 percent.

“NOx” means oxides of nitrogen.

“Octane,” “octane number,” or “octane rating” mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

“Oxygenate” has the same meaning as prescribed under A.R.S. § 3-3401.

“Oxygenate blender” means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

“Oxygen content” means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

“Pipeline” means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

“Premium Diesel” means a diesel fuel meeting the requirements in ASTM D975 and in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

“Producer” means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

“Production facility” means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the associate director may designate, as part of the producer’s production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

“Product transfer document” has the same meaning as prescribed under A.R.S. § 3-3401.

“Refiner” means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

“Refinery” means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

“Reproducibility” means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

“Supply” means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

“Terminal” means an owner or operator of a motor fuel storage tank facility that accepts custody, but not necessarily ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal.

“Test result” means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

“Transferee” means a person that receives title to or custody of a motor fuel.

“Transferor” means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

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“Transmix” means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

“Transmix facility” means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

“Transporter” means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

“UST” means underground storage tank.

“Vapor pressure” means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

“Vehicle emissions control area” has the same meaning as prescribed under A.R.S. § 3-3401.

“VOC” means volatile organic compound.

**Historical Note**

New Section R3-7-701 recodified from Section R20-2-701 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**R3-7-702. Material Incorporated by Reference**

A. The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 Edition, Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
2. API Recommended Practice 1637 (API RP 1637), “Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals,” published July 2006, Reaffirmed May 2012, American Petroleum Institute (API), 6300 Interfirst Drive, Ann Arbor, MI, 48108.
3. ASTM Standard D975, 2016a (ASTM D975- 16a), “Standard Specification for Diesel Fuel Oils,” published 2016, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
4. ASTM Standard D4806, 2016a (ASTM D4806- 16a), “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,” published 2016, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
5. ASTM Standard D4814, 2016e1 (ASTM D4814- 16e1), “Standard Specification for Automotive Spark-Ignition Engine Fuel,” published 2016, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
6. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.
7. ASTM Standard D5798, 2015 (ASTM D5798- 15), “Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines,” published 2015, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

8. ASTM Standard D6751, 2015ce1 (ASTM D6751- 15ce1), “Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels,” published 2015, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
  9. ASTM Standard D7862, 2017 (ASTM D7862-17), “Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel,” published 2017, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
  10. California Air Resources Board, “California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model,” adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
  11. The Federal Complex Model contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
  12. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
  13. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
  14. ASTM Standard D7467, 2015ce1 (ASTM D7467- 15ce1), “Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20),” published 2015, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
  15. SAE International, SAE J285, “Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines,” published May 5, 2012, SAE International, 400 Commonwealth Drive, Warrendale, PA 15096-0001 or www.sae.org.
- B. Subsection (A)(11) will not become effective until Arizona’s revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

**Historical Note**

New Section R3-7-702 recodified from Section R20-2-702 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers**

- A. After completing an inspection, the Division shall return all motor fuel to the owner or operator of a motor fuel dispensing site at the site where the Division collected the motor fuel.
- B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of a motor fuel dispensing site at the site where the Division collected the motor fuel, the Division shall transport the motor fuel to another site of the

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owner or operator’s choice and within a 20-mile radius of the inspection site.

**Historical Note**

New Section R3-7-703 recodified from Section R20-2-703 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-704. Motor Fuel Dispensing Site Price and Grade Posting on External Signs**

- A. A person who owns or operates a motor fuel dispensing site that has an external sign shall ensure that the sign:
  1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;
  2. Identifies the self-service and full-service prices, if different;
  3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;
  4. Displays lettering at a height of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 1/2”, whichever is larger, and is visible from the road;
  5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);
  6. Describes the motor fuel that meets ASTM D975 as No. 1 Diesel, #1 Diesel, No. 2 Diesel, #2 Diesel, or premium diesel. Describes other fuel for use in compression ignition engines as biodiesel, or biodiesel blend. Diesel fuel No. 2 may be labeled on dispensers as diesel fuel without indication of the fuel grade;
  7. Describes motor fuel with an ethanol concentration of 51 to 83 volume percent as ethanol flex fuel;
  8. Identifies the unit of measure of the price, if it is other than per gallon; and
  9. Sites that sell Ethanol Flex Fuel previously labeled as “E-85” shall update the signage to reflect the sale of Ethanol Flex Fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site.
- B. For the following terms used on a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index as determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method:

Term	Minimum Antiknock Index
1. Regular, Reg, Unleaded, UNL, or UL	87
2. Midgrade, Mid, or Plus	89
3. Premium, PREM, Super, Supreme, High, or High Performance	91

- C. A person may use an alternative to the descriptions provided in subsection (B) upon receipt of written approval by the associate director.

**Historical Note**

New Section R3-7-704, including Table, Antiknock Index, recodified from Section R20-2-704 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-705. Dispenser Labeling at Motor Fuel Dispensing Sites**

The owner or operator of a motor fuel dispensing site shall label dispensers in accordance with the following provisions:

- A. Pricing, motor fuel grade, octane rating, and lead substitute. A motor fuel dispensing station owner or operator shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a motor fuel dispenser:
  1. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
  2. Displays the highest price of motor fuel sold from the dispenser prior to any deliberate action of the customer resulting in a discounted price being displayed, provided the dispenser is capable of dispensing and computing the price of motor fuel at more than one price;
  3. Complies with the requirements of R3-7-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), (A)(7), (A)(8), (A)(9) and (B).
  4. Displays the octane rating of each grade of gasoline;
  5. Displays the signs required by Handbook 130 for motor fuel dispensers that dispense gasoline with lead substitute, in letters at least 1/4” in height; and
  6. Sites that sell ethanol flex fuel previously labeled as “E-85” shall update the signage to reflect the sale of ethanol flex fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site.
- B. All motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply:
  1. Gasoline containing fuel ethanol.
    - a. Gasoline containing greater than 1.5 percent by weight oxygen or 4.3 percent by volume fuel ethanol shall be labeled with the following statement to indicate the maximum percent by volume of fuel ethanol contained in the gasoline: “May contain up to \_\_\_\_ % fuel ethanol.”
    - b. Within the CBG-covered area and area B, gasoline containing fuel ethanol shall be labeled with the following statement: “This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles.”
    - c. Gasoline for sale outside of the CBG-covered area with an ethanol content greater than 10 volume percent and less than or equal to 15 volume percent shall additionally be labeled in accordance with 40 CFR 80.1501, as it existed on July 18, 2014, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.
  2. Gasoline containing an oxygenate other than fuel ethanol. Gasoline containing greater than 1.5 percent by weight shall be labeled with the following statement to indicate the type and maximum percent by volume of oxygenate contained in the gasoline: “May contain up to \_\_\_\_ % \_\_\_\_\_.”
  3. The labels in subsection B(1) and (B)(2) shall be printed in black and white block letters on a sharply contrasting background with lettering no smaller than ¼ inch. The

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statements in subsection (B)(1)(i) and (B)(1)(ii) may be printed on the same label or on separate labels if the statements are displayed next to each other.

4. Non-oxygenated gasoline. It is prohibited to label a dispenser as containing no oxygenate if the gasoline contains more than 0.5 percent by volume of any oxygenates.
  5. Biodiesel blends. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified.
- C. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.
- D. All dispensers shall have a decal that contains the Division's name and phone number. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. § 3-3414(A)(13) satisfies this requirement.
- E. All labels required under this section shall be in the upper 50 percent of the front panel of each motor fuel dispenser and shall be clean, legible, and visible at all times.

**Historical Note**

New Section R3-7-705 recodified from Section R20-2-705 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-706. Repealed****Historical Note**

New Section R3-7-706 recodified from Section R20-2-706 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Repealed by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB**

- A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:
1. The grade of the motor fuel;
  2. The volume of each grade of motor fuel being transferred;
  3. The date of the transfer;
  4. Product transfer document number;
  5. For conventional gasoline, the minimum octane rating of each grade as prescribed by 16 CFR 306;
  6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
  7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
  8. If a lead substitute is present in the gasoline, the type of lead substitute present;
  9. For the following biofuel or biofuel blends;
    - a. Ethanol Flex Fuel shall contain a declaration of the volume percent of ethanol in the blend; or
    - b. Biodiesel and biomass-based diesel blends containing more than 5 percent biodiesel or biomass-based diesel shall contain a declaration of the volume percent biodiesel or biomass-based diesel in the blend, as well as the grade of diesel in the blend; and

- c. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product.

## 10. The final destination:

- a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address and the transporter name and address;
  - b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
  - c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.
- B. To enable a transferor to comply fully with the requirement in subsection (A)(10)(b) and (A)(10)(c), the transferee shall supply to the transferor information regarding the final destination.
- C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.
- D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the Division's request.
- E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.
- F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for Division review.
- G. The Division shall accept a legible photocopy of a product transfer document instead of the original.
- H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with R3-7-757.

**Historical Note**

New Section R3-7-707 recodified from Section R20-2-707 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-708. Gasoline Oxygenate Blends**

- A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § 3-3491.
- B. Special provisions for gasoline ethanol blends.
  1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
    - a. The concentration of the ethanol, excluding the required denaturing agent, shall be:
      - i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
      - ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 per-

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- cent by volume of the gasoline ethanol blend; and
- b. The ethanol content of the gasoline ethanol blend shall:
    - i. Be determined using the appropriate test method listed in ASTM D4814, and
    - ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
  2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
    - a. Outside the CBG-covered area year around, and
    - b. Within the CBG-covered area during April.
  3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
    - a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      - i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      - ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;
    - b. The finished blend complies with the standards in ASTM D4814; or
    - c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      - i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      - ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived.
  4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.
- C. In addition to complying with the requirements in R3-7-707, the transfer of an oxygenated gasoline blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains an oxygenate and lists the type and percentage concentration of the oxygenate.
- D. Nothing in this subsection shall preclude the sale of gasoline with an ethanol content greater than 10 percent by volume and less than or equal to 15 percent by volume of ethanol outside of the CBG-covered area.

**Historical Note**

New Section R3-7-708 recodified from Section R20-2-708 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**R3-7-709. Repealed****Historical Note**

New Section R3-7-709 recodified from Section R20-2-709 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Repealed by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-710. Blending Requirements**

- A. A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs at a motor fuel dispensing site or fleet vehicle fueling facility.
- B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ 3-3491, 3-3492, 3-3495, or R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:
  1. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ 3-3491, 3-3492, 3-3495, or R3-7-751;
  2. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend;
  3. Upon written permission of the associate director, add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend.

**Historical Note**

New Section R3-7-710 recodified from Section R20-2-710 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-711. Gasoline-Alcohol Blend Storage Tank Requirements**

- A. Before a person adds the initial gasoline-alcohol blend into a storage tank, the person shall:
  1. Test the storage tank for the presence of water and, if any water is detected, remove the water from the storage tank; and
  2. Install a fuel filter designed for use with gasoline-alcohol blends in the fuel line of all motor fuel dispensers that dispense gasoline-alcohol blends.
- B. If water is detected in a storage tank containing a gasoline-alcohol blend, the owner or operator shall empty the storage tank.

**Historical Note**

New Section R3-7-711 recodified from Section R20-2-711 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-712. Water in Motor Fuel Dispensing Site Storage Tanks**

A motor fuel dispensing site owner or operator shall ensure that water in a motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

**Historical Note**

New Section R3-7-712 recodified from Section R20-2-712 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-713. Motor Fuel Storage Tank Labeling**

- A. An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:
  1. Unleaded gasoline,
  2. Unleaded midgrade gasoline,
  3. Unleaded premium gasoline,
  4. No. 1 or #1 diesel fuel,

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5. No. 2, #2 diesel fuel, or diesel fuel,
  6. Premium diesel,
  7. Gasoline vapor return,
  8. Biodiesel or biodiesel blend, for blends containing more than 5 percent by volume,
  9. E85 or Ethanol flex fuel, or
  10. Other fuel as designated on the product transfer document.
- B.** An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.
- C.** An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.
- D.** An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.
- E.** A person shall not deliver motor fuel to a motor fuel dispensing site unless the product transfer documents confirm the motor fuel is the correct type as indicated on the tank fill pipes labeled under subsection (A) or the product being delivered meets or exceeds the standards.
- F.** If tank manhole covers are color-coded, the color coding shall comply with API 1637.

**Historical Note**

New Section R3-7-713 recodified from Section R20-2-713 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-714. Additional Requirements for Motor Fuels**

- A.** A person that owns or operates a motor fuel dispensing site, transmix, or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale meets the requirements of the applicable specifications in R3-7-702 except that the maximum vapor pressure from May 1 through September 30 shall be 9.0 pounds per square inch or as allowed under R3-7-708(B).
- B.** The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.
- C.** Prohibited activities regarding a motor fuel sold or offered for sale.
1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel.
  2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § 3-3491.
  3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.
- D.** Biofuels and biofuel blends. Biofuel producers, biofuel blenders, and biofuel suppliers and owners or operators of motor fuel dispensing sites shall comply with the requirements in R3-7-718.

**Historical Note**

New Section R3-7-714 recodified from Section R20-2-714 at 22 A.A.R. 2786, effective August 15, 2016 (Supp.

16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-715. Motor Fuel Testing Methods and Requirements**

- A.** Unless otherwise required in A.R.S. Title 3, Chapter 19, or this Chapter, the producer of a motor fuel shall test and certify the motor fuel for its motor fuel properties using the methodologies in R3-7-702.
- B.** The octane rating shall be determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method.

**Historical Note**

New Section R3-7-715 recodified from Section R20-2-715 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-716. Sampling and Access to Records**

- A.** The Division shall obtain motor fuel samples for testing from:
1. The same motor fuel dispenser used for sales to customers;
  2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
  3. A bulk storage facility;
  4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
  5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
  6. A final distribution facility;
  7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;
  8. An oxygenate blender or registered supplier; or
  9. A transmix or production facility.
- B.** An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and shall make the records available for Division inspection upon request.

**Historical Note**

New Section R3-7-716 recodified from Section R20-2-716 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-717. Motor Fuel Dispensing Site Equipment**

- A.** Hold-open latch. If an owner or operator of a motor fuel dispensing site has a dispensing device with a motor fuel nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch operates according to the manufacturer's specifications.
- B.** Nozzle requirements for diesel fuel. An owner or operator of a motor fuel dispensing site with a dispensing device from which diesel fuel is sold at retail shall ensure that the dispensing device has a nozzle spout with a diameter that conforms to SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines."
- C.** Motor fuel dispenser filters. An owner or operator of a motor fuel dispensing site shall ensure that:
1. All gasoline, gasoline-alcohol blends, and ethanol flex fuel dispensers have a 10 micron or smaller nominal pore-sized filter;

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2. Dispensers that dispense gasoline-alcohol blends shall have fuel filters designed for use with gasoline-alcohol blends;
  3. All biodiesel, biodiesel blends, diesel, and kerosene dispensers have a 30 micron or smaller nominal pore-sized filter; or
  4. In the event a fuel dispenser is not manufactured to be equipped to use fuel filters, they shall be installed in line with the fuel dispensing hose at the base of the dispenser. If this is not feasible, the motor fuel dispensing site owner may provide evidence that fuel filters cannot be installed at the site due to the configuration and apply for a waiver from these requirements from the Associate Director.
- D.** From and after September 30, 2018, all retail diesel fuel dispensers shall be equipped with nozzles that have a green grip guard and ethanol flex fuel dispensers shall be equipped with nozzles that have a yellow grip guard. No other nozzles shall be equipment with these color grip guards.
- E.** Motor fuel dispensers shall meet appropriate UL ratings and be compatible with the motor fuel being dispensed.
- Historical Note**
- New Section R3-7-717 recodified from Section R20-2-717 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).
- R3-7-718. Additional Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends**
- A.** Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona.
1. Registration requirement.
    - a. A biofuel producer, biofuel supplier, or biofuel blender shall register with the associate director, using a form prescribed by the associate director, before producing or supplying biofuel or biofuel blend in Arizona.
    - b. A person required to register under subsection (A)(1)(a) shall notify the associate director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).
    - c. If a biofuel producer, biofuel supplier, or biofuel blender fails to register under subsection (A)(1)(a), the associate director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.
    - d. The Division shall maintain and make available to the public a list of all persons registered under this Section.
  2. Reporting requirement.
    - a. A person required to register under subsection (A)(1)(a) shall report to the Division by January 30th of each year for the previous calendar year. The person shall:
      - i. Report on a form or in a format prescribed by the associate director;
      - ii. Provide the total amount of biofuel or biofuel blend produced or supplied for the previous calendar year, including the total amount of each blend component;
      - iii. Attest to the truthfulness and accuracy of the information submitted; and
      - iv. Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.
    - b. The Division shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.
- B.** Quality Assurance and Quality Control (QA/QC) program requirements.
1. A biofuel producer or biofuel blender shall implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona;
  2. The QA/QC program implemented by a biofuel producer shall include the following minimum requirements:
    - a. A sampling and testing program to certify that the biofuel meets applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods. The plan shall include a policy for sample retention;
    - b. A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;
    - c. The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Division within 24 hours of a request; and
    - d. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards.
  3. The QA/QC program implemented by a biofuel blender shall include the following minimum requirements:
    - a. Retention of:
      - i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under 40 CFR 80, subpart K or M;
      - ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and
      - iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;
    - b. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the biofuel blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final biodiesel blend if it is advertised to consumers as a B6 to B20 biodiesel blend and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;
    - c. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and
    - d. All biodiesel used as a blend component in biodiesel blends consists of at least 99 percent biodiesel unless approved by the Division.
  4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Division upon request.
  5. In the event the Division identifies biofuel or biofuel blends that do not meet ASTM requirements, the pro-

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ducer or biofuel blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

- C. Ethanol flex fuel sold or offered for sale within the CBG-covered area shall:
1. Use fuel ethanol that meets the standards in this Chapter, and
  2. Have a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).
- D. Requirements for motor fuel dispensing sites. The owner or operator of a motor fuel dispensing site at which ethanol flex fuel is dispensed shall ensure that any ethanol flex fuel, biodiesel or biodiesel blend sold, offered or exposed for sale, or dispensed was received from and traceable to a person registered with the Division under subsection (A)(1) and the Environmental Protection Agency under 40 CFR 80, subparts K or M.
- E. Exemptions.
1. A biofuel producer, biofuel supplier, or biofuel blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or biofuel blender located within Arizona is not required to register under subsection (A)(1)(a);
  2. Diesel fuel containing five percent by volume or less biodiesel is exempt from this Section if the following conditions are met:
    - a. The diesel fuel meets the standards of ASTM D975; and
    - b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
  3. A biofuel producer, biofuel supplier, or biofuel blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section.
  4. Gasoline containing up to 10 percent ethanol is exempt from this section.

**Historical Note**

New Section R3-7-718 recodified from Section R20-2-718 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-719. Repealed****Historical Note**

Repealed Section R3-7-719 recodified from repealed Section R20-2-719 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-720. Renumbered****Historical Note**

Renumbered Section R3-7-720 recodified from renumbered Section R20-2-720 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-721. Renumbered****Historical Note**

Renumbered Section R3-7-721 recodified from renumbered Section R20-2-721 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-722. Reserved****Historical Note**

Reserved Section R3-7-722 recodified from reserved Section R20-2-722 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-723. Reserved****Historical Note**

Reserved Section R3-7-723 recodified from reserved Section R20-2-723 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-724. Reserved****Historical Note**

Reserved Section R3-7-724 recodified from reserved Section R20-2-724 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-725. Reserved****Historical Note**

Reserved Section R3-7-725 recodified from reserved Section R20-2-725 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-726. Reserved****Historical Note**

Reserved Section R3-7-726 recodified from reserved Section R20-2-726 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-727. Reserved****Historical Note**

Reserved Section R3-7-727 recodified from reserved Section R20-2-727 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-728. Reserved****Historical Note**

Reserved Section R3-7-728 recodified from reserved Section R20-2-728 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-729. Reserved****Historical Note**

Reserved Section R3-7-729 recodified from reserved Section R20-2-729 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-730. Reserved****Historical Note**

Reserved Section R3-7-730 recodified from reserved Section R20-2-730 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-731. Reserved****Historical Note**

Reserved Section R3-7-731 recodified from reserved Section R20-2-731 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-732. Reserved****Historical Note**

Reserved Section R3-7-732 recodified from reserved Section R20-2-732 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-733. Reserved**

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**Historical Note**

Reserved Section R3-7-733 recodified from reserved Section R20-2-733 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-734. Reserved****Historical Note**

Reserved Section R3-7-734 recodified from reserved Section R20-2-734 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-735. Reserved****Historical Note**

Reserved Section R3-7-735 recodified from reserved Section R20-2-735 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-736. Reserved****Historical Note**

Reserved Section R3-7-736 recodified from reserved Section R20-2-736 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-737. Reserved****Historical Note**

Reserved Section R3-7-737 recodified from reserved Section R20-2-737 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-738. Reserved****Historical Note**

Reserved Section R3-7-738 recodified from reserved Section R20-2-738 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-739. Reserved****Historical Note**

Reserved Section R3-7-739 recodified from reserved Section R20-2-739 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-740. Reserved****Historical Note**

Reserved Section R3-7-740 recodified from reserved Section R20-2-740 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-741. Reserved****Historical Note**

Reserved Section R3-7-741 recodified from reserved Section R20-2-741 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-742. Reserved****Historical Note**

Reserved Section R3-7-742 recodified from reserved Section R20-2-742 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-743. Reserved****Historical Note**

Reserved Section R3-7-743 recodified from reserved Section R20-2-743 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-744. Reserved****Historical Note**

Reserved Section R3-7-744 recodified from reserved Section R20-2-744 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-745. Reserved****Historical Note**

Reserved Section R3-7-745 recodified from reserved Section R20-2-745 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-746. Reserved****Historical Note**

Reserved Section R3-7-746 recodified from reserved Section R20-2-746 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-747. Reserved****Historical Note**

Reserved Section R3-7-747 recodified from reserved Section R20-2-747 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-748. Reserved****Historical Note**

Reserved Section R3-7-748 recodified from reserved Section R20-2-748 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB**

The following definitions apply only to R3-7-750 through R3-7-762, including Tables A, 1, and 2:

“Designated alternative limit” means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

“Downstream oxygenate blending” means combining AZRBOB and an oxygenate to produce fungible Arizona CBG.

“Importer” means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

“Oxygenate-blending facility” means any location (including a truck) where an oxygenate is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

“Oxygenated Arizona CBG” means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the associate director under A.R.S. § 3-3493, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

“Performance standard” means the VOC and NO<sub>x</sub> emission reduction percentages in R3-7-751(A)(8) and Table 1.

“PM” or “Predictive Model Procedures” means the California Predictive Model and CARB’s “California Procedures for Evaluating Alternative Specifications for Phase 2 Reformu-

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lated Gasoline Using the California Predictive Model,” as adopted April 20, 1995, which is incorporated by reference in R3-7-702.

“PM alternative gasoline formulation” means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

“PM alternative specifications” means the specifications for the following fuel properties, as determined using a testing methodology in R3-7-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;

Maximum sulfur content, expressed in the nearest part per million by weight;

Maximum olefin content, expressed in the nearest 10th of a percent by volume;

Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

Maximum T50, expressed in the nearest degree Fahrenheit;

Maximum T90, expressed in the nearest degree Fahrenheit; and

Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

“PM averaging compliance option” means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R3-7-751(G), (H), and (I).

“PM averaging limit” means a PM alternative specification that is subject to the PM averaging compliance option.

“PM flat limit” means a PM alternative specification that is subject to the PM flat limit compliance option.

“PM flat limit compliance option” means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

“Produce” means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner’s refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or

import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

“Registered supplier” means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the associate director under R3-7-750.

“Third-party terminal” means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter or other terminal.

“Type 1 Arizona CBG” means a gasoline that meets the standards contained in R3-7-751(A) and Table 1.

“Type 2 Arizona CBG” means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of R3-7-751(G), (H), and (I), and meets the requirements in:

R3-7-751(A) beginning April 1 through October 31 of each year, and

R3-7-751(B) beginning November 1 through March 31 of each year.

“Winter” means November 1 through March 31.

#### Historical Note

New Section R3-7-749 recodified from Section R20-2-749 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

#### R3-7-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the associate director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:

1. A refiner that produces Arizona CBG or AZRBOB;
2. An importer that imports Arizona CBG or AZRBOB;
3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the associate director and include the following information:

1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
  - a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and

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- b. If an independent laboratory is used to meet the requirements of R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the Division or its authorized agent to collect samples and access records as provided in R3-7-716.
- C.** A person registered under subsection (B) shall notify the associate director within 10 days after the effective date of a change in any of the information provided under subsection (B).
- D.** If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed to be noncompliant from the date that registration should have occurred.
- E.** The Division shall maintain a list of all registered suppliers.
- Historical Note**
- New Section R3-7-750 recodified from Section R20-2-750 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).
- R3-7-751. Arizona CBG Requirements**
- A.** General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.
1. Sulfur: 95 ppm by weight (max).
  2. Aromatics: 50 percent by volume (max).
  3. Olefins: 25 percent by volume (max).
  4. E200: 70-30 percent volume.
  5. E300: 100-70 percent volume.
  6. Maximum vapor pressure:
    - a. October: 9.0 psi.
    - b. November 1 - March 31: 9.0 psi.
    - c. April: 10.0 psi.
    - d. May: 9.0 psi.
    - e. June 1 - September 30: 7.0 psi.
    - f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in R3-7-708(B), during April only.
  7. Oxygen and oxygenates:
    - a. Minimum content:
      - i. November 1 - March 31: 10 percent fuel ethanol by volume or 12.5 percent isobutanol by volume. If A.R.S. § 3-3493(C) petition in effect: 2.7 percent oxygen by weight as approved by the associate director.
      - ii. April 1 - October 31: 0 percent by weight (any oxygenate).
    - b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and shall not exceed the amount allowed by EPA waivers under Section 211(f) of the Clean Air Act for other oxygenates. Additionally, the oxygen content shall comply with the requirements of A.R.S. § 3-3491 and § 3-3492.
- c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § 3-3491.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.
- B.** Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.
1. Sulfur: 80 ppm by weight (max),
  2. Aromatics: 30% by volume (max),
  3. Olefins: 10% by volume (max),
  4. 90% Distillation Temp. (T90): 330° F (max),
  5. 50% Distillation Temp. (T50): 220° F (max),
  6. Vapor Pressure: 9.0 psi (max), and
  7. Oxygenate;
    - a. Minimum oxygenate content - 10 percent fuel ethanol by volume or 12.5 percent isobutanol by volume;
    - b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § 3-3492; and
    - c. Alternative minimum fuel ethanol or isobutanol content may be used if approved by the associate director under A.R.S. § 3-3493(C).
- C.** Fuel ethanol and other oxygenate specifications. A person that uses fuel ethanol or other oxygenates as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol or other oxygenates meet the following requirements:
1. A sulfur content not exceeding 10 ppm by weight;
  2. The fuel ethanol or other oxygenate must be composed solely of carbon, hydrogen, nitrogen, oxygen, and sulfur;
  3. For fuel ethanol, only gasoline previously certified under 40 CFR Part 80 (including previously certified blendstocks for oxygenate blending), gasoline blendstocks, or natural gas liquids may be used as denaturants; and
  4. For fuel ethanol, the concentration of all denaturants is limited to a maximum of 3.0 volume percent.
- D.** General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director on a form or in a format prescribed by the associate director. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
  2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with R3-7-760. A

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registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

- E.** Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director on a form or in a format prescribed by the associate director. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and
  2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.
- F.** A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.
- G.** Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Division approves using the criteria stated in R3-7-759.
- H.** Certification and use of Predictive Model for alternative PM gasoline formulations.
1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
  2. A registered supplier shall certify a PM alternative gasoline formulation with the associate director by either:
    - a. Submitting to the associate director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or
    - b. Notifying the associate director, on a form prescribed by or in a format acceptable to the associate director, of:
      - i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
      - ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
  3. A registered supplier shall deliver the certification required under subsection (H)(2) to the associate director before transporting the PM alternative gasoline formulation.
4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
- a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
  - b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
    - i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;
    - ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
    - iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.
  - c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).
  - d. If a registered supplier notifies the associate director under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:
    - i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or
    - ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.
- I.** Prohibited activities regarding PM alternative gasoline formulations. A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R3-7-752 if any of the following occur:
1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,

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2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
  3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
  4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:
    - a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or
    - b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).
- J.** Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.
- K.** Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:
1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;
  2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 through September 15 during that same period; and
  3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 through September 15 during that same period.
- L.** Consequence of failure to comply with averages.
1. In addition to a penalty under R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:
    - a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;
    - b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the associate director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.
  2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:
    - a. The registered supplier submits a compliance plan to the associate director that includes:
      - i. An implementation schedule for actions to correct noncompliance, and
      - ii. Reporting requirements that document implementation of the compliance plan,
    - b. The associate director approves the plan,
    - c. The registered supplier implements the plan, and
    - d. The registered supplier achieves compliance.
  3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.
    - a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.
    - b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the associate director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director in writing of the beginning date of the probationary period.
  4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.
- M.** Effect of VOC survey failure. Each time a VOC survey conducted under R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.
- N.** Effect of NOx survey failure. Each time a NOx survey conducted under R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.
- O.** Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction per-

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centage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:

1. >27 percent for the VOC emissions reduction percentage, May 1 through September 15, Table 1, column C; and
  2. >6.8 percent for the NOx emissions reduction percentage, May 1 through September 15, Table 1, column B.
- P.** Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:
1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
  2. For a NOx survey failure, the NOx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
  3. If the VOC or NOx emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.
- Q.** Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.
- R.** The use of oxygenates other than ethanol under subsection (A)(7)(a)(i) and (B)(7)(a) is prohibited until EPA approves a revision to the state implementation plan allowing the use of oxygenates other than ethanol.
- Historical Note**
- New Section R3-7-751 recodified from Section R20-2-751 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).
- R3-7-751.01. Repealed**
- Historical Note**
- Repealed Section R3-7-751.01 recodified from repealed Section R20-2-751.01 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).
- R3-7-752. General Requirements for Registered Suppliers**
- A.** A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.
  - B.** A registered supplier shall make the certification on a form or in a format prescribed by the associate director. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the associate director on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.
  - C.** Recordkeeping and records retention.
1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
    - a. Sample date;
    - b. Identity of blend or product sampled;
    - c. Container or other vessel sampled;
    - d. The final blend or shipment volume; and
    - e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under R3-7-759.
  2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the associate director shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the associate director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
  3. A registered supplier shall provide to the associate director any records maintained by the registered supplier under this Section within 20 days of a written request from the associate director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the associate director shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of R3-7-751, unless the registered supplier demonstrates to the associate director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
- D.** Notification requirement. A registered supplier shall notify the associate director by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
- E.** Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the associate director for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the associate director for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director shall determine whether the changed QA/QC program meets the original quality objectives. The associate director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).
- F.** Independent testing.
1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:

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- a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
  - b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
    - i. An independent laboratory shall collect a representative sample from each batch;
    - ii. The associate director or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and
    - iii. The independent laboratory shall, for each sample identified by the associate director or designee, analyze the sample using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
2. The associate director or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the associate director or designee. The registered supplier shall submit a duplicate of the sample to the associate director within 24 hours of the written request.
  3. Designation of independent laboratory.
    - a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
    - b. A registered supplier shall identify the designated independent laboratory to the associate director under the registration requirements of R3-7-750.
    - c. A laboratory is considered independent if:
      - i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
      - ii. The laboratory does not have any interest in any registered supplier, and
      - iii. The registered supplier does not have any interest in the designated laboratory.
    - d. Notwithstanding the restrictions in subsection (F)(3)(c), the associate director shall consider a laboratory independent if it is owned or operated by a pipeline owned or operated by four or more registered suppliers.
    - e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.
  4. A registered supplier shall ensure that its designated independent laboratory:
    - a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
      - i. The producer's or importer's assigned batch number for the batch sampled;
      - ii. The volume of the batch;
      - iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
      - iv. The date and time the batch became Arizona CBG or AZRBOB;
      - v. The date and time the sample is collected;
      - vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
      - vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);
    - b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the associate director for up to 180 days;
    - c. Submits to the associate director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
      - i. The results of the independent laboratory's analyses for each fuel property, and
      - ii. The information specified in subsection (F)(4)(a) for each sample; and
    - d. Supplies to the associate director, upon request, a duplicate of the sample.
- G.** Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the associate director by March 1 of each year.
- H.** Use of laboratory analysis for certification of Arizona CBG and AZRBOB.
1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
    - a. Sulfur content: 25 ppm by weight,
    - b. Aromatics: 2.7% by volume,
    - c. Olefins: 2.5% by volume,
    - d. Fuel ethanol: 0.4% by volume,
    - e. Isobutanol: 0.6% by volume
    - f. Vapor pressure: 0.3 psi,
    - g. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
    - h. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
    - i. E200: 2.5% by volume,
    - j. E300: 3.5% by volume, or

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- k. API gravity: 0.3° API.
2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
- The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
  - Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

**Historical Note**

New Section R3-7-752 recodified from Section R20-2-752 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**R3-7-753. General Requirements for Pipelines and Third-party Terminals**

- A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
- The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the Division under R3-7-750; and
  - The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.
- B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the associate director.
- C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.
- D. A pipeline shall provide the associate director with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.
- E. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the associate director by fax or e-mail within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.
- F. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the associate director by fax or e-mail within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by

the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in R3-7-751(A) or (B), as applicable.

- G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the associate director for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the associate director for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Division. The associate director shall approve the changed QA/QC program if it meets the quality objectives.
- H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in R3-7-752 and oxygenate blenders in R3-7-755, as applicable.
- I. A pipeline is not liable under R3-7-761 if it follows all of the procedures in this Section.

**Historical Note**

New Section R3-7-753 recodified from Section R20-2-753 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-754. Downstream Blending Exceptions for Transmix**

- A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.
- B. One of two methods shall be used to measure the transmix as it is blended into the product stream:
- Meters, calibrated at least twice each year; or
  - Tank gauge as per American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the Division. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.

**Historical Note**

New Section R3-7-754 recodified from Section R20-2-754 at 22 A.A.R. 2786, effective August 15, 2016 (Supp.

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16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending**

**A. Application of Arizona CBG standards to AZRBOB.**

1. Determining whether AZRBOB complies with Arizona CBG standards.
  - a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified type and amount of oxygenate to a representative sample of the AZRBOB and determining the fuel properties and performance standards of the resulting gasoline using the test methods in R3-7-759 or, in the case of fuel ethanol blends, certifying the AZRBOB using the CARBOB model. If the registered supplier designates a range of amounts of oxygenate to be added to the AZRBOB, the minimum designated amount of oxygenate shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Division shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding oxygenate to the AZRBOB.
  - b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the oxygenate added to the representative sample under subsection (A)(1)(a) is representative of the oxygenate the registered supplier reasonably expects will be subsequently added to the AZRBOB.
2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under R3-7-751 by adding the minimum amount of oxygenate designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Division shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of oxygenate to the AZRBOB..

**B. Restrictions on transferring AZRBOB.**

1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:
  - a. The transferee is a registered oxygenate blender and will add oxygenate in the type and amount (or within the range of amounts) designated in R3-7-757 before the AZRBOB is transferred from a final distribution facility, or
  - b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the type and amount (or within the range of amounts) of oxygenate designated in R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.
2. A person shall not sell or supply Arizona CBG from a final distribution facility if the type and amount or range of amounts of oxygenate designated in R3-7-757 have not been added to the AZRBOB.

**C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:**

1. Oxygenate in the type and amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
2. Other AZRBOB for which the same oxygenate type and amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.
3. A registered oxygenate blender may utilize an oxygenate type other than the one specified by the registered supplier provided all the requirements of R3-7-751, R3-7-752, R3-7-755, and R3-7-759 are demonstrated with the addition of the different oxygenate type.

**D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.**

1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in R3-7-759...;" and
3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i))" is changed to read "(within the ranges of the applicable test methods)."

**E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:**

1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
  - a. The third party shall not be an employee of a registered supplier,
  - b. The third party shall not have an obligation to or interest in any registered supplier, and
  - c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the associate director under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated

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- in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the associate director to ensure the validity of analysis results;
  7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
  8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the associate director, within 30 days after submitting the report required under subsection (E)(10);
  9. Permits a Division official to monitor sample collection, transportation, storage, and analysis at any time; and
  10. Prepares and submits a report to the associate director within 30 days after the sampling is completed that includes the following information:
    - a. Name of the person collecting the samples;
    - b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the associate director under subsection (G) and the results are accurate;
    - c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    - d. Identification of the area from which the samples were collected;
    - e. Address of each motor fuel dispensing site from which a sample was collected;
    - f. Dates on which the samples were collected;
    - g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    - h. Name and address of each laboratory at which the samples were analyzed;
    - i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    - j. Number of samples collected at each motor fuel dispensing site; and
    - k. Justification for excluding a collected sample if one was excluded.
- F.** An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the associate director. The associate director shall inform the third party of the date selected at least 10 business days before sampling is to begin.
- G.** To obtain the associate director's approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:
1. Submit the plan to the associate director no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
  2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.
- H.** No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the associate director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.
- I.** Requirements for oxygenate blenders.
1. Requirement to add oxygenate to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that oxygenate will be added to the AZRBOB, the oxygenate blender shall add oxygenate to the AZRBOB in the type and amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
  2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending oxygenate with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.
  3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
    - a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"
    - b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in R3-7-759...;" and
    - c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."
  4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.
    - a. An oxygenate blender that produces Arizona CBG by blending oxygenate with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:
      - i. Obtain a flow proportional composite sample after the addition of oxygenate and before combining the resulting Arizona CBG with any other Arizona CBG;
      - ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in R3-7-759; and
      - iii. Determine the volume of the resulting Arizona CBG.
    - b. If the test results for the Arizona CBG indicate that it does not contain the amount of oxygenate specified by the ranges of the applicable test methods, the oxygenate blender shall:

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- i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;
  - ii. Begin an investigation to determine the cause of the noncompliance;
  - iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and oxygenate, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and
  - iv. Notify the associate director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.
- c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the associate director determines that the corrective action has remedied the noncompliance.
5. Recordkeeping and records retention.
- a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:
    - i. Sample date,
    - ii. Identity of blend or product sampled,
    - iii. Container or other vessel sampled,
    - iv. Volume of final blend or shipment,
    - v. Oxygen content as determined under R3-7-759, and
    - vi. Results from all testing.
  - b. The associate director shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards in R3-7-751.
  - c. Within 20 days of the associate director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the associate director shall deem that the blend or shipment of Arizona CBG violates R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards and limits under R3-7-751.
6. Notification requirement. An oxygenate blender shall notify the associate director by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the associate director for approval at least three months before transporting Arizona CBG. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).
8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).
9. Within 24 hours of the associate director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).
- J.** Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

**Historical Note**

New Section R3-7-755 recodified from Section R20-2-755 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks**

- A.** A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the associate director:
1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
  2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
  3. The resulting fuel blend is not used within the CBG-covered area.
- B.** Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in R3-7-751(A) or (B) if the person obtains prior written approval from the associate director based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the Division.

**Historical Note**

New Section R3-7-756 recodified from Section R20-2-756 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-757. Product Transfer Documentation; Records Retention**

- A.** If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:

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1. Volume of Arizona CBG or AZRBOB being transferred;
  2. Location of the Arizona CBG or AZRBOB at the time of transfer;
  3. Date of the transfer;
  4. Product transfer document number;
  5. Identification of the gasoline as Arizona CBG or AZRBOB;
  6. Minimum octane rating of the Arizona CBG or AZRBOB;
  7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the type and minimum quantity of oxygenate contained in the Arizona CBG;
  8. If the product transferred is AZRBOB for which oxygenate blending is intended:
    - a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of oxygenate";
    - b. Oxygenate type or types and amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent of oxygenate and weight percent oxygen content; and
    - c. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for oxygenate type or types and amount or range of amounts; and
  9. The final destination:
    - a. When a terminal is the transferor, the owner or the operator of the product transfer document the terminal name and address and the transporter name and address;
    - b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
    - c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.
- B.** To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.
- C.** A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.
- D.** Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.
- E.** A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.
- F.** A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 60 months before the most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.
- G.** When a person transfers custody or title of an oxygenate that is intended for use in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the oxygenate complies with the standards for an oxygenate intended for use in AZRBOB or Arizona CBG.
- H.** Upon request by the associate director or designee, a person shall present product transfer documents to the Division within two working days of the request. Legible photocopies of the product transfer documents are acceptable.

**Historical Note**

New Section R3-7-757 recodified from Section R20-2-757 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**R3-7-758. Repealed****Historical Note**

Repealed Section R3-7-758 recodified Section R20-2-758 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-759. Testing Methodologies**

- A.** Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org). A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or [www.arb.ca.gov](http://www.arb.ca.gov).
- B.** An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure the oxygenate content in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.
- C.** Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.
- D.** A test method that the Division determines is equivalent to those listed in Table A may be used to certify Arizona CBG or

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AZRBOB. The Division has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Division shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Division shall approve a proposed test method only if the Division determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is

required to align the two methods, the correlation equation becomes part of the equivalent method.

- E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

**Historical Note**

New Section R3-7-759 recodified from Section R20-2-759 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**Table A. Arizona Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB**

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003) <sup>A</sup>	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 (X) <sup>1.133</sup>
Olefins	V%	D1319-02a (2003)	0.32 (x) <sup>0.5</sup>	D6550-00 (2005) if correlated to D1319	0.32 (X) <sup>0.5</sup> ; Footnote 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004) <sup>B</sup>	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 (x) <sup>0.92</sup> wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

<sup>A</sup> A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004).

<sup>B</sup> A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).

**Footnotes:**

1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."

2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

**Historical Note**

New Article 7, Table A recodified from 20 A.A.C. 2, Article 7, Table A at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-760. Compliance Surveys**

- A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the associate director. The associate director shall approve a compliance survey program plan if it:

1. Consists of at least four VOC and NOx surveys conducted at least one per month between May 1 through September 15 of each year, and
  2. Complies with subsection (J).
- B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the associate director shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a

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per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the associate director's order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

- C.** General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:
1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
  2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
  3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;
  4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
  5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the associate director to ensure the validity of analysis results.
- D.** If the associate director determines that a sample used in a compliance survey does not comply with R3-7-751 or another requirement under this Article, the associate director shall take enforcement action against the registered supplier.
- E.** A registered supplier shall comply with the following VOC and NOx compliance survey requirements:
1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in R3-7-702;
  2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
  3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.
- F.** A registered supplier shall determine the result of the series of NOx compliance surveys conducted May 1 through September 15 as follows:
1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in R3-7-702; and
  2. The CBG-covered area fails the NOx series of compliance surveys conducted May 1 through September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.
- G.** General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The associate director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:
1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
    - a. The surveyor shall not be an employee of any registered supplier,
    - b. The surveyor shall not have an obligation to or interest in any registered supplier, and
    - c. The registered supplier shall not have an obligation to or interest in the surveyor;
  2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
  3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
  4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the associate director, within 30 days following submission of the survey report required under subsection (G)(6);
  5. Requires that the surveyor permit a Division official to monitor sample collection, transportation, storage, and analysis at any time;
  6. Requires the surveyor to submit a report of each survey to the associate director within 30 days after sampling for the survey is completed that includes the following information:
    - a. Name of the person conducting the survey;
    - b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
    - c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
    - d. Identification of the area from which survey samples were selected;
    - e. Dates on which the survey was conducted;
    - f. Address of each facility at which a sample was collected, and the date of collection;
    - g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
    - h. Name and address of each laboratory at which samples were analyzed;
    - i. Description of the method used to select the facilities from which a sample was collected;

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- j. Number of samples collected from each facility;
  - k. Justification for excluding a collected sample from the survey, if one was excluded; and
  - l. Average VOC and NOx emissions reduction percentage.
- H.** An independent surveyor shall begin each survey on a date selected by the associate director. The associate director shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.
- I.** To obtain the associate director's approval of a compliance survey program plan, the person seeking approval shall:
- 1. Submit the plan to the associate director no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
  - 2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.
- J.** No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the associate director a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

**Historical Note**

New Section R3-7-760 recodified from Section R20-2-760 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB**

- A.** Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with R3-7-751, the following are liable for the violation:
- 1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
  - 2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
  - 3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.
- B.** Defenses.
- 1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
    - a. That the violation was not caused by the person or person's employee or agent;
    - b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
    - c. That the person had a quality assurance sampling and testing program, as described in subsection (C)

in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.

- 2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
    - a. A violation of law other than A.R.S. Title 3, Chapter 19, Article 6, this Article, or an act of sabotage or vandalism;
    - b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
    - c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
  - 3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.
- C.** Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a motor fuel dispensing site or fleet owner facility, a person shall present evidence:
- 1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in R3-7-751; and
  - 2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in R3-7-751:
    - a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
    - b. The person remedies the violation as soon as practicable.

**Historical Note**

New Section R3-7-761 recodified from Section R20-2-761 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-762. Penalties**

Any person who violates any provision of this Article is subject to the following:

- 1. Prosecution for a Class 2 misdemeanor under A.R.S. § 3-3473(B)(4);
- 2. Civil penalties in the amount of \$500 per violation under A.R.S. § 3-3475; and
- 3. Stop-use, stop-sale, hold, and removal orders under A.R.S. § 3-3415(A)(2).

**Historical Note**

New Section R3-7-762 recodified from Section R20-2-762 at 22 A.A.R. 2786, effective August 15, 2016 (Supp.

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16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**Table 1. Type 1 Arizona CBG Standards**

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per-gallon)	Maximum (per-gallon)
VOC Emission Reduction (%) May 1 through Sept. 15	27.5	29.0	25.0	N/A
NOx Emission Reduction (%) May 1 through Sept. 15	5.5	6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) November 1 - March 31*** April 1 - October 31	N/A 0.0*	N/A N/A	N/A 0.0	N/A 4.0
Oxygen content: other than fuel ethanol, (% by weight) November 1 - March 31*** April 1 - October 31	N/A 0.0	N/A N/A	N/A 0.0	N/A ****3.5
* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § 3-3491. ** Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility. *** A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through March 31. ****Unless prohibited by A.R.S. § 3-3491.				

**Historical Note**

New Article 7, Table 1 recodified from 20 A.A.C. 2, Article 7, Table 1 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Table 1 amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**Table 2. Type 2 Arizona CBG Standards**

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0	22.0	25.0	% by volume
Oxygen content: fuel ethanol** November 1 - March 31 April 1 - October 31 The maximum oxygen content EtOH year around	10% fuel ethanol**	–	10% fuel ethanol**  4.0	% by volume  % by weight
Oxygen content: isobutanol** November 1 - March 31 April 1 - October 31 The maximum oxygen content year around	12.5% isobutanol	–	12.5% isobutanol  3.5	% by volume  % by weight

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\* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and R3-7-751(G), (H), and (I) for the use of the PM.

\*\* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.

A registered supplier shall certify all Arizona CBG using fuel ethanol or isobutanol as the oxygenate beginning November 1 through March 31. Alternative oxygenate contents not less than 2.7% total oxygen may be used if approved by the associate director under A.R.S. § 3-3493(C).

NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.

**Historical Note**

New Article 7, Table 2 recodified from 20 A.A.C. 2, Article 7, Table 2 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3). Table 2 amended by final rulemaking at 24 A.A.R. 2666, effective November 10, 2018 (Supp. 18-3).

**Table 3. Repealed****Historical Note**

Repealed Table 3 recodified from repealed Table 3 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**ARTICLE 8. RESERVED****ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS****R3-7-901. Material Incorporated by Reference**

The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no later amendments or editions:

1. Appendix J.5 of Technical Guidance – Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA450/391022b), published by the U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.
2. *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.
3. The following CARB test procedures:
  - a. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  - b. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  - c. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  - d. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

- e. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
- f. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
- g. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
- h. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

**Historical Note**

New Section R3-7-901 recodified from Section R20-2-901 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-902. Exemptions**

- A. The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with R3-7-913 or that is subject to A.R.S. § 3-3512, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.
- B. The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § 3-3515(B) may obtain an exemption by submitting a written request to the Division attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § 3-3515(B). By the 15th of each month, beginning the month after the Division approves the exemption, the person shall submit a written throughput report to the Division. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the Division deems the exemption void.
- C. To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing

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site for which an exemption is requested. The person shall submit a written request for exemption to the Division. The Division shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:

1. Purchase and sale of diesel fuel, and
  2. State lottery sales net commissions and incentives.
- D.** Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

**Historical Note**

New Section R3-7-902 recodified from Section R20-2-902 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-903. Equipment and Installation**

- A.** A person subject to A.R.S. § 3-3515 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with R3-7-913.
- B.** The Division shall reject a vapor recovery system or component from future installation if:
1. Federal regulations prohibit its use;
  2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-901; or
  3. The vapor recovery system or component fails greater than 20% of Division inspections for that system or component or the Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Division provides at least 30 days public notice of its proposed rejection.
- C.** The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining Division approval under R3-7-904.
- D.** If Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.
- E.** A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

**Historical Note**

New Section R3-7-903 recodified from Section R20-2-903 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval**

- A.** A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:

1. Adding or replacing a gasoline storage tank that is equipped with a Division approved stage II vapor recovery system;
  2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
  3. Replacing a Division-approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.
- B.** A person shall file with the Division a written change order to an authority to construct plan approval on a form provided by the Division if a modification of the approved vapor recovery system or component is needed after the Division issues an authority to construct plan approval. The person shall not make any modification until the Division approves the change order.
- C.** To obtain an authority to construct plan approval, a person shall submit to the Division, on a form provided by the Division, the following:
1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
  2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
  3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
  4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
  5. The application fee specified under R3-7-906.
- D.** After review and approval of the authority to construct plan, the Division shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Division review.
  2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
  3. An authority to construct plan approval is not transferable.
- E.** The Division shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
  2. Failing to meet the requirements stated in this Chapter.
- F.** If excavation is involved, the Division may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the Division notice by fax or e-mail at least two business days before the underground piping is complete. The Division shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.
- G.** After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for

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up to 90 days before final approval, if an initial inspection is scheduled according to R3-7-905.

- H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

**Historical Note**

New Section R3-7-904 recodified from Section R20-2-904 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-905. Initial Inspection and Testing**

- A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the Division at a time approved by the Division and include any of the following relevant to the specific vapor recovery system installed:
1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
  2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in R3-7-901(1) is used, the Division shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in R3-7-901(2) is used, the Division shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The Division shall compute combined tank vapor space for manifolded systems;
  3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
  4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;
  5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
  6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
  7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and
  8. Procedures specified by a manufacturer for testing the vapor recovery system.
- B. If there is a difference between a testing contractor's and the Division's test results, the Division's test results prevail.
- C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).
- D. A person who cancels an initial inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Division shall take enforcement action if a person fails to comply with this Section.
- E. A person shall notify the Division when a vapor recovery system or component is repaired after failing an initial inspection.

A registered service representative shall not proceed with a reinspection until the Division approves the reinspection date and time.

- F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Division shall fail the initial inspection of that site.
- G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
1. The Division shall take enforcement action if the person fails to timely reschedule the inspection.
  2. The registered service agency shall notify the Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
  3. The Division shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.

**Historical Note**

New Section R3-7-905 recodified from Section R20-2-905 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-906. Fee**

The authority to construct plan approval fee is \$250.

**Historical Note**

New Section R3-7-906 recodified from Section R20-2-906 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-907. Operation**

- A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 3, Chapter 19, Article 7, and this Article.
- B. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall operate the stage II vapor recovery system and associated components in compliance with the CARB certification for that system and these rules.
- C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, stage I fittings, and spill containment.
- D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage II vapor recovery system or component if one or more of the following system or component defects occur:
1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;
  2. When more than 1/4 of the cone is missing for vapor assist systems having bellowsless nozzles with flexible vapor deflecting cones;
  3. A nozzle bellows has a triangular tear measuring 1/2 inch or more to a side, a hole measuring 1/2 inch or more in diameter, or a slit or tear measuring one inch or more in length;
  4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manu-

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- facturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;
5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold-open latch;
  6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;
  7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds .84 inch, or the plastic insert in the tip of the spout is loose;
  8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only one nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;
  9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;
  10. A dispenser mounted vacuum pump that is not functioning;
  11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
    - a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;
    - b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;
    - c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;
    - d. Does not swivel at the hose/nozzle connection; or
    - e. Does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;
  12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;
  13. The stage I installation is not properly installed or maintained, in that:
    - a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, or there are non-functioning drain valves, or drain valves that do not seal;
    - b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;
    - c. Coaxial stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or
    - d. A fill tube is missing, not sealed, has holes, broken or damaged overflow preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;
  14. The tank rise cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;
  15. The under-dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the under-ground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;
  16. An above-ground storage tank that does not display a permanently attached UL approval plaque;
  17. A vacuum assist system with an inoperative central vacuum unit;
  18. A vacuum assist system with an inoperative vapor processing (burner) unit;
  19. A vacuum assist system with a monitoring system certified by CARB or the authority to construct that is not operational or malfunctions; or
  20. Any other component identified in the diagrams, exhibits, attachments or other documents that are certified by CARB or required by the authority to construct for that system is missing, disconnected, or malfunctioning.
- E. The owner or operator of a gasoline dispensing site shall inspect for the presence and proper placement of public information signs required by A.R.S. § 3-3515(E) and this Article.
  - F. For a stage II vacuum assist vapor recovery system, the owner or operator of a gasoline dispensing site shall immediately place damaged or malfunctioning equipment out of service and shall notify the Division by fax or e-mail no more than one day after the malfunction of a central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within five days of the repair to the Division.
  - G. For proper operation of a stage I system, under A.R.S. § 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.
  - H. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

**Historical Note**

New Section R3-7-907 recodified from Section R20-2-907 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-908. Training and Public Education**

- A. Each operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated and maintained properly in accordance with the manufacturer's specifications and CARB certification. The operator shall maintain documentation of this training onsite and make the documentation available to the Division on request.
- B. In addition to the information required in A.R.S. § 3-3515(E), an operator of a gasoline dispensing site with stage II vapor recovery shall display a Division telephone number that the public can call to report nozzle or other equipment problems. The operator shall place the required information on each face of each gasoline dispenser. The headings shall be at least 3/8 inches and shall be readable from up to 3 feet away for decal

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signs, and from up to 6 feet away for permanent (nondecals) signs. Decals shall be located on the upper 60% of each face of each dispenser.

**Historical Note**

New Section R3-7-908 recodified from Section R20-2-908 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-909. Recordkeeping and Reporting**

- A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.
- B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.
- C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 3-3515(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the Division as required under R3-7-902(B). If any throughput requirement provided in A.R.S. § 3-3515(B) and this Article is exceeded for any month, the owner or operator shall notify the Division in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.
- D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Division upon request.

**Historical Note**

New Section R3-7-909 recodified from Section R20-2-909 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-910. Annual Inspection and Testing**

- A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Division approves the inspection date and time.
- B. The annual inspection shall include the tests defined in R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.
- C. If there is a difference between a testing contractor's and the Division's test results, the Division's test results prevail.
- D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B).
- E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

- F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the Division issues to registered service agencies.
- G. A person who cancels a witnessed inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Division shall take enforcement action if a person does not comply with this subsection.

**Historical Note**

New Section R3-7-910 recodified from Section R20-2-910 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-911. Compliance Inspections**

The Division shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title 3, Chapter 19, or this Article, the Division shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-910.

**Historical Note**

New Section R3-7-911 recodified from Section R20-2-911 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-912. Enforcement**

If the Division finds that a stage II vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title 3, Chapter 19, the Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 3, Chapter 19 and this Chapter before the vapor recovery system or component is placed in service.

**Historical Note**

New Section R3-7-912 recodified from Section R20-2-912 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-913. Stage II Decommissioning**

- A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:
  1. If the owner or operator holds a license issued by the Division numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or
  2. If the owner or operator holds a license issued by the Division numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.

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- B.** Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the Division for approval prior to decommissioning at an alternate time period.
1. An owner or operator that holds licenses issued by the Division for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and
  2. An owner or operator that holds licenses issued by the Division for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).
- C.** An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):
1. The business name and mailing address on all licenses;
  2. The name and telephone number of an individual with whom the Division can communicate;
  3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;
  4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and
  5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
    - a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and
    - b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.
- D.** The Division shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The Division shall allow decommissioning of stage II vapor recovery equipment at the time gasoline dispensers are replaced as indicated on the request for approval under subsection (C)(4). The Division may reject an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;
- E.** The owner or operator of a gasoline dispensing site that is exempt under R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;
- F.** The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the Division, is submitted to the Division at least 10 days before the planned decommissioning and includes the following information:
1. Name of the owner or operator of the gasoline dispensing site,
  2. Address of the gasoline dispensing site,
  3. Name of the decommissioning contractor,
  4. Decommissioning dates,
  5. Name of the vapor testing registered service representative, and
  6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.
- G.** If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the Division receives the changed information at least 24 hours before the scheduled start of decommissioning.
- H.** The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in R3-7-901(4) with the following exceptions:
1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;
  2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and
  3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in R3-7-1005(A)(1).
- I.** The decommissioning contractor shall:
1. Complete a Decommissioning Checklist using a form or format provided by the Division,
  2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning, and
  3. Submit a copy of the completed Decommissioning Checklist to the Division within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.
- J.** A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under R3-7-910 but shall be subject to the initial inspection and testing prescribed under R3-7-1005 within 60 days after decommissioning is complete.
- K.** The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.
- L.** The Division shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § 3-3475 on the owner or operator of the gasoline dispensing site.

**Historical Note**

New Section R3-7-913 recodified from Section R20-2-913 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**ARTICLE 10. STAGE I VAPOR RECOVERY****R3-7-1001. Material Incorporated by Reference**

The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no later amendments or editions:

1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase I Adaptors, October 8,

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- 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  5. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

**Historical Note**

New Section R3-7-1001 recodified from Section R20-2-1001 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1002. Exemptions**

- A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.
- B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § 3-3512(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dispensing site shall submit an annual throughput report to the Division, using a form prescribed by the Division, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § 3-3512(B) was exceeded, the Division shall deem the exemption void.

**Historical Note**

New Section R3-7-1002 recodified from Section R20-2-1002 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1003. Equipment and Installation**

- A. The Division shall reject a vapor recovery system or component from future installation if:
  1. Federal regulations prohibit its use;
  2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-1001; or
  3. The vapor recovery system or component fails greater than 20% of Division inspections for that system or component or the Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Division provides at least 30 days public notice of its proposed rejection.
- B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining Division approval under R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the Division as required under A.R.S. § 3-3512.
- C. If Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.
- D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.
- E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

**Historical Note**

New Section R3-7-1003 recodified from Section R20-2-1003 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval**

- A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:
  1. Adding or replacing a gasoline storage tank that is equipped with a Division approved stage I vapor recovery system;
  2. Modifying, adding, or replacing underground vent piping; or
  3. Conducting construction under R3-7-913(H)(2).
- B. A person shall file with the Division a written change order, using a form provided by the Division, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the Division issues an authority to construct plan approval. The person shall not make any modification until the Division approves the change order.
- C. To obtain an authority to construct plan approval, a person shall submit to the Division, on a form provided by the Division, the following:
  1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
  2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;

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3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
  4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
  5. The application fee specified under R3-7-1006.
- D.** A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
  2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
  3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
  4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
  5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
  6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
  7. Has tank vent pipes with a minimum inside diameter of:
    - a. Two inches if the pipe is not manifolded, or
    - b. Three inches from the point of manifold if the pipe is manifolded;
  8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
  9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
  10. Has risers into gasoline storage tanks that are capped with UL-approved caps;
  11. Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
  12. Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY 88/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and
  13. Complies with other requirements outlined in the authority to construct permit.
- E.** After review and approval of the authority to construct plan, the Division shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.
1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Division review.
  2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
- 3.** An authority to construct plan approval is not transferable.
- F.** The Division shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
  2. Failing to meet the requirements stated in this Chapter.
- G.** If excavation is involved, the Division may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or component shall give the Division notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The Division may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.
- H.** After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to R3-7-1005.
- I.** An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

**Historical Note**

New Section R3-7-1004 recodified from Section R20-2-1004 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1005. Initial Inspection and Testing**

- A.** Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval and this subsection. The inspection shall be witnessed by the Division at a time approved by the Division and include the following tests:
1. A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;
  2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
  3. A Tie-Tank test using CARB TP-201.3C test procedure; and
  4. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.
- B.** If there is a difference between a testing contractor's test results and the Division's test results, the Division's test results prevail.
- C.** If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

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- D.** A person who cancels an initial inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Division shall take enforcement action if a person fails to comply with this Section.
- E.** A person shall notify the Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Division approves the reinspection date and time.
- F.** If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Division shall fail the initial inspection of that site.
- G.** If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
1. The Division shall take enforcement action if the person fails to timely reschedule the inspection.
  2. The registered service agency shall notify the Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
  3. The Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the inspection date and time.
- a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
  - b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
  - c. Coaxial stage I is not equipped with a functioning CARB-approved popped fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
  - d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;
4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
  5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
  6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.
- E.** For proper operation of a stage I system under A.R.S. § 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.
- F.** The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

**Historical Note**

New Section R3-7-1005 recodified from Section R20-2-1005 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1006. Fee**

The authority to construct plan approval fee is \$250.

**Historical Note**

New Section R3-7-1006 recodified from Section R20-2-1006 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**R3-7-1007. Operation**

- A.** The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 3, Chapter 19, Article 7, and this Article.
- B.** The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or Division approval under A.R.S. § 3-3512 for that system and these rules.
- C.** The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.
- D.** The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:
1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
  2. Vent pipes do not meet the CARB-specified paint color code specified in R3-7-1004(D)(13);
  3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:

**Historical Note**

New Section R3-7-1007 recodified from Section R20-2-1007 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1008. Training and Public Education**

Each owner or operator of a gasoline dispensing site using stage I vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training onsite and make the documentation available to the Division on request.

**Historical Note**

New Section R3-7-1008 recodified from Section R20-2-1008 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1009. Recordkeeping and Reporting**

- A.** The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under R3-7-1007.
- B.** The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.
- C.** The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 3-3512(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the Division within 24

## CHAPTER 7. DEPARTMENT OF AGRICULTURE - WEIGHTS AND MEASURES SERVICES DIVISION

hours after request. The owner or operator shall submit to the Division the throughput information required under R3-7-1002(B). If any throughput requirement provided in A.R.S. § 3-3512(B) and this Article is exceeded for any month, the owner or operator shall notify the Division in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

- D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under R3-7-913 shall maintain a copy of the decommissioning checklist required under R3-7-913(I) for three years.
- E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Division upon request.

**Historical Note**

New Section R3-7-1009 recodified from Section R20-2-1009 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1010. Annual Testing and Inspection**

- A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Division approves the inspection date and time.
- B. The annual inspection shall include the tests defined in R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.
- C. To verify proper operation of a vapor recovery system, the Division may perform or may require registered service representatives to perform additional tests under R3-7-1005(A)(4) during the annual inspection and testing. The Division shall provide registered service agencies with six months' notice before requiring additional annual testing under R3-7-1005(A)(4).
- D. If there is a difference between a testing contractor's test results and the Division's test results, the Division's test results prevail.
- E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).
- F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.
- G. A person shall notify the Division when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the Division approves the reinspection date and time.

- H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the Division issues to registered service agencies.
- I. A person that cancels an annual inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Division shall take enforcement action if a person does not comply with this subsection.
- J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

**Historical Note**

New Section R3-7-1010 recodified from Section R20-2-1010 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1011. Compliance Inspections and Additional Test Methods**

The Division shall not announce when it plans to conduct a compliance inspection of a stage I vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title 3, Chapter 19, or this Article, the Division shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-1010.

**Historical Note**

New Section R3-7-1011 recodified from Section R20-2-1011 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1012. Enforcement**

If the Division finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title 3, Chapter 19, the Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 3, Chapter 19 and this Chapter before the vapor recovery system or component is placed in service.

**Historical Note**

New Section R3-7-1012 recodified from Section R20-2-1012 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**R3-7-1013. Stage II Vapor Recovery**

If the Division identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the Division shall issue an administrative order and civil penalty under A.R.S. § 3-3475 and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. § 3-3475.

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**Historical Note**

New Section R3-7-1013 recodified from Section R20-2-1013 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective October 2, 2017 (Supp. 17-3).

**Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3**

Ullage (gallons)	Minimum Pressure after Five Minutes (Inches Water Column)
500	0.73
550	0.80
600	0.87
650	0.93
700	0.98
750	1.03
800	1.07
850	1.11
900	1.15
950	1.18
1000	1.21
1200	1.32
1400	1.40
1600	1.46

1800	1.51
2000	1.56
2400	1.62
2600	1.65
2800	1.67
3000	1.69
3500	1.73
4000	1.76
4500	1.79
5000	1.81
6000	1.84
7000	1.86
8000	1.88
9000	1.89
10000	1.90
15000	1.93
20000	1.95
25000	1.96

**Historical Note**

Article 10, New Table 1 recodified from 20 A.A.C. 2, Article 10, Table 1 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

### 3-3401. Definitions

In this chapter, unless the context otherwise requires:

1. "Area A" has the same meaning prescribed in section 49-541.
2. "Area B" has the same meaning prescribed in section 49-541.
3. "Area C" means that portion of Pinal county lying west of range 11 east, excluding that portion of the county lying within area A as defined in section 49-541 and that portion of the county within the jurisdiction of any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.
4. "Associate director" means the associate director of the division.
5. "Biodiesel" means a mono-alkyl ester that meets ASTM D6751.
6. "Biodiesel blend" means a motor fuel that is composed of biodiesel and diesel fuel and that is designated by the letter "B", followed by the numeric value of the volume percentage of biodiesel in the blend.
7. "Biofuel" means a solid, liquid or gaseous fuel that is derived from biomass and that can be used directly for heating or power or as a blend component in motor fuel.
8. "Biofuel blend" means a motor fuel that is composed of a biofuel, that is combined with a petroleum-based fuel and that is designated by the volume percentage of biofuel in the blend.
9. "Biomass" means biological material, such as plant or animal matter, excluding organic material that has been transformed by geological processes into substances such as coal or petroleum or derivatives thereof, that may be transformed into biofuel.
10. "Biomass-based diesel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency under 42 United States Code 7545 and includes fuel derived from animal wastes, including poultry wastes and other waste materials, municipal solid waste and sludge and oil derived from wastewater and the treatment of wastewater. Biomass-based diesel does not include biodiesel.
11. "Biomass-based diesel blend" means a blend of petroleum-based diesel fuel with biomass-based diesel.
12. "Certification" means the process of determining the accuracy of a commercial device to the standards of this state by a registered service representative or the division.
13. "Commercial device" means any weighing, measuring, metering or counting device that is used to determine the direct cost of things sold or offered or exposed for sale, or used to establish a fee for service if the cost is based on weight, measure or count, except that it does not include those devices used for in-house packaging, inventory control or law enforcement purposes.
14. "Commodity" means any merchandise, product or substance produced or distributed for sale to or use by others.
15. "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter.

16. "Diesel fuel" means a refined middle distillate that is used as a fuel in a compression-ignition internal combustion engine and that meets the specifications of ASTM D975.
17. "Division" means the weights and measures services division of the department.
18. "Ethanol flex fuel" means a fuel ethanol gasoline blend that meets the specifications of ASTM D5798 standard specification for ethanol fuel blends for flexible-fuel automotive spark-ignition engines.
19. "Fleet owner" means a registered owner or lessee of at least twenty-five vehicles.
20. "Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than five one-hundredths grams of lead for each United States gallon, that is produced, refined, manufactured, blended, distilled or compounded from petroleum, natural gas, oil, shale oils or coal and other flammable liquids free from undissolved water, sediment or suspended matter, with or without additives, and that is commonly used as a fuel for spark-ignition internal combustion engines. Gasoline does not include diesel fuel or ethanol flex fuel.
21. "Gasoline provider" means any manufacturer of gasoline or any person who imports gasoline into a vehicle emissions control area by means of a pipeline or in truckload quantities for the person's own use within the vehicle emissions control area or any person who sells gasoline intended for ultimate consumption within a vehicle emissions control area. Gasoline provider does not mean a person with respect to a gasoline supplied or sold by the person to another person for resale to a retailer within a vehicle emissions control area or to a fleet owner for consumption within a vehicle emissions control area.
22. "Inspector" means a state official of the division.
23. "Liquid measuring device" means any meter, pump, tank, gauge or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low viscosity heating oil.
24. "Manufacturer's proving ground" means a facility whose sole purpose is to develop complete advanced vehicles for an automotive manufacturer.
25. "Misfuel" means the act of dispensing into the fuel tank of a motor vehicle a motor fuel that was not intended to be used in the engine of that motor vehicle.
26. "Motor fuel" means a petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and ethanol flex fuels.
27. "Motor vehicle racing event" means a race that uses unlicensed vehicles designed and manufactured specifically for racing purposes and that is conducted on a public or private racecourse for the entertainment of the general public. Motor vehicle racing event includes practice, qualifying and demonstration laps conducted as part of the activities related to a motor vehicle race.
28. "Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and that is approved as a blending agent under the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).
29. "Oxygenated fuel" means an unleaded motor fuel blend that consists primarily of gasoline and at least one and one-half percent by weight of one or more oxygenates and that has been blended consistent with the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

30. "Package" means any commodity enclosed in a container or wrapped in any manner in advance of sale in units suitable for either wholesale or retail trade.
31. "Person" means both the plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations.
32. "Product transfer document" means any bill of lading, loading ticket, manifest, delivery receipt, invoice or other documentation used on any occasion when a person transfers custody or title of motor fuel other than when motor fuel is sold or dispensed at a service station or fleet vehicle fueling facility.
33. "Public weighmaster" means any person who is engaged in any of the following:
- (a) The business of weighing any object or thing for the public generally for hire or for internal use and issuing for that weighing a weight certificate intended to be accepted as an accurate weight on which a purchase or sale is to be based or on which a service fee is to be charged.
  - (b) The business of weighing for-hire motor vehicles, trailers or semitrailers and issuing weight certificates intended to be accepted as an accurate weight for the purpose of determining the amount of any tax, fee or other assessment on the vehicles.
34. "Reference standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.
35. "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and that has been issued a license by the division.
36. "Registered service representative" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and who has been issued a license by the division.
37. "Retail seller" means a person whose business purpose is to sell, expose or offer for sale or use any package or commodity by weight, measure or count.
38. "Secondary standards" means the physical standards that are traceable to the reference standards through comparisons, using acceptable laboratory procedures, and that are used in the enforcement of weights and measures laws and rules.
39. "Supplier" means any person that imports gasoline into a vehicle emissions control area by means of a pipeline or in truckload quantities for the person's own use within the vehicle emissions control area or any person that sells gasoline intended for ultimate consumption within a vehicle emissions control area, except that supplier does not mean a person with respect to gasoline supplied or sold by the person to another for resale to a retailer within a vehicle emissions control area or to a fleet owner for consumption within a vehicle emissions control area.
40. "Vehicle emissions control area" means a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, or any portion of area B or C, except that such an area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.
41. "Weight" as used in connection with any commodity means net weight.
42. "Weights" or "measures", or both, means all weights, measures, meters or counters of every kind, instruments and devices for weighing, measuring, metering or counting and any appliance and accessories associated with any or all such instruments and devices.



### 3-3414. Powers and duties; definition

A. The division shall:

1. Maintain custody of the state reference standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the federal government or that are otherwise approved as being satisfactory by the national institute of standards and technology.
2. Keep the state reference standards in a safe and suitable place in the metrology laboratory of the division and ensure that they are not removed from the laboratory except for repairs or for calibration as may be prescribed by the national institute of standards and technology.
3. Keep accurate records of all standards and equipment.
4. Adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to title 41, chapter 6. In adopting these rules, the associate director shall consider, as far as is practicable, the requirements established by other states and by authority of the United States, except that rules shall not be made in conflict with this chapter.
5. Publish rules adopted pursuant to this chapter and issue appropriate copies at no cost to all new applicants for licensure and certification. Updated copies of the rules shall be distributed, on request, at no cost to the public.
6. Investigate complaints made to the division concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of this chapter, in order to educate the public and regulated persons to encourage and promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.
7. Establish labeling standards, establish standards of weight, measure or count and establish reasonable standards of fill for any packaged commodity, and may establish standards for open dating information.
8. Grant, pursuant to this chapter, exemptions from the licensing provisions of this chapter for weighing and measuring instruments, standards or devices when the ownership or use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions. On request, the division may conduct inspections of instruments, standards or devices and shall charge a fee pursuant to section 3-3452.
9. Delegate to appropriate personnel any of the responsibilities of the associate director for the proper administration of this chapter.
10. Inspect and test weights and measures that are kept, offered or exposed for sale.
11. Inspect and test, to ascertain if they are correct, weights and measures that are commercially used either:
  - (a) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.
  - (b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.
12. Test, at random, commodities, weights and measures that are used in public institutions for which monies are appropriated by the legislature. The testing of commodities, weights and measures in public institutions includes items:
  - (a) That have historically been of short weight, measure or count.

(b) That have been found to be of short weight, measure or count by other jurisdictions.

(c) That are to be tested as part of a regional or national survey.

13. Test, approve for use and affix a seal of approval for use on all weights, measures and commercial devices that are manufactured in or brought into this state as it finds to be correct and shall reject and mark as rejected weights, measures and devices that it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the division if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The division shall condemn and may seize weights, measures and devices that are found to be incorrect and that are not capable of being made correct. The division may affix a nontampering seal to commercial devices that are tested and found to be within applicable tolerance.

14. Sample and test motor fuel that is stored, sold or exposed or offered for sale or that is stored for use by a fleet owner to determine whether the motor fuel meets the standards for motor fuel set forth in section 3-3433 and article 6 of this chapter and in any rule adopted by the associate director pursuant to this chapter.

15. Randomly witness tests on all mandated vapor recovery systems that are installed or operated in this state and, if the systems are determined to be in compliance with the law, approve those systems for use and reject, mark as rejected and stop the use of those systems that are determined not to be in compliance with the law.

16. Inspect facilities at which motor fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.

17. Publish and distribute to consumers and regulated persons weighing and measuring information.

18. Weigh, measure or inspect commodities that are kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or rules adopted pursuant to this chapter. In carrying out this section, the associate director shall employ recognized sampling procedures, such as are designated in appropriate national institute of standards and technology handbooks and supplements to those handbooks, except as modified or rejected by rule.

19. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. These variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.

20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this chapter. The associate director may prescribe or provide the official test and inspection forms to be used in the enforcement of this chapter.

21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

22. Subject to title 41, chapter 4, article 4, employ such personnel as needed to assist in administering this chapter.

23. Ensure that any information that is required to be filed with the division, that relates to the contents of motor fuels that are sold in this state and that is a trade secret as defined in section 49-201 is not disclosed.

24. Establish by rule labeling standards for tanks and containers of motor fuels.

B. The associate director may provide for the periodic examination and inspection of metering devices, including devices used to measure usage of electricity, natural gas or water by a consumer. Examination and inspection authority shall not apply to metering devices owned by federal, state or local government agencies unless requested by the government agency that owns the metering devices.

C. The associate director may establish standards for the presentation of cost-per-unit information. This subsection does not mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The associate director, when necessary to carry out this chapter, may adopt and enforce rules relating to quality standards for motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The associate director shall adopt rules to ensure that oxygenated fuels, as described in article 6 of this chapter, that are stored, used, sold or exposed or offered for use or sale are blended and stored, sold, exposed or offered in such a manner as to ensure that the oxygenated fuels are properly blended, that they meet the standards set forth in section 3-3433 and article 6 of this chapter, and in rules adopted pursuant to this chapter, and that dispensers at which the oxygenated fuels are dispensed are labeled as defined by rule of the division in such a manner as to notify persons of the type of oxygenated fuel being dispensed and the maximum percentage of oxygenate by volume contained in the oxygenated fuel. The associate director of the division shall consult with the director of the department of environmental quality in adopting rules pursuant to this subsection.

E. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the associate director or in response to a complaint by the public. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the associate director in accordance with title 41, chapter 23 or by a registered service agency or registered service representative licensed pursuant to section 3-3454. The associate director shall establish qualifications of persons and firms for selection for purposes of this subsection. The persons or firms conducting the testing and inspection shall immediately report to the division any violations of this chapter and incorrect weights, measures, devices, vapor recovery systems or vapor recovery components for investigation and enforcement by the division. A person or firm that tests or inspects a weight, measure, device, vapor recovery system or vapor recovery component that is rejected shall not correct the defect causing the rejection without the permission of the division.

F. During the course of an investigation or an enforcement action by the division, information regarding the complainant is confidential and is exempt from title 39, chapter 1, unless the complainant authorizes the information to be public.

G. For the purposes of the labeling requirements prescribed in this section, "oxygenated fuel" means a motor fuel blend containing 1.5 percent or more by weight of oxygen.

**DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 1, Article 5, Sliding Fee Schedules



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 4, 2022

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

**FROM:** Council Staff

**DATE:** December 13, 2021

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 1, Article 5, Sliding Fee Schedules

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### **Summary**

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 1, Article 5, regarding Sliding Fee Schedules. As the Department indicates in Item 8 of the 5YRR, the rules are intended to increase access to primary care services for the medically unserved (uninsured individuals). The Department further states that its primary care program requires primary care providers and service sites providing primary care services to uninsured individuals to charge fees established in the sliding-fee schedule requirements in Title 9, Chapter 1, Article 5.

In the previous 5YRR for these rules, which the Council approved in December 2016, the Department did not propose a course of action for these rules. The Department further indicated in the 2016 5YRR that it would amend the rules if an issue occurred that affected public health or safety or prevented the Department from meeting its regulatory objectives. In this 5YRR, the Department states that it did not amend the rules.

### **Proposed Action**

The Department proposes to address the issues with the rules' effectiveness, conciseness, and understandability identified in the report by April 2022. However, the Department indicates

that the April 2022 date is subject to change if the Department has to address another rulemaking that has a greater impact on the health and safety of Arizonans.

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

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

In its 2006 Economic, Small Business, and Consumer Impact Statement (EIS), the Department stated that it expected to incur minimal costs for completing the rulemaking and expected to receive increased revenues from rules that are easier to use, consistent with other laws, and more clear, concise, and understandable. The Department anticipated a minimal cost and substantial increase in revenues for providers. Additionally, low income-uninsured individuals who receive healthcare from sliding-fee schedule providers were expected to receive minimal to moderate benefits from increased availability of health care at reduced fees, increased value of the health services received, and increased self-esteem.

In comparing the current economic impact of the rules with the 2006 EIS, the Department agrees that the economic impact of the rules is consistent with the 2006 EIS for providers, uninsured individuals, and the Department. The Department expects that it received a moderate increase in benefits for having the sliding-fee schedule rules that other programs use, such as the J-1 Visa Waiver Program and the National Interest Waiver Program. As of July 2021, the Department has 109 primary care providers participating in the Primary Care Provider Loan Repayment Program; three primary care providers participating the Rural Private Primary Care Provider Loan Repayment Program; and 102 health care providers participating in the J-1 Visa Waiver Program. Further, five letters of support were issued for primary care providers in the National Interest Waiver Program.

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

The Department states that the probable benefits to providers and uninsured individuals outweighs the probable cost of the rules and the rules impose the least burden and costs to providers and uninsured individuals. The Department's determination includes paperwork and other compliance costs.

**4. Has the agency received any written criticisms of the rules over the last five years?**

No. The Department did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department states that the following rules could be improved for the reasons specified in the report:

- R9-1-501 (Definitions);
- R9-1-502 (Family Member Determination);
- R9-1-503 (Family Income Determination);
- R9-1-504 (Sliding Fee Schedule Submission and Contents);
- R9-1-505 (Sliding Fee Schedule Approval Time-frames); and
- R9-1-506 (Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule).

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

Yes. The Department states that the rules are mostly consistent with other rules and statutes except for rules in 9 A.A.C. 15. The Department indicates in the 5YRR that certain definitions in R9-1-501 should be revised.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are somewhat effective in achieving their objectives but can be improved to be more effective and understandable.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written, but that R9-1-504 (Sliding Fee Schedule Submission and Contents) and R9-1-505 (Sliding Fee Schedule Approval Time-frames) are antiquated and the Department plans to amend them.

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

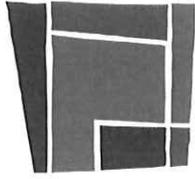
The Department indicates that the rules are not more stringent than corresponding federal laws. The Department indicates that the corresponding federal regulation to these rules is 42 CFR 62.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that the rules were adopted before July 29, 2010, and do not require the issuance of a regulatory permit, license, or agency authorization.

**11. Conclusion**

In this 5YRR, the Department identifies issues with the rules that prevent them from being concise and understandable. The Department proposes to amend the rules by April 2022, but indicates that the date could change if higher priority issues arise. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

October 25, 2021

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

Nicole Sornsins, Chair

Arizona Department of Administration

100 N. 15<sup>th</sup> Avenue, Suite 305

Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 1, Article 5 Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 1, Article 5 which is due on October 29, 2021.

The Department of Health Services reviewed the rules in A.A.C. Title 9, Chapter 1, Article 5 with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department of Health Services hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Teresa Koehler at 602-364-0813 or [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a white background.

Robert Lane  
Director's Designate

RL:tk

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247 P | 602-542-1025 F | 602-542-1062 W | [azhealth.gov](http://azhealth.gov)

*Health and Wellness for all Arizonans*



**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 1. Department of Health Services – Administration**

**Article 5. Sliding Fee Schedules**

**September 2021**

**1. Authorization of the rule by existing statutes**

Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-104(16), 36-2172(B), 36-2174(A), and 36-2907.06

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R9-1-501	The objective of the rule, Definitions, is to provide definitions to assist readers’ understanding of the requirements and criteria provided in Article 5, Sliding Fee Schedules.
R9-1-502	The objective of the rule, Family Member Determination, is to establish the criteria for a primary care provider to apply when determining the number of family members an individual who does not have health care coverage, specified in R9-1-501(43) as an “uninsured individual” seeking medical services.
R9-1-503	The objective of the rule, Family Income Determination, is to establish the criteria for a primary care provider to apply when determining a family’s income of an uninsured individual when calculating a discount fee for medical services provided to the uninsured individual.
R9-1-504	The objective of the rule, Sliding Fee Schedule Submission and Contents, is to establish when a primary care provider submits a sliding fee schedule to the Department for approval and specifies the information required depending on the type of sliding fee scheduled submitted whether based on a fee percentage or a flat fee.
R9-1-505	The objective of the rule, Sliding Fee Schedule Approval Time-Frame, is to establish a duration for completing an administrative completeness review and a substantive review, including an overall time-frame and notice of denial, if applicable.
R9-1-506	The objective of the rule, Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule, is to establish requirements for a primary care provider who to clarify limitations for discounted fees a provider may charge an uninsured individual based on current federal

	poverty guidelines and to establish requirements regarding a single administrative fee a provider may charge for medical services to an uninsured individual.
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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
	The rules are some what effective in achieving their objectives and as identified in Items 4 and 6, the rules could be improved to make the rules more effective and understandable.

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
	The rules are mostly consistent with all rules except for rules in 9 A.A.C. 15, Loan Repayment Program. In R9-1-501, definitions “calendar year” and “provider” should be revised to be consistent with A.A.C. R9-15-101 definitions “calendar year” and “primary care provider. Definition “primary care services” and “immediate family” in A.A.C. R9-15-101 could replace “medical services” and “family member” in R9-1-501.

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
	The rules are enforced as written; however, the rules in R9-1-504 and R9-1-505 are antiquated and the Department plans to changes the rules as documented in Item 6.

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
R9-1-501	<p>The rule could be clearer and more concise and understandable if antiquated definitions were updated or deleted and new definitions added as needed. The rule contains seven “income” definitions that if simplified-consolidated would improve rules understandability and clarity. The income definitions include: earned income, family income, interrupted income, new income, terminated income, unearned income, and variable income. Another is definition (30) "OASDI." OASDI is also known as “FICA” taxes. FICA taxes are divided into two parts: Social Security tax and Medicare tax pursuant to the Social Security Act, 42 U.S.C. 1395. The term "OASDI" is used in definitions (11) and (37). Since "Social Security tax" and “Medicare tax” are defined and used only in definition (11), deleting the acronym "OASDI" would simplify and improve the understandability of the rule. Additionally, the term "fetus" means "the same as in A.R.S. § 36-2152." Laws 2009, Ch. 172 deleted definition "fetus" from A.R.S. § 36-2152. The Department plans to delete the definition “fetus” based on the Department’s plan to amend R9-1-502 as indicated below. The Department also considers other terms to amend or delete for example: “costs of producing rental income,” “costs of producing self-employment income,” “deduction,” “provider,” and “profit.”</p>
R9-1-502	<p>The rule is somewhat clear; however, the rule could be improved if the requirements for determining an uninsured individual's family member contained the criteria and established the eligibility requirements prescribed by the National Health Service Corps (NHSC) Loan Repayment Program. A.R.S. § 36-2172 specifies that the Primary Care Provider Loan Repayment Program and A.R.S. § 36-2174 specifies that the Rural Private Primary Care Provider Loan Repayment Program prescribe to the NHSC eligibility requirements. The NHSC Sliding Fee Discount Program Information Package<sup>1</sup> states that eligibility is based on income and family size only. Family<sup>2</sup> is defined as: a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together; all such people (including related subfamily members) are considered as members of one family. If the current criteria used for determining the number of an uninsured individual's family members were less prescriptive, the effectiveness of the rule would increase by allowing more uninsured individuals access to medical services.</p>
R9-1-503	<p>The rule is clear; however, the rules could be more concise and understandable if the rule simplified requirements for determining a family’s income and consolidated the number of terms used to describe types of income. Additionally, the NHSC Sliding Fee Discount Program</p>

<sup>1</sup> NHSC Sliding Fee Discount Program Information Package: <https://nhsc.hrsa.gov/downloads/discountfeeschedule.pdf>

<sup>2</sup> NHSC uses the United States Census Bureau’s “family” definition.

	<p>clarifies “income”<sup>3</sup> as definition used by the United States Census Bureau. The United States Census Bureau defines “money income” as income used to compute poverty status and “money income” that is not used to compute poverty status.</p>
<p>R9-1-504</p>	<p>Although the rule is clear and understandable, the rule is outdated. For example, the rule uses antiquated terms such as medical services, provider, and group of medical services. The submission date of “April 1 of each year” should be changed in consideration of the Loan Repayment Program application requirements and the application’s submission date required by 9 A.A.C. 15 rules. The rule would be more effective if the rule clarified how a services site’s sliding fee schedule is verified, and when a provider’s financial situation changes, the provider submits a revised sliding-fee schedule prior to the schedule’s renewal date specified in 9 A.A.C. 15. Additionally, pursuant to A.R.S. § 41-1075, the Department may make supplemental requests for additional information during an application’s substantives review if the Department has written permission from the applicant allowing the Department to do so. This rule does not clarify or require a provider to attest that the Department may make supplemental requests for additional information. The Department believes having written permission would benefit the provider especially if the requested additional information is necessary for approving a provider’s sliding-fee schedule. There are other permissions in an application attestation that should be added, such as, the Department is authorized to verify all information provided in the application and the information submitted as part of the application is true and accurate. These statements are normal and usual for Department rules related to approval of an application. The rule would also be clearer if the rule identified if the provider of the sliding-fee schedule will submit the sliding-fee schedule with a Loan Repayment initial or renewal application specified in 9 A.A.C. 15. The rule should include a requirement that a provider shall submit required information in a Department-provided format that includes a provider’s contact information. With the Loan Repayment Program(s) rules amended in 2016, it is necessary for this Article be amended to ensure consistency between the two Articles and to ensure all information and requirements are identified in rule.</p> <p>Note: The Department has implemented an online application process and the rule may be changed in consideration of an electronic administrative review of documents submitted at the time an application is received and whether a sliding fee schedule is approved upon submission or approved with an application approval.</p>

<sup>3</sup> NHSC uses the United States Census Bureau’s [“income”](#) definition.

R9-1-505	<p>This rule is mostly clear and concise when clarifying the overall time-frame, the administrative completeness review time-frame, and the substantive review time-frame and the time-frame durations. However, the rule could be more effective if the rule were amended to consider sliding-fee schedule requirements in 9 A.A.C. 15, the Loan Repayment Program. Additionally, a time-frame table should be added to increase rule understandability and adding requirements related to the Department’s approval and denial of a request for a sliding-fee schedule approval is technically consistent with other rules and will provide a significant benefit to providers, specifically adding a requirement for a provider to appeal if a request for approval is denied.</p> <p>Note: As stated previously, the Department may repeal this rule if it is determined that a sliding fee schedule is verified complete upon submission with an application or whether approved with an application.</p>
R9-1-506	<p>This rule is mostly clear, however, could be clearer if the term “administrative fee” were amended to establish whether consistent with the NHSC term “nominal charge.” The NHSC term “nominal charge” is a type of discount and is a fixed or flat fee for a discount pay class. The rule could be simplified if subsections (A)(1) and (2) were combined to clarify “an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty” may only be charged a fee specified in subsection (E). Also since NHSC Sliding Fee Discount Program does not use the term “lowest contracted charge,” the rule may be clearer if the rule were amended to use the term “nominal charge.” [42 CFR 62] In addition, the rule may need to be amended to clarify that “telemedicine” provided by a primary care provider is a primary care service and an uninsured individual is charged according to the applicable sliding-fee schedule.</p>

7. **Has the agency received written criticisms of the rules within the last five years?**    Yes \_\_\_    No √

*If yes, please fill out the table below:*

Commenter	Comment	Agency’s Response

8. **Economic, small business, and consumer impact comparison (summary):**

The 2006 EIS summarizes the Department’s establishment and use of sliding-fee schedules to increase access to primary care services for the medically unserved (uninsured individuals). The Department’s primary care program requires primary care providers and service sites providing primary care services to uninsured individuals fees established by sliding-fee schedule requirements specified in 9 A.A.C. 1, Article 5. The sliding-fee schedule rules limit the amount charged to at or below 200 percent of the current federal poverty guidelines. The programs

identified as requiring the use of sliding-fee schedules include the primary care provider loan repayment program and the rural private primary care provider loan repayment program pursuant to A.R.S. § 36-2172 and 42 CFR Part 62<sup>4</sup> and A.R.S. § 36-2174, respectively, and the J-1 visa waiver program and the national interest waiver program under A.R.S. § 36-104(16) that reference the sliding-fee schedule. The 2006 EIS estimates costs and benefits for affected persons are designed as “minimal” as less than \$1,000, “moderate” between \$1,000 and \$10,000, and “substantial” as more than \$10,000. The Department in this five-year-review report uses the term “significant” for some costs or benefits when meaningful or important, but not readily subject to quantification. Affected persons include the Department, sliding-fee schedule providers, low income-uninsured individuals who receive health care from sliding-fee schedule providers.

The new rules promulgated by the 2006 Article 5 rulemaking added six rules that provide definitions and requirements for family member determination, family income determination, sliding-fee schedule content and submission, time-frames, and fees established by provider sliding-fee schedules. Additionally, under the new rules, sliding-fee schedule providers must establish a \$0 flat fee or a 100 percent reduction for uninsured individuals with family incomes at or below the current federal poverty guidelines. These uninsured individuals may pay an administrative fee of \$25 or less.

The 2006 EIS stated that the Department expected to incur minimal costs for completing the rulemaking and expected to receive increased revenues (benefits) for rules that are easier to use, consistent with other laws, and are more clear, concise, and understandable. The sliding-fee schedule providers were expected to see a minimal cost and a substantial increase in revenues (benefits) for having clearer, more concise, and understandable rules and from the possibility that charging the low income-uninsured individuals for services might reduce overuse of health care resources. Additionally, the Department anticipated that the low income-uninsured individuals who receive health care from sliding-fee schedule providers may receive a minimal to moderate revenue (benefit) from increased availability of health care at reduced fees or no fees, increased value of the health services received, and increased self-esteem.

The Department in the 2016 Five-year-review Report indicated that as of June 2016, the Department has 43 primary care providers participating in the Primary Care Provider Loan Repayment Program; four primary care providers participating the Rural Private Primary Care Provider Loan Repayment Program; 99 health care providers participating in the J-1 Visa Waiver Program; and three letters of support were issued for primary care providers in the National Interest Waiver Program. In this 2021 Five-year-review Report and as of July 2021, the Department has 109 primary care providers participating in the Primary Care Provider Loan Repayment Program; three primary care providers participating the Rural Private Primary Care Provider Loan Repayment Program;

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<sup>4</sup> 42 CFR 62.55(c)(2) provides that a health professional who participates in a state loan repayment program receiving federal grants authorized by 42 USC 254q-1 shall "charge for his or her professional services at the usual and customary rate prevailing in the area in which such services are provided, except that if a person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee."

102 health care providers participating in the J-1 Visa Waiver Program; and five letters of support were issued for primary care providers in the National Interest Waiver Program.

Additionally, in January and February of each year, services sites submit sliding-fee schedules, policies and procedures, and signage documentation to be active and eligible for programs. During April and June 2021, the renewal and initial allocation time periods, respectively, 146 sliding fee schedules were reviewed by the Office. One hundred and twenty-four sliding-fee schedules were approved for primary care providers, 11 approved for mental health providers; and 11 approved for dentists. The Department notes that a providers may provide primary care services at multiple service sites.

The Department, in this economic impact comparison of the Article 5 rules, agrees that the economic impact of the rules is consistent with the 2006 EIS for providers, uninsured individuals, and the Department. In this 2021 Five-year-review Report, the Department expects that with the increase in the number of providers offering sliding-fee schedules brought about an increase in the number of uninsured individuals receiving medical services. The Department estimates that both providers and uninsured individuals may have received a minimal to significant benefit for having rules that increased the number of patients a provider cares for and a decrease in the fees an uninsured individual pays for medical services or who may not have received medical services without the rules requiring sliding-fee schedules. The Department believes that a “nominal charge” consistent with NHSC benefits uninsured individuals at or below the current federal poverty guidelines is appropriate. And, the Department expects that the Department has received a moderate increase in benefits for having the sliding-fee schedule rules that other programs use, such as the J-1 Visa Waiver Program and the National Interest Waiver Program.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No ✓

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Department determined that the rules are necessary and the matters identified in the 2016 Five-year-review Report do not create an issue or priority for the Department. The Department stated it did not plan to amend the rules in Article 5 before the next five-year-review report. However, the Department expected it would amend the rules, including the matters identified in the report, should an issue occur that affects the public health and safety or prevents the Department from meeting its regulatory objectives. The Department, as indicated in the 2016 course of action, did not amend the rules.

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

As stated in Item 8, the Article 5 rules establish definitions; criteria for family member and family income

determination; requirements for sliding-fee schedule content, submission, and time-frames; and clarifies sliding-fee schedule fees that provider may collect. The Department identifies regulated persons as providers and uninsured individuals. Costs and benefits are designed as “minimal” when less than \$1,000, “moderate” when between \$1,000 and \$10,000, and “substantial” when more than \$10,000.

The Department expects that providers may incur a minimal cost for establishing annually sliding-fee schedules and for the administrative processing required for collecting and reviewing uninsured individuals forms that contains information about family members and family members’ income necessary for a provider to determine fees, if any, that an uninsured individual will pay for medical services received. Additionally, the Department expects that having rules that specify the information required to determine medical services’ fees benefits providers treating uninsured individuals by ensuring all providers, as required, use the same sliding-fee schedule method to ensure sliding-fee schedules are consistent. Some providers may benefit from having a rule that requires fees for uninsured individuals if providers deduct the difference between the true value of the medical services provided and the actual fees paid based on collecting a single administrative fee or a fee based on a sliding-fee schedule.

In addition, requirements in R9-1-506(C) and (D) benefits providers by allowing for some increase in the fees a provider may charge uninsured individuals with incomes above 100 percent of the federal poverty guidelines up to 200 percent of the federal poverty guidelines. The requirements in R9-1-506(C) and (D) also increases understandability and decreases burden by clarifying how providers apply the use of an administrative fee and fees using a sliding-fee schedule - making sliding fee schedules easier for providers to use. The Department determines that the rules provide providers the least burden and outweighs minimal costs. The Department expects that uninsured individuals costs for medical services provided by a provider complying with Article 5 rules have decreased and remain unaffected depending on the uninsured individual’s family size and income. The Department also expects that uninsured individuals most likely incurred a minimal burden for requirements to provide family income and family member information in addition to the normal-unusual information required by a medical professional providing medical services. However, the Department does not expect an uninsured individual’s burden to outweigh the benefits received for complying with the rules and paying a fee percentage for medical services received. Additionally, for uninsured individuals who pay only a single administrative fee up to \$25 or a \$0 flat fee, the Department expects the benefit is greater and most likely eliminates any burden incurred for providing family income and family member information. The Department has determined that the probable benefits to providers and uninsured individuals outweighs the probable cost of the rulemaking and the rules impose the least burden and costs to providers and uninsured individuals. The Department’s determination includes paperwork and other compliance costs.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No √

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

No, the rules are not more stringent than federal laws. The rules are consistent with the 42 CFR 62 Public Health Service, Department of Health and Human Services, National Health Services Corps Scholarship and Loan

Repayment Programs, Subpart B – National Health Service Corps Loan Repayment Program and Subpart C – Grants for State Loan Repayment Programs.

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 provide requirements for providers to establish a sliding fee schedule to be used to determine the fees a provider may collect from an uninsured individual who receives medical services. The rules were adopted before July 29, 2010 and do not require the issuance of a regulatory permit, license, or agency authorization. The Department believes that under A.R.S. § 41-1037(A)(3)<sup>5</sup> that a general permit is not applicable.

14. **Proposed course of action:**

The Department in its review of the Article 5 rules has determined that the rules could be more effective. In this five-year-review report, the Department identifies non-substantive matters that prevent the rules from being concise and understandable. The Department believes the changes to amend Article 5 rules as described in this five-year-review report are required. In this proposed course of actions, the Department plans to act with regards to 9 A.A.C. 1, Article 5 and expects to amend the rules by April 2022. Although the Department intends to amend the rules by April 2022, the Department clarifies that the expected date is subjected to change should the Department be required to address another rulemaking having a greater impact on the health and safety of Arizonans.

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<sup>5</sup> A.R.S. § 41-1037(A)(3) “The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.”

## ARTICLE 5. SLIDING FEE SCHEDULES

### R9-1-501. Definitions

In this Article, unless otherwise specified:

1. "Administrative fee" means a fee payable by an uninsured individual that is established and charged according to R9-1-506(E).
2. "AHCCCS" means the Arizona Health Care Cost Containment System.
3. "Business day" means the same as in A.R.S. § 10-140.
4. "Calendar year" means January 1 through December 31.
5. "Child" means an individual under age 19.
6. "Consideration" means valuable compensation for something received or to be received.
7. "Correctional facility" means the same as in A.R.S. § 13-2501.
8. "Costs of producing rental income" means payments made by a rental-income recipient that are attributable to the premises or the portion of the premises generating the income, including payments for:
  - a. Property taxes,
  - b. Insurance premiums,
  - c. Mortgage principal and interest,
  - d. Utilities, and
  - e. Maintenance and repair.
9. "Costs of producing self-employment income" means payments made by a self-employment-income recipient that are attributable to generating the income, including payments for:
  - a. Equipment, machinery, and real estate;
  - b. Labor;
  - c. Inventory;
  - d. Raw materials;
  - e. Insurance premiums;
  - f. Rent; and
  - g. Utilities.
10. "Current federal poverty guidelines" means the most recent annual update of the U.S. Department of Health and Human Services' Poverty Guidelines published in the Federal Register.

11. "Deduction" means a dollar amount subtracted from a payment, before an individual receives the payment, for:
  - a. Federal income tax,
  - b. Social Security tax,
  - c. Medicare tax,
  - d. State income tax,
  - e. Insurance other than OASDI,
  - f. Pension, or
  - g. Other dollar amounts required by law or authorized by the individual to be subtracted.
12. "Department" means the Department of Health Services.
13. "Detention facility" means a place of confinement, including:
  - a. A juvenile facility under the jurisdiction of:
    - i. A county board of supervisors, or
    - ii. A county jail district authorized by A.R.S. Title 48, Chapter 25;
  - b. A juvenile secure care facility under the jurisdiction of the Department of Juvenile Corrections;  
or
  - c. A facility for individuals who are not United States citizens and who are in the custody of the U.S. Immigration and Customs Enforcement, Department of Homeland Security.
14. "Earned income" means work-related payments received by an individual, including:
  - a. Wages,
  - b. Commissions and fees,
  - c. Salary,
  - d. Profit from self-employment,
  - e. Profit from rent received from an individual or entity, and
  - f. Any other work-related monetary payments received by an individual.
15. "Family income" means the dollar amount determined according to R9-1-503(B).
16. "Family member" means an individual, determined according to R9-1-502, whose income is included in family income.
17. "Fee percentage" means a part of a provider's usual charges for medical services that is:
  - a. Expressed in hundredths, and
  - b. Established by a provider in a sliding fee schedule for medical services rendered to an uninsured individual.

18. "Fetus" means the same as in A.R.S. § 36-2152.
19. "Flat fee" means a dollar amount that is:
  - a. Established by a provider in a sliding fee schedule for a medical service or group of medical services rendered to an uninsured individual, and
  - b. Less than the provider's usual charges for the medical service or group of medical services.
20. "Gift" means money, real property, personal property, a service, or anything of value other than unearned income for which the recipient does not provide consideration of equal or greater value.
21. "Hospital services" means the same as in A.A.C. R9-10-201.
22. "Income" means combined earned and unearned income.
23. "Inpatient services" means hospital services provided to an individual who will receive the services for 24 consecutive hours or more.
24. "Interrupted income" means income that stops for at least 30 continuous days during the current calendar year and then resumes.
25. "KidsCare" means the children's health insurance program, a federally funded program administered by AHCCCS under A.R.S. Title 36, Chapter 29, Article 4.
26. "Lowest contracted charge" means the smallest reimbursement a provider has agreed to accept for a medical service:
  - a. Determined by the provider's review of all the contracts between the provider and third party payors as defined in A.R.S. § 36-125.07(C), that:
    - i. Cover the medical service, and
    - ii. Are in effect at the time the medical service is provided to an uninsured individual; and
  - b. Subject to limitations of federal or state laws, rules, or regulations.
27. "Medical services" means the same as in A.R.S. § 36-401.
28. "Medicare tax" means the dollar amount subtracted from a payment for the health care insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.
29. "New income" means income that begins at least 30 days after the start of the current calendar year.
30. "OASDI" means old age, survivors, and disability insurance.
31. "Profit" means the remainder after subtracting:
  - a. The costs of producing rental income from the rent received from an individual or entity, or

- b. The costs of producing self-employment income from the self-employment.
32. "Provider" means an individual or entity that:
- a. Provides medical services;
  - b. Participates in a program that requires participants to use a sliding fee schedule, such as a program authorized under A.R.S. §§ 36-104(16), 36-2907.06, 36-2172, or 36-2174;
  - c. Includes:
    - i. A dentist licensed under A.R.S. Title 32, Chapter 11;
    - ii. A physician licensed under A.R.S. Title 32, Chapter 13 or Chapter 17;
    - iii. A registered nurse practitioner defined in A.R.S. § 32-1601 and licensed under A.R.S. Title 32, Chapter 15;
    - iv. A physician assistant licensed under A.R.S. Title 32, Chapter 25 and practicing according to A.R.S. § 32-2531;
    - v. A health care institution licensed under A.R.S. Title 36, Chapter 4; or
    - vi. An office or facility that is exempt from licensing under A.R.S. § 36-402(A)(3); and
  - d. Excludes an individual or entity when the individual or entity provides:
    - i. Inpatient services,
    - ii. Medical services at a correctional facility, or
    - iii. Medical services at a detention facility.
33. "Secure care" means the same as in A.R.S. § 41-2801.
34. "Self employment" means earning income from one's own business, trade, or profession rather than receiving a salary or wages from an employer.
35. "Sliding fee" means flat fee or fee percentage that increases or decreases based on one or more factors.
36. "Sliding fee schedule" means a document containing a provider's flat fees or fee percentages based on:
- a. Family members determined according to R9-1-502, and
  - b. Family income determined according to R9-1-503.
37. "Social Security tax" means the dollar amount subtracted from a payment for OASDI under Title II of the Social Security Act, 42 U.S.C. 401 et seq.
38. "State health benefits risk pool" means:
- a. A state-established organization qualifying under 26 U.S.C. 501(c)(26);

- b. A state-established qualified high risk pool described in Section 2744(c)(2) of the Public Health Service Act, 42 U.S.C. 300gg-44(c)(2); or
- c. A state-sponsored arrangement, for which the state specifies the membership, primarily established and maintained to provide health insurance coverage for state residents with a medical condition or a history of a medical condition that:
  - i. Prevents them from obtaining coverage for the condition through insurance or from a health maintenance organization, or
  - ii. Enables them to obtain coverage for the condition only at a rate substantially more than the rate available through the state-sponsored arrangement.
- 39. "Support payment" means a dollar amount, received at regular intervals by an individual, for food, shelter, furniture, clothing, and medical expenses.
- 40. "Terminated income" means income received during the current calendar year that stops and will not resume.
- 41. "Training stipend" means a dollar amount, received at regular intervals by an individual, during a course or program for the development of the individual's skills.
- 42. "Unearned income" means payments received by an individual that are not gifts and not earned income, including:
  - a. Unemployment insurance;
  - b. Workers' compensation;
  - c. Disability payments;
  - d. Social Security payments;
  - e. Public assistance payments, excluding food stamps;
  - f. Periodic insurance or annuity payments;
  - g. Retirement or pension payments;
  - h. Strike benefits from union funds;
  - i. Training stipends;
  - j. Child support payments;
  - k. Alimony payments;
  - l. Military family allotments or other support payments from a relative or other individual not residing with the recipient;
  - m. Investment income;
  - n. Royalty payments;

- o. Periodic payments from estates or trusts; and
  - p. Any other monetary payments received by an individual that are not gifts, earned income, capital gains, lump-sum inheritance or insurance payments, or payments made to compensate for personal injury.
43. "Uninsured individual" means an individual who does not have health care coverage under any of the following:
- a. A group health plan as defined in Section 2792(a)(1) of the Public Health Service Act, 42 U.S.C. 300gg-91(a)(1), including a small employer's group health plan under A.R.S. Title 20, Chapter 13 or under the laws of another state;
  - b. A church plan as defined in section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(33);
  - c. Medicare, the health insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.;
  - d. Medicaid, the program that pays for medical assistance for certain individuals and families with low incomes and resources, through AHCCCS or another state's Medicaid agency, under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., excluding a state program for distribution of pediatric vaccines under 42 U.S.C. 1396s;
  - e. Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or Tricare, the medical and dental care programs for members of the armed forces, certain former members, and their dependents under 10 U.S.C. 1071 et seq. and 32 CFR 199;
  - f. A medical care program of the Indian Health Service or of a tribal organization;
  - g. The Federal Employees Health Benefits Program for U.S. government employees, certain former employees, and their family members under 5 U.S.C. 8901 et seq. and 5 CFR 890 and 891;
  - h. Peace Corps plans under Section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e), including:
    - i. Medical and dental care for Peace Corps applicants, Peace Corps volunteers, and minor children living with Peace Corps volunteers under 32 CFR 728.59;
    - ii. Form PC-127C authorization for payment for evaluation of the Peace Corps related conditions of former Peace Corps volunteers;
    - iii. Treatment of the Peace Corps related conditions of former Peace Corps volunteers under 32 CFR 728.53; and
    - iv. CorpsCare coverage for the non-Peace Corps related conditions of former Peace Corps volunteers and their dependents.

- i. A state health benefits risk pool;
  - j. An individual policy or contract issued by:
    - i. An insurer for medical expenses, including a preferred provider arrangement;
    - ii. A health care services organization under A.R.S. Title 20, Chapter 4, Article 9 or a health maintenance organization as defined in Section 2792(b)(3) of the Public Health Service Act, 42 U.S.C. 300gg-91(b)(3); or
    - iii. A nonprofit hospital, medical, dental, or optometric service corporation as defined in A.R.S. § 20-822, including Blue Cross Blue Shield of Arizona, or organized under the laws of another state;
  - k. An individual policy or contract made available through the Healthcare Group of Arizona administered by AHCCCS under A.R.S. §§ 36-2912, 36-2912.01, and 36-2912.02;
  - l. A health insurance plan of a state or of a political subdivision as defined in A.R.S. § 35-511 or determined under the laws of another state;
  - m. A policy or contract issued to a member of a bona fide association as defined in section 2791(d)(3) of the Public Health Service Act, 42 U.S.C. 300gg-91(d)(3); or
  - n. KidsCare or another state’s children’s health insurance program under Title XXI of the Social Security Act, 42 U.S.C. 1397aa et seq.
44. “Variable income” means income in a dollar amount that changes from payment to payment.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

**R9-1-502. Family Member Determination**

A provider shall determine the family members of an uninsured individual seeking medical services.

- 1. A family with one member consists of:
  - a. A non-pregnant child who does not live with:
    - i. A parent;
    - ii. A spouse;
    - iii. An individual with whom the child has a common biological or adopted child;
    - iv. A biological or adopted child; or
    - v. A biological or adopted child of an individual with whom the child has a common biological or adopted child; or

- b. A non-pregnant individual who is at least age 19 who does not live with:
  - i. A spouse;
  - ii. An individual with whom the individual who is at least age 19 has a common biological or adopted child;
  - iii. A biological or adopted child; or
  - iv. A biological or adopted child of an individual with whom the individual who is at least age 19 has a common biological or adopted child.
- 2. A family with two or more members consists of:
  - a. An individual and:
    - i. The biological or adopted children who live with the individual; and
    - ii. If the individual or a child under subsection (2)(a)(i) is pregnant, each fetus;
  - b. Two individuals, who have a common biological or adopted child and who live together, and:
    - i. The common biological or adopted children living with the two individuals;
    - ii. The biological or adopted children of either individual living with the two individuals; and
    - iii. If an individual or a child under subsection (2)(b)(i) or subsection (2)(b)(ii) is pregnant, each fetus; or
  - c. Two individuals, who are married to each other, who live together, and who do not have a common biological or adopted child, and
    - i. The biological or adopted children of either individual living with the two individuals; and
    - ii. If an individual or a child under subsection (2)(c)(i) is pregnant, each fetus.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

**R9-1-503. Family Income Determination**

- A.** A provider shall establish flat fees or fee percentages for medical services rendered to uninsured individuals with family incomes, including earned and unearned income, equal to or less than 200 percent of the current federal poverty guidelines.
- B.** A provider shall determine an uninsured individual's family income by:
  - 1. Multiplying a weekly payment received by a family member, before deductions, by 52;
  - 2. Multiplying a biweekly payment received by a family member, before deductions, by 26;
  - 3. Multiplying a monthly payment received by a family member, before deductions, by 12;
  - 4. For variable income received by a family member:

- a. Adding at least four payments, before deductions;
- b. Dividing the sum obtained in subsection (B)(4)(a) by the number of payments included; and
- c. Multiplying the quotient obtained in subsection (B)(4)(b) by 52, 26, or 12 as applicable;
5. Counting the actual payments received by a family member, before deductions, for:
  - a. Interrupted income,
  - b. New income, and
  - c. Terminated income; and
6. Adding the dollar amounts calculated under subsections (B)(1) through (B)(5).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

**R9-1-504. Sliding Fee Schedule Submission and Contents**

- A.** By April 1 of each year, a provider shall submit to the Department the provider's sliding fee schedule, including:
  1. A sliding fee schedule with fee percentages,
  2. A sliding fee schedule with flat fees, or
  3. A sliding fee schedule with fee percentages and a sliding fee schedule with flat fees.
- B.** A sliding fee schedule with fee percentages shall contain:
  1. A statement that the sliding fee schedule applies to charges for all medical services provided to uninsured individuals by or through the provider;
  2. The current federal poverty guidelines;
  3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a 100 percent reduction; and
  4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three fee percentage levels that increase as family income increases.
- C.** A sliding fee schedule with flat fees shall contain:
  1. The requirements listed in subsections (B)(1) and (B)(2);
  2. The flat fee for each medical service or group of medical services;

3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a \$0 flat fee for each medical service or group of medical services included under subsection (C)(2); and
4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three flat fee levels that increase as family income increases for each medical service or group of medical services included under subsection (C)(2).

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

#### **R9-1-505. Sliding Fee Schedule Approval Time-frames**

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for a request for sliding fee schedule approval is 32 days.
  1. A provider and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  2. An extension of the substantive review time-frame and the overall time-frame shall not exceed eight days.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a request for sliding fee schedule approval is 11 days, beginning on the day the Department receives the request.
  1. Except as provided in subsections (B)(3) and (B)(4), the Department shall mail to a provider a written notice of administrative completeness when the provider's request for sliding fee schedule approval is complete.
  2. If a request for sliding fee schedule approval is incomplete, the Department shall mail to the provider a written notice of administrative deficiencies that:
    - a. Lists the missing documents or incomplete information, and
    - b. Suspends the administrative completeness review time-frame and the overall time-frame from the date on the notice of administrative deficiencies:
      - i. Until the date the Department receives a complete request for sliding fee schedule approval; or
      - ii. For 60 days, whichever comes first.

3. If the Department does not receive all the additional documents or information required under subsection (B)(1) within 60 days after the date on the notice of administrative deficiencies, the Department deems the request for sliding fee schedule approval withdrawn.
  4. If the Department approves a sliding fee schedule during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) for a request for sliding fee schedule approval is 21 days, beginning on the date on the Department's notice of administrative completeness under subsection (B)(1).
1. The Department shall mail to a provider a written notice granting or denying approval according to A.R.S. § 41-1076 by the last day of the substantive review time-frame and the overall time-frame.
  2. If the Department issues to a provider a written request for additional information according to A.R.S. § 41-1075(A), the request for additional information suspends the substantive review time-frame and the overall time-frame from the date on the request for additional information:
    - a. Until the date the Department receives all the information requested; or
    - b. For 60 days, whichever comes first.
  3. If the Department does not receive all the information requested under subsection (C)(2) within 60 days after the postmark date of the request for additional information, the Department shall deny sliding fee schedule approval.
- D.** If a time-frame's last day falls on a Saturday, Sunday, or state service holiday listed in A.A.C. R2-5-402, the Department considers the next business day the time-frame's last day.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

#### **R9-1-506. Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule**

- A.** A provider:
1. Shall not charge an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines the fee determined according to subsection (C) or subsection (D), and
  2. May charge an individual described in subsection (A)(1) only the single administrative fee determined according to subsection (E).

- B.** A provider may charge an uninsured individual with a family income more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines the fee determined according to subsection (C), subsection (D), or subsection (E).
- C.** If a provider uses a sliding fee schedule with fee percentages, an uninsured individual's fee for medical services shall not exceed the dollar amount calculated by applying the fee percentage for the individual's family income to the lowest contracted charge for each medical service provided.
- D.** If a provider uses a sliding fee schedule with flat fees, an uninsured individual's fee for medical services shall not exceed the lowest contracted charge for each medical service provided.
- E.** A provider may:
  - 1. Establish a single administrative fee that does not exceed \$25; and
  - 2. Charge the administrative fee to:
    - a. Uninsured individuals with a family income equal to or less than 100 percent of the current federal poverty guidelines; and
    - b. Uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines only in lieu of the fee calculated under subsection (C) or subsection (D).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

### 36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.
23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall

prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

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

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

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

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

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

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

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

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

**36-2172. Primary care provider loan repayment program; purpose; eligibility; default; use of monies**

A. The primary care provider loan repayment program is established in the department to pay off portions of education loans taken out by physicians, dentists, pharmacists, advance practice providers and behavioral health providers.

B. The department shall prescribe application and eligibility requirements that are consistent with the requirements of the national health service corps loan repayment program (42 Code of Federal Regulations part 62). To be eligible to participate in the primary care provider loan repayment program, an applicant shall meet all of the following requirements:

1. Have completed the final year of a course of study or program approved by recognized accrediting agencies for higher education in a health profession licensed pursuant to title 32 or hold an active license in a health profession licensed pursuant to title 32.

2. Demonstrate current or prospective employment with a public or nonprofit entity located and providing services in a federally designated health professional shortage area in this state as designated under 42 Code of Federal Regulations section 62.52.

3. Contract with the department to serve and be qualified to serve in general dentistry, family medicine, pediatrics, obstetrics, internal medicine, geriatrics, psychiatry, pharmacy or behavioral health.

C. In addition to the requirements of subsection B of this section, an applicant who is a physician shall meet both of the following requirements:

1. Have completed a professional residency program in family medicine, pediatrics, obstetrics, internal medicine or psychiatry or a fellowship, residency or certification program in geriatrics.

2. Contract with the department to serve for at least two years.

D. An advance practice provider, behavioral health provider or dentist who participates in the primary care provider loan repayment program shall initially contract with the department to provide services pursuant to this section for at least two years.

E. In making recommendations for the primary care provider loan repayment program, the department shall give priority to applicants who:

1. Intend to practice in rural areas most in need of primary care services.

2. Have been assigned to a high-need health professional shortage area pursuant to 42 Code of Federal Regulations section 62.52.

3. Meet criteria established in rule to determine priority consistent with the national health service corps loan repayment program (42 Code of Federal Regulations part 62, subpart B).

F. All loan repayment contract obligations are subject to the availability of monies and legislative appropriation. The department may cancel or suspend a loan repayment contract based on unavailability of monies for the program. The department is not liable for any claims, actual damages or consequential damages arising out of a cancellation or suspension of a contract.

G. This section does not prevent the department from encumbering an amount that is sufficient to ensure payment of each primary care provider loan for the services rendered during a contract period.

H. The department shall issue program monies to pay primary care provider loans that are limited to the amount of principal, interest and related expenses of educational loans, not to exceed the provider's total student loan indebtedness, according to the following schedule:

1. For physicians and dentists:

(a) For the first two years of service, a maximum of sixty-five thousand dollars.

(b) For subsequent years, a maximum of thirty-five thousand dollars.

2. For advance practice providers, pharmacists and behavioral health providers:

(a) For the first two years of service, a maximum of fifty thousand dollars.

(b) For subsequent years, a maximum of twenty-five thousand dollars.

I. A participant in the primary care provider loan repayment program who breaches the loan repayment contract by failing to begin or to complete the obligated services is liable for liquidated damages in an amount equivalent to the amount that would be owed for default as prescribed by the federal grants to states for loan repayment program or as determined and authorized by the department. The department may waive the liquidated damages provisions of this subsection if it determines that death or permanent physical disability accounted for the failure of the participant to fulfill the contract. The department may prescribe additional conditions for default, cancellation, waiver or suspension that are consistent with the national health service corps loan repayment program (42 Code of Federal Regulations sections 62.27 and 62.28).

J. Notwithstanding section 41-192, the department may retain legal counsel and commence whatever actions are necessary to collect loan payments and charges if there is a default or a breach of a contract entered into pursuant to this section.

K. The director of the department may authorize the program to be implemented independent of the federal grants for state loan repayment program based on the needs of this state.

L. The department may use monies to develop programs such as resident-to-service loan repayment and employer recruitment assistance to increase participation in the primary care provider loan

repayment program. The department may use private donations, grants and federal monies to implement, support, promote or maintain the program.

**36-2174. Rural private primary care provider loan repayment program; private practice; rules**

A. Subject to the availability of monies, the department shall establish a rural private primary care provider loan repayment program for physicians, dentists, pharmacists, behavioral health providers and advance practice providers with current or prospective rural primary care practices located in federally designated health professional shortage areas or medically underserved areas in this state, as prescribed in section 36-2352. To be eligible to participate in the program, an applicant shall agree to provide organized, discounted, sliding fee scale services for medically uninsured individuals from families with annual incomes below two hundred percent of the federal poverty guidelines as established annually by the United States department of health and human services. The department shall approve the sliding fee scale used by the provider. The provider shall ensure notice to consumers of the availability of these services. The department shall give preference to applicants who agree to serve in rural areas.

B. Except as provided in section 36-2172, subsection B, paragraph 2, the program established pursuant to this section and loan repayment contracts made pursuant to this section shall comply with the requirements of section 36-2172.

C. The department may apply for and receive private donations and grant monies to implement the rural private primary care provider loan repayment program established pursuant to this section.

D. The department shall adopt rules to cancel or suspend a loan repayment contract, impose a penalty for default or find a person in default of a contract.

**36-2907.06. Qualifying community health centers; contracts; requirements; definition**

(Conditionally Rpld.)

A. Subject to the availability of monies, the administration shall enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with the department of health services to contract with qualifying community health centers to provide primary health care services to indigent or uninsured Arizonans. The department of health services shall enter into one-year contracts with qualifying community health centers for the centers to provide the following primary health care services:

1. Medical care provided through licensed primary care physicians and licensed mid-level providers as defined in section 36-2907.05.
2. Prenatal care services.
3. Diagnostic laboratory and imaging services that are necessary to complete a diagnosis and treatment, including referral services.

4. Pharmacy services that are necessary to complete treatment, including referral services.
  5. Preventive health services.
  6. Preventive dental services.
  7. Emergency services performed at the qualifying community health center.
  8. Transportation for patients to and from the qualifying community health center if these patients would not receive care without this assistance.
- B. A contract entered into pursuant to subsection A of this section may include urgent care services for walk-in patients.
- C. Each contract shall require that the qualifying community health center provide the services prescribed in subsection A of this section to persons who the center determines:
1. Are residents of this state.
  2. Are without medical insurance policy coverage.
  3. Do not have a family income of more than two hundred percent of the federal poverty guidelines.
  4. Have provided verification that the person is not eligible for enrollment in the Arizona health care cost containment system pursuant to this chapter.
  5. Have provided verification that the person is not eligible for medicare.
- D. The department of health services shall directly administer the program and issue requests for proposals for the contracts prescribed in this section. Contracts established pursuant to subsection A of this section shall be signed by the department and the contractor before the transmission of any tobacco tax and health care fund monies to the contractor.
- E. Persons who meet the eligibility criteria established in subsection C or H of this section shall be charged for services based on a sliding fee schedule approved by the department of health services.
- F. In awarding contracts, the department of health services may give preference to qualifying community health centers that have a sliding fee schedule. Monies shall be used for the number of patients that exceeds the number of uninsured sliding fee schedule patients that the qualifying community health center served during fiscal year 1994. Each qualifying community health center shall make its sliding fee schedule available to the public on request. The contract shall require the qualifying community health center to apply a sliding fee schedule to all of its uninsured patients.
- G. The department of health services may examine the records of each qualifying community health center and conduct audits necessary to determine that the eligibility determinations were performed accurately and to verify the number of uninsured patients served by the qualifying community health center as a result of receiving tobacco tax and health care fund monies by the contract established pursuant to subsection A of this section.

H. Contracts established pursuant to subsection A of this section shall require qualifying community health center contractors to submit information as required pursuant to section 36-2907.07 for program evaluations.

I. For the purposes of this section, "qualifying community health center" means a community-based primary care facility that provides medical care in medically underserved areas as provided in section 36-2352, or in medically underserved areas or medically underserved populations as designated by the United States department of health and human services, through the employment of physicians, professional nurses, physician assistants or other health care technical and paraprofessional personnel.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)**

Title 9, Chapter 22, Article 1, Definitions



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** January 4, 2022

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

**FROM:** Council Staff

**DATE:** December 13, 2021

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)  
Title 9, Chapter 22, Article 1, Definitions

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### **Summary**

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to one rule, R9-22-101, found in Title 9, Chapter 22, Article 1 related to definitions for terms used in the deliverance of funds for AHCCCS's acute care program.

AHCCCS indicates there was no prior proposed course of action for these rules in the last 5YRR, which was approved by the Council on January 4, 2017.

### **Proposed Action**

AHCCCS is proposing to remove two definitions from R9-22-101: "Chronic" and "CRS Provider." AHCCCS indicates that R9-22-101 states these definitions are defined in R9-22-1301. However, those definitions were removed from R9-22-1301 in a prior rulemaking and must also be removed from R9-22-101 to maintain consistency. AHCCCS intends to initiate an expedited rulemaking to remove the two definitions identified above within 60 days of approval of this 5YRR by the Council.

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

AHCCCS cites both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

In the last rulemaking related to this rule, AHCCCS determined that the rule change in language may have a nominal economic impact on small businesses and consumers. The stakeholders who could be affected include: AHCCCS contractors, members, providers, Arizona Department of Health Services, the Department of Economic Security, and AHCCCS. However, since the article only contains definitions, AHCCCS states a change in the article does not result in any substantive change. Because of this, AHCCCS has determined that rule changes do not have substantive economic impact on stakeholders.

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

AHCCCS states there are no costs associated with complying with R9-22-101 because it clarifies terms associated with acute care services, and does not create the substantive authority for reimbursement of those services. Therefore, the benefits of clarity of definitions outweigh the minimal cost, if any, to complying with the rule.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

AHCCCS indicates the rules are clear, concise, and understandable.

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

As indicated above, AHCCCS states the terms "chronic" and "CRS provider" should be removed from the list of terms in R9-22-101. The rule states these terms are defined in R9-22-1301; however, a prior rulemaking removed those terms, therefore they should be removed from this rule to maintain consistency.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

AHCCCS indicates the rules are effective in achieving their regulatory objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

AHCCCS indicates the rules are currently enforced as written.

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

AHCCCS indicates the rule is not more stringent than corresponding federal law. AHCCCS states the rule is consistent with federal statutes and federal regulations 42 CFR (Code of Federal Regulations) 455.101; 42 CFR 435.1010; Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396s(a)(10)(A)(i)(IV), 42 U.S.C. 1396s(a)(10)(A)(i)(VI), 42 U.S.C. 1396s(a)(10)(A)(i)(VII).

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. R9-22-101 does not require a permit, license, or agency authorization.

**11. Conclusion**

AHCCCS indicates that the rules are clear, concise and understandable, achieving their intended purpose, and enforced as written. AHCCCS states that R9-22-101 is currently inconsistent with other rules as it includes the terms “chronic” and “CRS provider,” stating these terms are defined in R9-22-1301. However, both terms were removed from R9-22-1301 in a prior rulemaking. Therefore, AHCCCS intends to initiate an expedited rulemaking to remove the two definitions identified above within 60 days of approval of this 5YRR by the Council.

Council staff recommends approval of this report.



Douglas A. Ducey, Governor  
Jami Snyder, Director

October 28, 2021

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

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

RE: AHCCCS Title 9, Chapter 22, Article 1, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 1 which is due on October 29, 2021.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or [nicole.fries@azahcccs.gov](mailto:nicole.fries@azahcccs.gov).

Sincerely,

A handwritten signature in black ink that reads "Kasey Rogg". The signature is written in a cursive, flowing style.

Kasey Rogg  
Assistant Director

Attachments



Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 1

October 2021

1. **Authorization of the rule by existing statutes**

General Statutory Authority: ARS § 36-2903.01(F)

Specific Statutory Authority: ARS § 36-2903.01(F)

2. **The objective of each rule:**

Rule	Objective
R9-22-101	To provide definitions for terms used in the deliverance of funds for AHCCCS's acute care program.

3. **Are the rules effective in achieving their objectives?**

Yes  X

No

4. **Are the rules consistent with other rules and statutes?**

Yes

No  X

Rule	Objective
R9-22-101	Remove "chronic" and "CRS provider" from the list of terms in this rulemaking. It states they are defined in R9-22-13; however, a prior rulemaking removed those terms, therefore they should be removed from this rule to maintain consistency.

5. **Are the rules enforced as written?**

Yes  X

No

6. **Are the rules clear, concise, and understandable?**

Yes  X

No

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes

No  X

8. **Economic, small business, and consumer impact comparison:**

In the last rulemaking that occurred affecting this article stated that a nominal economic impact could occur related to small businesses and consumers. However, this article only contains acute care definitions, and a change in definitions does not affect a substantive change, that would occur in another rule. Therefore, no change to this rule will have a corresponding economic impact.

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?**

There was no prior proposed course of action.

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

There are no costs associated with complying with R9-22-101 because it merely defines terms associated with acute care services, it does not create the substantive authority for reimbursement of those services. Therefore, the benefits of clarity of definitions outweigh the minimal cost, if any, to complying with the rule.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No **X**

Chapter 22, Article 1 rules are consistent with federal statutes and federal regulations 42 CFR (Code of Federal Regulations) 455.101; 42 CFR 435.1010; Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396s(a)(10)(A)(i)(IV), 42 U.S.C. 1396s(a)(10)(A)(i)(VI), 42 U.S.C. 1396s(a)(10)(A)(i)(VII).

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action:**

AHCCCS proposes initiating an expedited rulemaking to remove the two definitions identified above within 60 days of approval of this 5YRR by GRRC.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 1. DEFINITIONS

R9-22-101. Location of Definitions

A. Location of definitions. Definitions applicable to this Chapter are found in the following:

Definition	Section or Citation	Definition	Section or Citation
“Accommodation”	R9-22-701	“Court-ordered evaluation”	R9-22-1201
“Active treatment”	R9-22-1301	“Court-ordered pre-petition screening”	R9-22-1201
“ADHS”	R9-22-101	“Court-ordered treatment”	R9-22-1201
“Administration”	A.R.S. § 36-2901	“Covered charges”	R9-22-701
“Adult behavioral health therapeutic home”	9 A.A.C. 10, Article 1	“Covered services”	R9-22-101
“Adverse action”	R9-22-101	“CPT”	R9-22-701
“Affiliated corporate organization”	R9-22-101	“Creditable coverage”	R9-22-2003 and 42 U.S.C. 300gg(c)
“Aged”	42 U.S.C. 1382c(a)(1)(A) and R9-22-1501	“Crisis services”	R9-22-1201
“Agency”	R9-22-1201	“Critical Access Hospital”	R9-22-701
“Aggregate”	R9-22-701	“CRS application”	R9-22-1301
“AHCCCS”	R9-22-101	“CRS condition”	R9-22-1301
“AHCCCS inpatient hospital day or days of care”	R9-22-701	“CRS provider”	R9-22-1301
“AHCCCS registered provider”	R9-22-101	“Cryotherapy”	R9-22-2001
“Ambulance”	A.R.S. § 36-2201	“Customized DME”	R9-22-212
“Ancillary service”	R9-22-101	“Day”	R9-22-101 and R9-22-1101
“Anticipatory guidance”	R9-22-201	“Date of the Notice of Adverse Action”	R9-22-1441
“Annual enrollment choice”	R9-22-1701	“DBHS”	R9-22-101
“APC”	R9-22-701	“DCSS”	R9-22-301
“Applicant”	R9-22-101 or R9-22-301	“Department”	A.R.S. § 36-2901
“Application”	R9-22-101	“Dependent child”	A.R.S. § 46-101 or R9-22-1401
“Assessment”	R9-22-1101 or R9-22-1201	“DES”	R9-22-101
“Assignment”	R9-22-101	“Diagnostic services”	R9-22-101
“Attending physician”	R9-22-101 or R9-22-202	“Direct graduate medical education costs” or “direct program costs”	R9-22-701
“Authorized representative”	R9-22-101	“Direct supervision”	R9-22-1201
“Authorization”	R9-22-202	“Director”	R9-22-101
“Auto-assignment algorithm”	R9-22-1701	“Disabled”	R9-22-1501
“AZ-NBCCEDP”	R9-22-2001	“Discussion”	R9-22-101
“Behavior management services”	R9-22-1201	“Disenrollment”	R9-22-1701
“Behavioral health therapeutic home care services”	R9-22-1201	“DME”	R9-22-101
“Behavioral health paraprofessional”	R9-22-101	“DRI inflation factor”	R9-22-701
“Behavioral health professional”	R9-22-101	“E.P.S.D.T. services”	42 CFR 440.40(b)
“Behavioral health recipient”	R9-22-201	“Eligibility posting”	R9-22-701
“Behavioral health services”	R9-22-1201	“Eligible person”	A.R.S. § 36-2901
“Behavioral health technician”	R9-22-1201	“Emergency behavioral health condition for a non-FES member”	R9-22-201
“Benefit year”	R9-22-201	“Emergency behavioral health services for a non-FES member”	R9-22-201
“BHS”	R9-22-301	“Emergency medical condition for a non-FES member”	R9-22-201
“Billed charges”	R9-22-701	“Emergency medical services for a non-FES member”	R9-22-201
“Blind”	R9-22-1501	“Emergency medical services provider”	R9-22-1201
“Burial plot”	R9-22-1401	“Emergency medical or behavioral health condition for a FES member”	R9-22-217
“Business agent”	R9-22-701	“Emergency services costs”	A.R.S. § 36-2903.07
“Calculated inpatient costs”	R9-22-712.07	“Emergency services for a FES member”	R9-22-217
“Capital costs”	R9-22-701	“Encounter”	R9-22-701
“Capped fee-for-service”	R9-22-101	“Enrollment”	R9-22-1701
“Caretaker relative”	R9-22-1401	“Equity”	R9-22-101
“Case management”	R9-22-1201	“Experimental services”	R9-22-203
“Case record”	R9-22-101	“Existing outpatient service”	R9-22-701
“Cash assistance”	R9-22-1401	“Expansion funds”	R9-22-701
“Certified psychiatric nurse practitioner”	R9-22-1201	“FAA”	R9-22-301
“Charge master”	R9-22-712	“Facility”	R9-22-101
“Child”	R9-22-1503	“Factor”	R9-22-701 and 42 CFR 447.10
“Children’s Rehabilitative Services” or “CRS”	R9-22-101 or R9-22-301	“FBR”	R9-22-101
“Chronic”	R9-22-1301	“Federal financial participation” or “FFP”	42 CFR 400.203
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“Claims paid amount”	R9-22-712.07	“Fee-For-Service” or “FFS”	R9-22-101
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“Clinical oversight”	9 A.A.C. 10	“FESP”	R9-22-101
“CMDP”	R9-22-1701	“First-party liability”	R9-22-1001
“CMS”	R9-22-101	“File”	R9-22-1101
“Continuous stay”	R9-22-101	“Fiscal agent”	R9-22-210
“Contract”	R9-22-101	“Fiscal intermediary”	R9-22-701
“Contract year”	R9-22-101	“Foster care maintenance payment”	42 U.S.C. 675(4)(A)
“Contractor”	A.R.S. § 36-2901 or R9-22-210.01	“FQHC”	R9-22-101
“Copayment”	R9-22-701	“Freestanding Children’s Hospital”	R9-22-701
“Cost avoid”	R9-22-1201	“Functionally limiting”	R9-22-1301
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		“GME program approved by the Administration” or “approved GME program”	R9-22-701

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“HCPCS”	R9-22-701	“Post-stabilization services”	R9-22-201 or 42 CFR 422.113
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“Health care practitioner”	R9-22-1201	“Practitioner”	R9-22-101
“Hearing aid”	R9-22-201	“Pre-enrollment process”	R9-22-301
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“Hospital”	R9-22-101	“Primary care provider services”	R9-22-201
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“IHS”	R9-22-101	“Prior period coverage” or “PPC”	R9-22-101
“IHS enrolled” or “enrolled with IHS”	R9-22-708	“Procedure code”	R9-22-701
“IMD” or “Institution for Mental Diseases”	42 CFR 435.1010 and R9-22-101	“Procurement file”	R9-22-601
“Income”	R9-22-301	“Proposal”	R9-22-101
“Indirect program costs”	R9-22-701	“Prospective rates”	R9-22-701
“Individual”	R9-22-211	“Psychiatrist”	R9-22-1201
“In-kind income”	R9-22-1420	“Psychologist”	R9-22-1201
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“Inpatient covered charges”	R9-22-712.07	“Public hospital”	R9-22-701
“Intermediate Care Facility for the Mentally Retarded” or “ICF-MR”	42 U.S.C. 1396d(d)	“Qualified alien”	A.R.S. § 36-2903.03
“Intern and Resident Information System”	R9-22-701	“Qualified behavioral health service provider”	R9-22-1201
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“Medical education costs”	R9-22-701	“Rehabilitation services”	R9-22-101
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“Tier”	R9-22-701
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**B.** General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“ADHS” means the Arizona Department of Health Services.

“Adverse action” means an action taken by the Department or Administration to deny, discontinue, or reduce medical assistance.

“Affiliated corporate organization” means any organization that has ownership or control interests as defined in 42 CFR 455.101, and includes a parent and subsidiary corporation.

“AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

“AHCCCS registered provider” means a provider or non-contracting provider who:

Enters into a provider agreement with the Administration under R9-22-703(A), and

Meets license or certification requirements to provide covered services.

“Ancillary service” means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“Applicant” means a person who submits or whose authorized representative submits a written, signed, and dated application for AHCCCS benefits.

“Application” means an official request for AHCCCS medical coverage made under this Chapter.

“Assignment” means enrollment of a member with a contractor by the Administration.

“Attending physician” means a licensed allopathic or osteopathic doctor of medicine who has primary responsibility for providing or directing preventive and treatment services for a Fee-For-Service member.

“Authorized representative” means a person who is authorized to apply for medical assistance or act on behalf of another person.

“Behavioral health paraprofessional” means an individual who is not a behavioral health professional who provides

behavioral health services at or for a health care institution according to the health care institution’s policies and procedures that:

If the behavioral health services were provided in a setting other than a licensed health care institution,

If the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33,

If the behavioral health services were provided in a setting other than a licensed health care institution; and

Are provided under supervision by a behavioral health professional R9-10-101.

“Behavioral Health Professional” has the same meaning as defined A.A.C. R9-10-101 excluding subsection (g).

“Capped fee-for-service” means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific covered service or equipment provided to a member. A payment is made in accordance with an upper or capped limit established by the Director. This capped limit can either be a specific dollar amount or a percentage of billed charges.

“Case record” means an individual or family file retained by the Department that contains all pertinent eligibility information, including electronically stored data.

“Children’s Rehabilitative Services” or “CRS” means the program that provides covered medical services and covered support services in accordance with A.R.S. § 36-261.

“CMS” means the Centers for Medicare and Medicaid Services.

“Continuous stay” means a period during which a member receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

“Contract” means a written agreement entered into between a person, an organization, or other entity and the Administration to provide health care services to a member under A.R.S. Title 36, Chapter 29, and this Chapter.

“Contract year” means the period beginning on October 1 of a year and continuing until September 30 of the following year.

“Covered services” means the health and medical services described in Articles 2 and 12 of this Chapter as being eligible for reimbursement by AHCCCS.

“Day” means a calendar day unless otherwise specified.

“DBHS” means the Division of Behavioral Health Services within the Arizona Department of Health Services.

“DES” means the Department of Economic Security.

“Diagnostic services” means services provided for the purpose of determining the nature and cause of a condition, illness, or injury.

“Director” means the Director of the Administration or the Director’s designee.

“Discussion” means an oral or written exchange of information or any form of negotiation.

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“DME” means durable medical equipment, which is an item or appliance that can withstand repeated use, is designed to serve a medical purpose, and is not generally useful to a person in the absence of a medical condition, illness, or injury.

“Equity” means the county assessor full cash value or market value of a resource minus valid liens, encumbrances, or both.

“Facility” means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related service.

“FBR” means Federal Benefit Rate, the maximum monthly Supplemental Security Income payment rate for a member or a married couple.

“Fee-For-Service” or “FFS” means a method of payment by the AHCCCS Administration to a registered provider on an amount-per-service basis for a member not enrolled with a contractor.

“FES member” means a person who is eligible to receive emergency medical and behavioral health services through the FESP under R9-22-217.

“FESP” means the federal emergency services program under R9-22-217 which covers services to treat an emergency medical or behavioral health condition for a member who is determined eligible under A.R.S. § 36-2903.03(D).

“FQHC” means federally qualified health center.

“GSA” means a geographical service area designated by the Administration within which a contractor provides, directly or through a subcontract, a covered health care service to a member enrolled with the contractor.

“Hospital” means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined, by the Arizona Department of Health Services as the CMS designee, to meet the requirements of certification.

“IHS” means Indian Health Service.

“IMD” or “Institution for Mental Diseases” means an Institution for Mental Diseases as described in 42 CFR 435.1010 that is licensed by ADHS.

“Legal representative” means a custodial parent of a child under 18, a guardian, or a conservator.

“License” or “licensure” means a nontransferable authorization that is granted based on established standards in law by a state or a county regulatory agency or board and allows a health care provider to lawfully render a health care service.

“Mailing date” when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:

Shown on the postmark;

Shown on the postage meter mark of the envelope, if no postmark; or

Entered as the date on the document, if there is no legible postmark or postage meter mark.

“Medical record” means a document that relates to medical or behavioral health services provided to a member by a physician or other licensed practitioner of the healing arts and that is kept at the site of the provider.

“Medical supplies” means consumable items that are designed specifically to meet a medical purpose.

“Medically necessary” means a covered service is provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or to prolong life.

“Medicare claim” means a claim for Medicare-covered services for a member with Medicare coverage.

“Non-FES member” means an eligible person who is entitled to full AHCCCS services.

“Offeror” means an individual or entity that submits a proposal to the Administration in response to an RFP.

“Physician” means a person licensed as an allopathic or osteopathic physician under A.R.S. Title 32, Chapter 13 or Chapter 17.

“Practitioner” means a physician assistant licensed under A.R.S. Title 32, Chapter 25, or a registered nurse practitioner certified under A.R.S. Title 32, Chapter 15.

“Prescription” means an order to provide covered services that is signed or transmitted by a provider authorized to prescribe the services.

“Primary care provider” or “PCP” means an individual who meets the requirements of A.R.S. § 36-2901 (14), and who is responsible for the management of a member’s health care.

“Prior authorization” means the process by which the Administration or contractor, whichever is applicable, authorizes, in advance, the delivery of covered services based on factors including but not limited to medical necessity, cost effectiveness, compliance with this Article and any applicable contract provisions. Prior authorization is not a guarantee of payment.

“Prior period coverage” means the period prior to the member’s enrollment during which a member is eligible for covered services. PPC begins on the first day of the month of application or the first eligible month, whichever is later, and continues until the day the member is enrolled with a contractor.

“Proposal” means all documents, including best and final offers, submitted by an offeror in response to an RFP by the Administration.

“Radiology” means professional and technical services rendered to provide medical imaging, radiation oncology, and radioisotope services.

“Referral” means the process by which a member is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.

“Rehabilitation services” means physical, occupational, and speech therapies, and items to assist in improving or restoring a person’s functional level.

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“Responsible offeror” means an individual or entity that has the capability to perform the requirements of a contract and that ensures good faith performance.

“Responsive offeror” means an individual or entity that submits a proposal that conforms in all material respects to an RFP.

“Review” means a review of all factors affecting a member’s eligibility.

“Review month” means the month in which the individual’s or family’s circumstances and case record are reviewed.

“RFP” means Request for Proposals, including all documents, whether attached or incorporated by reference, that are used by the Administration for soliciting a proposal under 9 A.A.C. 22, Article 6.

“Service location” means a location at which a member obtains a covered service provided by a physician or other licensed practitioner of the healing arts under the terms of a contract.

“Service site” means a location designated by a contractor as the location at which a member is to receive covered services.

“S.O.B.R.A.” means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII).

“Specialist” means a Board-eligible or certified physician who declares himself or herself as a specialist and practices a specific medical specialty. For the purposes of this definition, Board-eligible means a physician who meets all the requirements for certification but has not tested for or has not been issued certification.

“Spouse” means a person who has entered into a contract of marriage recognized as valid by this state.

“SSN” means Social Security number.

“Standard of care” means a medical procedure or process that is accepted as treatment for a specific illness, injury, or medical condition through custom, peer review, or consensus by the professional medical community.

“Subcontract” means an agreement entered into by a contractor with any of the following:

A provider of health care services who agrees to furnish covered services to a member,

A marketing organization, or

Any other organization or person that agrees to perform any administrative function or service for the contractor specifically related to securing or fulfilling the contractor’s obligation to the Administration under the terms of a contract.

“Taxi” is as defined in A.R.S. § 28-101(53).

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-101 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-101 repealed, former Sections R9-22-102 and R9-22-301

renumbered as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency by adding new paragraphs (24), (46), (84) and (91) and renumbering accordingly effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency by adding new paragraphs (2) and (15) and renumbering accordingly effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment added paragraphs (2) and (15) and renumbered accordingly effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended paragraphs (10) and (15) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended by deleting paragraphs (39) and (62) and renumbering accordingly effective July 1, 1988 (Supp. 88-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted effective December 8, 1997 (Supp. 97-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3830, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008

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(Supp. 08-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-102. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-102 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1092 (Supp. 82-4). Former Section R9-22-102 renumbered together with former Section R9-22-301 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section adopted effective December 8, 1997 (Supp. 97-4). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3).

**R9-22-103. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-104. Reserved****R9-22-105. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-106. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-107. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-108. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3317, effective

August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-109. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. effective 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-110. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

**R9-22-111. Reserved****R9-22-112. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Repealed by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

**R9-22-113. Reserved****R9-22-114. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-115. Repealed****Historical Note**

Final Section adopted at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-116. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-117. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by

### 36-2903.01. Additional powers and duties; report; definition

- A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.
- B. The director shall:
1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.
  2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).
  3. Enter into an intergovernmental agreement with the department to:
    - (a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.
    - (b) Establish performance measures and incentives for the department.
    - (c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.
    - (d) Establish eligibility quality control reviews by the administration.
    - (e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.
    - (f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.
    - (g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.
    - (h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.
  4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration 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.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor'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 services rendered on and after October 1, 1997, the administration 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 administration 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 administration 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 administration 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. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)**

Title 9, Chapter 22, Article 7, Standards for Payments



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** January 4, 2022

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

**FROM:** Council Staff

**DATE:** December 13, 2021

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)  
Title 9, Chapter 22, Article 7, Standards for Payments

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### Summary

This One-Year Review Report (1YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to two rules in Title 9, Chapter 22, Article 7 regarding Standards for Payment. Specifically, this 1YRR relates to rules R9-22-730, which relates to rates paid by hospitals under the Hospital Assessment Fund, and R9-22-731, which relates to rates paid by hospitals under the Health Care Investment Fund (HCIF). Amendments to these rules were adopted in an exempt rulemaking pursuant to Laws 2020, Chapter 46 which granted AHCCCS a one-time exemption from the Administrative Procedures Act (APA) in Title 41, Chapter 6 of the Arizona Revised Statutes. A copy of the Notice of Exempt Rulemaking is included with the final materials for the Council's reference.

A.R.S. §§ 36-2999.72 and 36-2999.73 required AHCCCS to establish a second hospital assessment beginning October 1, 2020 and required the Administration to deposit the monies into the HCIF. Monies from the HCIF are to be used to 1) make directed payments to hospitals pursuant to 42 CFR § 438.6(c) that supplement the base reimbursement provided to hospitals for services provided to persons eligible for Title XIX services, 2) increase base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule, and 3) to pay for the non-federal share of the costs for AHCCCS expenses to administer this program, not to exceed one percent of the total assessment monies collected.

The statute requires AHCCCS to adopt rules regarding the method for determining the assessment, the amount or rate of the assessment, and modifications to or exemptions from the assessment. AHCCCS stated in its exempt rulemaking that it structured the HCIF assessment similar to hospital assessment established under A.R.S. § 36-2901.08.

In addition to establishing the HCIF assessment, the exempt rulemaking made modifications to the original assessment. A.R.S. § 36-2901.08 authorizes AHCCCS to establish, administer and collect an assessment on hospital revenues, discharges or bed days for funding a portion of the nonfederal share of the costs incurred beginning January 1, 2014, associated with eligible persons added to the program by A.R.S. §§ 36-2901.01 and 36-2901.07.

The exempt rulemaking, in part, amended rates paid by hospitals under the hospital assessment authorized by A.R.S. § 36-2901.08 for the time period beginning October 1, 2020. AHCCCS states, this assessment funds the cost of covered services to certain eligibility groups identified in the statute. As with prior rulemakings implementing the hospital assessment, AHCCCS stated it is its objective to assess only as much as is necessary to meet the estimated costs associated with the projected populations referenced in the statute. As such, AHCCCS states it is necessary to adjust the assessment from time to time as AHCCCS updates its estimate of the number of eligible persons and projected cost associated with coverage for those persons.

The exempt rulemaking also renamed the title of R9-22-730 “Hospital Assessment Fund” hospital assessment to distinguish it from the newly established HCIF hospital assessment.

An additional amendment was proposed to assess freestanding children’s hospitals effective October 1, 2020. Previously, freestanding children’s hospitals were exempt from the assessment.

Finally, the exempt rulemaking removed the threshold for the outpatient component of the assessment.

Pursuant to A.R.S. § 41-1095, “[f]or an agency that the legislature has granted a one-time rulemaking exemption, within one year after a rules has been adopted the agency shall review the rule adopted under the rulemaking exemption to determine whether any rules adopted under the rulemaking exemption should be amended or repealed.” As such, AHCCCS has submitted the following report.

### **Proposed Action**

AHCCCS proposes a rulemaking pursuant to the applicable exemptions to amend rates paid by hospitals under the Hospital Assessment authorized by A.R.S. § 36-2901.08 for the federal fiscal year (FFY) 2022, beginning October 1, 2021, and running till September 30, 2022.

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

AHCCCS cites both general and specific statutory authority for the rules under review. The session law authorizing a one-time exemption from the APA is Laws 2020, Chapter 46. A copy of the session law is included in the final materials for the Council's reference.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

Stakeholders include AHCCCS, hospitals, health care providers, and AHCCCS members.

A.R.S. § 36.2901.08 authorized AHCCCS to establish, administer and collect an assessment on hospital revenues, discharges, or bed days for funding a portion of the nonfederal share of the costs incurred beginning January 1, 2014, associated with eligible persons added to the Medicaid program. AHCCCS will use the amounts collected from the assessment combined with the federal financial participation to fund the cost of health care coverage for an estimated 538,000 persons through direct payments to healthcare providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members. Many of the providers of that medical care are considered small businesses located in Arizona.

The HCIF hospital assessment will be matched by federal funds. Many of the assessment funds and accompanying federal funds will be used to provide an increase for base reimbursement for specific services reimbursed to Arizona hospitals.

The substance of these rules requires them to be updated annually in rulemaking.

**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?**

AHCCCS states it works with providers and other stakeholders annually to determine the hospital assessment and health care investment fund rates for the upcoming year. Once the rates have been finalized, they are published in a Final Public Notice. This notice outlines the rates and how a hospital will be reimbursed under these rules. Therefore, with extensive input from stakeholders and the hospitals who are the providers receiving these values, AHCCCS believes these rules are the most effective method, incurring the greatest benefit with the least burden on regulated persons.

**4. Has the agency received any written criticisms of the rules since the rule was adopted?**

AHCCCS indicates it has not received any written criticisms of the rules since they were adopted.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

AHCCCS states the rules under review are clear, concise, and understandable.

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

AHCCCS states the rules under review are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

AHCCCS states the rules are not currently effective in achieving their objectives. Specifically, AHCCCS proposes to amend rates paid by hospitals under the Hospital Assessment for FFY 2022 to reflect the changing needs of the hospitals covered by this rule. Similarly, AHCCCS Administration proposes to update the intended HCIF assessment amounts for FFY 2022 to reflect the changing needs of the hospitals covered by this rule.

8. **Has the agency analyzed the current enforcement status of the rules?**

AHCCCS states the rules under review are currently enforced as written.

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

AHCCCS indicates the rules under review are not more stringent than corresponding federal law.

10. **Has the agency completed any additional process required by law?**

Not applicable.

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

Not applicable.

12. **Conclusion**

Council staff finds that AHCCCS submitted an adequate report that meets the requirements of A.R.S. § 41-1095. As indicated above, the substance of these rules requires them to be updated annually. As such, AHCCCS proposes to amend these rules pursuant to the applicable exemptions to amend rates paid by hospitals under the Hospital Assessment authorized by A.R.S. § 36-2901.08 for FFY 2022, beginning October 1, 2021, and running till September 30, 2022.

Council staff recommends approval of this report.



Douglas A. Ducey, Governor  
Jami Snyder, Director

October 26, 2021

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

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

RE: AHCCCS Title 9, Chapter 22, Article 7, One Year Review Report

Dear Ms. Sornsin:

Please find enclosed the One-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 7.

AHCCCS reviewed the following rules on this date because the Council rescheduled the initial review of an article under A.R.S. 41-1095(D).

AHCCCS hereby certifies compliance with A.R.S. 41-1095.

For questions about this report, please contact Nicole Fries at 602-417-4232 or [nicole.fries@azahcccs.gov](mailto:nicole.fries@azahcccs.gov).

Sincerely,

A handwritten signature in black ink that reads "Kasey Rogg". The signature is written in a cursive, flowing style.

Kasey Rogg  
Assistant Director

Attachments

801 East Jefferson, Phoenix, AZ 85034 • PO Box 25520, Phoenix, AZ 85002 • 602-417-4000 • [www.azahcccs.gov](http://www.azahcccs.gov)

**Arizona Health Care Cost Containment System (AHCCCS)**

**1 YEAR REVIEW REPORT**

**A.A.C. Title 9, Chapter 22, Article 7**

**October 2021**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2901.08; 36-2999.72

Implementing statute: A.R.S. § 36-2901.08; 36-2999.73

**2. The objective of each rule:**

Rule	Objective
R9-22-730	This rule provides the rates for the Annual Hospital Assessment Fund
R9-22-731	This rule provides the rates for the Health Care Investment Fund

**3. Are the rules effective in achieving their objectives?**

Yes \_\_\_ No X

Rule	Objective
R9-22-730	AHCCCS proposes to amend rates paid by hospitals under the Hospital Assessment for FFY 2022 to reflect the changing needs of the hospitals covered by this rule.
R9-22-731	AHCCCS Administration proposes to update the intended Health Care Investment Fund (HCIF) assessment amounts for FFY 2022 to reflect the changing needs of the hospitals covered by this rule.

**4. Are the rules consistent with other rules and statutes?**

Yes X No \_\_\_

**5. Are the rules enforced as written?**

Yes X No \_\_\_

**6. Are the rules clear, concise, and understandable?**

Yes X No \_\_\_

**7. Has the agency received written criticisms of the rules within the last five years?**

Yes \_\_\_ No X

**8. Economic, small business, and consumer impact comparison:**

The AHCCCS program is jointly funded by the State and the federal government through the Medicaid program. Depending on the eligibility category of the individual, the federal government provides between two-thirds and 100% of the cost of care for persons described in A.R.S. § 36.2901.08(A). A.R.S. § 36.2901.08 authorizes the Administration to establish, administer and collect an assessment on hospital revenues, discharges, or bed days for funding a portion of the nonfederal share of the costs incurred beginning January 1, 2014, associated with eligible persons added to the program by A.R.S. §§ 36-2901.01 and 36-2901.07. The Administration will use the amounts collected from the assessment combined with the federal financial

participation to fund the cost of health care coverage for an estimated 538,000 persons described in A.R.S. § 36.2901.08(A) through direct payments to health care providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members. Many of the providers of that medical care are considered small businesses located in Arizona.

The Health Care Investment Fund hospital assessment established in A.R.S. § 36-2999.72 will be matched by federal funds. Many of the assessment funds and accompanying federal funds will be used to provide an increase for base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule and for quarterly supplemental payments to Arizona hospitals.

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?**

There is no prior One- or Five-Year Review Report for these rules because the substance of them requires them to be updated annually in a rulemaking.

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 a collaborative process, AHCCCS works with providers and other stakeholders annually to determine the hospital assessment and health care investment fund rates for the upcoming year. Once the rates have been finalized, they are published in a Final Public Notice. This notice outlines the rates and how a hospital will be reimbursed under these rules. Therefore, with extensive input from stakeholders and the hospitals who are the providers receiving these values, AHCCCS believes these rules are the most effective method, incurring the greatest benefit with the least burden on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No **X**

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action:**

AHCCCS proposes a rulemaking pursuant to the applicable exemptions to amend rates paid by hospitals under the Hospital Assessment authorized by A.R.S. § 36-2901.08 for the federal fiscal year (FFY) 2022, beginning October 1, 2021, and running till September 30, 2022. These two assessments fund the cost of covered services to certain eligibility groups identified in the statute. It is necessary for the Administration to adjust the assessment from time to time as the

Administration updates its estimate of the number of eligible persons and projected cost associated with coverage for those persons.

House Engrossed

hospitals; unreimbursed costs; assessment; fund

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

**CHAPTER 46**  
**HOUSE BILL 2668**

AN ACT

AMENDING SECTION 36-2903.08, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7; RELATING TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2903.08, Arizona Revised Statutes, is amended  
3 to read:

4 36-2903.08. AHCCCS uncompensated care; hospital assessment;  
5 reports

6 A. On or before October 1, ~~2014, and annually thereafter~~ EACH YEAR,  
7 the Arizona health care cost containment system administration shall  
8 report to the speaker of the house of representatives, the president of  
9 the senate, THE CHAIRPERSONS OF THE APPROPRIATIONS COMMITTEES OF THE HOUSE  
10 OF REPRESENTATIVES AND THE SENATE and the directors of the joint  
11 legislative budget committee and the governor's office of strategic  
12 planning and budgeting on the change in uncompensated hospital costs  
13 experienced by hospitals in this state and hospital profitability during  
14 the previous fiscal year.

15 B. On or before August 1, ~~2014, and annually thereafter~~ EACH YEAR,  
16 the Arizona health care cost containment system administration shall  
17 report to the speaker of the house of representatives, the president of  
18 the senate, THE CHAIRPERSONS OF THE APPROPRIATIONS COMMITTEES OF THE HOUSE  
19 OF REPRESENTATIVES AND THE SENATE and the directors of the joint  
20 legislative budget committee and the governor's office of strategic  
21 planning and budgeting the following:

22 1. The AGGREGATE amount each hospital contributed for the hospital  
23 ~~assessment~~ ASSESSMENTS authorized pursuant to ~~section~~ SECTIONS 36-2901.08  
24 AND 36-2999.72 in the previous fiscal year.

25 2. The AGGREGATE amount of estimated payments each hospital  
26 received from the coverage AND DIRECTED PAYMENTS funded by the assessment.

27 Sec. 2. Title 36, chapter 29, Arizona Revised Statutes, is amended  
28 by adding article 7, to read:

29 ARTICLE 7. HEALTH CARE FINANCIAL STABILIZATION

30 36-2999.71. Definitions

31 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

32 1. "ADMINISTRATION" HAS THE SAME MEANING PRESCRIBED IN SECTION  
33 36-2901.

34 2. "BASE REIMBURSEMENT LEVEL":

35 (a) MEANS THE TOTAL EXPENDITURES BY THE ARIZONA HEALTH CARE COST  
36 CONTAINMENT SYSTEM AND ITS CONTRACTED HEALTH PLANS FOR HOSPITAL SERVICES  
37 TO ELIGIBLE PERSONS IN STATE FISCAL YEAR 2019-2020.

38 (b) DOES NOT INCLUDE DIRECTED PAYMENTS MADE PURSUANT TO THIS  
39 ARTICLE OR PAYMENTS MADE THROUGH THE PEDIATRIC SERVICES INITIATIVE  
40 PURSUANT TO 42 CODE OF FEDERAL REGULATIONS SECTION 438.6(c).

41 3. "DIRECTOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2901.

42 36-2999.72. Hospital assessment; rules; collection;  
43 enforcement

44 A. IN ADDITION TO THE ASSESSMENT ESTABLISHED PURSUANT TO SECTION  
45 36-2901.08, BEGINNING OCTOBER 1, 2020, THE DIRECTOR SHALL ESTABLISH,

1 ADMINISTER AND COLLECT AN ASSESSMENT ON HOSPITAL REVENUES, DISCHARGES OR  
2 BED DAYS WITH RESPECT TO INPATIENT OR OUTPATIENT SERVICES, OR BOTH, FOR  
3 THE PURPOSES PRESCRIBED IN SECTION 36-2999.73.

4 B. THE DIRECTOR SHALL ADOPT RULES REGARDING THE METHOD FOR  
5 DETERMINING THE ASSESSMENT, THE AMOUNT OR RATE OF THE ASSESSMENT AND  
6 MODIFICATIONS TO OR EXEMPTIONS FROM THE ASSESSMENT. THE ASSESSMENT IS  
7 SUBJECT TO APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES TO  
8 ENSURE THAT THE ASSESSMENT IS NOT ESTABLISHED OR ADMINISTERED IN A MANNER  
9 THAT CAUSES A REDUCTION IN FEDERAL FINANCIAL PARTICIPATION.

10 C. THE DIRECTOR MAY ESTABLISH MODIFICATIONS TO OR EXEMPTIONS FROM  
11 THE ASSESSMENT. IN DETERMINING THE MODIFICATIONS OR EXEMPTIONS, THE  
12 DIRECTOR MAY CONSIDER SUCH FACTORS AS THE SIZE OF THE HOSPITAL, THE  
13 SPECIALTY SERVICES AVAILABLE TO PATIENTS AT THE HOSPITAL AND THE  
14 GEOGRAPHIC LOCATION OF THE HOSPITAL.

15 D. THE DIRECTOR SHALL PRESENT ANY CHANGE TO THE HOSPITAL ASSESSMENT  
16 METHODOLOGY TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR REVIEW.

17 E. THE ADMINISTRATION SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146  
18 AND 35-147, THE MONIES COLLECTED PURSUANT TO THIS SECTION IN THE HEALTH  
19 CARE INVESTMENT FUND ESTABLISHED BY SECTION 36-2999.73.

20 F. A HOSPITAL MAY NOT PASS THE COST OF THE ASSESSMENT ON TO  
21 PATIENTS OR THIRD-PARTY PAYORS THAT ARE LIABLE TO PAY FOR CARE ON A  
22 PATIENT'S BEHALF. AS PART OF ITS FINANCIAL STATEMENT SUBMISSIONS PURSUANT  
23 TO SECTION 36-125.04, A HOSPITAL SHALL SUBMIT TO THE DEPARTMENT OF HEALTH  
24 SERVICES AN ATTESTATION THAT IT HAS NOT PASSED ON THE COST OF THE  
25 ASSESSMENT TO PATIENTS OR THIRD-PARTY PAYORS.

26 G. IF A HOSPITAL DOES NOT COMPLY WITH THIS SECTION AS PRESCRIBED BY  
27 THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM, THE  
28 DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MAY SUSPEND OR  
29 REVOKE THE HOSPITAL'S ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM PROVIDER  
30 AGREEMENT REGISTRATION. IF THE HOSPITAL DOES NOT COMPLY WITHIN ONE  
31 HUNDRED EIGHTY DAYS AFTER THE DIRECTOR OF THE ARIZONA HEALTH CARE COST  
32 CONTAINMENT SYSTEM SUSPENDS OR REVOKES THE HOSPITAL'S PROVIDER AGREEMENT,  
33 THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM SHALL  
34 NOTIFY THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES, WHO SHALL  
35 SUSPEND OR REVOKE THE HOSPITAL'S LICENSE PURSUANT TO SECTION 36-427.

36 36-2999.73. Health care investment fund; purposes; approval

37 A. THE HEALTH CARE INVESTMENT FUND IS ESTABLISHED CONSISTING OF THE  
38 FOLLOWING:

- 39 1. MONIES DEPOSITED IN THE FUND PURSUANT TO SECTION 36-2999.72.
- 40 2. INTEREST EARNED PURSUANT TO THIS SECTION.
- 41 3. LEGISLATIVE APPROPRIATIONS.

42 B. THE DIRECTOR SHALL ADMINISTER THE HEALTH CARE INVESTMENT FUND.  
43 THE DIRECTOR MAY NOT USE FUND MONIES TO PAY FOR THE BASE REIMBURSEMENT  
44 LEVEL FOR HOSPITAL SERVICES. THE DIRECTOR SHALL USE FUND MONIES AS

1 NECESSARY ONLY FOR THE PURPOSE OF FUNDING THE NONFEDERAL SHARE OF THE COST  
2 FOR THE FOLLOWING:

3 1. TO MAKE DIRECTED PAYMENTS TO HOSPITALS PURSUANT TO 42 CODE OF  
4 FEDERAL REGULATIONS SECTION 438.6(c) THAT SUPPLEMENT THE BASE  
5 REIMBURSEMENT LEVEL FOR HOSPITAL SERVICES TO ELIGIBLE PERSONS AS DEFINED  
6 IN SECTION 36-2901.

7 2. TO INCREASE BASE REIMBURSEMENT RATES FOR SERVICES REIMBURSED  
8 UNDER THE ADMINISTRATION'S DENTAL FEE SCHEDULE AND PHYSICIAN FEE SCHEDULE,  
9 NOT INCLUDING THE PHYSICIAN DRUG FEE SCHEDULE, TO THE EXTENT NECESSARY AS  
10 DETERMINED BY THE ADMINISTRATION TO RESTORE THESE PROVIDERS' RATES TO THE  
11 RATE LEVELS IN EXISTENCE BEFORE FISCAL YEAR 2008-2009, IF THESE EXPENSES  
12 DO NOT EXCEED THE LESSER OF \$70,500,000 OR TWENTY PERCENT OF THE TOTAL  
13 ASSESSMENT MONIES DEPOSITED PURSUANT TO SECTION 36-2999.72 FOR THE FISCAL  
14 YEAR.

15 3. TO PAY FOR THE NONFEDERAL SHARE OF THE COSTS FOR ADMINISTRATIVE  
16 EXPENSES INCURRED BY THE ADMINISTRATION OR ITS AGENTS IN PERFORMING THE  
17 ACTIVITIES AUTHORIZED BY THIS SECTION, IF THESE EXPENSES DO NOT EXCEED ONE  
18 PERCENT OF THE TOTAL ASSESSMENT MONIES DEPOSITED PURSUANT TO SECTION  
19 36-2999.72 FOR THE FISCAL YEAR.

20 C. THE ADMINISTRATION SHALL DEVELOP A PROCESS TO ENSURE THAT  
21 CONTRACTORS PASS THROUGH DIRECTED PAYMENTS TO ELIGIBLE PROVIDERS IN A  
22 TIMELY MANNER. CONTRACTORS MAY NOT REDUCE CONTRACTED RATES AS A RESULT OF  
23 DIRECTED PAYMENTS.

24 D. MONIES IN THE HEALTH CARE INVESTMENT FUND:

25 1. ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO  
26 LAPSING OF APPROPRIATIONS.

27 2. ARE CONTINUOUSLY APPROPRIATED.

28 3. ARE TO BE CREDITED AGAINST THE TOTAL HOSPITAL ASSESSMENT TO BE  
29 COLLECTED PURSUANT TO SECTION 36-2999.72 FOR THE SUBSEQUENT FISCAL YEAR IF  
30 NOT EXPENDED FOR THE PURPOSES AUTHORIZED UNDER THIS SECTION WITHIN THE  
31 SAME FISCAL YEAR THE MONIES ARE DEPOSITED IN THE FUND.

32 4. MAY NOT BE USED TO SUPPLANT EXISTING AND FUTURE APPROPRIATIONS  
33 TO THE ADMINISTRATION FOR EXISTING AND FUTURE PROGRAMS.

34 E. THE ADMINISTRATION MAY NOT USE THE MONIES IN THE HEALTH CARE  
35 INVESTMENT FUND PURSUANT TO THIS SECTION UNTIL THE CENTERS FOR MEDICARE  
36 AND MEDICAID SERVICES APPROVES THE USE OF THE ASSESSMENT MONIES FOR  
37 DIRECTED HOSPITAL EXPENDITURES PURSUANT TO 42 CODE OF FEDERAL REGULATIONS  
38 SECTION 438.6(c) AND FEDERAL FINANCIAL PARTICIPATION ELIGIBILITY FOR THE  
39 DIRECTED HOSPITAL EXPENDITURES CONTEMPLATED UNDER THIS SECTION.

40 F. ON NOTICE FROM THE ADMINISTRATION, THE STATE TREASURER SHALL  
41 INVEST AND DIVEST MONIES IN THE HEALTH CARE INVESTMENT FUND AS PROVIDED BY  
42 SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE  
43 FUND.

1           Sec. 3. AHCCCS; rulemaking exemption

2           For the purposes of this act, the Arizona health care cost  
3 containment system is exempt from the rulemaking requirements of title 41,  
4 chapter 6, Arizona Revised Statutes, for one year after the effective date  
5 of this act.

6           Sec. 4. Conditional repeal; refund; notice

7           A. Title 36, chapter 29, article 7, Arizona Revised Statutes, as  
8 added by this act, is repealed as of the effective date for which the  
9 centers for medicare and medicaid services notifies the Arizona health  
10 care cost containment system administration that the centers for medicare  
11 and medicaid services has made a final determination that the hospital  
12 assessment established pursuant to section 36-2999.72, Arizona Revised  
13 Statutes, as added by this act, is no longer eligible for federal  
14 financial participation. The administration shall refund any monies  
15 remaining in the health care investment fund established by section  
16 36-2999.73, Arizona Revised Statutes, as added by this act, to hospitals  
17 in proportion to the amounts paid by each hospital. The refund amount  
18 shall be reduced for any authorized expenditures associated with a period  
19 for which the hospital assessment is eligible for federal financial  
20 participation.

21           B. The administration shall notify in writing the director of the  
22 Arizona legislative council of this date.

APPROVED BY THE GOVERNOR MARCH 25, 2020.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 25, 2020.



NOTICES OF FINAL EXEMPT RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Exempt Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the final exempt rule should be addressed to the agency proposing them.

Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R20-190]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action
2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
3. The effective date of the rule:
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:
5. The agency's contact person who can answer questions about the rulemaking:

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

A.R.S. §§ 36-2999.72 and 36-2999.73 require AHCCCS to establish a second hospital assessment beginning October 1, 2020 and requires the Administration to deposit the monies into the Health Care Investment Fund (HCIF).

The statute requires the Administration to adopt rules regarding the method for determining the assessment, the amount or rate of the assessment and modifications to or exemptions from the assessment.

In addition to establishing the HCIF assessment, the proposed rule makes modifications to the original assessment. A.R.S. § 36-2901.08 authorizes the Administration to establish, administer and collect an assessment on hospital revenues, discharges or bed days for funding a portion of the nonfederal share of the costs incurred beginning January 1, 2014, associated with eligible persons added to the program by A.R.S. §§ 36-2901.01 and 36-2901.07.

This rulemaking, in part, will amend rates paid by hospitals under the hospital assessment authorized by A.R.S. § 36-2901.08 for the time period beginning October 1, 2020. This assessment funds the cost of covered services to certain eligibility groups identified in the statute.



much as is necessary to meet the estimated costs associated with the projected populations referenced in the statute. As such, it is necessary for the Administration to adjust the assessment from time to time as the Administration updates its estimate of the number of eligible persons and projected cost associated with coverage for those persons.

At the assessment rates in the current rule, the Administration estimates that it would collect \$433 million over the course of a federal fiscal year. The amendments reflected in this proposed rule adjust the assessment rates such that the Administration anticipates the collection of \$534 million for the Federal Fiscal Year ending September 30, 2021. This amount corresponds to the amount of non-federal funds estimated to be necessary to cover the cost of providing care to the estimated 490,000 eligible individuals described in A.R.S. §36-2901.08(A) for Federal Fiscal year ending September 30, 2021. Moving forward, it is the Administrations’ intent to update both assessments at the beginning of each Federal Fiscal Year.

The rulemaking also renames the title of A.A.C. R9-22-730 “Hospital Assessment Fund” hospital assessment to distinguish it from the newly established HCIF hospital assessment. An additional amendment is proposed to assess freestanding children’s hospitals effective October 1, 2020. Previously, freestanding children’s hospitals were exempt from the assessment. Finally, the rulemaking removes the threshold for the outpatient component of the assessment.

**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 studies were conducted relevant to the rule.

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

Not applicable

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

The Administration estimates that \$534 million will be necessary to be collected from Arizona hospitals to fund the cost required by A.R.S. § 36-2901.08 for Federal Fiscal Year (FFY) 2021, ending September 30, 2021. The assessment amount currently in rule reflects the amount needed in SFY 2021 to cover the estimated cost of care, approximately \$433 million. The original SFY 2021 amount was determined earlier in the year and did not account for additional enrollment and costs associated with COVID-19. The amendment adjusts the rates upward to reflect the estimated need of \$534 million for FFY 2021.

The AHCCCS program is jointly funded by the State and the federal government through the Medicaid program. Depending on the eligibility category of the individual, the federal government provides between two-thirds and 90% of the cost of care for persons described in A.R.S. § 36.2901.08(A). The Administration will use the amounts collected from the assessment combined with the federal financial participation to fund the cost of health care coverage for an estimated 490,000 persons described in A.R.S. § 36.2901.08(A) through direct payments to health care providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members.

Additionally, the Health Care Investment Fund hospital assessment established in A.R.S. § 36-2999.72 will be matched by federal funds. The majority of the assessment funds and accompanying federal funds will be used to provide an increase for base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule and for quarterly supplemental payments to Arizona hospitals. Many of the providers of that medical care are considered small businesses located in Arizona.

A.R.S. §§ 36-2901.08 and 36-2999.72 prohibit the assessed hospitals from passing the cost of the assessment on to patients or third parties who pay for care in the hospital. In the aggregate, the Administration expects to return millions more in FFY 2021 in incremental payments for medical services than will be collected through the assessment. Along with a copy of this proposed exempt rule making, the Administration has posted to its website information regarding the fiscal impact of this amendment to hospitals: <https://azahcccs.gov/PlansProviders/CurrentProviders/State/proposedrules.html>

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

There were no changes between the proposed and final rulemaking.

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

Name and Position of Commenter	Date of Comment	Text of Comment	AHCCCS Response
Jennifer A. Carusetta, Executive Director – Health System Alliance of Arizona	9/28/20	<p>On behalf of the Health System Alliance of Arizona (Alliance), it is with great pleasure that we extend our support for the Notice of Proposed Rulemaking: Hospital Assessment Fund and Health Care Investment Fund.</p> <p>The Alliance would like to thank AHCCCS for its dedication and partnership in the implementation of the HEALTHIII Payments Program (“Program”). When this Program was first conceived more than two years ago, hospitals across Arizona were facing a \$1 billion shortfall in Medicaid reimbursement.</p>	<p>AHCCCS thanks Health System Alliance of Arizona for their support of this rulemaking. AHCCCS understands and recognizes that hospitals require time to plan for increases to the assessment and commits to continuing to engage with hospitals to provide this information as timely as possible.</p>



Jennifer A. Carusetta (continued)	9/28/20	<p>This shortfall limited hospital economic development and the industry’s collective ability to grow to meet the needs of a booming population.</p> <p>Arizona hospitals and healthcare providers have since been devastated by lost patient volume and unprecedented outlays in the fight against the COVID-19 pandemic. What at one point was a fiscal shortfall has since become a financial crisis. The healthcare industry’s recovery is contingent upon the successful implementation of this Program. It is for this reason that we are so very grateful for the efforts and foresight of our Agency partners.</p> <p>We recognize that the development of the Program is an iterative process and that in the coming years, adjustments will be necessary to ensure that it continues to meet federal statistical and regulatory requirements. As an Alliance, we are committed to continuing to lend our resources and support to ensure the long-term sustainability of the Program.</p> <p>Please do not hesitate to contact me if I can provide any additional information.</p>	
Sean Murphy, Executive Director – Arizona Dental Association	9/24/20	<p>The Arizona Dental Association is grateful for the work of fellow dentist and State Representative Dr. Regina Cobb for sponsoring HB 2668 (hospitals; unreimbursed costs; assessment; fund) also known as the Health Care Investment Act. The legislation, signed into law at the end of March 2020, will help make Arizona’s healthcare system stronger by increasing AHCCCS payments so they can be slightly closer to the costs associated with providing care to these patients.</p> <p>The enactment of this legislation and the accompanying proposed rules will help provide financial feasibility to hospitals and will help support the network of providers to help hospitals and providers meet the needs of patients in their communities. AzDA would like to thank the legislators, and the Governor, who supported this important bill and appreciate the rules being crafted in a way to ensure that dental providers are brought back to their 2009/2010 rates. We appreciate the clarity of the legislation and the proposed rules that require insurance companies to pass through to the providers the entirety of the monies in these assessment Funds. As the summary of the proposed rules highlights: “the majority of the assessment funds will be used to provide an increase for base reimbursement for services reimbursed under the dental fee schedule.” We recognize the need for appropriate oversight and auditing capability to ensure these monies are given to the providers in a timely manner, and that contractors are prohibited from reducing contracted rates as a result of these payments.</p> <p>With over a decade without such a rate increase, and during the existing public health crisis that has further exasperated healthcare issues, these increased reimbursement rates are crucial to dental providers caring for AHCCCS patients across Arizona.</p>	<p>AHCCCS thanks the Arizona Dental Association for their support of this rulemaking. AHCCCS understands and recognizes that dental providers require time to plan for increases to the assessment and commits to continuing to engage with dental providers to provide this information as timely as possible.</p>

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

No other matters have been prescribed.

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

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**  
The rulemaking must be established consistent with 42 CFR Part 433 Subpart B. The rule is not more stringent than federal law.



**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitive-ness 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 material is incorporated by reference.

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

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

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)  
ADMINISTRATION**

**ARTICLE 7. STANDARD FOR PAYMENTS**

Section

R9-22-730. Hospital Assessment Fund - Hospital Assessment

R9-22-731. Health Care Investment Fund - Hospital Assessment

**ARTICLE 7. STANDARD FOR PAYMENTS**

**R9-22-730. Hospital Assessment Fund - Hospital Assessment**

- A. For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:
1. "2018 Medicare Cost Report" means: The Medicare Cost Report for the hospital fiscal year ending in calendar year 2018 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated October 9, 2019.
  2. "2018 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of November 6, 2019 for the hospital's fiscal year ending in calendar year 2018.
  3. "Quarter" means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
  4. A "new hospital" means a licensed hospital that did not hold a license from the Arizona Department of Health Services prior to January 2, 2020.
  5. "Outpatient Net Patient Revenues" means an amount, calculated using data in the hospital's 2018 Uniform Accounting Report, that is equal to the hospital's 2018 total net patient revenue multiplied by the ratio of the hospital's 2018 gross outpatient revenue to the hospital's 2018 total gross patient revenue.
- B. Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning ~~July 1, 2020~~ October 1, 2020, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2018 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:
1. ~~\$612.75~~ \$757.25 per discharge and ~~1.2078%~~ 1.4466% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
  2. ~~\$612.75~~ \$757.25 per discharge and ~~0.5033%~~ 0.6028% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
  3. ~~\$153.25~~ \$189.50 per discharge and ~~0.5033%~~ 0.6028% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
  4. ~~\$153.25~~ \$189.50 per discharge and ~~0.5033%~~ 0.6028% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2018 Medicare Cost Report.
  5. ~~\$490.25~~ \$605.75 per discharge and ~~1.3085%~~ 1.5672% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  6. ~~\$551.50~~ \$681.50 per discharge and ~~1.5098%~~ 1.8083% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  7. \$151.50 per discharge and 0.4822% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
  - 7-8. ~~\$612.75~~ \$757.25 per discharge and ~~2.0131%~~ 2.4111% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C. Peer groups for the four quarters beginning ~~July~~ October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2020.



- D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of ~~\$153.25~~ \$189.50 for each discharge from the psychiatric sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F. Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2018 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of ~~\$61.50~~ \$75.75 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).
- ~~G.~~ ~~Notwithstanding subsection (B), for any hospital with more than \$300,000,000 in outpatient net patient revenues on the hospital's 2018 Uniform Account Report, outpatient revenues greater than \$300,000,000 are assessed a rate of 0.2013% for revenue in excess of \$300,000,000. Revenues at or below \$300,000,000 are assessed at the rate required by subsection (B).~~
- G.H.** Hospital Assessment Fund Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the Hospital Assessment Fund assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.H.** Assessment due date. The Hospital Assessment Fund assessment must be received by the Administration no later than:
  1. The 15th day of the second month of the quarter or
  2. In the event CMS approves the assessment after the 15th day of the first month of the quarter, 30 days after notification by the Administration that the Hospital Assessment Fund assessment invoice is available.
- J.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2018 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2020:
  1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
  3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2018 Medicare Cost Report.
  4. Hospitals designated as type: hospital, subtype: rehabilitation.
  - ~~5. Hospitals designated as type: hospital, subtype: children's.~~
  - ~~56.~~ Hospitals designated as type: med-hospital, subtype: special hospitals.
  - ~~67.~~ Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2018 Medicare Cost Report are reimbursed by Medicare.
  - ~~78.~~ Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2018 Medicare Cost Report.
- K.** New hospitals. For hospitals that did not file a 2018 Medicare Cost Report because of the date the hospital began operations:
  1. If the hospital was open on the January 2 preceding the ~~July-October~~ assessment start date, the hospital Hospital Assessment Fund assessment will begin on ~~July-October 1~~ following the date the hospital began operating.
  2. If the hospital began operating between January 3 and June 30, the assessment will begin on July-October 1 of the following calendar year.
  3. A hospital is not considered a new hospital based on a change in ownership.
  4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;
    - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the July-October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
    - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
  5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
  6. For hospitals providing self-reported data, described in subpart 4 and 5:
    - a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
    - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- L.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the Hospital Assessment Fund assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- M.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly Hospital Assessment Fund assessment equal to that portion of the quarter during which the hospital operated.



- N. Required information for the inpatient Hospital Assessment Fund assessment. For any hospital that has not filed a 2018 Medicare Cost report, or if the 2018 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2018 Uniform Accounting Report filed by the hospital in place of the 2018 Medicare Cost report to calculate the assessment. If the 2018 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the assessment.
- O. Required information for the outpatient Hospital Assessment Fund assessment. For any hospital that has not filed a 2018 Uniform Accounting Report, or if the 2018 Uniform Accounting Report does not reconcile to 2018 Audited Financial Statements, the Administration shall use the data reported on 2018 Audited Financial Statements to calculate the outpatient assessment. If the 2018 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2018 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the outpatient assessment.
- P. The Administration will review and update as necessary rates and peer groups periodically to ensure the Hospital Assessment Fund assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in 36-2901.08.
- Q. Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

### **R9-22-731. Health Care Investment Fund - Hospital Assessment**

- A.** For purposes of this Section, terms are the same as defined in R9-22-730 as provided below unless the context specifically requires another meaning:
- B.** Beginning October 1, 2020, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2020, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2018 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:
1. \$151.50 per discharge and 2.5886% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
  2. \$151.50 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
  3. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
  4. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2018 Medicare Cost Report.
  5. \$121.25 per discharge and 2.8043% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  6. \$136.50 per discharge and 3.2357% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  7. \$30.50 per discharge and 0.8629% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
  8. \$151.50 per discharge and 4.3143% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C.** Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2020.
- D.** Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$38.00 for each discharge from the psychiatric sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E.** Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F.** Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2018 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of \$15.25 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).
- G.** Assessment notice. On or before the 20th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. The assessment must be received by the Administration no later than the 20th day of the second month of the quarter.



- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital’s 2018 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2020:
  - 1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  - 2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning “SH”.
  - 3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2018 Medicare Cost Report.
  - 4. Hospitals designated as type: hospital, subtype: rehabilitation.
  - 5. Hospitals designated as type: med-hospital, subtype: special hospitals.
  - 6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2018 Medicare Cost Report are reimbursed by Medicare.
  - 7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2018 Medicare Cost Report.
- J.** New hospitals. For hospitals that did not file a 2018 Medicare Cost Report because of the date the hospital began operations:
  - 1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
  - 2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
  - 3. A hospital is not considered a new hospital based on a change in ownership.
  - 4. The assessment will be based on the discharges reported in the hospital’s first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply:
    - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. “Annualized” means divided by a ratio equal to the number of months of data divided by 12 months.
    - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31.
  - 5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
  - 6. For hospitals providing self-reported data, described in subpart 4 and 5:
    - a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
    - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- L.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- M.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- N.** Required information for the inpatient assessment. For any hospital that has not filed a 2018 Medicare Cost report, or if the 2018 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2018 Uniform Accounting Report filed by the hospital in place of the 2018 Medicare Cost report to calculate the assessment. If the 2018 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the assessment.
- O.** Required information for the outpatient assessment. For any hospital that has not filed a 2018 Uniform Accounting Report, or if the 2018 Uniform Accounting Report does not reconcile to 2018 Audited Financial Statements, the Administration shall use the data reported on 2018 Audited Financial Statements to calculate the outpatient assessment. If the 2018 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2018 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the outpatient assessment.
- P.** Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital’s provider agreement. If the hospital does not comply within 180 days after the hospital’s provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital’s license.

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- g. Sub-acute facilities with 17 or more beds.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 3120, effective October 1, 2019 (Supp. 19-4).

R9-22-722.	Reserved
R9-22-723.	Reserved
R9-22-724.	Reserved
R9-22-725.	Reserved
R9-22-726.	Reserved
R9-22-727.	Reserved
R9-22-728.	Reserved
R9-22-729.	Reserved

*Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 1041 (Supp. 15-3).*

*Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 491 (Supp. 15-2).*

**R9-22-730. Hospital Assessment Fund - Hospital Assessment**

A. For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:

1. "2018 Medicare Cost Report" means: The Medicare Cost Report for the hospital fiscal year ending in calendar year 2018 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated October 9, 2019.
2. "2018 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of November 6, 2019 for the hospital's fiscal year ending in calendar year 2018.
3. "Quarter" means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
4. A "new hospital" means a licensed hospital that did not hold a license from the Arizona Department of Health Services prior to January 2, 2020.
5. "Outpatient Net Patient Revenues" means an amount, calculated using data in the hospital's 2018 Uniform Accounting Report, that is equal to the hospital's 2018 total net patient revenue multiplied by the ratio of the hospital's 2018 gross outpatient revenue to the hospital's 2018 total gross patient revenue.

B. Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2020, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2018 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the

hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:

1. \$757.25 per discharge and 1.4466% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
  2. \$757.25 per discharge and 0.6028% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
  3. \$189.50 per discharge and 0.6028% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
  4. \$189.50 per discharge and 0.6028% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2018 Medicare Cost Report.
  5. \$605.75 per discharge and 1.5672% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  6. \$681.50 per discharge and 1.8083% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  7. \$151.50 per discharge and 0.4822% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
  8. \$757.25 per discharge and 2.4111% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2020.
- D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$189.50 for each discharge from the psychiatric sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F. Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2018 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of \$75.75 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).
- G. Hospital Assessment Fund Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to

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each hospital a notification that the Hospital Assessment Fund assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.

- H.** Assessment due date. The Hospital Assessment Fund assessment must be received by the Administration no later than:
1. The 15th day of the second month of the quarter or
  2. In the event CMS approves the assessment after the 15th day of the first month of the quarter, 30 days after notification by the Administration that the Hospital Assessment Fund assessment invoice is available.
- J.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2018 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2020:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
  3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2018 Medicare Cost Report.
  4. Hospitals designated as type: hospital, subtype: rehabilitation.
  5. Hospitals designated as type: med-hospital, subtype: special hospitals.
  6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2018 Medicare Cost Report are reimbursed by Medicare.
  7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2018 Medicare Cost Report.
- K.** New hospitals. For hospitals that did not file a 2018 Medicare Cost Report because of the date the hospital began operations:
1. If the hospital was open on the January 2 preceding the October assessment start date, the Hospital Assessment Fund assessment will begin on October 1 following the date the hospital began operating.
  2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
  3. A hospital is not considered a new hospital based on a change in ownership.
  4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;
    - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
      - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
6. For hospitals providing self-reported data, described in subpart 4 and 5:
- a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
  - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- L.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the Hospital Assessment Fund assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- M.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly Hospital Assessment Fund assessment equal to that portion of the quarter during which the hospital operated.
- N.** Required information for the inpatient Hospital Assessment Fund assessment. For any hospital that has not filed a 2018 Medicare Cost report, or if the 2018 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2018 Uniform Accounting Report filed by the hospital in place of the 2018 Medicare Cost report to calculate the assessment. If the 2018 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the assessment.
- O.** Required information for the outpatient Hospital Assessment Fund assessment. For any hospital that has not filed a 2018 Uniform Accounting Report, or if the 2018 Uniform Accounting Report does not reconcile to 2018 Audited Financial Statements, the Administration shall use the data reported on 2018 Audited Financial Statements to calculate the outpatient assessment. If the 2018 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2018 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the outpatient assessment.
- P.** The Administration will review and update as necessary rates and peer groups periodically to ensure the Hospital Assessment Fund assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in A.R.S. § 36-2901.08.

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- Q.** Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

**Historical Note**

New Section R9-22-730 made by exempt rulemaking at 20 A.A.R. 281, effective January 15, 2014 (Supp. 14-1).

Amended by exempt rulemaking at 20 A.A.R. 1833, effective July 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 637, effective April 15, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 21 A.A.R. 1486, effective July 16, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 2050, effective July 14, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 1945, effective July 1, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2229, effective July 10, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 1938, effective July 1, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1702, effective July 1, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4).

**R9-22-731. Health Care Investment Fund - Hospital Assessment**

- A.** For purposes of this Section, terms are the same as defined in R9-22-730 as provided below unless the context specifically requires another meaning.
- B.** Beginning October 1, 2020, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2020, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2018 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:
1. \$151.50 per discharge and 2.5886% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
  2. \$151.50 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
  3. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
  4. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2018 Medicare Cost Report.
  5. \$121.25 per discharge and 2.8043% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  6. \$136.50 per discharge and 3.2357% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
  7. \$30.50 per discharge and 0.8629% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
  8. \$151.50 per discharge and 4.3143% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C.** Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2020.
- D.** Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$38.00 for each discharge from the psychiatric sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E.** Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F.** Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2018 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of \$15.25 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).
- G.** Assessment notice. On or before the 20th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. The assessment must be received by the Administration no later than the 20th day of the second month of the quarter.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2018 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2020:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
  3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2018 Medicare Cost Report.
  4. Hospitals designated as type: hospital, subtype; rehabilitation.

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5. Hospitals designated as type: med-hospital, subtype: special hospitals.
  6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2018 Medicare Cost Report are reimbursed by Medicare.
  7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2018 Medicare Cost Report.
- J.** New hospitals. For hospitals that did not file a 2018 Medicare Cost Report because of the date the hospital began operations:
1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
  2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
  3. A hospital is not considered a new hospital based on a change in ownership.
  4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;
    - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
    - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
  5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
  6. For hospitals providing self-reported data, described in subpart 4 and 5:
    - a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
    - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- L.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- M.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- N.** Required information for the inpatient assessment. For any hospital that has not filed a 2018 Medicare Cost report, or if the 2018 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2018 Uniform Accounting Report filed by the hospital in place of the 2018 Medicare Cost report to calculate the assessment. If the 2018 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the assessment.
- O.** Required information for the outpatient assessment. For any hospital that has not filed a 2018 Uniform Accounting Report, or if the 2018 Uniform Accounting Report does not reconcile to 2018 Audited Financial Statements, the Administration shall use the data reported on 2018 Audited Financial Statements to calculate the outpatient assessment. If the 2018 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2018 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the outpatient assessment.
- P.** Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

**Historical Note**

New Section made by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4).

**ARTICLE 8. REPEALED**

*Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-22-801. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-801 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended under an exemption from the provisions of the Administrative Procedure Act,

### 36-2901.08. Hospital assessment

(Conditionally Rpld.)

A. The director shall establish, administer and collect an assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs, except for costs of the services described in section 36-2907, subsection F, that are incurred beginning January 1, 2014 and that are not covered by the proposition 204 protection account established by section 36-778 and the Arizona tobacco litigation settlement fund established by section 36-2901.02 or any other monies appropriated to cover these costs, for all of the following individuals:

1. Persons who are defined as eligible pursuant to section 36-2901.07.
2. Persons who do not meet the eligibility standards described in the state plan or the section 1115 waiver that were in effect immediately before November 27, 2000, but who meet the eligibility standards described in the state plan as effective October 1, 2001.
3. Persons who are defined as eligible pursuant to section 36-2901.01 but who do not meet the eligibility standards in either section 36-2934 or the state plan in effect as of January 1, 2013.

B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment. The assessment is subject to approval by the federal government to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.

C. The director may establish modifications or exemptions to the assessment. In determining the modifications or exemptions, the director may consider factors including the size of the hospital, the specialty services available to patients and the geographic location of the hospital.

D. Before implementing the assessment, and thereafter if the methodology is modified, the director shall present the methodology to the joint legislative budget committee for review.

E. The administration shall not collect an assessment for costs associated with service after the effective date of any reduction of the federal medical assistance percentage established by 42 United States Code section 1396d(y) or 1396d(z) that is applicable to this state to less than eighty per cent.

F. The administration shall deposit the revenues collected pursuant to this section in the hospital assessment fund established by section 36-2901.09.

G. A hospital shall not pass the cost of the assessment on to patients or third-party payors that are liable to pay for care on a patient's behalf. As part of its financial statement submissions pursuant to section 36-125.04, a hospital shall submit to the department of health services an attestation that it has not passed on the cost of the assessment to patients or third-party payors.

H. If a hospital does not comply with this section as prescribed by the director, the director may suspend or revoke the hospital's Arizona health care cost containment system provider agreement registration. If the hospital does not comply within one hundred eighty days after the director suspends or revokes the hospital's provider agreement, the director shall notify the director of the department of health services, who shall suspend or revoke the hospital's license pursuant to section 36-427.



36-2999.72. Hospital assessment; rules; collection; enforcement

(Conditionally Rpld.)

- A. In addition to the assessment established pursuant to section 36-2901.08, beginning October 1, 2020, the director shall establish, administer and collect an assessment on hospital revenues, discharges or bed days with respect to inpatient or outpatient services, or both, for the purposes prescribed in section 36-2999.73.
- B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment and modifications to or exemptions from the assessment. The assessment is subject to approval by the centers for medicare and medicaid services to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.
- C. The director may establish modifications to or exemptions from the assessment. In determining the modifications or exemptions, the director may consider such factors as the size of the hospital, the specialty services available to patients at the hospital and the geographic location of the hospital.
- D. The director shall present any change to the hospital assessment methodology to the joint legislative budget committee for review.
- E. The administration shall deposit, pursuant to sections 35-146 and 35-147, the monies collected pursuant to this section in the health care investment fund established by section 36-2999.73.
- F. A hospital may not pass the cost of the assessment on to patients or third-party payors that are liable to pay for care on a patient's behalf. As part of its financial statement submissions pursuant to section 36-125.04, a hospital shall submit to the department of health services an attestation that it has not passed on the cost of the assessment to patients or third-party payors.
- G. If a hospital does not comply with this section as prescribed by the director of the Arizona health care cost containment system, the director of the Arizona health care cost containment system may suspend or revoke the hospital's Arizona health care cost containment system provider agreement registration. If the hospital does not comply within one hundred eighty days after the director of the Arizona health care cost containment system suspends or revokes the hospital's provider agreement, the director of the Arizona health care cost containment system shall notify the director of the department of health services, who shall suspend or revoke the hospital's license pursuant to section 36-427.

36-2999.73. Health care investment fund; purposes; approval

(Conditionally Rpld.)

A. The health care investment fund is established consisting of the following:

1. Monies deposited in the fund pursuant to section 36-2999.72.
2. Interest earned pursuant to this section.
3. Legislative appropriations.

B. The director shall administer the health care investment fund. The director may not use fund monies to pay for the base reimbursement level for hospital services. The director shall use fund monies as necessary only for the purpose of funding the nonfederal share of the cost for the following:

1. To make directed payments to hospitals pursuant to 42 Code of Federal Regulations section 438.6(c) that supplement the base reimbursement level for hospital services to eligible persons as defined in section 36-2901.
2. To increase base reimbursement rates for services reimbursed under the administration's dental fee schedule and physician fee schedule, not including the physician drug fee schedule, to the extent necessary as determined by the administration to restore these providers' rates to the rate levels in existence before fiscal year 2008-2009, if these expenses do not exceed the lesser of \$70,500,000 or twenty percent of the total assessment monies deposited pursuant to section 36-2999.72 for the fiscal year.
3. To pay for the nonfederal share of the costs for administrative expenses incurred by the administration or its agents in performing the activities authorized by this section, if these expenses do not exceed one percent of the total assessment monies deposited pursuant to section 36-2999.72 for the fiscal year.

C. The administration shall develop a process to ensure that contractors pass through directed payments to eligible providers in a timely manner. Contractors may not reduce contracted rates as a result of directed payments.

D. Monies in the health care investment fund:

1. Are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
2. Are continuously appropriated.
3. Are to be credited against the total hospital assessment to be collected pursuant to section 36-2999.72 for the subsequent fiscal year if not expended for the purposes authorized under this section within the same fiscal year the monies are deposited in the fund.
4. May not be used to supplant existing and future appropriations to the administration for existing and future programs.

E. The administration may not use the monies in the health care investment fund pursuant to this section until the centers for medicare and medicaid services approves the use of the assessment monies for directed hospital expenditures pursuant to 42 Code of Federal Regulations section 438.6(c) and federal financial participation eligibility for the directed hospital expenditures contemplated under this section.

F. On notice from the administration, the state treasurer shall invest and divest monies in the health care investment fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.